



YOUR RIGHTS & RESPONSIBILITIES ===== IN THE ===== CHILD PROTECTION PROCESS

The Courtroom
Basics Guide

20
21



Ombimindwaa Gidinawemaaganinaadog
“Uplifting All Our Relatives”



**This is not legal advice.*

*This is an informational
brochure to assist in
understanding the child
protection legal process.*



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WHAT IS IMPORTANT TO KEEP IN MIND?

In Anishinaabe worldview, we are to see our children as a gift from the creator. As parents and caretakers, we have the responsibility to honor the sacred gift of children by providing them with love and respect while passing along the customs, traditions, and teachings so that they may grow to become Anishinaabeg with a better quality of life.

WHAT ARE YOUR RIGHTS?

- (1) The right to notice of the date and time of all hearings;
- (2) Right to be represented by an attorney, if you cannot afford one you may ask the Judge to appoint you a public defender;
- (3) Right to be present at all hearings;
- (4) Right to conduct discovery – a copy of information and reports regarding you and your child(ren) from OG and a list of witnesses that may be called to testify;
- (5) Right to bring motions before judge – a written document to have Judge order something you would like to happen for you or your child(ren);
- (6) Right to subpoena witnesses to testify on your behalf;
- (7) The right to make an argument in support of or against the petition;
- (8) The right to present evidence to support your side of the case;
- (9) The right to question or cross-examine witnesses; and
- (10) The right to request review of the Judge's decision.



WHAT ARE YOUR RESPONSIBILITIES?

- (1) You must come to Court when you are notified to do so;
 - a. If you do not come, the hearing may proceed without you and the Judge may make decisions about you and your child(ren).
 - b. If you do not attend, the Judge may issue a bench warrant.
 - c. Please note, attendance via phone may be permissible given approval.
- (2) You must follow all court orders;
- (3) You must follow your case plan if it is approved by the Judge; and
- (4) You *should* work with your attorney/lawyer/legal advocate on your case.



WHO IS IN THE COURTROOM?

WHO IS WHO?

The Judge – The Judge sits at the front of the Court on the bench facing everyone who is in attendance. They will ask everyone to identify themselves so that the record reflects who was there.

The Court Clerk – The Clerk sits next to the Judge, takes note, and schedules the next hearing. They may also hand you a copy of the Court order from your hearing.

The Ombimindwaa Gidinawemaaganinaadog (OG) Attorney – This person is a lawyer who sits at the table on the right-hand side of the Court, facing the Judge. They represent OG as Petitioner for the case and are responsible to explain the case. This Attorney works with response workers and case managers to produce recommendations for the outcome of the hearing. If the OG Attorney is unavailable the date of your hearing, a Prosecutor from the Red Lake Nation Tribal Court will be in their place to ensure your hearing goes on as scheduled. This Attorney is licensed to practice law in Red Lake Nation Tribal Court and in the State of Minnesota.

The Defense Counsel – This person is a(n) attorney, lawyer, or legal advocate who sits at the table on the left-hand side of the Court, facing the Judge. They are your counsel for hearings. They may be a public defender who is court-appointed to you or an attorney that you have privately hired. Their role is to consult with you about your case and represent your intentions. This Counsel is licensed to practice law in Red Lake Nation Tribal Court.



