

**WHITE EARTH BAND OF OJIBWE
JUDICIAL CODE**

TITLE 4a . CUSTOMARY ADOPTION CODE

4a-1 Short Title, Declaration of Policy, Purpose and Definitions

4a-1 A. Short Title

Title 7 (Chapters 4a-1 through 4a-15) shall be entitled “Customary Adoption Code”.

4a-1 B. Declaration of Policy

1. It is the fundamental belief of the White Earth Band of Ojibwe that its children are the sacred responsibility of the Tribe.

2. One of the White Earth Band of Ojibwe’s basic inherent sovereign rights is the right to make decisions regarding the best interests of its children including who should provide for the care, custody and control of its children. This code is intended to assure a safe, stable, nurturing and permanent environment for the tribe’s children and to provide for the protection of our children, our people and our way of life.

3. The principles that shall guide decisions pursuant to this code are: protection of the child’s safety, well-being and welfare and their sense of belonging; preservation of the child’s identity as a tribal member and member of an extended family and clan; preservation of the culture, religion, language, values, clan system and relationships of the Tribe.

4. As an exercise of its inherent sovereignty the White Earth Band has the authority and jurisdiction to formally delegate the authority to its Children’s Court to adjudicate its own customary practices regarding child rearing and child custody.

4a-1 C. Purpose

The customary adoption code shall be liberally interpreted and construed as an exercise of the inherent sovereign authority of the White Earth Band of Ojibwe to fulfill the following express purposes:

1. To embody and promote the basic traditional values of the White Earth Band of Ojibwe regarding the protection and care of the tribe’s children. The White Earth Band of Ojibwe believes that it is the responsibility of the tribe, the tribal communities and extended families to protect, care for and nurture our children.

2. To promote the belief of the White Earth Band of Ojibwe that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.

3. To provide for the best interests of the tribe, tribal communities and the tribe's children.
4. To afford judicial processes which allow for formal adjudications that address the issues of the rights, responsibilities, care, custody and control of minor children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children by conferring jurisdiction upon the White Earth Children's Court to hear and adjudicate such matters.

4a-1 C. Definitions

As used in this code:

1. **"Adoptee"** is defined as the individual, child or adult who is adopted or is to be adopted.
2. **"Adoptive Parent"** is defined as the person establishing or seeking to establish a permanent parent-child relationship with a child who is not their biological child.
3. **"Band"** means the White Earth Band of Ojibwe.
4. **"Best Interests of the Child"** is defined as a variety of factors including: the ability of the tribe and reservation community to provide for the care of the child; the wishes of the tribe, parents, party or parties; the preference of the child if the child is of sufficient age to express a preference; the intimacy of the relationship between the parties and the child; the child's adjustment to home, school and tribal community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed adoptive home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child love, affection, guidance and to continue educating the child in the child's tribal culture and heritage.
5. **"Best Interests of the Tribe"** is defined as a variety of factors including but not limited to the ability of the tribe and its members to provide for the child; the ability of the tribe and its members to provide for the continuation of the tribe's culture, language, history, religion, traditions and values through its children if those children are taken away and not taught these things throughout their daily lives. The ability of the Tribe to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Tribe as crucial to the future

of the tribe as a whole.

6. **“Birth Parent”** is defined as the biological parent.
7. **“Customary Adoption”** means a traditional tribal practice recognized by the community and tribe which gives a child a permanent parent-child relationship with someone other than the child’s birth parent(s).
8. **“Court Administrator”** means the office of the Court Administrator created pursuant to Chapter IV of the Judicial Code.
9. **“Court”** means the Children’s Court of the White Earth Band.
10. **“Child”** is defined as a person under the age of eighteen (18) years of age.
11. **“Family member”** is defined as a person related by blood or marriage who maintains some form of significant contact with the child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren, cousins, significant others, and any other persons who might be considered a family member or a relative under tribal law or custom.
12. **“Final Decree of Customary Adoption”** is defined as the final court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent.
13. **“Final Order Suspending Parental Rights”** means a final order of the court which permanently suspends the rights of a biological parent to provide for the care, custody and control of their child. Said order may establish the parameters of contact between the birth parent and the child if said contact is in the child’s best interests.
14. **“State court”** means a court of the State of Minnesota, or of any other state, having civil jurisdiction over the child or children who are the subject of a suspension of parental rights petition or customary adoption petition.
15. **“Suspension of Parental Rights”** is defined as the permanent suspension of the rights of biological parents to provide for the care, custody and control of their child.

