

**SANTA YSABEL BAND OF DIEGUENO INDIANS**  
**CHILDREN'S CODE**

**CHAPTER ONE**

**JURISDICTION AND DEFINITIONS**

**Section 1. Establishment of the Santa Ysabel Tribal Court**

The General Council of the Band, acting with its delegated authority under the Band's Articles of Association, approved the establishment of the Santa Ysabel Tribal Court ("Tribal Court") on August 14, 2005 and authorized the Tribal Council to take whatever actions were necessary to carry out the intent of the General Council. (Resolution #05-60) On March 12, 2005, the Tribal Council passed Resolution #519 authorizing the Intertribal Court of Southern California to act as the Tribal Court. The Tribal Court is authorized to exercise tribal jurisdiction over all matters as granted by the Tribe. The Tribal Court shall hear all proceedings arising under this Ordinance.

**Section 2. Purpose**

Children of the Santa Ysabel Band of Diegueno Indians ("Band") are an extremely valuable tribal resource. The welfare of our tribal children is of the foremost importance. Our children must receive the care and guidance necessary to allow them to become productive members of our Band and society in general.

The purpose of this Children's Code is as follows:

1. To allow the Band to take an active role in providing for the welfare and safety of children within its jurisdiction,
2. To preserve and strengthen family ties whenever possible, including improvement of home and environment,
3. To protect and preserve tribal heritage and cultural identity of the children, and
4. To ensure that other courts and agencies will fully cooperate with the Band in fulfilling the purposes of this Code.

**Section 3. Jurisdiction**

The Tribal Court shall have jurisdiction over all proceedings under this Code which involve the following:

1. A child who resides or is domiciled on Tribal Lands with the following exception: (1) the Tribal Court may not exercise such jurisdiction over a non-Indian child without the consent of the child's parent(s), guardian, or custodian and if said consent is not given the Tribal Court shall proceed in accordance with Chapter 2, Section 7; and (2) the Tribal Court may not exercise its jurisdiction over a non-member Indian child if the non-member Indian child's Tribe files an objection to such exercise of jurisdiction and seeks a transfer of the case pursuant to Chapter 4.
2. The Tribal Court shall have concurrent jurisdiction over all child custody proceedings involving a tribal member child, including his/her non-Indian and/or non-member Indian siblings, arising off Tribal Lands. However, pursuant to Chapter 4, Section 5.B., the Tribal Court may accept or decline a request for transfer of jurisdiction over a child custody case involving a tribal member child and his/her non-Indian and/or non-

member Indian sibling from a state or tribal court.

#### **Section 4. Definitions**

The following words and phrases, whenever used in this Code, shall have the following meaning unless defined otherwise by Tribal ordinance or guidelines:

- 1) “Abandonment”: means a parent, guardian or custodian who intentionally has not contacted his /her child by telephone, letter, or in person and/or made provision for his/her child’s care for an unreasonable amount of time. The Tribal Court will determine what an unreasonable amount of time is. A parent or guardian may also abandon his/her child by so expressing abandonment either verbally or in writing.
- 2) “Abuse and Neglect”: means at a minimum any recent act or failure to act on the part of a parent, custodian or guardian, which results in death, serious physical or emotional harm, sexual abuse or exploitations, or any act or failure to act which presents imminent risk of harm.
- 3) “Child”: means a person under the age of 18 years old.
- 4) “Child protection proceeding”: means a case where a child is found to be a Child-in-Need-of-Care.
- 5) “Clear and Convincing Evidence”: means that quantum of evidence beyond a mere “preponderance” but below that of “beyond a reasonable doubt” and such that it will produce in the mind of the trier of fact a firm belief in the facts as presented.
- 6) “Coerced”: means to compel an act by threat of force or force.
- 7) “Custodian”: Any person or entity having legal authority over a child either by court order or parent permission.
- 8) “Dependent”: means a child who has been found to be in need of care and placed under the jurisdiction of the Tribal Court.
- 9) “Direct Descendent of a Tribe”: A person under the age of eighteen that has a parent that is a member or eligible for membership in an Indian Tribe.
- 10) “Domicile”: means the place where a person has his/her permanent home or principle establishment and when absent intends to return. A child’s domicile is considered that of his parent(s).
- 11) “Duress”: means to restrain one from acting through threat of force or force.
- 12) “Extended family”: means a person’s parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins, sisters and brothers, or as defined by the Tribe.
- 13) “Family Preservation/Intervention-Prevention Services”: means services provided to the family to prevent removal of children or to reunite the family.
- 14) “Guardian”: means a person assigned by a Tribal Court or other court of law, or other person not the natural or adoptive parent, who has the authority to provide for the health and care of a child.

- 15) “Guardian Ad Litem”: a person appointed by the Tribal Court to represent the best interest of a child found to be in need of care.
- 16) “Infant Child”: Any child under the age of 12 months.
- 17) “Non-Indian Child”: means a person under the age 18 years old that is neither a member in, eligible for membership in or a descendent of a member of a federally recognized tribe.
  - 18) “Non-Member Indian Child”: means a person under the age 18 years old that is a member in, eligible for membership in or a descendent of a member of a federally recognized tribe other than the Santa Ysabel Band of Diegueno Indians.
- 19) “Party or Parties”: shall mean any person having a relationship or direct interest in a child that is the subject of a child protection proceeding.
- 20) “Preponderance of the Evidence”: means evidence that which leads the trier of fact to find that the existence of the fact in issue is more probable than not.
  - 21) “Probable Cause”: for the purposes of a child protection proceeding, probable cause means testimony, official reports of other evidence from a trustworthy source that would cause a reasonable person to believe that a child may be in need of care and that an investigation and hearing should be conducted to determine all the facts.
  - 22) “Santa Ysabel Social Services (SYSS)”: means a person employed or appointed by the Band to represent the interests of Indian children and the Band.
  - 23) “Tribal Lands”: means all land held by the United States of America in trust for the Santa Ysabel Band of Diegueno Indians.
  - 24) “Tribal Member Child”: means a person under the age of 18 that is a member of, eligible for membership in or a descendent of an enrolled member of the Santa Ysabel Band of Diegueno Indians.

## CHAPTER TWO

### PETITION/HEARINGS

#### **Section 1. Confidentiality**

All child custody proceedings under this Code shall be considered and treated as confidential. No employee or officer of the Tribal Court or employee of the Band shall give or release any information regarding a child custody case unless such release is within the employee’s or officer’s job duties and responsibilities.

