

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 23-105 (December 11, 2023, ratified December 18, 2023)*

# FAMILY LAW CODE

CONFEDERATED TRIBES  
OF THE  
UMATILLA INDIAN RESERVATION

**FAMILY LAW CODE**

**TABLE OF CONTENTS**

CHAPTER 1.	GENERAL MATTERS .....	1
SECTION 1.01.	Title.....	1
SECTION 1.02.	Trial by Jury.....	1
SECTION 1.03.	Procedure.....	1
SECTION 1.04.	Definition .....	1
SECTION 1.05.	Sovereign Immunity.....	1
SECTION 1.06.	Severability .....	1
SECTION 1.07.	Customs and Traditions Recognized .....	1
SECTION 1.08.	Jurisdiction.....	2
CHAPTER 2.	MARRIAGE .....	4
SECTION 2.01.	Traditional Marriages Recognized.....	4
SECTION 2.02.	Common Law Marriages .....	4
SECTION 2.03.	Existing and Future Marriages.....	5
SECTION 2.04.	Marriage Contract; Age of Parties .....	5
SECTION 2.05.	Marriage Licenses and Certificates.....	5
SECTION 2.06.	Persons Permitted to Solemnize Marriages and Duties .....	6
SECTION 2.07.	Form of Solemnization .....	6
SECTION 2.08.	Void and Voidable Marriages.....	7
CHAPTER 3.	ANNULMENT .....	7
SECTION 3.01.	Decree of Annulment.....	7
SECTION 3.02.	Legitimacy of Children.....	8
SECTION 3.03.	Conclusiveness of Decree of Annulment.....	8
CHAPTER 4.	DISSOLUTION OF MARRIAGE AND SEPARATION .....	8
SECTION 4.01.	Grounds for Dissolution or Separation .....	8
SECTION 4.02.	Fault is Not a Factor.....	8
SECTION 4.03.	Mediation.....	8
SECTION 4.04.	Contents of Petition.....	9
SECTION 4.05.	Mandatory Discovery.....	10
SECTION 4.06.	Automatic Asset Restraining Order .....	12
SECTION 4.07.	Temporary Orders .....	14
SECTION 4.08.	Court Proceedings and Findings .....	15
SECTION 4.09.	Final Orders .....	15
SECTION 4.10.	Decree of Separation and Conversion to Decree of Dissolution .....	16
SECTION 4.11.	Summary Dissolutions .....	16
CHAPTER 5.	COMMUNITY PROPERTY .....	26
SECTION 5.01.	Separate Property .....	26
SECTION 5.02.	Community Property.....	26
SECTION 5.03.	Mixed Property .....	27
SECTION 5.04.	Conveyances Between Spouses .....	27
SECTION 5.05.	Agreements as to Status or Disposition of Property .....	27
SECTION 5.06.	Custody and Estate of Children .....	28
SECTION 5.07.	Earnings and Accumulations Spouses Living Apart .....	28
SECTION 5.08.	Rights of Married Persons in General.....	28
SECTION 5.09.	Spouses May Sue Each Other .....	28
SECTION 5.10.	Liability to Third Parties for Acts of Other Spouse.....	28
SECTION 5.11.	Liability for Antenuptial and Separate Debts and Child Support Obligations.....	28
SECTION 5.12.	Termination of Support Obligation of Stepparent .....	29
SECTION 5.13.	Annulled Marriages .....	29

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 23-105 (December 11, 2023, ratified December 18, 2023)**

CHAPTER 6.	DISPOSITION OF PROPERTY AND SPOUSAL SUPPORT .....	29
SECTION 6.01.	Disposition of Property and Liabilities .....	29
SECTION 6.02.	Spousal Support .....	30
CHAPTER 7.	CHILD CUSTODY AND PARENTING PLANS .....	31
SECTION 7.01.	Application.....	31
SECTION 7.02.	Parenting Plans.....	32
SECTION 7.03.	Agreed Parenting Plans.....	33
SECTION 7.04.	Custodial Responsibility (Visitation Schedule) .....	34
SECTION 7.05.	Decision Making Responsibility.....	35
SECTION 7.06.	Dispute Resolution Included in Plan.....	36
SECTION 7.07.	Limiting Factors.....	36
SECTION 7.08.	Court-Ordered Investigation; Appointment of Guardian ad Litem or Lawyer for the Child .....	37
SECTION 7.09.	Interview of the Child by the Court .....	37
SECTION 7.10.	Modification upon Showing of Changed Circumstances or Harm.....	38
SECTION 7.11.	Modification Without Showing of Changed Circumstances .....	38
SECTION 7.12.	Relocation of a Parent.....	39
SECTION 7.13.	Enforcement of Parenting Plans.....	40
CHAPTER 8.	CHILD SUPPORT AND SUPPORT ENFORCEMENT .....	41
SECTION 8.01.	Child Support.....	41
SECTION 8.02.	Office of Child Support Enforcement.....	42
SECTION 8.03.	Mandatory Health Insurance Coverage .....	42
SECTION 8.04.	Failure to Comply With Support Order .....	43
SECTION 8.05.	Grounds for Modification and Termination.....	44
SECTION 8.06.	Petition or Motion for Mandatory Wage Assignment .....	45
SECTION 8.07.	Issuance of Wage Assignment Order.....	47
SECTION 8.08.	Contents of Wage Assignment Order .....	47
SECTION 8.09.	Wage Assignment Order Form .....	47
SECTION 8.10.	Employer’s Answer to Wage Assignment Order.....	47
SECTION 8.11.	Wage Assignment Order Answer Form.....	49
SECTION 8.12.	Grounds to Quash, Modify, or Terminate Wage Assignment .....	49
SECTION 8.13.	Lower Limits on Child Support Amounts .....	49
SECTION 8.14.	Standards for Determination of Income.....	49
SECTION 8.15.	Standards for Deviation From the Standard Calculation .....	51
SECTION 8.16.	Allocation of Child Support Obligation Between Parents.....	53
SECTION 8.17.	Postsecondary Educational Support Awards .....	54
SECTION 8.18.	Income Tax Exemptions And Dividends.....	55
CHAPTER 9.	PATERNITY .....	55
SECTION 9.01.	Definitions.....	55
SECTION 9.02.	Scope of Chapter; Choice of Law.....	57
SECTION 9.03.	Protection of Participants.....	57
SECTION 9.04.	Establishment of Parent-Child Relationship.....	57
SECTION 9.05.	No Discrimination Based on Marital Status. ....	57
SECTION 9.06.	Consequences of Establishment of Parentage.....	57
SECTION 9.07.	Presumption of Paternity.....	57
SECTION 9.08.	Acknowledgment of Paternity. ....	58
SECTION 9.09.	Execution of Acknowledgment of Paternity.....	58
SECTION 9.10.	Denial of Paternity. ....	59
SECTION 9.11.	Rules for Acknowledgment and Denial of Paternity.....	59
SECTION 9.12.	Effect of Acknowledgment or Denial of Paternity. ....	59
SECTION 9.13.	Proceeding for Rescission.....	59
SECTION 9.14.	Challenge After Expiration of Period for Rescission. ....	60
SECTION 9.15.	Procedure for Rescission or Challenge.....	60
SECTION 9.16.	Ratification Barred.....	60
SECTION 9.17.	Full Faith and Credit.....	60
SECTION 9.18.	Scope of Sections Covering Genetic Testing.....	60

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 23-105 (December 11, 2023, ratified December 18, 2023)**

SECTION 9.19.	Order for Testing.....	61
SECTION 9.20.	Requirements for Genetic Testing.....	61
SECTION 9.21.	Report of Genetic Testing.....	62
SECTION 9.22.	Genetic Testing Results; Rebuttal.....	62
SECTION 9.23.	Costs of Genetic Testing.....	62
SECTION 9.24.	Additional Genetic Testing.....	63
SECTION 9.25.	Genetic Testing When Specimens Not Available.....	63
SECTION 9.26.	Identical Brothers.....	63
SECTION 9.27.	Confidentiality of Genetic Testing.....	63
SECTION 9.28.	Proceeding Authorized.....	63
SECTION 9.29.	Standing to Maintain Proceeding.....	63
SECTION 9.30.	Parties to Proceeding.....	64
SECTION 9.31.	Personal Jurisdiction.....	64
SECTION 9.32.	No Limitation: Child Having No Presumed, Acknowledged, or Adjudicated Father.....	64
SECTION 9.33.	Limitation: Child Having Presumed Father.....	64
SECTION 9.34.	Authority to Deny Motion for Genetic Testing.....	65
SECTION 9.35.	Limitation: Child Having Acknowledged or Adjudicated Father.....	65
SECTION 9.36.	Joinder of Proceedings.....	66
SECTION 9.37.	Proceeding Before Birth.....	66
SECTION 9.38.	Child as Party; Representation.....	66
SECTION 9.39.	Admissibility of Results of Genetic Testing; Expenses.....	66
SECTION 9.40.	Consequences of Declining Genetic Testing.....	67
SECTION 9.41.	Admission of Paternity Authorized.....	67
SECTION 9.42.	Temporary Order.....	67
SECTION 9.43.	Rules for Adjudication of Paternity.....	67
SECTION 9.44.	Jury Prohibited.....	68
SECTION 9.45.	Hearings; Inspection of Records.....	68
SECTION 9.46.	Order on Default.....	68
SECTION 9.47.	Dismissal for Want of Prosecution.....	68
SECTION 9.48.	Order Adjudicating Parentage.....	68
SECTION 9.49.	Binding Effect of Determination of Parentage.....	69
CHAPTER 10.	UNIFORM RECOGNITION AND ENFORCEMENT OF FAMILY SUPPORT ORDERS.....	69
SECTION 10.01.	Purpose.....	69
SECTION 10.02.	Definitions.....	69
SECTION 10.03.	Remedies Cumulative.....	71
SECTION 10.04.	Bases for Jurisdiction Over Nonresident.....	71
SECTION 10.05.	Simultaneous Proceedings.....	72
SECTION 10.06.	Continuing, Exclusive Jurisdiction to Modify Child Support Order.....	72
SECTION 10.07.	Initiating and Responding Tribunal of This Tribe.....	73
SECTION 10.08.	Determination of Controlling Child Support Order.....	73
SECTION 10.09.	Child Support Orders for Two or More Obligees.....	74
SECTION 10.10.	Credit for Payments.....	74
SECTION 10.11.	Proceedings Under this Chapter.....	74
SECTION 10.12.	Proceeding by Minor Parent.....	75
SECTION 10.13.	Application of Law of the Tribe.....	75
SECTION 10.14.	Duties of Initiating Tribunal.....	75
SECTION 10.15.	Duties and Powers of Responding Court.....	75
SECTION 10.16.	Inappropriate Tribunal.....	76
SECTION 10.17.	Duties of Support Enforcement Agency.....	76
SECTION 10.18.	Duty of Attorney General.....	77
SECTION 10.19.	Private Counsel.....	77
SECTION 10.20.	Duties of Information Agency.....	77
SECTION 10.21.	Pleadings and Accompanying Documents.....	77
SECTION 10.22.	Nondisclosure of Information in Exceptional Circumstances.....	78
SECTION 10.23.	Costs and Fees.....	78
SECTION 10.24.	Limited Immunity of Petitioner.....	78