4a-2 Civil Jurisdiction

The Court shall have civil jurisdiction to hear and adjudicate petitions seeking a suspension of parental rights order or a customary adoption for protection of a child or ; to issue temporary and permanent orders for protection of a child, including *ex parte* orders if an emergency exists; and to issue such other orders as may be just and reasonable and designed to carry out the intent and purposes of this title, including use of the civil contempt powers of the court as set forth in Chapter II of the Judicial Code.

4a-3 Rights of Parties in Suspension of Parental Rights Proceedings

In addition to any other rights afforded under the Indian Civil Rights Act, 25 U.S.C. Sections 1301-03 (1968), as amended, or enumerated within the Judicial Code, petitioners, and other parties have the following rights:

1. A biological parent has the right to refuse services provided by any social services agency, however, their refusal to accept services may have a significant impact on their ability to have contact with their child;
2. The petitioner and respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a petition for suspension of parental rights pursuant to this Title. 4a. The biological parents and the petitioner have the right to be represented by counsel at their own expense at all proceedings;
5. The biological parents and the petitioner have the right to summon and cross-examine witnesses.
6. The biological parents and the petitioner have the right to seek independent medical, psychological or psychiatric evaluations of the child at their own expense.

4a-4 Petition to Suspend Parental Rights.

A. Any adult or agency possessing custody of a minor child may file a petition with the Court Administrator seeking an order for the permanent suspension of the parental rights of a parent of a child. The petition shall contain the following information:

1. The name, address and telephone number of the child's tribe;
2. The name, address, telephone number and age of the child's parent whose parental rights are to be suspended;
3. The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;

4. The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;
5. A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's tribe.
6. A statement as to basis for the request for the suspension of parental rights, supported by medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;
7. A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

B. The petitioner shall sign the petition in the presence of the Court Administrator or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

4a-5 Notice of Hearing on Petition to Suspend Parental Rights

Upon the filing of a petition seeking an order for the suspension of parental rights, the Court Administrator shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent(s); family members; caretaker, if any; and appropriate agencies of the Band which may either have an interest in the proceedings or be of assistance to the court in adjudicating the matter. Such notice shall be served in the manner provided for in the White Earth Rules of Civil Procedure.

4a-6 Hearing.

- A. Attendance at hearing.
 1. The parents, family members, agencies and petitioner shall be present at the hearing in person or by telephone unless he or she has waived the right to appear in a writing executed before the Court Administrator or a notary and filed with the court or unless the parent is unable to attend by reason of a medical condition as evidenced by a written statement from a licensed physician or other appropriate professional.
 2. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.
 3. The parent(s) named in the petition shall also be present. The parent(s) failure to appear shall not prevent the issuance of an order for suspension of parental rights.

B. Conduct of the hearing.

1. The court shall inform the parent of their rights under this code and of the nature and consequences of the proceedings.

2. The court shall further inform all other parties of their rights under the Judicial Code and pursuant to the Indian Civil Rights Act, 25 U.S.C., Section 1301-03 (1968), as amended, including the right to summon and cross-examine witnesses.

3. The rules of evidence of the Tribal Court shall apply.

4. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence. There shall be a legal presumption of the parent's ability to parent until proven otherwise.

5. The court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Title.

C. Record of proceedings.

In all proceedings the court shall take and preserve an accurate stenographic or recording of the proceedings.

D. Findings.

1. In all cases, the court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.

2. The court may make findings that it is in the child's best interests that a final order suspending the parental rights be entered and the court shall specify the basis of those findings.

4a-7 Final Order for Suspension of Parental Rights

A. If the court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a suspension of parental rights. Such an order for the suspension of parental rights may include, but is not limited, to the following:

1. A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody and control of the minor child and

allowing the child to be adopted;

2. A permanent suspension of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement agreed upon by the parties to be ordered by the court;

3. Restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the minor child;

4. Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;

5. Ordering that any prior court order for custody, visitation or contact with the minor child is hereby terminated;

6. The parent shall have no standing to appear at any future legal proceedings involving the child;

7. The suspension of parental rights does not sever or affect in any way a child's relationship to his/her tribe or any rights of inheritance from the biological parent(s);

8. Shall contain a statement regarding why it is in the best interests of the child and the child's tribe to enter this order;

B. Copies of any order for suspension of parental rights shall be served upon the parent and the agency or agencies having legal custody of the child and any other parties as directed by the court.