#### **Section 2. Rights and Interest of Child**

In all child custody cases, the Tribal Court shall hear all the facts and evidence brought before it and shall consider the rights of all parties in the case when deciding what is in the child’s best interest. The best interest of the child shall be placed above the rights of any of the parties, including the interests of the child’s Tribe.

**Section 3. Grounds for Establishing a Child is in Need of Care**

A child is in need of care if:

- 1) He/she is being or has been abused or neglected by his/her parent(s), guardian or custodian; or,
- 2) His/her parent(s), guardian, or custodian fails to protect him/her from abuse and neglect or refuses to or is unable to discharge their parental responsibilities to and for the child. Parental responsibilities means the duty to supervise, control, care for, discipline, and provide the necessities of life to their child; or,
- 3) He/she, for any reason, is deprived subsistence, education, medical care, or any care or necessities that provide for his/her safety, well-being; or,
- 4) He/she has been abandoned.

**Section 4. Immediate and Emergency Removal**

All reports of a child in need as care as set forth in Section 3 shall be investigated by the SYSS or other appropriate agency within 48 hours of receiving the report.

**A. Authority to Remove and Place in Temporary Custody**

If upon investigation of a report of a child in need of care, SYSS finds that any of the grounds under Section 3 above exist, SYSS shall, with the assistance of Tribal Law Enforcement if necessary, remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement, without order from the Tribal Court.

**B. Placement Preferences**

The following placement preference shall be applied in all cases where a child is being placed outside his/her home:

- 1) An extended family member;
- 2) A tribal member family;
- 3) A licensed Indian foster home on, or near the child's reservation;
- 4) A licensed Indian foster home;
- 5) A licensed foster home; or
- 6) A licensed facility (i.e. a facility operated by a licensed child welfare service agency).

**C. Immediate and Emergency Removal Notice**

SYSS and/or Tribal Law Enforcement shall make all reasonable efforts to immediately notify, through the most efficient means available, the parents, guardian or custodian that their child has been removed from the home or otherwise detained.

**Section 5. Initiation of a Child Protection Case**

**A. Filing the "Child-in-Need-of-Care" Petition**

A "Child-in-Need-of-Care" Petition, as provided for under this Section, shall be filed with the Tribal Court by an officer of the Tribe, the Tribe's legal counsel or SYSS within forty eight (48) hours after a child has been removed from his or her home. A "Child-in-Need-of-Care" Petition must be filed within seventy two

(72) hours following the completion of SYSS's investigation of a child in need of care report and where the SYSS determines there is probable cause to believe that a child is in need of care.

## **B. Contents of "Child-in-Need-of-Care" Petition**

The Petition shall provide the following information:

- 1) The name, address and age of the child;
- 2) The names and addresses of the child's parents, guardian, or custodian;
- 3) The specific grounds upon which the Petition is based; and
- 4) The evidence that the petitioner is relying upon to support the Petition (declarations, doctor report, teachers' report, reports from witnesses to the injury, abuse or neglect, etc.).

If the child is a non-member Indian, a statement that notice to the child's Tribe has been made pursuant to Chapter 4, Section 1.

## **Section 6. Scheduling of Initial Hearing and Service of Petition.**

### **A. Scheduling the Initial Hearing**

Upon filing the Petition, the Clerk of Tribal Court will schedule an Initial Hearing no later than seventy-two (72) hours from the date of filing. In case where a child has been removed from his/her home pursuant to Section 4, the Initial Hearing will be held no later than the next judicial day following the date upon which the child was removed.

### **B. Services of the Petition**

The petitioner shall serve the "Child-in-Need-of-Care" Petition along with a Notice of Hearing that sets forth the time, date and location of the Initial Hearing on the child's parent(s), guardian or custodian and to the non-member Indian child's Tribe when appropriate. Service of the Petition and Notice of Hearing may be made by personal delivery, certified mail with return receipt requested, regular mail or any other method of service approved by the Tribal Court. The Petition and Notice of Hearing shall be served no less than 24 hours before the Initial Hearing. A Proof of Service must be filed with Tribal Court before the Tribal Court will act on the "Child-in-Need-of-Care" Petition.

## **Section 7. Initial Hearing.**

### **A. Purpose of the Initial Hearing**

At the Initial Hearing the petitioner bears the burden of establishing a prima facie showing that the child is in need of care and when appropriate that the child should be or continue to be placed outside of his or her home.

The Tribal Court will review the Petition and supporting documents, and hear from the petitioner and the child's parent(s), guardian and/or custodian, and other relevant witnesses. The Initial Hearing is preliminary in nature and the Tribal Court will determine whether there is sufficient probable cause to set the case for a "Child-in-Need-of-Care" Hearing and whether or not the child should be placed or remain outside of his/her home pending the "Child-in-Need-of-Care" Hearing. The Tribal Court may also at this time appoint the child a Guardian Ad Litem or advocate to represent the child's interests. The child's parent(s), guardian and/or custodian may be represented by counsel at their own expense.

In cases involving non-Indian children, the Tribal Court will entertain any objection by the parent, guardian and/or custodian of the child regarding the Tribal Court's exercise of jurisdiction over the proceeding. If an objection to the Court's jurisdiction is made by the parent, guardian or custodian, the Tribal Court shall, through assistance from the SYSS, have the case transferred to the appropriate state court or agency. If no state court or agency will accept transfer of the case, the Tribal Court will determine whether it is in the best interest of the child to continue to exercise Tribal Court jurisdiction over the child.

In cases involving a non-member Indian child, if a Motion to Transfer has been filed by the non-member Indian child's Tribe, the Tribal Court shall set a hearing date on the Motion no later than 30 days from the filing date as provided for under Chapter 4.

At any time should a party to an action under this Code contest the paternity of the child, the Tribal Court shall have jurisdiction to order the child, mother and putative father to submit to blood grouping tests or genetic (DNA) testing to determine whether or not the putative father is the biological parent of the child.

#### **B. Removal Findings**

Should the Tribal Court determine at the Initial Hearing that the child should be or continue to be placed outside his or her home pending the Child-in-Need-of-Care Hearing, the Tribal Court's order shall make specific findings that the continuation of residence in the child's home would be contrary to the welfare of the child or that out of home placement would be in the child's best interest. The Tribal Court's findings will be based on oral or written statements of facts showing probable cause of one or more of the following:

- 1) The child is suffering from an illness or injury and no parent, guardian, custodian or other person is providing adequate treatment or necessary care;
- 2) The child is in immediate danger from his/her surroundings and removal is necessary for his/her safety or well being;
- 3) The child will be subject to injury by others if not placed outside of his/her home;
- 4) The child has been abandoned by his/her parent, guardian or custodian;
- 5) No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the child; or
- 6) The child will run away so that he/she will be unavailable for further proceedings.