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 23-105 (December 11, 2023, ratified December 18, 2023)*

SECTION 10.25.	Nonparentage as Defense.....	78
SECTION 10.26.	Special Rules of Evidence and Procedure .....	78
SECTION 10.27.	Communication Between Tribunals .....	79
SECTION 10.28.	Assistance with Discovery.....	79
SECTION 10.29.	Receipt and Disbursement of Payments .....	79
SECTION 10.30.	Petition to Establish Support Order .....	79
SECTION 10.31.	Employer's Receipt of Income-Withholding Order of Another Tribe or Nation.....	80
SECTION 10.32.	Employer's Compliance with Income-Withholding Order of Another Tribe or Nation .....	80
SECTION 10.33.	Employer's Compliance with Two or More Income-Withholding Orders .....	80
SECTION 10.34.	Immunity from Civil Liability .....	81
SECTION 10.35.	Penalties for Noncompliance .....	81
SECTION 10.36.	Contest by Obligor.....	81
SECTION 10.37.	Administrative Enforcement of Order .....	81
SECTION 10.38.	Registration of Order for Enforcement; Procedure to Register Order for Enforcement.....	81
SECTION 10.39.	Effect of Registration for Enforcement.....	82
SECTION 10.40.	Choice of Law.....	82
SECTION 10.41.	Notice of Registration of Order .....	82
SECTION 10.42.	Procedure to Contest Validity or Enforcement of Registered Order .....	83
SECTION 10.43.	Contest of Registration or Enforcement .....	83
SECTION 10.44.	Confirmed Order.....	84
SECTION 10.45.	Procedure to Register Child Support Order of Another Tribe or Nation for Modification.....	84
SECTION 10.46.	Effect of Registration for Modification .....	84
SECTION 10.47.	Modification of Child Support Order of Another Tribe or Nation .....	84
SECTION 10.48.	Recognition of Order Modified in Another Tribe or Nation .....	85
SECTION 10.49.	Jurisdiction to Modify Child Support Order of Another Tribe or Nation when Individual Parties Reside on the Reservation.....	85
SECTION 10.50.	Notice to Issuing Tribunal of Modification .....	85
SECTION 10.51.	Proceeding to Determine Parentage.....	85
SECTION 10.52.	Grounds for Rendition .....	86
SECTION 10.53.	Conditions of Rendition.....	86
SECTION 10.54.	Uniformity of Application and Construction.....	86
SECTION 10.55.	Resolving Conflicts with Chapter 11 .....	86
CHAPTER 11.	FULL FAITH AND CREDIT OF FOREIGN CHILD SUPPORT ORDERS.....	87
SECTION 11.01.	General Rule. ....	87
SECTION 11.02.	Definitions.....	87
SECTION 11.03.	Requirements of Child Support Orders.....	88
SECTION 11.04.	Continuing Jurisdiction.....	88
SECTION 11.05.	Authority to Modify Orders.....	88
SECTION 11.06.	Recognition of Child Support Orders. ....	88
SECTION 11.07.	Enforcement of Modified Orders.....	89
SECTION 11.08.	Choice of Law.....	89
SECTION 11.09.	Registration for Modification. ....	89
CHAPTER 12.	GUARDIANSHIP.....	89
SECTION 12.01.	Purpose.....	89
SECTION 12.02.	General Definitions.....	89
SECTION 12.03.	Notice of Proceedings .....	89
SECTION 12.04.	Waiver of Notice.....	90
SECTION 12.05.	Delegation of Powers by Guardian.....	90
SECTION 12.06.	Preference in Appointing Guardian .....	90
SECTION 12.07.	Letters of Guardianship.....	90
SECTION 12.08.	Persons not Qualified to Act as Guardian.....	90
SECTION 12.09.	Contents of Petition.....	90

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 23-105 (December 11, 2023, ratified December 18, 2023)*

SECTION 12.10.	Procedure for Appointment of Guardian .....	91
SECTION 12.11.	Findings, Appointment .....	91
SECTION 12.12.	Effect of Accepting Appointment as Guardian.....	91
SECTION 12.13.	Terminating Guardianship .....	91
SECTION 12.14.	Removal or Resignation of Guardian; Order That Incapacity no Longer Exists.....	91
SECTION 12.15.	Notice on Appointment or Removal of Guardian.....	92
SECTION 12.16.	Appointment of Temporary Guardian .....	92
SECTION 12.17.	General Powers and Duties of Guardian.....	92
CHAPTER 13.	DOMESTIC PARTNERSHIPS .....	93
SECTION 13.01.	Domestic Partnerships Recognized.....	93
SECTION 13.02.	Domestic Partnerships Defined.....	93
SECTION 13.03.	Future Domestic Partnerships .....	93
SECTION 13.04.	Domestic Partnership Licenses and Certificates.....	93
SECTION 13.05.	Persons Permitted to Solemnize Domestic Partnerships and Duties .....	94
SECTION 13.06.	Form of Solemnization .....	94
SECTION 13.07.	Rights of a Domestic Partnership .....	94
APPENIX A	LEGISLATIVE HISTORY .....	A - 1

**FAMILY LAW CODE**

**CHAPTER 1. GENERAL MATTERS**

**SECTION 1.01. TITLE.**

This Code shall be known as the Family Law Code.

**SECTION 1.02. TRIAL BY JURY.**

There shall be no trial by jury under this Code.

**SECTION 1.03. PROCEDURE.**

All disputed procedural matters are to be resolved by the Judge in his or her discretion. The application of the Federal Rules of Civil Procedure or the State of Oregon Rules of Civil Procedure are persuasive, but not binding, in proceedings under this act. The court is hereby permitted to enact its own rules of procedure provided copies are made available to the general public at the court.

**SECTION 1.04. DEFINITION**

“Confederated Tribes” shall mean the Confederated Tribes of the Umatilla Indian Reservation

**SECTION 1.05. SOVEREIGN IMMUNITY**

The Confederated Tribes does not waive sovereign immunity for itself, any of its entities, businesses, or agents including but not limited to the Tribes’ information agency, court, and personnel, or otherwise, in any form under the Family Law Code even if a more specific chapter, section, sentence, phrase, word, or any other part of the Family Law Code might otherwise be interpreted as a waiver of immunity, except with regard to Chapter 8.

**SECTION 1.06. SEVERABILITY**

If any provision of the Family Law Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

**SECTION 1.07. CUSTOMS AND TRADITIONS RECOGNIZED**

- A. Tradition Recognized. The customs and traditions of the Confederated Tribes are hereby recognized and encouraged in the application and interpretation of the Family Law Code.
- B. Conflicts. In any proceeding where custom and tradition is asserted and conflicts with the express written provisions of the Family Law Code, the Tribes’ customs and traditions shall apply in lieu of the conflicting code provision, provided that:
  - 1. The purported customs and traditions have been proven to be the customs and traditions of the Tribes by a preponderance of the evidence,
  - 2. The respondent and all parties with an interest in the proceeding have been provided adequate notice, an opportunity to be heard, and an opportunity to present evidence on their behalf, and
  - 3. The presiding judge makes written findings of fact that:
    - a. A conflict exists between the express written provisions of the Family Law Code and the purported customs and traditions of the Tribes,

- b. The purported customs and traditions have been found by a preponderance of the evidence to be the customs and traditions of the Tribes. This finding shall detail the evidence upon which the finding was made, and
  - c. The respondent and all parties with an interest in the proceeding have been accorded due process of law by being given adequate notice, opportunity to be heard, and to present evidence on their behalf. This finding shall detail how notice was given, what opportunity was provided for the party to be heard, and a general summary of the evidence permitted to be presented on their behalf.
4. In determining what the customs and traditions of the Tribes are on a particular issue in dispute a judge shall ensure each party has a right to present the opinion of an elder of their choice on the issue. A judge shall also be permitted to consult the opinion of an elder of the court's choosing in making a determination of what the customs and traditions of the Tribes are on a particular issue in dispute.
- C. Uncovered Areas. When issues before the court are not covered by the Family Law Code the court is encouraged to apply the customs and traditions of the Confederated Tribes to resolve the dispute.

#### SECTION 1.08. JURISDICTION

- A. Full Jurisdiction Asserted. The court of the Confederated Tribes is accorded maximum personal and subject matter jurisdiction over domestic relations as is permitted by the inherent sovereign powers of the Tribe, the Tribe's treaty rights, the Constitution of the Tribes, the laws of the United States of America, Public Law 280 as adopted and hereafter amended by the State of Oregon, and any and all applicable international laws.
- B. Personal Jurisdiction. The court of the Confederated Tribes has, but is not limited to, personal jurisdiction over the following:
- 1. Any and all enrolled members of the Confederated Tribes,
  - 2. Any and all individuals who consent to the jurisdiction of the court by either:
    - a. Filing an action,
    - b. Knowingly and voluntarily giving written consent to jurisdiction of the court,
    - c. Entering a notice of appearance in an action without concurrently filing all of the following: an express written reservation of issues concerning personal jurisdiction, a motion to dismiss for lack of personal jurisdiction, and noting the matter for a hearing on the motion not more than 30 days from the date of the notice of appearance, or
    - d. Impliedly consenting to jurisdiction by appearing in an action without concurrently filing all of the following: an express written reservation of issues concerning personal jurisdiction, a motion to dismiss for lack of jurisdiction, and noting the matter for a hearing on the motion not more than 30 days from the date of appearance.
  - 3. Any and all individuals who have had a bona fide residence within the exterior boundaries of the Confederated Tribes or otherwise had a bona fide residence on lands of the Confederated Tribes, for at least 60 of the past 90 days preceding the filing of an action in the court, who is any of the following:
    - a. The parent, whether biological or adoptive, of a child that is in any way a subject of the proceeding and the child is either:



- i. An enrolled member of the Confederated Tribes, or
      - ii. Eligible for enrollment in the Confederated Tribes and has resided within the exterior boundaries of the Confederated Tribes, or on lands of the Confederated Tribes, since birth or for at least 60 of the past 90 days preceding the filing of an action.
    - b. The guardian, in any form, of a child that is in any way a subject of the proceeding and the child is either:
      - i. An enrolled member of the Confederated Tribes, or
      - ii. Eligible for enrollment in the Confederated Tribes and has resided within the exterior boundaries of the Confederated Tribes, or on lands of the Confederated Tribes, since birth or for at least 60 of the past 90 days preceding the filing of an action.
    - c. A person who otherwise has legally enforceable rights in any jurisdiction to visitation or custody of a child that is in any way a subject of the proceeding and the child is either:
      - i. An enrolled member of the Confederated Tribes, or
      - ii. Eligible for enrollment in the Confederated Tribes and has resided within the exterior boundaries of the Confederated Tribes, or on lands of the Confederated Tribes, since birth or for at least 60 of the past 90 days preceding the filing of an action.
  4. Any and all individuals who are Indian and have had a bona fide residence within the exterior boundaries of the Confederated Tribes or otherwise had a bona fide residence on lands of the Confederated Tribes, for at least 60 of the past 90 days preceding the filing of an action.
  5. Any and all individuals who are alleged to have engaged in an act of sexual intercourse within the exterior boundaries of the Confederated Tribes, or on lands of the Confederated Tribes, with respect to which a child that is either a member of the Confederated Tribes, or is eligible for enrollment in the Confederated Tribes, may have been conceived.
- C. Continuing Jurisdiction.
1. In every action under the Family Law Code, the court shall retain continuing jurisdiction over the parties.
  2. Once given, consent whether express or implied cannot be withdrawn. This includes consent impliedly given by a party who files an action in court.
  3. Once personal jurisdiction attaches to an individual it remains and cannot be defeated by relocation.
  4. An enrolled member of the Confederated Tribes cannot avoid jurisdiction after jurisdiction attaches by subsequently renouncing tribal membership or changing tribal affiliation.
- D. Exercise of Jurisdiction.
1. A Judge may in their discretion, and either upon their own motion or the motion of a party to the action, decline to exercise jurisdiction if any one of the following are shown:

- a. The relief sought by the Petitioner or Respondent will be impossible for the court to enforce and the relief sought is a reasonably likely outcome of the action.
  - b. Another jurisdiction is available and provides a more convenient forum for the parties, or children, subject to the action.
  - c. Another jurisdiction is attempting to exercise authority over the issues involved in the action and comity should be extended to allow that court to act.
  - d. The court does not have the financial means to address the matters involved in the action, or is otherwise without adequate resources to address the matters involved in the case.
2. If a motion to decline jurisdiction is made by the court, it shall state the basis for the motion and provide all parties an adequate opportunity to respond to the motion.
  3. If a Judge declines to exercise jurisdiction as permitted by this subsection, they shall make written findings of fact detailing the basis for the declination after a full hearing and opportunity for all parties to be heard on the motion.

## **CHAPTER 2. MARRIAGE**

### **SECTION 2.01. TRADITIONAL MARRIAGES RECOGNIZED**

- A. Traditional Marriages Not Limited to Pre-existing Marriages. All marriages conducted pursuant to the Confederated Tribes customs and traditions are recognized and hereby declared to be legal and binding subject to the procedures set forth in section 1.07. Parties to such marriages may obtain a marriage certificate upon proof of the validity of their marriage in accordance with the procedures set forth in section 1.07 and payment of a fee to be set by the court.
- B. Pre-existing Traditional Marriages Recognized. All marriages performed or entered into on the Reservation prior to the effective date of the Family Law Code pursuant to the customs and traditions of the Confederated Tribes are declared to be legal and binding without being subject to the procedures set forth in section 1.07. Parties to such marriages may obtain a marriage certificate upon proof to the clerk of the court by affidavit or otherwise of the validity of their marriage, and payment of a fee to be set by the court.

### **SECTION 2.02. COMMON LAW MARRIAGES**

- A. Any couple that has maintained a common household as defined in 2.02(B) for a period that equals or exceeds five (5) years, and who are able to marry under sections 2.04 and 2.08, are presumed to be married under the laws of the Confederated Tribes. This presumption is subject to rebuttal by evidence that the parties did not share a life together as a couple, as defined in 2.02(C).
- B. Persons maintain a common household when they share a primary residence only with each other and family members; or when, if they share a household with other unrelated persons, they act jointly, rather than as individuals, with respect to management of the household.
- C. Whether persons share a life together as a couple is determined by reference to all the circumstances, including:
  1. the oral or written statements or promises made to one another, or representations jointly made to third parties, regarding their relationship;
  2. the extent to which the parties intermingled their finances;

3. the extent to which their relationship fostered the parties' economic interdependence, or economic dependence of one party upon the other;
4. the extent to which the parties engaged in conduct and assumed specialized or collaborative roles in furtherance of their life together;
5. the extent to which the relationship wrought change in the life of either or both parties;
6. the extent to which the parties acknowledged responsibilities to each other, as by naming the other the beneficiary of life insurance or of a testamentary instrument, or as eligible to receive benefits under an employee benefit plan;
7. the extent to which the parties' relationship was treated by the parties as qualitatively distinct from the relationship either party had with any other person;
8. the emotional or physical intimacy of the parties' relationship;
9. the parties' participation in a commitment ceremony;
10. The parties' maintenance of a common household, as defined in 2.02(B).

#### SECTION 2.03. EXISTING AND FUTURE MARRIAGES

- A. Other Jurisdictions. All marriages performed other than as provided for in the Family Law Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Confederated Tribes, provided further that they are not also in violation of section 2.08(A) or 2.08(B). This includes marriages performed in accordance with other Tribe's customs and traditions provided that the Tribe whose customs and traditions are asserted as the basis for a finding of marriage recognizes the marriage as valid.
- B. Tribal Marriages. All marriages entered into subsequent to the adoption of the Family Law Code must be performed in accordance with the provisions of the Code except as provided in section 2.01 and 2.03(A).

#### SECTION 2.04. MARRIAGE CONTRACT; AGE OF PARTIES

Marriage is a civil contract entered into by persons at least 18 years of age, who are otherwise capable, and solemnized in accordance with section 2.06.

#### SECTION 2.05. MARRIAGE LICENSES AND CERTIFICATES

- A. Licenses Required. No marriage shall be performed pursuant to the Family Law Code unless the parties have first obtained a marriage license from the clerk of the court.
  1. Contents of Application. The application for marriage license shall include at a minimum the applicant's full legal name, tribal affiliation if any, date of birth, age, place of birth, occupation, gender, residence, and signature affirming that the information provide is true and correct.
  2. Mandatory Language. All marriage license applications shall contain the following language: "Applicant hereby consents to the jurisdiction of the courts of the Umatilla Indian Reservation for the purpose of any action to obtain a judgment of dissolution, annulment, separation, or for any other action related to the rights and obligations of the applicant, and to any other civil action under the Umatilla Indian Reservation Family Law Code or any other relevant Tribal code governing or concerning family relationships. The applicant grants this consent regardless of whether or not the applicant is a member of the Confederated Tribes of the Umatilla Indian Reservation, another Tribe, or an Indian. The applicant further grants this consent regardless of the location of their present or future domicile."

3. Blood Test. Prior to issuance of a license applicants shall obtain a blood test to detect sexually transmitted disease and file an affidavit that the test results have been disclosed to the other applicant.
  4. Issuance of License. Upon payment of a fee to be set by the court and completion of an application for a marriage license, the clerk shall issue a marriage license to persons who appear entitled to be married as provided for in this Code.
  5. Recommendation of Counseling. At the time of issuance of the license the clerk shall inform the applicants that it is recommended that they engage in pre-marriage counseling to assist them in understanding the importance of marriage and the legal and spiritual duties and obligations it carries, and to consider whether children of the marriage will be eligible for enrollment in the Confederated Tribes of the Umatilla Indian Reservation.
  6. To Whom Directed. The license shall be directed to any person authorized to solemnize marriages under section 2.06 and authorize them to join together in marriage the persons named in the license.
  7. Effective Date. The license shall become effective three days after the date on which the application was signed by the applicants, which date the clerk shall indicate on the license.
  8. Length of Validity. A license shall be valid for 60 days after the effective date.
- B. Marriage Certificate. Upon issuing a marriage license as set forth in section 2.05(A) the clerk of the court shall also provide the applicants with two blank marriage certificate forms to be completed by the person performing the marriage ceremony.
- C. Contents of Certificate. The forms shall contain the names and addresses of the parties and of at least two witnesses, the date and place of the marriage, the signature of the person who solemnized the marriage, the date of the license for the marriage and the name of the court clerk who issued the license.
- D. Retention of Records. The court clerk shall keep a public record of all marriage licenses, license applications, and certificates issued.

#### SECTION 2.06. PERSONS PERMITTED TO SOLEMNIZE MARRIAGES AND DUTIES

- A. Who May Solemnize. A marriage may be solemnized and performed by any of the following:
1. A person recognized by his or her religion as having authority to marry;
  2. An active or retired judge of any court of the Confederated Tribes;
  3. Any person recognized by the Tribal Court and laws of the State of Oregon as having authority to solemnize marriages.
- B. Certificate of Marriage Provided to the Parties and Filed with the Court Clerk. The person solemnizing a marriage shall ensure both marriage certificates are completed. One certificate is to be given to the parties of the marriage and the other shall be delivered to the clerk of the court within 30 days after performance of the ceremony.

#### SECTION 2.07. FORM OF SOLEMNIZATION

No Particular Form Required. In the solemnization of a marriage no particular form is required except that the parties thereto shall assent or declare in the presence of the person solemnizing the marriage and in the presence of at least two witnesses, that they take each other in marriage.

**SECTION 2.08. VOID AND VOIDABLE MARRIAGES**

- A. **Consanguinity Prohibited.** Marriages between an ancestor and his or her descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between second cousins are void from the beginning, whether or not the degree of relationship is by blood or by law.
- B. **Bigamy Prohibited.** Marriages between a person who is at the time of the marriage married to another person still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:
  - 1. Actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce or annulment; or
  - 2. Actually believed, in good faith, that his or her prior spouse was deceased.
- C. **Legitimacy of Children.** When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents. This section shall not apply to matters involving the establishment of paternity.
- D. **Voidable Marriages.** If either party to a marriage is incapable as a result of some cause or mental dysfunction or legal incapacity to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or fraud, the marriage is voidable, but only at the suit of an innocent party.
- E. **Effect of Invalid Solemnization.** No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for want of such authority under section 2.05, if consummated in the belief of the parties or either of them that the person performing the ceremony had such authority and that they have been lawfully married.

**CHAPTER 3. ANNULMENT**

**SECTION 3.01. DECREE OF ANNULMENT**

An action to obtain a decree of annulment of a marriage may be obtained for any of the causes listed in this section that were existing at the time of marriage.

- A. **Under Age Marriage.** The party on whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other party to the marriage. Such action must be brought by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of legal consent;
- B. **Consanguinity.** The marriage is between an ancestor and his or her descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between second cousins. Such actions can be brought by any party.
- C. **Bigamy.** The former spouse of either party was living at the time of marriage, and the marriage with such former spouse was then in force. Such action can be brought by either party during the life of the other, or by such former spouse.
- D. **Unsound Mind.** Either party was of unsound mind at the time of marriage, unless such party, after coming into reason, freely cohabited with the other in marriage. Such action can be

brought by an innocent party, or relative or guardian of the party of unsound mind, at any time before the death of either party.

- E. Fraud. The consent of either party to the marriage was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other in marriage. Such action must be brought by the innocent party within two years after the discovery of the facts constituting a fraud.
- F. Force. The consent of either party was obtained by force, unless such party afterwards freely cohabited with the other in marriage. Such action must be brought by the innocent party, within four years after the marriage.