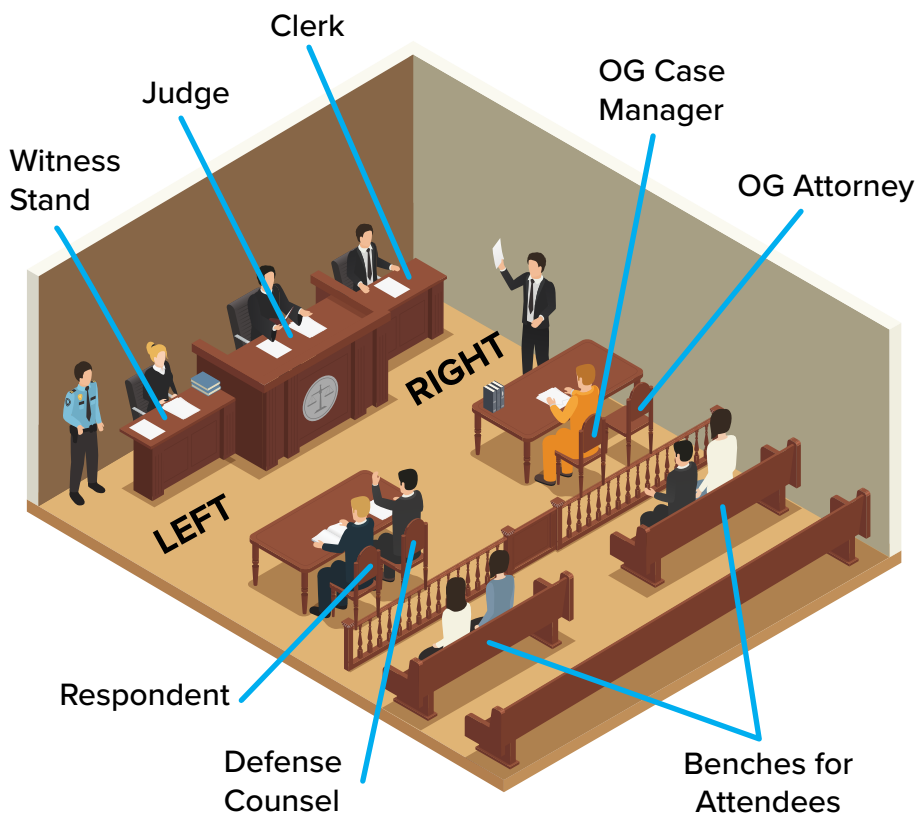
The Respondent – This is you, you will be seated next to or behind the Defense Attorney on the left-hand side of the Court. A Respondent is the party whom the petition from OG is filed against. There may be additional respondents if they are others whom are also the custodial parent/caretaker of the child(ren) and are involved in the petition set forth by OG.

Response Worker – The Response Worker will be seated next to or behind the OG Attorney. This person is part of the OG staff who is quite often the first person you may have contact with. They take initial reports and check-in on emergency situations. They will be present at an EPC hearing and they may also be present at any other hearings that require their participation.

Reunification Case Manager – The Case Manager will be seated next to or behind the OG Attorney. This person is part of the OG staff who is assigned to you once a case is opened to assist you in all your needs in relation to this case along the way of this hearing process. They will continue to gather information for you and your child(ren) and create a personalized case plan. They will be present at all of your hearings and help you follow your case plan.

Guardian Ad Litem (GAL) – There may be a Guardian Ad Litem in the courtroom. The Court may, at its discretion, and at any time during the pendency of a child(ren) custody proceeding, appoint a GAL to represent the best interests of your child(ren) before the Court to make such recommendations regarding custody and parenting time of the child(ren) as will guide the Court.

DEPICTION OF RED LAKE NATION TRIBAL COURTROOM LAYOUT





TYPES OF HEARINGS

TYPES OF HEARINGS EXPLAINED:

(1) Emergency Protective Care (EPC) Hearing

- a. These happen if your child(ren) has been removed from your care.
 - i. The hearing will commence within 72 hours of their removal, excluding weekends and Federal and Tribal holidays.
- b. At this hearing, the Judge decides where your child(ren) will live until the next hearing. They may decide to:
 - i. Return your child(ren) to you;
 - ii. Place child(ren) with a relative or important friend; or
 - iii. Place your child(ren) in foster care or shelter.
- c. You may tell the Judge where you wish the child(ren) to live and what you would like to have happen in this case.
- d. You may let the Judge know if you would plan to have witnesses or other written submissions of evidence.
- e. The Judge will then order an “Admit/Deny” hearing within eight (8) to twenty (20) working days of your EPC hearing.