The Tribal Court's order shall also find that temporary placement and care are to be vested with the SYSS.

#### **C. Reasonable Efforts**

Upon a finding the child should be removed from his/her home or continue to be removed from his/her home, the Tribal Court order must make specific finding on whether reasonable efforts have been made to prevent or eliminate the need for the removal or that such efforts are unnecessary because:

- a. The parent, guardian or custodian has been convicted of murder or involuntary manslaughter of another child of the parent, guardian or custodian or convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or involuntary manslaughter;
- b. The parent, guardian, or custodian has been convicted of felony assault that resulted in serious bodily injury to the child or another child of the parent, guardian or custodian;

- c. The parental rights of the parent with respect to a sibling have been terminated involuntarily;
- d. The parent, guardian, custodian has subjected the child to aggravated circumstances (including, but not limited to, abandonment, torture, chronic abuse, and sexual abuse)

#### **D. Interim Findings Order**

If the Tribal Court is satisfied that probable cause exists it may issue a interim order that the child is in need of care but does not need to be removed from his/her home or should be returned to his or her home if removed pursuant to Section 4 pending the Child-in-Need-of-Care Hearing. In such cases the Tribal Court may also order the child's parent, guardian or custodian take immediate corrective steps to resolve the problems giving rise to the "Child-in-Need-of-Care" Petition.

### **Section 8. Peacemaker Mediation / Family Unity - RESERVED**

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

1. It is the Band's preference for a non-adversarial approach in resolving internal conflicts involving children and families. The Tribal Court, at any stage of a proceeding under this Code, may order the parties to participate in a confidential tribal Peacemaker Mediation. If mediation is ordered it shall be conducted pursuant to the Band's Peacemaker Mediation written guidelines and procedures.

2. Additionally, the Tribal Court may order the child's family to participate in a Family Unity Conference, which shall provide the child's family with an opportunity to establish a plan that will ensure the safety of the child. A Family Unity Conference shall be conducted and facilitated according to written guidelines established by the Band's appointed and/or authorized representatives. This Code recognizes a preference for family decision making opposed to judicial intervention and determination.

(a) Once the parties have reached a plan for the child, the plan shall be presented to the Tribal Court for approval or disapproval.

(b) If the Tribal Court disapproves the plan, it has the discretion to either send the family back for an additional conference or mediation, or may set the case for hearing. If the Tribal Court approves the plan, the plan shall become a final Tribal Court order.

### **Section 9. Child-in-Need-of-Care Hearing**

#### **A. Scheduling of a Child-in-Need-of-Care Hearing**

Within fifteen (15) days from the issuance of the Initial Hearing Order, the Tribal Court shall hold a Child-in-Need-of-Care Hearing. Notice of the hearing shall issue to the child's parents(s), custodian and/or guardian, child's representative and the child's Tribe if the child is a non-member Indian child in the manner provided for in Section 6.B. At the written request of any party, the fifteen (15) day requirement may be lengthened or shortened by the Tribal Court upon a showing of good cause, but in no event shall the Child-in-Need-of-Care Hearing be extended beyond sixty (60) days from the date a child has been removed from his/her home.

#### **B. The Purpose of the Child-in-Need-of-Care Hearing**

The purpose of the Child-in-Need-of-Care Hearing is to determine whether or not the allegations in the Petition are supported by the preponderance of the evidence. The parent(s), custodian and/or guardian shall

have the right to be represented at their own expense, call their own witnesses and to question witnesses called by any other party.

### **C. Tribal Court Finding**

If at the conclusion of the hearing the Tribal Court finds that the child is in need of care and it is in the child's best interest to remain under the jurisdiction of the Tribal Court, the Court shall set the case for a Dispositional Hearing pursuant to Section 10. If the Tribal Court determines that the child should be moved from his/ her home at the conclusion of the Child-in-Need-of-Care Hearing, the Tribal Court order shall set forth the findings mandated under Sections 7. B and C.

If the Tribal Court determines that reasonable efforts to reunite the child with his/her parent(s), guardian, or custodian are not required per a finding under Section 7 C., the Tribal Court will schedule a Permanency Hearing within thirty (30) days from issuance of its Child-in-Need-of-Care Order.

## **Section 10. Dispositional Hearing**

### **A. Timing of the Dispositional Hearing**

The Tribal Court shall set a Dispositional Hearing within thirty (30) days of issuance of the Child-in-Need-of-Care Order. The thirty (30) day deadline may be lengthened or shortened at the written request of any party and upon a finding by the Tribal Court of good cause.

### **B. Purpose of the Dispositional Hearing**

Having determined that a child is in need of care, the Tribal Court at the Dispositional Hearing will determine what services will be provided the family or in cases where a child has been removed from the home, what reunification serves will be provided. The Tribal Court shall hear from the child's parent(s), guardian and/or custodian, the child (if age appropriate), other relevant witnesses and the recommendations set forth in the SYSS workers case plan. In all cases the child's parents must be informed at the hearing and given written notice that their parental rights could be terminated if they do not successfully complete the services under the case plan within twelve (12) months from the date said services are ordered by the Tribal Court.

### **C. The Tribal Court's Dispositional Order**

After considering all the evidence and documents, the Tribal Court may order the child, the child's parent(s), custodian and/or guardian to undergo evaluation and treatment for substance abuse, mental illness, emotional disturbances, and/or order parenting classes, mandatory school attendance, visitation or other services or activities for the benefit of the child and his or her family that are appropriate and likely to result in the best interest of the child and reunification of the family. The Tribal Court may order that the child remain in a foster care placement until further order and may issue interim orders for the protection of the child and/or family while further proceedings are being considered.

If a child has been moved from his or her home, the Tribal Court may order trial home visits not to exceed six (6) months unless the Tribal Court finds good cause to extend the six (6) month limitation. A child that is subsequently placed back in foster care following a trial home visit that exceeds a Tribal Court ordered time line, will be treated as a new foster care placement and the required findings under Section 7. B. and C must be made to validate such removal.

The Tribal Court will review the child's dispositional/case plan every ninety (90) days as provided under Section 13 or more frequently if determined by the Tribal Court.