#### SECTION 3.02. LEGITIMACY OF CHILDREN

When a marriage is annulled for any reason, children begotten before the decree are legitimate and succeed to the estate of both parents. The court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents may require. This section shall not apply to matters involving the establishment of paternity.

#### SECTION 3.03. CONCLUSIVENESS OF DECREE OF ANNULMENT

A decree of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

### CHAPTER 4. DISSOLUTION OF MARRIAGE AND SEPARATION

#### SECTION 4.01. GROUNDS FOR DISSOLUTION OR SEPARATION

A decree of dissolution of a marriage or separation may be rendered when irreconcilable differences between the parties have caused the irremediable breakdown of the marriage. Where satisfactory proof of grounds for the annulment or dissolution of a marriage or for separation has been made, the court shall render a decree for the annulment or dissolution of the marriage or for separation. A decree of separation shall state the duration of the separation. Nothing in this Code shall preclude parties from entering into pre-nuptial agreements.

#### SECTION 4.02. FAULT IS NOT A FACTOR

- A. Not Applicable in Annulment, Dissolution, or Separation. The doctrine of fault shall not apply in suits for annulment, dissolution of marriage, or separation.
- B. Evidence of Misconduct Limited. The court shall not receive evidence of specific acts of misconduct, except when child custody is an issue and such evidence is relevant to that issue, or when the court finds such evidence necessary to prove the existence of irreconcilable differences.
- C. No Role in Property Distribution and Spousal Support. Unless otherwise specifically indicated, fault shall not be considered except in cases of domestic violence in dividing, awarding and distributing property, or in making such property or any of it subject to a trust, nor in fixing the amount and duration of spousal support.

#### SECTION 4.03. MEDIATION

- A. Mediation. In any proceeding under the Family Law Code, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. Mediation can be mandated by the court upon its own motion, rule, or custom at any time.

- B. Purpose of Mediation. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties, resolve issues involving the separation of property, to develop an agreement assuring a child's close and continuing contact with both parents after the marriage is dissolved, and to resolve issues involving child support in a manner that accords with the laws of the Tribe. The mediator shall use his or her best efforts to effect a settlement of the dispute.
- C. Who May Serve as Mediators. The court has the sole authority to establish a list of individuals qualified to serve as mediators. The court may order that the costs of the mediation be paid by one or both of the parties, as the court finds equitable upon consideration of the relative ability of the parties to pay those costs. If the parties cannot agree to a mediator, the court may in its discretion select a mediator for the parties.
- D. Reporting of Mediated Resolutions. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.
- E. Unresolved Matters. If, after 90 days of having started mediation, the parties do not arrive at a resolution of their differences, the court may proceed on its own motion, and at its own discretion, to determine the remaining contested issues in the action.
- F. Objections to Mediation.
  - 1. Mediation is favored in most cases, however, if either party objects to mediation that party shall file a petition for show cause and note the matter for hearing. At the hearing the court shall hear from both parties and issue an order either compelling mediation or permitting the matter to proceed without mediation, at its discretion.
  - 2. If either party objects to mediation on the grounds that to participate in mediation would subject the party to severe emotional distress and moves the court to waive mediation, the court shall hold a hearing on the motion. If the court finds it likely that participation in mediation will subject the party to severe emotional distress, the court shall waive the requirement of mediation.
    - a. Domestic Violence. If either party has committed a criminal act of domestic violence against the other party or their child in any jurisdiction within the past 10 years, the court may, in its discretion, enter a per se finding that the conditions of section 4.01(F) have been met.

#### SECTION 4.04. CONTENTS OF PETITION

- A. Heading. A petition for marital annulment, dissolution or separation shall be entitled: "IN THE MATTER OF THE MARRIAGE OF (names of parties): PETITION FOR (ultimate relief sought)." The moving party shall be designated as the "Petitioner" and the other party the "Respondent." Nothing in this section shall preclude both parties from acting as "Co-petitioners."
- B. Contents. A petition in a proceeding for dissolution, annulment, or legal separation of a marriage shall allege:
  - 1. If for dissolution or separation of a marriage, that irreconcilable differences between the parties have caused the irremediable breakdown of the marriage;
  - 2. If for annulment of a marriage, the statutory basis for such an action;
  - 3. Whether or not an action for the dissolution of marriage or legal separation was or has been at any time commenced by either party, or if such action is pending in any other court or before any judge;

4. The last known residence of each party to include at a minimum the state, county, and if applicable, reservation;
  5. Where each party has resided for the last 90 days preceding the filing of the action;
  6. Tribal affiliation of each party;
  7. The date and place of the marriage;
  8. If the parties are separated, the date on which the separation occurred;
  9. The names and ages of any child dependent upon either or both spouses and their tribal affiliation, as well as where each child has resided for the last 90 days preceding the filing of the action;
  10. Whether the wife is pregnant;
  11. Any arrangements as to the custody of, visitation of, decision making for, dispute resolution for, and support of the children and spousal support;
  12. A statement specifying whether there is community or separate property owned by the parties to be disposed of;
  13. That a Notice of Statutory Restraining Order is being served on the other party concurrent with service of the petition unless service of the petition is perfected by publication; and
  14. The relief sought.
- C. Who May Initiate. Either or both parties to the marriage may initiate the proceeding. The party initiating the action or his or her attorney or court advocate shall sign the petition. Both parties or their respective attorneys or court advocates shall sign a joint petition if the parties are filing together.
- D. Summons. The summons shall be in any form approved by the court.
- E. Service. Service shall be made in accordance with regular and customary court procedures to include personal service. Proof of service shall be filed with the court. If only one party initiates the action, the other party may serve a response within 30 days after the date of service.

#### SECTION 4.05. MANDATORY DISCOVERY

- A. Required Minimal Discovery. Each party in a suit for legal separation, annulment, or for dissolution shall at a minimum provide to the other party copies of the following documents in their possession or control:
1. All federal and state income tax returns filed by either party for the last three calendar years;
  2. All documents concerning the party's health insurance coverage and extent of eligible employee health benefits;
  3. If income tax returns for the last calendar year have not been filed, all W-2 statements, year-end payroll statements, interest and dividend statements and all other records of income earned or received by either party during the last calendar year;
  4. All records showing any income earned or received by either party for the current calendar year;



5. All financial statements, statements of net worth and credit card and loan applications prepared by or for either party during the last two calendar years;
  6. All documents such as deeds, real estate contracts, appraisals and most recent statements of assessed value relating to real property in which either party has any interest;
  7. All documents showing debts of either party, including the most recent statement of any loan, credit line or charge card balance due;
  8. Certificates of title or registrations of all automobiles, motor vehicles, boats or other personal property registered in either party's name or in which either party has any interest;
  9. Documents showing stocks, bonds, secured notes, mutual funds and other investments in which either party has any interest;
  10. The most recent statement describing any retirement plan, IRA pension plan, profit-sharing plan, stock option plan or deferred compensation plan in which either party has any interest; and
  11. All financial institution or brokerage account records on any account in which either party has had any interest or signing privileges in the past year, whether or not the account is currently open or closed.
  12. A copy of all criminal records from any State or Tribe where the party has a criminal record.
- B. Time to Produce Documents. Except as otherwise provided by law or court order, the party shall provide the information listed in section 4.05(A) to the other party no later than 30 days after service of a copy of this section. If a support hearing is pending fewer than 30 days after service of a copy of this section on either party, the party upon whom a copy of this section is served shall provide the information listed in section 4.05(A)(1) to (A)(5) of this section no later than three judicial days before the hearing.
- C. Attorney Fees for Failure to Comply. If a party does not provide information as required by sections 4.05(A) and (B), the other party may apply for a motion to compel. If the motion is granted and the court finds that there was willful noncompliance with the requirements of section 4.05(A) or (B), the court may require the party whose conduct necessitated the motion or the party or attorney advising the action, or both, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees.
- D. Result of Delay. If a date for a support hearing has been set and the information listed in sections 4.05(A)(1) to (A)(5) has not been provided as required by section 4.05(B):
1. By the obligor, the judge shall postpone the hearing, if requested to do so by the obligee, and may provide in any future order for support that the support obligation is retroactive to the date of the original hearing; or
  2. By the obligee, the judge shall postpone the hearing, if requested to do so by the obligor, and may provide that any support ordered in a future hearing may be prospective only.
- E. Not Exclusive. The provisions of this section do not limit in any way the discovery provisions otherwise applicable in civil proceedings by the court or the laws of the Confederated Tribes.

SECTION 4.06. AUTOMATIC ASSET RESTRAINING ORDER

- A. Automatic Restraining Order Against Diminishing Assets. After a petition for marital annulment, separation or dissolution is filed and upon service of summons and petition upon the respondent as provided in section 4.04, a restraining order against diminishing assets is in effect against the petitioner and the respondent until a final decree or judgment is issued, until the petition for marital annulment, separation or dissolution is dismissed, or until further order of the court.
- B. Scope of Order. The restraining order issued under this section shall restrain the petitioner and respondent from:
1. Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance, homeowner or renter insurance or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.
  2. Changing beneficiaries or covered parties under any policy of health insurance, homeowner or renter insurance or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy.
  3. Transferring, encumbering, concealing or disposing of property in which the other party has an interest, in any manner, without written consent of the other party or an order of the court, except in the usual course of business or for necessities of life. This paragraph does not apply to payment by either party of:
    - a. Attorney fees in the existing action;
    - b. Real estate and income taxes;
    - c. Mental health therapy expenses for either party or a minor child of the parties; or
    - d. Expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.
  4. Making extraordinary expenditures without providing written notice and an accounting of the extraordinary expenditures to the other party. This paragraph does not apply to payment by either party of expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.
- C. Modification and Revocation of Order. Either party restrained under this section may apply to the court for further temporary orders, including modification or revocation of the restraining order issued under this section.
- D. Notice of Right to Request Hearing. The restraining order issued under this section shall also include a notice that either party may request a hearing on the restraining order by filing a request for hearing with the court.
- E. Serve With Summons. A copy of the restraining order issued under this section shall be attached to the summons. The order shall be in the following form:

“

<b>NOTICE OF STATUTORY RESTRAINING ORDER</b>
--

**BOTH PARTIES MUST OBEY THIS ORDER PURSUANT TO SECTION 4.06 OF THE FAMILY LAW CODE OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION**

**YOU ARE HEREBY RESTRAINED FROM:**

1. Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance, homeowner or renter insurance or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.
2. Changing beneficiaries or covered parties under any policy of health insurance, homeowner or renter insurance or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy.
3. Transferring, encumbering, concealing or disposing of property in which the other party has an interest, in any manner, without written consent of the other party or an order of the court, except in the usual course of business or for necessities of life.
  - a. This paragraph does not apply to payment by either party of:
    - i. Attorney fees in the existing action;
    - ii. Real estate and income taxes;
    - iii. Mental health therapy expenses for either party or a minor child of the parties; or
    - iv. Expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.
4. Making extraordinary expenditures without providing written notice and an accounting of the extraordinary expenditures to the other party.
  - a. This paragraph does not apply to payment by either party of expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

**AFTER FILING OF THE PETITION, THE ABOVE PROVISIONS ARE IN EFFECT IMMEDIATELY UPON SERVICE OF THE SUMMONS AND PETITION UPON THE RESPONDENT. IT REMAINS IN EFFECT UNTIL A FINAL DECREE OR JUDGMENT IS ISSUED, UNTIL THE PETITION IS DISMISSED, OR UNTIL FURTHER ORDER OF THE COURT.**

**RIGHT TO REQUEST HEARING:** Either party may request a hearing to apply for further temporary orders, or to modify or revoke one or more terms of the automatic mutual restraining order, by filing a request for such a hearing with the Court of the Confederated Tribes of the Umatilla Indian Reservation.