C. Final orders for the suspension of parental rights may be reviewed by the court at the request of the biological parent, the agency or agencies possessing custody of the child only if one of the following occurs: if there is no final permanency order in effect after a period of one (1) year after the entry of the final order suspending parental rights; the adoption of the child fails; or the adoptive parent is deceased. Notice of this review shall be provided to all parties to the hearing at which the final suspension of parental rights order was issued.

4a-8 Petition for Customary Adoption.

A. Any adult may file a petition with the Court Administrator seeking an order for the customary adoption of a minor child. The petition shall contain the following information:

1. The name, address and telephone number of the child's tribe;

2. The name, address, telephone number and age of the child to be adopted;
3. The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;
4. The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;
5. The proposed name of the adoptee after the entry of the final order of customary adoption;
6. A statement or a copy of the final order suspending the parental rights of the biological parent(s);
7. A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the child's tribe.
8. A statement as to basis for the customary adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;
9. A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

4a-9 Notice of Hearing on Petition for Customary Adoption

Upon the filing of a petition seeking an order for a customary adoption of a minor child, the Court Administrator shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; appropriate family members, if any; caretaker, if any; and appropriate agencies of the Band which may either have an interest in the proceedings or be of assistance to the court in adjudicating the matter. Such notice shall be served in the manner provided for in White Earth Rules of Civil Procedure.

4a-10 Hearing on Petition for Customary Adoption.

- A. Attendance at hearing.
 1. The child who is the subject of a petition for customary adoption, agencies, petitioner and any appropriate family members including siblings may be present at the hearing in person or by telephone
 2. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

B. Conduct of the hearing.

1. The court shall inform the parties of their rights under this code and of the nature and consequences of the proceedings.
2. The court shall further inform all other parties of their rights under the Judicial Code and pursuant to the Indian Civil Rights Act, 25 U.S.C., Section 1301-03 (1968), as amended, including the right to summon and cross-examine witnesses.
3. The rules of evidence of the Tribal Court shall apply.
4. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence.
5. The court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Title.

C. Record of proceedings.

In all proceedings the court shall take and preserve an accurate stenographic or recording of the proceedings.

D. Findings.

1. In all cases, the court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.
2. The court may make findings that it is in the child's best interests that a final order for a customary adoption be entered and the court shall specify the basis of those findings.

4a-11 Final Order for Customary Adoption

A. If the court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a customary adoption. Such an order may include, but is not limited, to the following:

1. A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order;
2. A notice regarding the new name of the child, if any.

4a-12 Certification of a Customary Adoption

1. A customary adoption, conducted in a manner that is a long-established, continued, reasonable process and considered by the people of the White Earth Band to be binding and authentic, based upon the testimony of an expert witness, may be certified by the Children's Court as having the same effect as an adoption order issued by this court so long as it is in the best interests of the child and the child's tribe.
2. A decree certifying a customary adoption has the same effect as a decree or final order of customary adoption issued by this court.

4a-13 Enforcement

Final orders for the suspension of parental rights or customary adoption may be enforced by utilizing the contempt powers of the court as set for in Chapter VII of the Judicial Code.

4a-14 Appeals

A. Who Can Appeal

Any party to a petition to suspend the parental rights of a parent pursuant to this code may appeal a final court order.

B. Appeals Procedure

All appeals from proceedings under this Code shall be heard pursuant to White Earth Judicial Code except to the extent that any Rule of Procedure is in direct conflict with the express provisions of this Title 2. In such a case the provisions of this Title shall apply.

4a-15 Right of Access to Records

Any party deemed appropriate by the Court and the child who has been the subject of a suspension of parental rights proceeding or a customary adoption proceeding has the right, upon reaching the age of majority, to review all of the court's file on these matters subject to redaction of names or the rights of confidentiality of some documents under federal or tribal law.

4a-16 Severability

If any provision of this Title, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Title which can be given effect without the invalid provisions, and to this end the provisions of this Title are declared severable.