## **Section 11. Case Plan**

### **A. Preparation of the Case Plan**

The case plan shall consist of a written document for each child under the jurisdiction of the Tribal Court. The plan shall be a discrete part of the Court record and will be jointly developed with SYSS, the child's parent(s), guardian and/or guardian. The case plan shall be prepared and presented by the SYSS worker to the Tribal Court at the Dispositional Hearing or Permanency Hearing in cases where a Dispositional Hearing is found to be unnecessary. The case plan shall be made available to all parties at least ten (10) days prior to all hearing.

### **B. Content of the Case Plan**

In a case where a child has been removed from his or her home, the case plan shall be prepared no later than sixty (60) days from the date of child's removal and shall be designed to achieve a safe placement for the child in the least restrictive setting available and in close proximity to the parents home consistent with the best interests and special needs of the child.

The plan shall include detailed social services designed to reunite the family or in case where the child has remained in the home, social services that will eliminate the causes giving rise to the Child-in-Need-of-Care Petition.

If pursuant to Section 7 C., services or reunification services are determined not to be in the best interest of the child, the case plan shall set forth the SYSS workers recommendation for permanency placement and document the steps to finalize an appropriate permanent placement. When the case plan goal is adoption, at a minimum, such documentation shall include child specific recruitment.

## **Section 12. Review Hearings**

### **A. Timing of Review Hearing**

The Tribal Court shall conduct a review hearing every ninety (90) days until the scheduling of the Permanency Hearing as provided for under Section 14. Review hearings will commence from the date the Dispositional Order was issued.

### **B. Review Hearing Report**

The SYSS worker shall submit a report before each hearing that addresses:

- 1) The appropriateness and continuing appropriateness of the child's placement,
- 2) The extent of SYSS's compliance with the case plan in making reasonable efforts to safely return the child to his or her home and to complete whatever steps are necessary to finalize the permanent placement of the child,
- 3) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care or filing of the Child-in-Need-of-Care Petition, and
- 4) The likely date by which the child will be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in another planned permanent living arrangement.

The SYSS worker's report shall be completed and submitted to the Tribal Court and all parties no later than ten (10) days prior to the review hearing. If the Tribal Court finds that it is in the child's best interest to remain under the Tribal Court's jurisdiction it shall enter another Order committing the child to the continuing jurisdiction of the Tribal Court.

### **C. Case Review of Child Not Removed From His or Her Home**

At the twelve (12) month review of a case where the child has remained in his or her home, the SYSS report shall recommend that the case be dismissed without further protective services or that the Tribal Court should continue its jurisdiction in order for continued monitoring and family preservation/intervention and preventive services.

## **Section 13. Permanency Hearing**

### **A. Timing of the Permanency Hearing**

A Permanency Hearing is the deadline for the Tribal Court to determine the final plan in a child custody case that will move the child into a safe, nurturing and permanent home.

A Permanency Hearing shall be held thirty (30) days from the issuance of a Child-in-Need-of-Care order when it has been determined that reasonable efforts and reunification services are unnecessary (see Section 7.B.) In all other cases where a child has been removed from his or her home, a Permanency Hearing shall be held no later than twelve (12) months after the date the child is considered to have entered foster care. A child is considered to have entered foster care on the earlier of: I) the date of the first judicial finding that the child is in need of care; or ii) the date that is sixty (60) days after the date on which the child is removed from home. The above stated time frames are maximum time frames. A case may move to a Permanency Hearing at any point where reasonable efforts to reunify have failed.

All parties shall receive Notice of the Permanency Hearing no less than ten (10) days prior to the hearing date. Notice of the hearing shall be made in the manner provided for under Section 6.B.

### **B. Purpose of the Permanency Hearing**

At the Permanency Hearing the Tribal Court shall order one of the following permanent plans for the child and specify the date that the plan will be implemented:

- 1) Return the child to his or her parent;
- 2) Continue with reunification for an additional six months;
- 3) Proceed with adoption by a relative, foster care parent or other non-relative with SYSS filing a petition for the modification of parental rights, if necessary;
- 4) Proceed with legal guardianship;
- 5) Proceed with permanent placement with a relative, foster parent or other non-relative; or
- 6) Provide another specified permanent living arrangement, if there is a compelling reason why it would not be in the best interest of the child to proceed with one of the other listed options.

### **C. Tribal Court's Findings**

The Tribal Court shall issue findings of fact and conclusions of law at the conclusion of the hearing. The Tribal Court's findings and conclusions shall be in writing and include, at a minimum the following:

- 1) The child's placement is necessary and appropriate;
- 2) Persons present at the hearing and whether absent parties were provided with appropriate notice. The

order shall also verify that reports, including the case plan, offered into evidence have been provided to all parties in advance of the hearing.

- 3) A finding, when appropriate, that SYSS has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child;
- 4) What, if any, progress has been made by the parent(s), custodian and/or guardian toward the alleviating or mitigating the causes that necessitated the removal of the child or filing of the "Child-in-Need-of-Care" Petition.
- 5) A statement addressing special factors or conditions of the child that are identified as special needs, what services are to be provided to address the needs and who is responsible for providing the services.
- 6) The Tribal Court's determination of the permanent plan for the child and why the plan is in the best interest of the child. The order shall state the steps to be taken and time lines for accomplishing the permanent goal. If the child is 16 years or older the Tribal Court shall find that the services set forth in the plan include those needed to assist the child in making the transition from foster care to independent living.
- 7) If the permanency plan is termination of parental rights and the petition has not yet been filed, the order should state the expected time frame for the filing of the petition for modification of parental rights is thirty (30) days. If the petition has been filed the Tribal Court should proceed to schedule a hearing date.
- 8) For any plan, the scheduling of a review hearing within ninety (90) days and the purpose of the hearing. The exception to this requirement is if all Tribal Court and agency involvement is terminated.

#### **Section 14. Involuntary Modification of Parental Rights**

##### **A. When Modification of Parental Rights is Mandatory**

The Tribal Court shall modify parental rights:

- 1) If the child has been in foster care under the responsibility of SYSS for fifteen (15) months of the most recent twenty-two (22) months. In calculating the fifteen (15) months out of the most recent twenty-two (22) months the Tribal Court must use a cumulative method of calculation when the child has experienced multiple exits and entries into foster care during a twenty-two (22) month period. A child is considered to have entered foster care on the earlier of: i) a judicial finding that the child is in need of care; or ii) sixty (60) days after the child is removed from the home. The Tribal Court shall not include trail home visits or runaway episodes in calculating the fifteen (15) months in foster care. When a modification of parental rights petition is filed pursuant to this section, the SYSS shall concurrently begin to identify, recruit, process and approve a qualified adoptive family for the child.
- 2) If a child has been determined by the Tribal Court to have been abandoned. A petition to modification parental rights on this ground must be filed within sixty (60) from the Tribal Court's determination that the child has been abandoned.
- 3) In a case where the parent(s) has been convicted of a felony listed in Section 7.B. A petition to modify parental rights on this ground must be filed within sixty (60) from the Tribal Court's determination that reasonable efforts to reunify the child and the parents are not required.