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SECTION 4.07. TEMPORARY ORDERS

- A. Permissible Court Actions Pending Final Decree. After the commencement of a suit for a decree of annulment, dissolution or separation and until entry of a final decree therein, the court may provide as follows:
1. That a party pay such amount of money as may be necessary to enable the other party to prosecute or defend the action including costs of expert witnesses, and such amount of money as may be necessary to support and maintain the other party during the pendency of the action.
  2. For the care, custody, support and maintenance, by one party or jointly, of the minor children as described in Chapter 8 and for visitation as described in Chapter 7 of the parent not having custody of such children.
  3. For the restraint of a party from interfering in any manner with the other party or the minor children.
  4. That if minor children reside in the family home and the court considers it necessary for their best interest to do so, the court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.
  5. Restraining and enjoining either party or both from encumbering or disposing of any of the real or personal property of either or both of the parties, except as ordered by the court.
  6. For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of installment liens and encumbrances thereon.
  7. That even if no minor children reside in the family home, the court may require one party to move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other.
  8. Any other order the court deems both appropriate and in a child's best interest.
- B. Child and Spousal Support. A limited judgment may be entered in an action for dissolution, separation, or annulment of a marriage providing for child support and spousal support.
- C. Ex Parte Temporary Order of Child Custody or Visitation.
1. A court may enter ex parte a temporary order providing for the custody of, or visitation with, a child only if:
    - a. The party requesting an order is present in court and presents an affidavit alleging that the child is in immediate danger; and
    - b. The court finds, based on the facts presented in the party's testimony and affidavit and in the testimony of the other party, if the other party is present, that the child is in immediate danger.
  2. The party requesting an order under this subsection shall provide the court with telephone numbers where the party can be reached at any time during the day and a contact address.

3. A copy of the order and the supporting affidavit must be served on the other party. The order must include the following statement: “Notice: You may request a hearing on this order as long as it remains in effect by filing with the court a hearing request.”
4. The court shall make reasonable efforts to hold a hearing within 14 days and shall hold a hearing no later than 21 days after receipt of the request for the hearing. The court shall notify each party of the time, date and place of the hearing.

#### SECTION 4.08. COURT PROCEEDINGS AND FINDINGS

When both parties to an action meet the requirements of section 1.08(B) of the Family Law Code, and one party petitions for a dissolution of marriage alleging that the marriage is irretrievably broken, and when at least ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

- A. If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution.
- B. If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition.
- C. If the other party denies that the marriage is irretrievably broken the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:
  1. Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or
  2. At the request of either party or on its own motion, refer them to a counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing. After hearing from the counseling service or parties, or after sixty days have passed since referring the parties to a counseling service, the court shall:
    - a. Find that the parties have agreed to reconciliation and dismiss the petition; or
    - b. Find that the parties have not been reconciled, and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage.
- D. If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution.

#### SECTION 4.09. FINAL ORDERS

- A. Scope. In entering a decree of dissolution of marriage, legal separation, or annulment, the court shall determine the marital status of the parties, make provision for child custody, decision making, and a parenting plan for any minor child of the marriage, make provision for the support of any child of the marriage entitled to support including the medical support of the children, consider or approve provision for the support of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of tax exemptions, award rights concerning the dividends of children to the custodial parent, and make provision for any necessary continuing restraining orders.
- B. Entry of Decree on Affidavit in Lieu of Hearing. In a suit for annulment or dissolution of marriage or for separation, wherein the parties are co-petitioners or the respondent is found by

the court to be in default or the respondent having appeared has waived further appearance or the parties stipulate to the entry of a judgment, the court may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a decree of annulment or dissolution or for separation based upon a current affidavit of the petitioner or co-petitioners, setting forth a prima facie case, and covering such additional matters as the court may require. If child support or custody of minor children is involved, then the affidavit also shall include:

1. The gross monthly income of each party, to the best of the affiant's knowledge; and
2. The name of the party with whom the children currently reside and the length of time they have so resided.

#### SECTION 4.10. DECREE OF SEPARATION AND CONVERSION TO DECREE OF DISSOLUTION

- A. **Motion to Show Cause.** Upon motion of a party for an order to show cause why a decree of separation should not be converted to a decree of dissolution and after service of notice to the other party at least 30 days before the scheduled hearing, the court may, within two years after the entry of a decree of separation, convert a decree of separation into a decree of dissolution of the marriage. The other party may file a written consent to conversion and waiver of the hearing at any time before the hearing. A supplemental decree of dissolution entered under this section does not set aside, alter or modify any part of the decree of separation that has created or granted rights that have vested.
- B. **Does Not Preclude Suit For Dissolution.** Nothing in this section is intended to prevent either party to a judgment of separation from commencing at any time in the manner required by law a suit for dissolution of the marriage.
- C. **Duration of Separation.** The court shall determine and fix in its decree of separation the duration of the separation. At the expiration of such time, the decree shall have no further effect. However, no rights created or granted in the decree which have vested shall be affected by its termination. Upon motion of a party and service upon the other party of notice in the manner provided by law for service of summons, the court may renew or extend the duration. When the judgment is for unlimited separation, a party may by motion alleging that the cause for separation no longer exists and after due service of notice upon the other party in the manner provided by law for service of summons, apply for an order modifying or vacating the judgment.

#### SECTION 4.11. SUMMARY DISSOLUTIONS

- A. **When Permitted.** A marriage may be dissolved by the summary dissolution procedure specified in this section when all of the following conditions exist at the time the proceeding is commenced:
  1. Both parties have been bona fide residents of the Confederated Tribes of the Umatilla Reservation continuously for 60 of the prior 90 days before filing of the action.
  2. There are no minor children born to the parties or adopted by the parties during the marriage.
  3. There are no children over age 18 born to the parties or adopted by the parties during the marriage who are attending high school, community college, a four-year college or university; a course of professional, vocational or technical training designed to fit the child for gainful employment; or a high school equivalency course, including but not limited to a General Educational Development (GED) program, an educational program for grade 12 or below and home schooling.
  4. There are no minor children born to or adopted by the parties prior to the marriage.

5. The wife is not now pregnant.
  6. The marriage is not more than 10 years in duration.
  7. Neither party has any interest in real property wherever situated.
  8. There are no unpaid obligations in excess of \$15,000 incurred by either or both of the parties from the date of the marriage.
  9. The total aggregate fair market value of personal property assets in which either of the parties has any interest, excluding all encumbrances, is less than \$30,000.
  10. The petitioner and respondent waive any right to spousal support.
  11. The petitioner waives any rights to temporary orders except those related to allegations of domestic violence.
  12. The petitioner knows of no other pending domestic relations suits involving the marriage in this or any other jurisdiction.
- B. Procedure for Filing. A proceeding for summary dissolution of the marriage shall be commenced by filing in the court a summons, petition, affidavit of service, affidavit motion and order of default, and decree of summary dissolution. The petition shall be signed by the petitioner and shall state that as of the date of the filing of the petition each and every condition set forth in section 4.11(A) has been met. If the Respondent answers and contests the matter in any form, a summary dissolution shall not be permitted. The court, upon its own motion, may require a showing by appearance or affidavit of the petitioner. The forms to be used in a summary dissolution action are as follows:

“

**IN THE COURT OF THE  
CONFEDERATED TRIBES OF THE UMATILLA RESERVATION**

In the Matter of the Marriage of \_\_\_\_\_ )  
 ) No. \_\_\_\_\_  
Petitioner, )  
 ) **SUMMONS FOR SUMMARY**  
and ) **DISSOLUTION OF MARRIAGE**  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

TO: \_\_\_\_\_  
(Name of Respondent)

\_\_\_\_\_  
(Address of Respondent – Must be within the reservation)

**YOU HAVE BEEN SUED.** The court may decide against you without your being

heard unless you respond within 30 days of the day you received these papers.

Read the information below.

**NOTICE TO RESPONDENT: READ THESE PAPERS CAREFULLY**

Your spouse has filed a petition with the court to end your marriage and asking to divide your property and debts, if any. You must "appear" in this case or the court will grant your spouse's requests or file pleadings contesting jurisdiction as set forth in section 1.08(B)(2) of the Family Law Code. To "appear," you must file with the court a legal paper called a "motion" or "answer." The "motion", "answer", or jurisdictional pleadings must be given to the Clerk or the Court of the Confederated Tribes of the Umatilla Reservation within 30 days of the day you received these papers, along with the required filing fee. The "motion" or "answer" must be in proper form and you must show that your spouse has been served with a copy of it.

\_\_\_\_\_  
Name of Petitioner

\_\_\_\_\_  
Address of Petitioner

\_\_\_\_\_  
City/State/Zip Code

Important Information about Respondent (A recent photo may be attached in addition to the requested information.)

Height: \_\_\_\_\_  
Weight: \_\_\_\_\_  
Race: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Automobile license number and description: \_\_\_\_\_  
Other identifying information: \_\_\_\_\_  
Best time and place to locate: \_\_\_\_\_

“

“

**IN THE COURT OF THE  
CONFEDERATED TRIBES OF THE UMATILLA RESERVATION**

In the Matter of the Marriage of \_\_\_\_\_ )  
 ) No. \_\_\_\_\_  
 )  
Petitioner, ) **PETITION FOR SUMMARY**  
 ) **DISSOLUTION OF MARRIAGE**  
and )  
 )



\_\_\_\_\_, )  
Respondent. )  
\_\_\_\_\_ )

1. ( \_\_\_\_\_, Petitioner,) ( \_\_\_\_\_, Respondent,)  
has been a bona fide resident of the Confederated Tribes of the Umatilla Reservation continuously for 60 of the past 90 days before filing this action.

2. Statistical Facts:

a. Date of marriage: \_\_\_\_\_

b. Place of marriage: \_\_\_\_\_

c. Wife's address: \_\_\_\_\_

d. Wife's age: \_\_\_\_\_

e. Husband's address: \_\_\_\_\_

f. Husband's age: \_\_\_\_\_

3. My spouse and I have not been married more than 10 years.

4. Petitioner does not know of any pending (not yet decided by a judge) domestic relations suits involving this marriage in this or any other jurisdiction.