(2) Admit/Deny Hearing

- a. At this hearing, you are entitled to a copy of the subpoena and petition.
- b. You will be asked to admit or deny whether the alleged facts are true.
 - i. If you deny the allegations:
 1. The Judge will set a Pretrial Hearing
 - ii. If you admit the allegations:



1. You will be placed under oath and questioned about the facts and the legal basis of the petition.
2. The Judge will then issue a Court Order that details what you must do to resolve the issues that are causing harm to your child(ren).

(3) Review Hearing

- a. These hearings happen at least as frequently as 180-days from the last hearing.
- b. You must attend these unless otherwise excused.
- c. This is the opportunity to show that you are making progress on your case plan.

(4) Permanency Hearing

- a. If a case moves from reunification status to permanency status the court will hold permanency hearings. If a respondent is unwilling to work his/her case or unable to contact this switch from reunification status to permanency status is generally at the 12-month mark of an open case.
- b. If your case reaches permanency status, your case manager is no longer required to provide, or report on, active efforts if you as respondent are unwilling to work your case or have been unable to contact.
- c. During the permanency hearing the court requires a case manager to provide an update on each of the children in out of home placement, including what the permanency plan is for each child, along with where the progress is at for that particular plan. A permanency plan may be to transfer legal and physical custody to the foster provider that is currently caring for the child.
- d. You, as respondent, may continue working your case, or resume working your case while it is in permanency. You may be a permanency option and may also attend permanency hearings.



- e. If you continue or resume working your case at the permanency stage, you will be subject to meeting court ordered requirements as stated in your previous court order(s), or demonstrating to the Judge that you have met the requirements alternatively. (Ex. Court ordered to do a Rule 25 and follow recommendations is a court order; however, the respondent never did the Rule 25, but has been working his/her case and voluntarily providing random UA's for 3 months that are clean/negative.)

(5) Pre-Trial

- a. You as represented by your attorney, legal advocate, or self-represented, along with the OG Attorney, the Judge, your Case Worker, and if applicable the Guardian Ad Litem will work together to create an agreement of what should happen with you and your child(ren).
- b. If an agreement cannot be reached, then the Judge will set a date for “trial.”

(6) Trial

- a. At trial, the OG Attorney will work to prove the facts alleged in the petition.
 - i. The OG Attorney may call witnesses and/or submitting written documents.
- b. You may call witnesses to testify on your behalf and/or submit written documents.
- c. If there is a Guardian Ad Litem, they may also call witnesses and/or submit written documents.
- d. You and your child(ren) may also be called as witnesses.
- e. Once the Judge reviews evidence from each person in its entirety, they will issue a Court Order. The Judge may decide:



- i. To dismiss the Petition; or
- ii. That your child(ren) is/are in need of protection or services.
 1. The Judge may order things to resolve what is causing the need for child(ren) protection such as:
 - a. Find appropriate housing;
 - b. Attend counseling;
 - c. Attend parenting classes;
 - d. Chemical dependency treatment; or
 - e. OG to provide services to you and your child(ren).

(7) Northstar Kinship Agreement (NSK/NKA) Hearing

- a. An NSK hearing is a type of permanency hearing, whereas, a child has reached the step in their permanency plan to transfer legal and physical custody to a foster provider through the Northstar Kinship process

See, Hearings timeline on next page.

WHEN AND HOW TO APPEAL A JUDGMENT

When: If either the Respondent or Petitioner believe that the judgment in their case was made in error, that party may file an appeal within fifteen (15) days from the judgment.

How: This appeal needs to be a written notice given to the Clerk of the Red Lake Nation Tribal Court.