##### **B. Exceptions to Mandatory Modification of Parental Rights**

1) The Tribal Court may find exception to the mandatory provision above if:

i. The child is being cared for by a relative,

ii. The case plan documents a compelling reason why it would not be in the best interest of the child to modify parental rights. A compelling reason not to modify parental rights may include a determination that adoption is not an appropriate permanency goal for the child or there are no grounds to file a petition for modification of parental rights, or

iii. The Tribal Court determines that SYSS has failed to provide the child's family, consistent with the time frame in the case plan, services deemed necessary for the safe return of the child the home when reasonable efforts to reunify the family were required.

### **C. When Modification of Parental Rights is Discretionary**

A Tribal Court may modify parental rights upon any of the following grounds:

1) Continued custody of the child with his or her parent(s) is likely to result in serious emotional or physical damage to the child,

2) The parents have subjected the child to sexual, physical and/or emotional abuse,

3) The parents have failed reasonable reunification efforts and it is documented in the case plan that adoption is in the best interest of the child,

4) Minimal contacts with the child by the parents and an exhibiting of extreme disinterest for a period of six (6) or more,

5) Parental drug and alcohol impairment that creates an inability to care for the child and refusal or failure by the parent(s) to respond to substantial treatment efforts,

6) For a father, if paternity is not sought or custody of the child is not sought within thirty (30) days of notice of the child's birth,

7) The parental rights of the parent with respect to a sibling have been modified involuntarily,

8) The parent has been declared by the Tribal Court or other court of competent jurisdiction to be developmentally disabled or mentally ill.

### **D. Procedure for Modification of Parental Rights**

1) Except for the mandatory filing requirements of Section 14.A. above or order of the Tribal Court, a SYSS worker or the Tribe's legal counsel may file a Petition to Modify Parental Rights no later than thirty (30) days after he or she determines that there is sufficient grounds to support the modification of parental rights. The Petition must be complete and definite and provide fair notice to the parent. The Petition will set forth the specific ground(s) upon which the Petition is based and the facts and documentation to support the grounds stated in the Petition.

2) A pre-hearing shall be scheduled no later than thirty (30) days from the filing of the Petition. At the pre-hearing the Tribal Court shall set a date for all discovery to be concluded. The Tribal Court, in its discretion, may schedule a settlement conference that will be held no earlier than ten (10) days from the discovery deadline and no earlier than thirty (30) days from the trial date. Finally, the Tribal Court shall set

a trial date on the Petition no later than ninety (90) days after the Petition has been filed.

3) If so ordered by the Tribal Court, a settlement conference may be held prior to a trial on the Petition for the purpose of seeking the parent(s)' consent to the adoption and to settle related issues. Present at the settlement conference will be all parties, their representatives, and other relevant case participants, including the child if age appropriate, other family members or relatives and the foster parents and /or pre-adoptive parents. If settlement is reached and the parent(s) agree to the adoption of their child, a settlement agreement will be prepared by the parent(s) counsel or the SYSS or the Tribe's legal counsel if the parent has not retained counsel. The agreement must set forth the full and complete terms of the parent(s) voluntary consent, specifically what, if any, contact the parent(s) will continue to have with the child and how such contacts, if agreed upon, will be managed and by whom. If requested by a party, a Tribal Court may appoint a professional mediator to assist the parties in reaching a settlement on the adoption and related issues.

4) If settlement is reached and the parent(s) consent to the adoption of their child, the Tribal Court, at the trial on the Petition, shall question the parents to ensure that their consent is voluntary and informed. If the Tribal Court is satisfied that the parent(s) are knowingly and voluntarily relinquishing modifying their parental rights and that adoption is in the best interest of the child, the Tribal Court shall issue an order modifying the parent(s) rights and admit into evidence the signed settlement agreement reached by the parties. The Tribal Court shall no later than fourteen (14) days from the close of the trial issue written findings of fact and conclusions of law. The Tribal Court's findings shall include, but not be limited to, a finding that states what efforts were made by the Tribal Court to ensure the modification was voluntary and informed.

5) If settlement is not reached, the Petition to Modify Parental Rights shall advance to trial. The parent(s) shall have the right to be represented by counsel at his/her own expense and the right to confront and cross examine witnesses.

At the hearing the Tribal Court shall, based on clear and convincing evidence, determine whether:

- a) All parties were properly noticed,
- b) The evidence presented show grounds for modification of parental rights,
- c) If applicable, what reasonable efforts were made to reunify, and
- d) Modification of parental rights is in the best interest of the child.

If the Tribal Court is satisfied that the above requirements have been met then the Tribal Court shall issue an order modifying the rights of the parents. The Tribal Court shall issue written findings of facts and conclusions of law with fourteen (14) days of the modification hearing. The Tribal Court's written findings shall make specific findings on each of the requirements listed above.

#### **E. Tribal Membership Status**

Modification of parental rights will not affect the child's tribal membership status, nor the child's rights or privileges as a tribal member whether written or unwritten, nor shall it affect the jurisdiction of the Tribal Court over the child.

#### **F. Effect of Modification of Parental Rights**

If a parent's rights are modified in whole, they no longer have any right to the child or any responsibility for that child. A modification in whole completely severs the parent/ child relationship. A modification of

parental rights in part only terminates the parent's rights to legal and physical custody of the child and their responsibility to financially support the child, the parent may maintain the right to visit the child.

## **Section 15: Post-Permanency Review**

### **A. Timing of the Post-Permanency Review Hearing**

The Tribal Court shall conduct a review hearing no later than ninety (90) days following the issuance of the Permanency Order or Order Modifying Parental Rights. The SYSS worker shall file a report addressing the progress of the permanency plan and the report shall be filed with the Tribal Court and parties at least forty-five (45) days prior to the review hearing.