5. There are no minor children born to the parties or born during the marriage. There are no adopted minor children. The wife is not now pregnant.

6. There are no children over age 18 born to the parties or adopted by the parties during the marriage who are attending high school, community college, a four-year college or university; a course of professional, vocational or technical training designed to fit the child for gainful employment; or a high school equivalency course, including but not limited to a General Educational Development (GED) program, an educational program for grade 12 or below and home schooling.

7. Petitioner requests a dissolution because irreconcilable differences between the parties have caused the irremediable breakdown of the marriage.

8. The personal property of the parties is not worth more than \$30,000. Petitioner requests that the Court divide the property as follows:

(a) The wife should be awarded the following personal property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Additional pages have been attached and labeled "8a. continued."

(b) The husband should be awarded the following personal property:

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Additional pages have been attached and labeled "8b. continued."

(c) The husband and wife should each sign any documents necessary to remove his or her name as owner of personal property awarded to the other party.

9. Neither the husband nor the wife own any real property.

10. The debts incurred by the husband and wife together or separately from the date of the marriage are not greater than \$15,000. Petitioner requests the following division of debts:

(a) The wife be required to pay the debts listed below. The husband is awarded a judgment against the wife in the sum of \$\_\_\_\_\_. The wife can satisfy this judgment by paying off the following debts:

Name of Creditor	Amount Owed
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(b) The husband be required to pay the debts listed below. The wife is awarded a judgment against the husband in the sum of \$\_\_\_\_\_. The husband can satisfy the judgment by paying off the following debts:

Name of Creditor	Amount Owed
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

10. I relinquish all rights I may have to spousal support and waive any right to temporary orders except those related to allegations of domestic violence.

(Complete 11 only if petitioner is paying fees and wants reimbursement.)

11. If petitioner has paid court costs and service fees, petitioner requests that costs and fees paid by petitioner be repaid by respondent spouse, \_\_\_\_\_, and that a judgment in the amount of such costs and fees be entered in favor of petitioner, \_\_\_\_\_, in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
(Petitioner's signature)

Address:

\_\_\_\_\_

Telephone: \_\_\_\_\_

“

“

**IN THE COURT OF THE  
CONFEDERATED TRIBES OF THE UMATILLA RESERVATION**

In the Matter of the Marriage of \_\_\_\_\_ )

) No. \_\_\_\_\_

Petitioner, \_\_\_\_\_ )

) **AFFIDAVIT OF PROOF OF  
SERVICE**

and \_\_\_\_\_ )

Respondent. \_\_\_\_\_ )

STATE OF OREGON )

) ss.

County of \_\_\_\_\_ )

I, \_\_\_\_\_, swear/affirm under oath that: I am a resident of the State of Oregon. I am a competent person over 18 years of age. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case. On the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_, I served the Summons and Petition in this case personally upon the above named respondent in \_\_\_\_\_ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

\_\_\_\_\_



\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires \_\_\_\_\_

**II. MOTION**

Petitioner moves the Court for an Order entering the default of Respondent.

\_\_\_\_\_  
Petitioner  
\_\_\_\_\_  
Address of Petitioner  
\_\_\_\_\_  
City, State Zip

**III. ORDER**

IT IS SO ORDERED.

DATED: This \_\_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
JUDGE

“

“

**IN THE COURT OF THE  
CONFEDERATED TRIBES OF THE UMATILLA RESERVATION**

In the Matter of the Marriage of )  
 ) No. \_\_\_\_\_  
\_\_\_\_\_, )  
Petitioner, ) **DECREE OF SUMMARY**  
 ) **DISSOLUTION**  
and )  
 )  
\_\_\_\_\_, )  
Respondent. )  
\_\_\_\_\_)

**I. STATISTICAL FACTS**

1. Date of marriage: \_\_\_\_\_
2. Place of marriage: \_\_\_\_\_
3. Wife's address: \_\_\_\_\_
4. Wife's age: \_\_\_\_\_
5. Husband's address: \_\_\_\_\_
6. Husband's age: \_\_\_\_\_
7. Both parties have been bona fide residents of the Confederated Tribes of the Umatilla Reservation continuously for 60 of the last 90 days prior to filing of the action.

**II. DECREE OF DISSOLUTION**

This matter came before the Court for default. Petitioner appeared (in person) (by affidavit), and Respondent did not appear. THE COURT HAS BEEN FULLY ADVISED, AND A DECREE IS RENDERED AS FOLLOWS:

1. Dissolution: This marriage is dissolved and shall terminate on \_\_\_\_\_ (at least 90 days after filing and service of petition).
2. Prior Wills: Any will previously executed by either spouse with provisions in favor of the other spouse is revoked with respect to those provisions, unless the will expresses a different intent.
3. Division of Property:

(a) The wife is awarded and shall own by herself the following personal property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional pages have been attached as C-1.

(b) The husband is awarded and shall own by himself the following personal property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional pages have been attached as C-2.

(c) Husband and wife each shall sign any documents necessary to remove his or her name as owner of personal property awarded to the other. If either fails to sign the necessary documents, a certified copy of the Decree shall serve as a conveyance of the property.

4. Payment of Debts:

(a) The wife shall pay the debts listed below. The husband is awarded a judgment against the wife in the sum of \$ \_\_\_\_\_ . The wife can satisfy this judgment by paying the following debts:

Name of Creditor	Amount Owed
_____	
_____	
_____	
_____	
_____	

Additional pages have been added as D-1.

(b) The husband shall pay the debts listed below. The wife is awarded a judgment against the husband in the sum of \$ \_\_\_\_\_ . The husband can satisfy the judgment by paying the following debts:

Name of Creditor	Amount Owed
_____	
_____	
_____	
_____	
_____	

Additional pages have been added as D-2.

5. A judgment against (the husband) (the wife) for court costs and service fees in the amount of \$ \_\_\_\_\_ is awarded to (the husband) (the wife).

DATED: This \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
JUDGE

“

## **CHAPTER 5. COMMUNITY PROPERTY**

### **SECTION 5.01. SEPARATE PROPERTY**

- A. **Property Acquired Before Marriage.** Property and pecuniary rights owned by one spouse before marriage is their separate property and shall not be subject to the debts or contracts of the other spouse, and they are free to manage, lease, sell, convey, encumber or devise by will such property without the other spouse joining in such management, alienation or encumbrance, as fully and to the same effect as though they were unmarried.
- B. **Property Acquired After Marriage.** Property acquired by a spouse during marriage is separate property and shall not be subject to the debts or contracts of the other spouse, and they are free to manage, lease, sell, convey, encumber or devise by will such property without the other spouse joining in such management, alienation or encumbrance, as fully and to the same effect as though they were unmarried PROVIDED the property was acquired by any of the following means:
1. By gift during lifetime or by a disposition at death, by a third person to that spouse and not to both spouses, and all traceable rents, issues and profits thereof. A distribution of principal or income from a trust created by a third person to one spouse is the individual property of that spouse unless the trust provides otherwise as are all traceable rents, issues and profits thereof.
  2. In exchange for or with the proceeds of other individual property of the spouse.
  3. From traceable appreciation of the spouse's individual property.
  4. By a court order, or knowing and voluntary joint agreement of the spouses, designating it as the individual property of the spouse.
  5. As a recovery for damages arising from a claim by one spouse against the other.

### **SECTION 5.02. COMMUNITY PROPERTY**

- A. Property not acquired or owned, as prescribed in section 5.01(A) and 5.01(B), acquired after marriage by either spouse, is presumed to be community property. Each spouse has a present undivided one-half interest in each item of community property.
- B. Either spouse, acting alone, may manage and control community property, with a like power of disposition as the acting spouse has over their separate property, except:
1. Neither spouse shall devise or bequeath by will more than one-half of the community property.
  2. Neither spouse shall give community property without the express or implied consent of the other.
  3. Neither spouse shall sell, convey, or encumber the community real property without the other spouse joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses.
  4. Neither spouse shall purchase or contract to purchase community real property without the other spouse joining in the transaction of purchase or in the execution of the contract to purchase.
  5. Neither spouse shall create a security interest other than a purchase money security interest in, or sell, community household goods, furnishings, or appliances, or a



community mobile home unless the other spouse joins in executing the security agreement or bill of sale, if any.

6. Neither spouse shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses participate in its management without the consent of the other: PROVIDED, That where only one spouse participates in such management the participating spouse may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse.

#### SECTION 5.03. MIXED PROPERTY

- A. Co-mingled Property. Mixing community property with individual property reclassifies the individual property to community property unless the separate property component of the resulting mixed property can be traced.
- B. Contribution to Individual Property. Application by one spouse of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity to either spouse's separate property creates community property attributable to that application if both of the following apply:
  1. Reasonable compensation is not received for the application.
  2. Substantial appreciation of the property results from the application.

#### SECTION 5.04. CONVEYANCES BETWEEN SPOUSES

A spouse may give, grant, sell or convey directly to the other spouse their community right, title, interest or estate in all or any portion of their community real property: And every deed made from one spouse to the other shall operate to divest the real estate therein recited from any or every claim or demand as community property and shall vest the same in the grantee as separate property. The grantor in all such deeds, or the party releasing such community interest or estate shall sign, execute and acknowledge the deed as a single person without the joinder therein of the married party therein named as grantee. The conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or conveyance. Any deeds of gift conveyances or releases of community estate by or between spouses heretofore made but in which the spouses have not joined as grantors, said deeds, where made in good faith and without intent to hinder, delay or defraud creditors, shall be and the same are hereby fully legalized as valid and binding.

#### SECTION 5.05. AGREEMENTS AS TO STATUS OR DISPOSITION OF PROPERTY

- A. Nothing contained in any of the provisions of this chapter or in any law of the Confederated Tribes, shall prevent the spouses from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either.
- B. Such agreement may be made at any time by the spouses by the execution of an instrument in writing under their hands, and the same may at any time thereafter be altered or amended in the same manner.
- C. Such agreement shall not derogate from the right of creditors;
- D. Such agreement shall not be construed to curtail the powers of the court to set aside or cancel such agreement for fraud or under some other recognized equity jurisdiction, at the suit of either party;

- E. Such agreement shall not prevent the application of laws governing the community property and inheritance rights of slayers.

#### SECTION 5.06. CUSTODY AND ESTATE OF CHILDREN

- A. Equal Rights Between Spouses to Child's Estate. The rights and responsibilities of the parents in the absence of misconduct shall be equal, and both shall be equally entitled to the custody, control and earnings of the children.
- B. Death of Spouse. In case of one spouse's death, the other spouse shall come into full and complete control of the children and their estate.

#### SECTION 5.07. EARNINGS AND ACCUMULATIONS SPOUSES LIVING APART

- A. Separate Property When Living Apart. When spouses are living separate and apart, their respective earnings and accumulations shall be the separate property of each.
- B. Property of Children When Spouses Living Apart. When a husband and wife are living separate and apart, the earnings and accumulations of minor children shall be the separate property of the spouse who has their custody or, if no custody award has been made, then the separate property of the spouse with whom said children are living the majority of the time or as otherwise ordered by the court.