HEARINGS TIMELINE

1

Emergency Protective Custody (EPC)

- Hearing within 72 hours of the child(ren)'s removal
- If the Court does not find 'Probable Cause' for the Removal, the case will be dismissed

2

Admit/Deny

- This Hearing happens if 'Probable Cause' was found at the EPC Hearing
- Hearing takes place between 8-20 days after the EPC Hearing
- If the Court does not find 'Prima Facie' basis of allegations on the Petition, the case will be dismissed

3

Review

- This Hearing happens if 'Prima Facie' basis of allegations was proven at the Admit/Deny
- Hearing most often happens in 30, 90 or 180-day periods following the most recent Hearing

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Permanency

- Hearing generally happens at the 12-month mark of the case originally opening but may be later pending the circumstances
- At this point, if Respondent is not working on their case, the reunification efforts may end

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Pre-Trial

- Pre-Trial will happen only if a Respondent chooses to Deny at the Admit/Deny Hearing
- Pre-Trial will happen prior to Trial as an opportunity to come to an agreement in advance instead

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Trial

- This happens only if an agreement cannot be reached at Pre-Trial
- Trial takes place no longer than 90-days from the Admit/Deny Hearing
- The burden of proof is on the petitioner to prove allegations raised in the Petition are true by a preponderance of evidence



DEFINITIONS TO KNOW

Allegation – This is something that someone has said happened. The OG Attorney will tell the Court the information of what they have been told happened from a police report, response worker, or your case manager, pending the situation. What the OG Attorney is presenting are things that have “allegedly” happened. It will be up to you to admit or deny to what they are saying at your Admit/Deny Hearing, if this applies to your case.

Bench Warrant – An arrest warrant, which is a written order, issued directly by the sitting judge over the civil court proceeding.

Best Interests of the Child means a compilation of a variety of factors including, but not limited to:

- (1) the ability of the tribe and the reservation community to provide for the care of the child;
- (2) the wishes of the parents, parties, or tribe;
- (3) the preference of the child, if the child is of sufficient age to express a preference;
- (4) the intimacy of the relationship between the child and the parties;
- (5) the child’s adjustment to home, school, and tribal community;
- (6) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (7) the permanence of the existing or proposed custodial home as a family unit;
- (8) the mental and physical health of all individuals involved; and
- (9) 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.



CHIPS Petition – The acronym stands for, “Child in Need of Help or Protection.” These petitions are used to identify cases where OG becomes involved in family matters where allegations exist related to juvenile delinquency, truancy, child neglect, or child abuse. This petition requires “prima facie.”

Counsel – This is another word used for ‘attorney,’ ‘lawyer,’ or ‘legal advocate.’ If you have a defense counsel, they are there to represent your interests in Court after they talk with you and learn about your case, but you must still be present. The OG Attorney or the Prosecutor will be “opposing counsel” as the Petitioner.

Ex Parte Order – Motion for order that can be granted without waiting for a response from the other side; usually only in place until further hearings can be held.

Oath – A promise to tell the truth.

Petition – A formal request seeking a specific court order, made by a person, group or organization to the Court. This can be used to initiate the child protection case and is typically required to be submitted to the Court by OG Attorney for the admit/deny hearing.

Petitioner – In these proceedings, this will be the OG Attorney. They bring forth this matter to the Court with a Petition alleging what has happened with you listed as Respondent.

Preponderance of the Evidence – An evidentiary standard used in the burden of proof analysis which requires the party to convince the Judge that there is a greater than fifty (50) percent chance that the claims are true or untrue. This standard must be met at the Trial Hearing.



Prima Facie – The evidence must be sufficient to establish a fact or raise a presumption unless disproved or rebutted. In Latin this means, “On its first encounter” or “at first sight.” There must be a prima facie basis for finding that the allegations contained in the CHIPS petition are sufficiently true to merit a trial on the issues.

Pro Se – A person who is party to the case who chooses to represent themselves in court without the assistance of an attorney. In Latin this means, “In one’s own behalf.”

Probable Cause – “Reasonable grounds” to believe that the alleged facts have been committed. This standard must be used at the EPC Hearing in regard to the removal of the child(ren).