### **B. The Purpose of the Post-Permanency Review Hearing**

1) Reunification. In all cases where reunification was the permanency plan for the child, the Tribal Court shall determine at the ninety (90) day review hearing, whether or not reunification has been achieved and if not issue a new permanency plan which provides that a Petition to Terminate Parental Rights be filed within thirty (30) days or set another review hearing within thirty (30) days to implement an alternative plan for guardianship or permanent custody.

2) Permanent Guardianship or Custody. The Tribal Court shall expect that guardianship and permanent custody plans to be fully implemented within ninety (90) days from the Permanency Hearing unless there is compelling reasons otherwise. If permanent guardianship or custody has not been achieved, the Tribal Court shall grant one more ninety (90) day review hearing at which time the case will be set for a final hearing to grant permanent guardianship or permanent custody to the child's new family or to issue a new permanency plan.

3) Adoption. Where the rights of the parents have been modified and the permanency plan provides for adoption with the family the child has been residing, a review hearing shall be held to ensure that finalization of the adoption is progressing.

In cases where the rights of the parents have been modified and an adoptive home is being recruited, a review hearing shall be held to determine what efforts have been made, since the modification of parental rights hearing, to identify potential adoptive homes both locally and in other jurisdictions if necessary.

The Tribal Court shall continue to hold review hearings in permanency plan cases that provide for adoption until a final hearing date is scheduled to issue the order of adoption.

4) All Other Permanency Plans. All other permanency plans that provide for some other specified permanent living arrangement other than reunification, adoption, guardianship or permanent custody, shall be reviewed to determine whether the case is ready for finalization or whether a new permanency plan is needed.

## **Section 16: Final Hearing**

### **A. Timing of the Final Hearing**

It shall be the goal of the Tribal Court to conclude a Child-in-Need-of-Care case within twelve (12) to fifteen (15) months from the date the child is placed in foster care or in a case where the child has not been removed from his or her home twelve (12) to fifteen (15) months from the date the child is determined to be in need of care.

A final hearing shall be scheduled within five (5) days from a Tribal Court finding that the goal of a child's permanency plan has been achieved. All parties to the case shall be properly noticed at least two (2) days before the hearing and in the manner provided for under Section 6. B.

**B. Tribal Court Findings**

At the conclusion of the hearing the Tribal Court shall issue findings of fact and conclusions of law that include but are not limited to the following:

- 1) Who was present at the hearing and whether absent parties were provided with legal notice. It should be verified that reports provided the Tribal Court were made available to all parties prior to the hearing.
- 2) If any issues were contested, the Tribal Court's decision and reasons for the decision.
- 3) A finding as to why the adoption, permanent custody of permanent guardianship is in the best interest of the child.
- 4) A finding that full disclosure of the child's history and current or potential problems has been made.
- 5) A finding that reasonable efforts were made to finalize a permanent plan.
- 6) A statement and description of the new legal relationship and its terms and conditions, including any post-finalization contact agreements.
- 7) If this is an adoption finalization, a finding that all rights of the birth parents have been relinquished or modified and that any necessary consents to the adoption have been obtained.
- 8) If custody or guardianship is granted, clear definition of visitation and support orders relating to the biological parent(s).
- 9) A clear statement that the Tribal Court's involvement in this case is now concluded.

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## CHAPTER THREE

### Adoption and Guardianship

#### I. Adoption

##### Section 1. Who May Be Adopted

Any unmarried child may be adopted by an adult.

##### Section 2. Modification of Parental Rights

An unmarried child may not be adopted until his/her parents' parental rights have been modified. Parental rights can be modified either voluntarily, involuntarily or upon the death of one or both parents.

A. Involuntary Modification: Involuntary modification of parental rights may be ordered pursuant to Chapter 2, Section 14 of this Code or upon the filing of Petition to Modify Parental Rights by any person who seek to adopt the unmarried child. Grounds to modify parental rights shall include the following:

- a. The minor has been abandoned by one or both parents as defined under Section 3, 1) of the this Code;
- b. The minor has been neglected or cruelly treated by one or both parents;
- c. One or both parents is suffering from habitual use of alcohol or any other controlled substance as defined under tribal, federal or state law which renders them incapable of caring for or controlling his/her child;
- d. One or both of the parents has been convicted of a felony and the facts of the crime prove the unfitness of the parent(s) to have custody future custody and control of the child.
- e. Where one or both parents has been declared by a court of competent jurisdiction to be developmentally disabled or mentally ill which renders to such a degree that s/he will not be capable of supporting or controlling the child in a proper manner; or
- f. Where one or both parents have been declared by a court of competent jurisdiction to are mentally disabled, meaning suffering a mental incapacity or disorder that renders the parent or parents unable to care for and control his/her child.
- g. Any other grounds upon which, by clear and convincing evidence, demonstrates that that one or both parents cannot care for or control the minor.

B. Voluntary Modification: Voluntary modification of parental rights shall be ordered only if the parent(s) give their valid consent to the modification. Consent will be deemed voluntary if:

- a. The consent is given more than (10) days after the birth of the child;
- b. It is given in the presence of the Tribal Court or designated pro tem judge, with the participation of a designated representative;
- c. The person relinquishing parental rights is fully informed by the Tribal Court and he/she signs a statement declaring he/she were fully informed of the legal ramifications of his/her voluntary consent to modification of parental rights, the consenting parent understood what he/she were doing and knowingly and voluntarily relinquished his/her parental rights; and



d. The person relinquishing parental rights is informed that he/she has the right to be provided with an interpreter to explain the voluntary consent, its consequences, and his/her right to withdraw the voluntary consent, the time limit to do so and the procedure for doing so.

Voluntary consent to the modification of parental rights can be withdrawn anytime within ten (10) days of giving voluntary consent. After ten (10) days, withdrawal can only be done with the Tribal Court's permission. The Tribal Court shall give permission only if it finds it was given under duress, was coerced, or given under some other circumstance giving rise to its validity (e.g. the party was not competent at the time of signing the consent).

### **Section 3. Petition to Modify Parental Rights**

A Petition to Modify Parental Rights may be filed by any adult person seeking to adopt an unmarried child. The Petition shall contain the following information:

- a. The name and address of the petitioner and the relationship with the minor;
- b. Name, date of birth and address of the child;
- c. Names and addresses of the minor's legal parents, if known;
- d. Grounds for modifying parental rights with sufficient factual detail to place the legal parents on notice of the allegations against them;
- e. Name and address of the minor child's Tribe if other than the Band; and
- f. Whether legal parents are voluntarily consenting to the modification of his/her rights.