#### SECTION 5.08. RIGHTS OF MARRIED PERSONS IN GENERAL

Every married person shall have the same right and liberty to acquire, hold, enjoy and dispose of every species of property, and to sue and be sued, as if he or she were unmarried.

#### SECTION 5.09. SPOUSES MAY SUE EACH OTHER

Should a spouse obtain possession or control of property belonging to the other spouse, either before or after marriage, the owner of the property may maintain an action therefore, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried.

#### SECTION 5.10. LIABILITY TO THIRD PARTIES FOR ACTS OF OTHER SPOUSE

For all injuries committed by a married person, there shall be no recovery to a third party against the separate property of the other spouse except in cases where there would be joint responsibility if the marriage did not exist.

#### SECTION 5.11. LIABILITY FOR ANTENUPTIAL AND SEPARATE DEBTS AND CHILD SUPPORT OBLIGATIONS

Neither spouse is liable for the debts or liabilities of the other spouse incurred before marriage, nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other: PROVIDED, That the earnings and accumulations of a spouse shall be available to the legal process of creditors for the satisfaction of debts incurred by that spouse prior to marriage. For the purpose of this section, neither spouse shall be construed to have any interest in the earnings of the other: PROVIDED FURTHER, That no separate debt, except a child support or spousal support obligation, may be the basis of a claim against the earnings and accumulations of either spouse unless the same is reduced to judgment within three years of the marriage of the parties. The obligation of a parent or stepparent to support a child may be collected out of the parent's or stepparent's separate property, the parent's or stepparent's earnings and accumulations, and the parent's or stepparent's share of community personal and real property. Funds in a community bank account which can be identified as the earnings of the non-obligated spouse are exempt from satisfaction of the child support obligation of the debtor spouse.

**SECTION 5.12. TERMINATION OF SUPPORT OBLIGATION OF STEPPARENT**

The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both spouses and they may be sued jointly or separately. When a petition for dissolution of marriage or a petition for legal separation is filed, the court may, upon motion of the stepparent, terminate the obligation to support the stepchildren. The obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death.

**SECTION 5.13. ANNULLED MARRIAGES**

If a marriage is annulled by an order of the court, the court may apply so much of this chapter to the property of the parties to the annulled marriage as is necessary to avoid an inequitable result.

**CHAPTER 6. DISPOSITION OF PROPERTY AND SPOUSAL SUPPORT**

**SECTION 6.01. DISPOSITION OF PROPERTY AND LIABILITIES**

- A. All Property is Before the Court. In a proceeding for dissolution of the marriage, legal separation, annulment, or in a proceeding following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse in which disposition of property and liabilities of the parties is sought, all property whether real or personal, tangible or intangible, vested or unvested, separate or community, is properly before the court.
- B. Just and Equitable Distribution. The court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties as shall appear just and equitable. However, the court may consider economic misconduct by the parties.
- C. Non-exclusive Factors to be Considered. In making a just and equitable disposition of the property and liabilities of the parties the court shall consider all relevant factors including, but not limited to:
1. The nature and extent of the community property;
  2. The nature and extent of the separate property;
  3. The economic circumstances of each spouse at the time the division of property is to become effective, including the following:
    - a. The desirability of awarding the family home or the right to live therein for reasonable periods to the custodial spouse,
    - b. The age of the parties,
    - c. The health of the parties,
    - d. The work history, training, and education of the parties,
    - e. Future expectancy or loss including social security benefits, possibility of remarriage, and likelihood of non-custodial spouse's failure to pay child support; and
  4. The duration of the marriage.
- D. Factors to Consider Relating to Duration of Marriage. The following are discretionary in nature and are provided to guide the court in the application of Section 6.01(c)(4):
1. Short Term Marriages. For marriages lasting approximately five years or less the court should seek to return the parties to the same economic condition they enjoyed at

the inception of the marriage except in extraordinary circumstances such as when one party forgoes job opportunities to accommodate the marriage.

2. Long Term Marriages. For marriages lasting approximately twenty five years or more the court should seek to place the parties in roughly equal financial positions for the rest of their lives.
  3. Midrange Marriages. For marriages approximately more than five years but less than twenty five years the court should blend the considerations underlying the analysis of both long and short term marriages.
- E. Property Not Subject to Division. In some circumstances property will not be subject to division by the court by operation of federal law, tribal customs and traditions, lack of jurisdiction over the property, or otherwise. When this occurs, the court may still take the property into consideration when rendering a just and equitable disposition of the party's property and liabilities as well as consider the imposition of spousal support in lieu of, or in addition to, the division of property.
1. Social Security Benefits. Social Security old age benefits are not to be considered property subject to division or distribution, but the possibility of future receipt of such benefits is a factor the court may consider when making a just and equitable distribution of the property and liabilities of the parties.
  2. Indian Trust Lands. Indian Trust land is not to be considered property subject to a requirement of conveyance without the approval of the Secretary of Interior, but may be considered by the court when seeking a just and equitable disposition of the property and liabilities of the parties.
- F. Spousal Support Considered. When dividing property and liabilities of the parties the court may take into account the amount of spousal support it intends to grant due to the inability of the court to otherwise award an equitable share of the property.
- G. Order Effective for All Purposes. Upon the filing of the judgment, the property division ordered shall be deemed effective for all purposes.
- H. Regalia. Distribution of Regalia shall be subject to the Tribes' customs and traditions. The value of Regalia shall not be considered, except in cases of wrongful dispossession, by the court in reaching a just and equitable distribution of property and liabilities.

## SECTION 6.02. SPOUSAL SUPPORT

- A. Spousal Support Permitted. In a proceeding for dissolution of marriage, legal separation, annulment, or in a proceeding for spousal support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant an order for spousal support for either spouse.
- B. Agreed Orders. The court may approve an agreement between the parties for the entry of an order for the support of a party.
- C. Must Be Just and Equitable. The spousal support order, if any, shall be in such amounts and for such periods of time as the court deems just and equitable after considering all relevant factors including but not limited to:
  1. The financial resources of the party seeking maintenance, including separate or community property apportioned to them, and their ability to meet their needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

2. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to their skill, interests, standard of living, and other attendant circumstances;
  3. The standard of living established during the marriage;
  4. The duration of the marriage;
  5. The age, physical and emotional condition, and financial obligations of the spouse seeking support;
  6. The ability of the spouse from whom support is sought to meet their needs and financial obligations, including child custodial and support obligations, while meeting those of the spouse seeking support; and
  7. The need for spousal support in lieu of, or in addition to, disposition of the property and liabilities of the parties due to the inability of the court to award an equitable share of the property. In such a circumstance the court shall note in the order that the spousal support is being ordered in lieu of, or in addition to, a division of property in order to effect an equitable disposition of the property and liabilities of the parties. The court shall also indicate the portion of the spousal support order made in lieu of, or in addition to, the division of property.
- D. **Modification of Spousal Support Order.** A spousal support order may be modified upon a showing of a substantial change in circumstances that was not within the contemplation of the parties at the time the order was entered. The burden of proof shall be on the party seeking modification.
1. A modification order shall only apply as to installments accruing subsequent to the filing of the petition for modification or motion for adjustment with the exception of motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment.
  2. Any motion to modify a spousal support order must be filed before termination of the original spousal support award.
  3. The following do not in and of themselves constitute a substantial change in circumstances for purposes of modifying a spousal support order:
    - a. A self-induced reduction in income on the part of either party,
    - b. An increase in the obligor's earnings, or
    - c. Remarriage on the part of the obligor.
- E. **Termination of Spousal Support Order.** Unless otherwise agreed in writing or expressly provided in a court order, the obligation to pay future spousal support is terminated upon the death of either party or the remarriage of the party receiving maintenance.
- F. **Enforcement.** Enforcement of a spousal support order can be had by the means set forth in sections 8.04, and 8.06 to 8.12.

## **CHAPTER 7. CHILD CUSTODY AND PARENTING PLANS**

### **SECTION 7.01. APPLICATION**

- A. **Scope.** In any proceeding under the Family Law Code in which the parents of a minor or dependent child do not live together, the court shall provide for the allocation of custodial and decision making responsibility for the children and establish a parenting plan.

- B. Best Interests of Child. When determining child custody and decision making responsibility the court shall do so in accordance with the best interest of the child by facilitating all of the following:
1. Parental planning and agreement about the child's custodial arrangements and upbringing;
  2. Continuity of existing parent-child attachments;
  3. Meaningful contact between the child and each parent;
  4. Caretaking relationships by adults who love the child, know how to provide for the child's needs, and place a high priority on doing so;
  5. Security from exposure to conflict and violence;
  6. Expeditious, predictable decision making and the avoidance of prolonged uncertainty respecting arrangements for the child's care and control;

#### SECTION 7.02. PARENTING PLANS

- A. Mandatory Filing of Proposed Parenting Plans. Any individual seeking allocation of custodial responsibility or decision making responsibility shall file with the court a proposed parenting plan containing proposals for each of the provisions specified in section 7.02(F). Joint plans are permissible and encouraged.
- B. Affidavit. Each parenting plan filed under section 7.02(A) shall be supported by an affidavit containing, to the extent known, all of the following:
1. The name, address, tribal affiliation, and length of co-residence of any individuals with whom the child has lived for one year or more, or in the case of a child less than one year old, any individuals with whom the child has lived for any significant period of time since birth;
  2. A description of the past allocation of caretaking and other parenting functions performed by both parents, including at a minimum during the 24 months preceding the filing of an action;
  3. A description of the employment and child-care schedules of any individual seeking an allocation of custodial responsibility, and any expected changes to these schedules in the future;
  4. A schedule of the child's school and extracurricular activities;
  5. A description of any of the limiting factors specified in section 7.07 that are present in the case, including any restraining orders to prevent child abuse or domestic violence, with case number and issuing court;
  6. Financial information required to be disclosed under Chapter 8;
  7. A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.
- C. Confidentiality. The court shall maintain the confidentiality of information required to be filed under section 7.02(B) if the individual providing the information demonstrates a reasonable fear of child abuse or domestic violence and disclosure of the information would increase safety risks.

