

## **Title 1 HBMI § 1001 Judicial appointment of Indian Custodian/Guardian; conditions for appointment**

1. In enacting this statute it is the Houlton Band of Maliseet Indians Tribal Council's intent to exercise the full restoration of tribal jurisdiction over tribal children under the Indian Child Welfare Act, Title 25 USC Section 1901, et. Seq and the Maine Indian Child Welfare Act Title 22 MRSA Section 3941.
2. **Petition.** The Houlton Band of Maliseet Indians Child Welfare Department may petition for appointment of a Indian Custodian/Guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. **Appointment.** The court may appoint the Houlton Band of Maliseet Indians as an Indian Custodian/Guardian for a minor if the court finds the appointment is in the best interest of the minor, and finds:

A. That the parent(s)' consent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. That all parental rights have been terminated; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. By clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including but not limited to the following situations:

(1) The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent;

(2) The parent has failed, without good cause, to maintain a parental relationship with the minor, including but not limited to failing to maintain regular contact with the minor for a length of time that evidences an intent to abandon the minor.

4. **Action Plan.** Within ten (10) days of the appointment of the Houlton Band of Maliseet Indians Child Welfare Department as Indian Custodian/Guardian or Custodian of a minor the Houlton Band of Maliseet Indians Child Welfare Department shall present to the parents and to the court an action plan to rehabilitate and reunify the minor child with the child's parents.

A. The court shall schedule the matter for hearing within twenty-one (21) days and shall either approve, modify, or reject the action plan.

5. **Appointment of a Indian Custodian/Guardian on an emergency basis.** The court may appoint a Indian Custodian/Guardian on an emergency basis for a minor pursuant to this subsection.

A. On motion by a person who has also filed a petition for appointment of a Indian Custodian/Guardian pursuant to [subsection 1](#), the court may appoint a Indian Custodian/Guardian for the minor on an emergency basis if the court finds by a preponderance of the evidence that:

(1) The sworn affidavit or testimony demonstrates that appointment of a Indian Custodian/Guardian on an emergency basis is needed to prevent substantial harm to the minor's physical health or safety;

(2) No other person appears to have authority and willingness to act in the circumstances;

(3) Following the procedures set forth in [section 5-205](#), including those for appointment of a Indian Custodian/Guardian on an interim basis, will likely result in substantial harm to the minor's health or safety before a Indian Custodian/Guardian can be appointed;

(4) A petition has been filed under [subsection 1](#) and there is a substantial likelihood that a basis for appointment of a Indian Custodian/Guardian under [subsection 2](#) exists; and

(5) The requirements of this subsection for providing notice have been satisfied. [PL 2019, c. 417, Pt. A, §18 (NEW).]

B. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this subsection. [PL 2019, c. 417, Pt. A, §18 (NEW).]

C. The duration of the authority of a Indian Custodian/Guardian appointed pursuant to this subsection may not exceed 90 days, and the Indian Custodian/Guardian may exercise only the powers specified in the order. [PL 2019, c. 417, Pt. A, §18 (NEW).]

D. Reasonable notice of the motion for appointment of an emergency Indian Custodian/Guardian and the time and place of the hearing on the petition must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent. The court shall hold a hearing on the appointment of the Indian Custodian/Guardian on an emergency basis within 14 days but not less than 7 days after the filing of the petition. [PL 2019, c. 417, Pt. A, §18 (NEW).]

E. The court may dispense with the notice requirement in [paragraph D](#) and appoint a Indian Custodian/Guardian pursuant to this subsection on a temporary ex parte basis if it finds from affidavit or testimony that the minor will be substantially harmed before notice can be completed to all those entitled to receive notice and a hearing can be held on the petition. If the Indian Custodian/Guardian is appointed without notice and hearing, the court shall schedule a hearing on the appointment of the Indian Custodian/Guardian on an emergency basis within 14 days but not less than 7 days after issuance of the order appointing the Indian Custodian/Guardian, except that a parent may request that the hearing take place sooner. Notice of the appointment and hearing must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent, within 48 hours after the appointment. [PL 2019, c. 417, Pt. A, §18 (NEW).]

F. The notices required under this subsection regarding Indian Custodian/Guardianship on an emergency basis may be provided orally or in writing using a means that the petitioner in good faith believes is the most effective way to ensure actual notice. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice and to whom the notice was provided or attempted. The court shall make a determination as to whether the methods

of notices or attempted notices by petitioner were reasonably calculated to give notice of the pendency of the petition. [PL 2019, c. 417, Pt. A, §18 (NEW).]

G. Appointment of a Indian Custodian/Guardian on an emergency basis under this subsection is not a determination that the conditions required for appointment of a Indian Custodian/Guardian under [subsection 2](#) or the notice requirements have been satisfied. Before a Indian Custodian/Guardian may be appointed pursuant to [subsection 2](#), the petitioner must meet the notice requirements set forth in this Part and any applicable rules of procedure. [PL 2019, c. 417, Pt. A, §18 (NEW).]

[PL 2019, c. 417, Pt. A, §18 (RPR).]

**6. Child support.** When appointing a Indian Custodian/Guardian, including on an emergency or interim basis, the court's order must indicate whether there are any support orders involving the child presently in effect through judicial or administrative proceedings and the effect of the Indian Custodian/Guardianship appointment on the orders. The court shall consider whether to order a parent to pay child support to the Indian Custodian/Guardian in accordance with [Title 19-A, Part 3](#). A Indian Custodian/Guardian must be treated as a caretaker relative for computation of a parental support obligation pursuant to [Title 19-A, section 2006, subsection 4](#). The court may reserve the question of support or decline to issue an order if it determines that an order for support is not warranted at the time of the appointment. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this subsection.

**7. Termination of Indian Custodian/Guardian.** The court shall terminate the Indian Custodianship/Guardianship if it finds, clear and convincing, evidence presented by the parent(s)' that:

A. That the parent(s)' consent has been withdrawn, and the parents have met the conditions of the court approved action plan, or;

B. The parents are willing and able to meet the minor's needs and living with the parents will not have a substantial adverse effect on the minor's well-being if the minor lives with the parent(s)'.

Adopted by vote of council on March 19, 2024

\_6\_ In favor \_0\_ Opposed \_0\_ Abstentions

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Tribal Clerk