B. The Petition to Modify Parental Rights must be served on the legal parent(s) of the child and the child's Tribe if other than the Band. Service shall be made by personally service. If personal service cannot be made on the parent(s) the Petition alternative service may be made with leave of the Tribal Court. Such alternative service may include but is not limited to mail, publication in the local newspaper where the parent(s) were last known to reside. If the identity or the whereabouts of the parent(s) are unknown and upon a showing of due diligence by the petitioner to identify and locate the parents the Tribal Court may proceed to hearing on the Petition without any further notice to the legal parents. A proof of service must be filed with the Tribal Court before Petition will be set for hearing.

C. Upon the filing of the proof of service or a finding by the Tribal Court that service is unnecessary, the matter shall be set for hearing. A Notice of Hearing shall be issued by the Tribal Court and shall set forth the time, date, and location of the hearing. The parties shall be advised that they have a right to be represented at the hearing at their own expense. The Notice of Hearing shall be served on the parties by the Tribal Court. A hearing may not be held less than thirty (30) days from the date the Notice of Hearing is served on the parties. A request for a continuance of the hearing may be made by any party and granted upon a showing of good cause.

D. The standard of proof for granting a Petition to Modify Parental Rights shall be a preponderance of evidence. After hearing from all parties and witnesses, if any, and a review of all relevant documents, or the entry of the voluntary consent, the Tribal Court shall issue a written order no less than thirty (30) days following the hearing. If the Tribal Court grants the Petition to Modify Parental Rights, the petitioner may proceed with a Petition for Adoption.

## **Section 4. Adoption Petition**

### **A. Initiation of an Adoption**

An adoption proceedings shall not be initiated until the parental rights of the parent(s) has been modified pursuant to Section 3. above or under Chapter 2. Section 14 of this Code or terminated by a court of competent jurisdiction. Once a parent(s) rights have been modified/ terminated a Petition for Adoption may be filed with the Tribal Court by any person wishing to adopt the child.

### **B. The Content of the Adoption Petition**

The Adoption Petition shall state the following:

- 1) The relationship, if any, of the petitioner to the child;
- 2) The name, sex, date of birth, and residence of the child;
- 3) The names and addresses of the child's custodian or guardian. If the child is in sheltered care, the location and the time he or she was placed in shelter care;
- 4) When appropriate the tribal affiliation of the petitioner;
- 5) A certified copy of the Tribal Court order modifying parental rights or order from a court of jurisdiction terminating parental rights.

## **Section 5. Scheduling of the Adoption Hearing**

A hearing date shall be set no more than forty-five (45) days from the filing of the Petition for Adoption.

## **Section 6. Pre-adoption Placement Report**

A pre-adoption placement report shall be prepared and served on all parties at least fifteen (15) days prior to the adoption hearing. The report shall be prepared by the SYSS worker or other tribally approved agency. The pre-adoption report shall present an opinion as to whether the adoption is in the best interest of the child. Adoptions that will result in the substantial alienation of an Indian child from his or her Tribe, culture, or heritage shall not be favored. To the extent essential to the best interest of the child, the following placement preferences will be followed:

- 1) An extended family member;
- 2) A tribal member family;
- 3) An Indian family,

## **Section 7. Order of Adoption**

After the Tribal Court has heard all the evidence and reviewed the pre-adoption report and has determined that adoption is in the best interest of the child, the Tribal Court shall enter an Order of Adoption. The Order shall be kept on record with the Tribal Court, the child's Tribe, the Bureau of Indian Affairs and the State of California Office of Vital Statistics.

## **Section 8. Post Adoption Agreements**

If agreed to by the adoptive parents, the Tribal Court may approve and enter into the record a post adoption agreement. Such agreements may include, but are not limited to, visitation, contact (telephone, letters, etc) and other forms of contact between the child and his/her former legal parent(s).

## **II. Guardianship**

### **Section 1. Purpose**

It is the purpose of this section to provide for the appointment of guardians for children whose parents are deceased or are otherwise unable or unwilling to care for them on a permanent or temporary basis.

### **Section 2. Authority of the Tribal Court**

The Tribal Court shall have the authority to appoint guardians for the person and property of a child who is under the jurisdiction of the Tribal Court. The Tribal Court shall have the authority to place conditions upon a guardianship, to limit the powers of the guardianship and to define the terms of the guardianship.

### **Section 3. Who is Eligible to be a Guardian**

Any person eighteen (18) years or older may, if not otherwise disqualified, be appointed guardian of a child and/or his or her property. A person will be disqualified as an eligible guardian if:

- 1) He or she are found to be incompetent,
- 2) Convicted of a crime involving child abuse or neglect,
- 3) A non-resident of the Santa Ysabel Reservation and has not consented to the jurisdiction of the Tribe,
- 4) Any person the Tribal Court finds unsuitable.

### **Section 4. Petitioning for Guardianship**

A. Any interested person or tribal agency may file a petition for the appointment of himself or herself as the guardian of an Indian child.

B. A petition for guardianship shall state the following:

- 1) The name, age, residence and tribal affiliation of the child,
- 2) The name, age, residence and tribal affiliation of the petitioner or the person whom petitioner asks to have appointed guardian,
- 3) The name, age, residence and tribal affiliation of the child's extended family,
- 4) The name, age, residence and tribal affiliation of the person or facility having custody of the child and the date the child was placed in that custody,
- 5) The reason why the appointment of a guardian is necessary and the reason why the person asked to be appointed should be the guardian,
- 6) The approximate value and description of the child's property, including trust property and any payments to which he or she is entitled,

- 7) Any limitations requested on the powers and duties of the guardian, and
- 8) The requested term of the guardianship.

### **Section 5. Guardianship Hearing**

A. A guardianship hearing shall be held within forty-five (45) days from the filing of the Petition for Guardianship.

B. Notice of the Hearing and Petition for Guardianship shall be given to all persons named in the Petition (see Section 4. B.1. - 4). The Hearing Notice and Petition may be made by personal delivery, certified mail with return receipt requested, regular mail or any other method of service approved by the Tribal Court. The Petition and Notice of Hearing shall be served no less than ten (10) days before the Guardianship hearing. A proof of service must be filed with Tribal Court before the Tribal Court will act on the Petition for Guardianship.

C. After considering the Petition and hearing testimony from all interested parties and witnesses, the Tribal Court shall issue an Order that specifically addresses the following:

- 1) Is there a need to appoint a guardian,
- 2) If so, is it in the best interest of the child to appoint the person seeking the guardianship appointment,
- 3) If so, what is the term of the guardianship and should there be any limitations on the powers of the guardian,
- 4) If the child has property to be managed, should the guardian be required to post a bond and/or make an annual accounting to the Tribal Court.