Rule 25 – This is a chemical use assessment. Under Rule 25, an assessor gathers information about an individual and decides whether the individual needs treatment and if so, what type will be the most beneficial. The four levels of care available are primary inpatient, primary outpatient, extended care, and halfway house.

Subpoena – An official court document which is a written order to compel an individual to give testimony on a particular subject in front of the Court. Failure to appear may result in issuance of a bench warrant. Subpoena comes from the Latin meaning for, “Under penalty.”

Summons – A form prepared by the Petitioner and issued by the Court that informs the Respondent that he/she/they has a legal action filed against them. This may be used interchangeably with Subpoena and still requires that whomever receives the Summons appears before the Court or face a potential bench warrant.



WHAT, WHO & HOW TO CONTACT

WHAT IS OMBIMINDWAA GIDINAWEMAAGANINAADOG?

Ombimindwaa Gidinawemaaganinaadog (OG) which translates to “Uplifting all our Relatives” is the program formerly known as “Red Lake Family and Children Services.”

The name change comes with transformation of approaches and service to be rooted in Anishinaabe language, culture, traditions, beliefs, and values.

Their main focus is on inter-generational family wellness which includes physical, emotional, spiritual, mental, and cultural wellness. This approach addresses the health and wellness for each family member that is inclusive to each hill of life (infancy, adolescence, adulthood, and elder-hood). Their framework is person centered, trauma and resiliency focused, and is grounded in the Anishinaabe worldview, the Seven Grandfather teachings, National Association of Social Work (NASW) Code of Ethics, and cultural humility.

WHO IS A PART OF OMBIMINDWAA GIDINAWEMAAGANINAADOG?

The OG Attorney, the Response Worker, and the Reunification Case Manager.

HOW TO CONTACT OMBIMINDWAA GIDINAWEMAAGANINAADOG?

Phone Number: 218-679-2122

Fax Number: 218-679-2929

Address: 15816 Main Avenue
Red Lake, MN 56671



WHAT IS THE RED LAKE NATION TRIBAL COURT?

For short, “RLNTC,” this is where your hearings will take place and the outcome of the hearings will be adjudicated.

The hearings that are listed on this document are *civil* matters to be tried in the Red Lake Nation Tribal Court. These are separate from *criminal* proceedings.

WHO IS A PART OF THE RED LAKE TRIBAL COURT?

The Judge, the Court Clerk, and the Public Defender.

HOW TO CONTACT THE RED LAKE TRIBAL COURT?

Phone Number: 218-679-3303

Fax Number: 218-679-2683

Address: Red Lake Tribal Courts
Hwy 1 West
Red Lake, MN 56671



AABINOOJIIINH(YAG) :// BABY(IES) ://

THE ONES WHO ARE MEANT TO BE HERE

After Creator made the earth new again, he made man and woman after all other orders of creation, simply because we rely on all of all of creation (water, air, fire, rocks, trees, plants, animals, and beyond) in order to survive. Legend has it that this man and woman were chosen by their Aabinoojiihnyag after roaming the stars with the ancestors for a very long time in search of the perfect mother and father for them. Creator called them **Aabinoojiihnyag** to mean, “*The ones who are meant to be here.*” In the colonized world, we call them, babies or children.

The old ones told us that when we are fortunate enough to see a falling star, that this is when babies have then chosen their parents and are conceived. This begins their *Four Hills of Life* journey and *Mino-Bimaadiziwin, a good life.*

When we are chosen as parents we carry the biggest gift and responsibility of Mino-Bimaadiziwin, which is the spiritual obligation to our Aabinoojiihnyag because Aabinoojiihnyag represent our survival and future. Our Aabinoojiihnyag chose their parents despite the hardships that may lie ahead of them, but with hardship comes learning, love, and beauty. We must treat this honor as a ceremony and acknowledge that being Anishinaabe comes with great responsibilities.



