

Qagan Tayagungin Tribal Court of Sand Point Village

Termination of Parental Rights Information Sheet

Cases Where Parental Rights May be Terminated

Parental rights may be terminated in whole, or in part, in any case involving custody of a child, child protection, where a parent voluntarily consents to relinquish their parent rights, or in the case of an adoption.

Findings Necessary for Termination of Parental Rights

The Court may terminate parental rights to a child only if it finds beyond a reasonable doubt that:

1. If the parental rights are not terminated, the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child; or
2. The child has suffered physical or emotional injuries willfully and repeatedly inflicted by his or her parents which create a substantial risk of death, disfigurement, or serious emotional or physical injury;
3. The child has been subjected by his or her parent(s) to sexual abuse;
4. The child has been abandoned; or
5. Where a parent voluntarily consents to the relinquishment of parental rights.

Procedure for Involuntary Termination of Parental Rights

Persons or entities may file a Petition to use the Tribal Court form requesting parental rights of a person be terminated. The Petition shall contain the name, address, and age of the child; the names and addresses of parents, any custodians of the child, and any other person or tribe with an interest in the child; the reason why the Petitioner believes that parental rights should be terminated; and any available written evidence to support termination of parental rights.

If the Court finds the Petition sets forth valid reasons for terminating parental rights, the Court shall schedule a hearing within 20-60 days of the date the Petition was filed. The Court shall provide the parties with notice of the time and date of the hearing at least 20 days in advance of the hearing. At the hearing, the parent shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.

The parents of the child have the right to counsel at the hearing. “Counsel” may be an attorney or any other person they wish to have advise him or her. Unless otherwise allowed by the Court, counsel will not be permitted to address the Court or other parties directly. Counsel’s participation will be limited to asking questions of the client and consulting with the client.

After hearing all of the evidence, if the Court finds beyond a reasonable doubt that one or more of the conditions exists, it may issue an Order terminating parental rights in whole or in part depending on what is in the best interest of the child. If the Court finds the conditions necessary to terminate parental rights do not exist, it shall dismiss the case.

Effect of Termination of Parental Rights

If a parent’s rights are terminated they no longer have any right to the child or any responsibility for that child and parental rights are completely severed, unless otherwise provided by the Tribal Court Order. If the Court provided for anything less than completely terminated parental rights, the Court shall be very specific. For example, the Court may specifically allow parental participation in specific tribal ceremonies in relation to the child.

Effect of Voluntary Consent

Voluntary consent to termination of parental rights shall act as a waiver (or giving up) of all rights by the parent to withhold consent to an adoption; act as a waiver of any requirements to secure the consent of relinquishing parties prior to any adoption; act as a waiver of any rights to notice of a hearing on a petition for adoption; and, unless otherwise ordered by the court, result in the complete and total severance of the parent-child relationship except that voluntary relinquishment shall not have the effect of severing the child’s right to inheritance.

Procedure of Voluntary Termination of Parental Rights

Any parent may voluntarily consent to the termination of his or her parental rights to any minor child. However, no voluntary consent will be valid unless;

1. The consent is given more than ten (10) days after the birth of the child;

2. The consent is given in the presence of the Tribal Court or a designated representative of the Tribal Court, a qualified representative of a recognized tribal or state agency presently having legal custody of the child.
3. The person or Court the consent is given in front of signs a sworn statement that the consenting parent understood what he/she was doing and knowingly and voluntarily relinquished his/her parental rights; and
4. The person is informed 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.

Counseling

In any voluntary consent proceeding, the Court may, if it chooses, order counseling for the persons giving up their parental rights to assure such persons understand the nature and consequences of their decision.

Withdrawal of Voluntary Consent

A voluntary consent to the termination of parental rights may be withdrawn within 10 days of giving voluntary consent. After 10 days, withdrawal may only be done with the Court's permission. The Court shall give permission only if it finds it is in the best interest of the child to do so.