D. Following the entry of an Order Appointing a Guardian, the Tribal Court Clerk shall issue Letters of Guardianship to the person appointed. The Letters of Guardianship shall set forth the name of the person appointed as guardian, the name and age of the child, and the powers granted the guardian. A Letter of Guardianship shall be affirmed by the guardian and certified by the Tribal Court.

### **Section 6. Guardian Bond**

If the child's estate includes real or personal property (excluding the residence of minor the personal possessions such as clothes, books, furniture, etc.) is: (1) valued at more than \$7,500; (2) has monthly income, exclusive of public benefits payments, valued at \$1000 or more; and (3) not all the income from the estate will be used for the benefit of the child, the Tribal Court may require the guardian to file a bond or other security payable to the Tribal Court in a sum fixed by the Tribal Court to protect against the guardian's mismanagement of the child's estate.

### **Section 7. Annual Accounting**

If the child's estate includes real or personal property (excluding the residence of the minor and personal possessions such as clothes, books, furniture, etc.) valued at \$ 7,500 dollars or more, the Tribal Court may require the guardian to file a written report annually accounting for the guardian's administration of the property.

### **Section 8. Duties of a Guardian**

The duties of a guardian shall include the following, unless limited by the Tribal Court:

- 1) Provide for the care, education, and custody of the child;
- 2) Make all decisions with respect to the child that the child's parent(s) would have the right to make, including but not limited to consent to medical treatment and decisions regarding education, religion, and cultural upbringing;
- 3) Preserve, protect and manage the child's property for the best interest of the child, to the extent consistent with tribal and federal laws;
- 4) File with the Tribal Court within one month after his or her appointment a list of all the property of the child that has come into possession of the guardian;
- 5) If Tribal Court ordered, file with the Tribal Court an annual accounting of the guardian's administration of the property of the child;
- 6) Apply to the Tribal Court for an order authorizing the sale of any property of the child or authorizing payments out of the estate of the child to the child or on his or her behalf.

#### **Section 9. Removal of a Guardian**

The Tribal Court may remove a guardian if the guardian is no longer qualified or if removal is in the best interest of the child. The Tribal Court may appoint a successor guardian and require the guardian to deliver up to the successor all property of the child.

#### **Section 10. Termination of Guardianship**

A guardianship shall be terminated automatically upon the eighteenth (18) birthday of the child or upon the expiration of the terms of the guardianship stated on the Tribal Court order. The guardianship may also terminate if the Tribal Court determines the guardianship is no longer necessary.

### **CHAPTER FOUR**

#### **TRANSFER OF JURISDICTION**

##### **Section 1. Notice to Other Tribes**

If the Tribal Court or any party in a child protection proceeding under this Code has reason to believe that the child is a member or eligible for membership in a Tribe other than the Santa Ysabel Band, the Tribal Court Clerk shall be directed to give written notice of the proceeding to the child's Tribe. The notice shall ask that the child's Tribe to respond in writing within fifteen (15) days of receiving the notice and to state whether the Tribe intends to act in the matter or seek transfer of the case. The notice shall include a copy of the this Chapter and written instructions on how the child's Tribe may intervene into the child protection proceeding if it so chooses.

##### **Section 2. Transfer of Jurisdiction - Hearings**

If a non-member child's Tribe files a motion requesting transfer of a pending Child-in-Need-of-Care, adoption or guardianship action, the Tribal Court shall schedule a hearing within thirty (30) days from the filing of the Motion to Transfer. Notice of Hearing on the Motion to Transfer shall be served on all parties to the action and the child's Tribe. The Tribal Court may dispense with holding a hearing on a Motion to Transfer, if all the parties to the action stipulate to the transfer and the Tribal Court finds that it is in the best interest of the child to transfer the case.

At the Motion to Transfer hearing, the Tribal Court shall hear from all the parties and the child's Tribe and weigh the following factors in deciding whether or not a case should be transferred to the child's Tribe:

- 1) Whether or not the non-member child's Tribe has jurisdiction;
- 2) The wishes of the parent, custodian, or guardian;
- 3) The wishes of the child, if he or she is able to understand the meaning of a transfer of jurisdiction;
- 4) Where appropriate the recommendation of the SYSS worker and other social and health service staff;
- 5) Where the child and the child's parent(s), guardian and/or custodian reside and their tribal affiliation;
- 6) The child's ties and connections to the tribal communities involved, as well as, as the child's parent(s), guardian and/or custodian; and
- 7) Whether the child's Tribe(s) have timely responded to the notice informing the Tribe of the Tribal Court proceeding.

### **Section 3. Interim Orders To Protect The Child During Transfer Proceedings**

The Tribal Court may make any orders which will protect the child, pending the outcome of any transfer of jurisdiction proceeding.

### **Section 4. Tribal Court's Order**

After weighing the factors listed in Section 2 above the Tribal Court shall issue an order either transferring the case to the child's Tribe or retaining jurisdiction over the case. The Tribal Court's order should be specific and clearly state the grounds for its decision.

### **Section 5. Recognition of Other Tribal Courts' Orders**

#### **A. Comity**

The Tribal Court may give recognition to State and other Tribal Court orders as a matter of comity (tribal courtesy) if:

- 1) When appropriate, the order does not violate the Indian Child Welfare Act;
- 2) The court granting the order had jurisdiction over the case; and
- 3) The order does not violate tribal policy of the Santa Ysabel Band.

#### **B. Accepting Jurisdiction from a State or Tribal Court**

The Tribal Court has the authority to accept or decline a transfer of a child custody action involving a tribal member child and his/her non-Indian or non-member Indian sibling, from a state or tribal court (or functioning equivalent.)

## **CHAPTER FIVE**

### **MISCELLANEOUS PROVISIONS**

#### **Section 1. Severability**

If any provision of this Code, or its application to any person or circumstances, is determined invalid, such determination shall not invalidate any other provisions or applications of this Code, and to this end, the provisions of this Code are severable.

#### **Section 2. Amendments**

This Code may be amended by the General Council and any such amendment shall be effective upon the date of the General Council's decision, unless otherwise determined by the General Council.

#### **Section 2. Effective Date**

This Code shall be come effective upon approval by the General Council. A copy of the General Council Resolution approving this Code shall be attached hereto.