- D. Child Abuse and Domestic Violence Allegations. If the court receives credible information that child abuse or domestic violence has occurred or is otherwise a factor in the action the court shall:
1. Refer the victim of domestic violence to any and all relevant services available to the Tribe,
  2. Refer the allegations to Tribal Police and CFS.
  3. Conduct a hearing as set forth in section 7.03(B) and 7.03(C).
- E. Temporary Orders. Prior to a decision on a final parenting plan and upon motion of a party, the court may order a temporary allocation of custodial responsibility or decision making responsibility as the court determines is in the child's best interests, considering the factors in sections 7.04 and 7.05.
1. A temporary order should not preclude access to the child by a parent who has been exercising a reasonable share of parenting functions without good cause having been shown.
  2. Upon credible information of one or more of the circumstances set forth in section 7.07, and pending adjudication of the underlying facts, the court shall issue a temporary order limiting or denying access to the child in order to protect the child or other family member.
  3. A temporary order shall address who is to claim the child for tax purposes and allocate rights concerning the child's dividends to the custodial parent.
- F. Contents of Plan. After consideration of any proposed parenting plans submitted in the case and any evidence presented in support thereof, the court shall order a parenting plan that contains the following provisions:
1. A provision for the child's living arrangements and for each parent's custodial responsibility, which shall include either:
    - a. A custodial schedule that designates in which parent's home each minor child will reside on given days of the year including birthdays, vacations, holidays, and weekends including weekends with holidays or school in-service days preceding or following weekends; or
    - b. A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in a subsequent proceeding.
  2. An allocation of decision making responsibility as to significant matters reasonably likely to arise with respect to the child;
  3. Telephone access and transportation needs; and
  4. A provision consistent with this section for resolution of disputes that arise under the plan with a provision establishing remedies for violations of the plan.
- G. Relocation and Modification. The court may provide in the parenting plan for how issues relating to a party's future relocation will be resolved, and it may provide for future modifications of the parenting plan if specified contingencies occur.

#### SECTION 7.03. AGREED PARENTING PLANS

- A. Agreed Plans Preferred. The court shall order provisions of a parenting plan agreed to by the parents, unless the agreement:

1. Is not knowing or voluntary,
  2. Would be harmful to the child,
  3. Is otherwise not in the best interest of the child, or
  4. Other good cause is shown.
- B. Hearing for Denial. The court, on any basis it deems sufficient, may conduct an evidentiary hearing to determine whether there is a factual basis under section 7.03(A) to find that the court should not be bound by an agreement. If the court rejects an agreement, in whole or in part, it shall allow the parents the opportunity to negotiate another agreement.
- C. Abuse. If credible information is presented to the court that child abuse or domestic violence has occurred, the court shall hold a hearing and, if the court determines that child abuse or domestic violence has occurred, it shall order appropriate protective measures under section 7.07.

#### SECTION 7.04. CUSTODIAL RESPONSIBILITY (VISITATION SCHEDULE)

- A. Should Approximate History of Caretaking. Unless otherwise resolved by agreement of the parents, the court should allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents' separation or, if the parents never lived together, before the filing of the action, except to the extent required under section 7.07 or as necessary to achieve one or more of the following objectives:
1. To permit the child to have a relationship with each parent which should be not less than 96 hours a month;
  2. To accommodate the firm and reasonable preferences of a child who has reached the age of fourteen;
  3. To keep siblings together when the court finds that doing so is necessary to their welfare;
  4. To protect the child's welfare when the presumptive allocation under this section would harm the child because of a gross disparity in the quality of the emotional attachment between each parent and the child or in each parent's demonstrated ability or availability to meet the child's needs;
  5. To take into account any prior agreement that would be appropriate to consider in light of the circumstances as a whole, including the reasonable expectations of the parties, the extent to which they could have reasonably anticipated the events that occurred and their significance, and the interests of the child;
  6. To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical, or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;
  7. To apply the principles set forth in section 7.12(E) if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the presumptive amount of custodial responsibility under this section;
  8. To avoid substantial and likely harm to the child.



- B. Not Consider Temporary Arrangements Post Separation. In determining the proportion of caretaking functions each parent previously performed for the child under section 7.04(A), the court should not consider the division of functions arising from temporary arrangements after the parents' separation, whether those arrangements are consensual or by court order.
- C. When No History of Caretaking Functions. If the court is unable to allocate custodial responsibility under section 7.04(A) because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a sufficiently clear pattern of caretaking, the court should allocate custodial responsibility based on the child's best interests.
- D. Factors to Consider in Scheduling Custodial Time. In determining how to schedule the custodial time allocated to each parent, the court should take account of economic, physical, and other practical circumstances, such as those listed in section 7.04(A)(6).
- E. Custodial Parent. In any parenting plan the court shall designate the parent with whom the child is to reside the majority of the time as the custodial parent.

#### SECTION 7.05. DECISION MAKING RESPONSIBILITY

- A. Factors to Consider. Unless otherwise resolved by agreement of the parents, the court shall allocate responsibility for making significant life decisions on behalf of the child, including decisions regarding the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interests, in light of the following:
  - 1. The allocation of custodial responsibility under section 7.04;
  - 2. The level of each parent's participation in past decision making on behalf of the child;
  - 3. The wishes of the parents;
  - 4. The level of ability and cooperation the parents have demonstrated in past decision making on behalf of the child;
  - 5. A prior agreement that would be appropriate to consider under the circumstances as a whole including the reasonable expectations of the parents and the interests of the child;
  - 6. The existence of any limiting factors, as set forth in section 7.07.
- B. Presumption of Joint Decision Making. The court should presume that an allocation of decision making responsibility jointly to each parent who has been exercising a reasonable share of parenting functions is in the child's best interests. The presumption is overcome if there is a history of domestic violence or child abuse, or if it is shown that joint allocation of decision making responsibility is not in the child's best interests.
- C. Day-to-Day Decisions. Unless otherwise provided or agreed by the parents, a parent should have sole responsibility for day-to-day decisions for the child while the child is in that parent's custodial care and control, including emergency decisions affecting the health and safety of the child.
- D. Access to Records. Even if not allocated decision making responsibility under this section, any parent should have access to the child's school and health-care records to which parents have access by other law, except insofar as access is not in the best interest of the child or when the provision of such information might endanger an individual who has been the victim of child abuse or domestic violence.

**SECTION 7.06. DISPUTE RESOLUTION INCLUDED IN PLAN**

Must Include Dispute Resolution Provision. Unless otherwise resolved by agreement of the parents or inappropriate due to domestic violence or child abuse, the court shall include in the parenting plan a process for resolving future disputes that will serve the child's best interests in light of the following:

- A. The parents' present wishes regarding future dispute resolution;
- B. Circumstances, including but not limited to financial circumstances, that may affect the parents' ability to participate in a prescribed process for dispute resolution;
- C. The existence of any limiting factor set forth in section 7.07.

**SECTION 7.07. LIMITING FACTORS**

- A. Child Abuse, Neglect, Interference, and Domestic Violence. If either of the parents so requests, or upon receipt of credible information that such conduct has occurred, the court shall determine promptly whether a parent who would otherwise be allocated responsibility under a parenting plan has done any of the following:
  - 1. Abused, neglected, or abandoned a child;
  - 2. Inflicted domestic violence, or allowed another to inflict domestic violence;
  - 3. Abused drugs, alcohol, or another substance in a way that interferes with the parent's ability to perform caretaking functions;
  - 4. Interfered persistently with the other parent's access to the child, except in the case of actions taken with a reasonable, good-faith belief that they are necessary to protect the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief which the interfering parent should be required to initiate as soon as reasonably possible.
  - 5. Committed a sex offense.
- B. Imposition of Limitations. If a parent is found to have engaged in any activity specified by section 7.07(A), the court shall impose limits that are reasonably calculated to protect the child, child's parent, or other member of the household from harm. The limitations available to the court to consider include, but are not restricted to, the following:
  - 1. An adjustment, including a reduction or the elimination, of the custodial responsibility of a parent;
  - 2. Supervision of the custodial time between a parent and the child;
  - 3. Exchange of the child between parents through an intermediary, or in a protected setting;
  - 4. Restraints on a parent's communication with or proximity to the other parent or the child;
  - 5. A requirement that a parent abstain from possession or consumption of alcohol or non-prescribed drugs while exercising custodial responsibility and within a specified period immediately preceding such exercise;
  - 6. Denial of overnight custodial responsibility;
  - 7. Restrictions on the presence of specific persons while a parent is with the child;

8. A requirement that a parent complete a program for perpetrators of domestic violence, for drug or alcohol abuse, or for other behavior addressed in this section. An anger management program will not qualify as a program for perpetrators of domestic violence;
  9. Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent, or any other person whose safety immediately affects the child's welfare.
- C. **Written Findings.** If a parent is found to have engaged in any activity specified in section 7.07(A), the court shall not allocate custodial responsibility or decision making responsibility to that parent without making special written findings that the child, other parent, or other household member can be adequately protected from harm by the limits imposed under section 7.07(B).
  - D. **Burden of Proof.** A parent found to have engaged in the behavior specified in section 7.07(A) has the burden of proving by clear and convincing evidence that an allocation of custodial responsibility or decision making responsibility to that parent will not endanger the child, other parent, or other household member.

**SECTION 7.08. COURT-ORDERED INVESTIGATION; APPOINTMENT OF GUARDIAN AD LITEM OR LAWYER FOR THE CHILD**

- A. **Investigations.** The court may order a written investigation or evaluation to assist it in determining any issue relevant to proceedings under this Chapter. The court should specify the scope of the investigation or evaluation and the authority of the investigator or evaluator.
- B. **Guardian Ad Litem.** The court may appoint a guardian ad litem to represent the child's interests. The court should specify the terms of the appointment, including the guardian's role, duties, and scope of authority.
- C. **Lawyer for the Child.** The court may appoint a lawyer to represent the child if the child is competent to direct the terms of the representation and the court has a reasonable basis for finding that the appointment would be helpful in resolving the issues of the case. The court may also appoint a lawyer to represent the guardian ad litem appointed under section 7.08(B). The court should specify the terms of the appointment, including the lawyer's role, duties, and scope of authority.
- D. **Allegations of Domestic Violence, Child Abuse, or Neglect.** When substantial allegations of domestic violence or child abuse or child neglect have been made or when there is credible information that domestic violence or child abuse or neglect has occurred, the court shall order an investigation under section 7.08(A) or appoint a guardian ad litem or an attorney under section 7.08(B) or (C), unless the court is satisfied that the information adequate to evaluate the allegations will be secured without such an order or appointment.
- E. **Mandating Disclosure.** Subject to whatever restrictions on disclosure may exist under other law, the court may require the child, parent, or other person having information about the child or parent to provide information to a person or agency appointed under this section.
- F. **Costs.** Appointments, investigations, evaluation services, or tests should not be ordered under this section unless at no cost to the persons involved, or at a cost that is reasonable in light of the financial resources of the parents. When one parent's ability to pay is significantly greater than the other's, the court should allocate the costs between them equitably.

**SECTION 7.09. INTERVIEW OF THE CHILD BY THE COURT**

**Court May Interview Child.** The court shall have discretion to interview the child, or direct another person to interview the child, in order to obtain information relevant to the issues of the case. Counsel

for a parent or for the child is permitted to propose questions to the court that may be asked of the child.

**SECTION 7.10. MODIFICATION UPON SHOWING OF CHANGED CIRCUMSTANCES OR HARM**

- A. **Basis for Modification.** Except as provided in section 7.11(B) or 7.12(B), the court may modify a court-ordered parenting plan if it finds, on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated therein, that a substantial change has occurred in the circumstances of the child or of one or both parents and that a modification is necessary to the child's welfare.
- B. **Unworkable and Harmful Plans.** Even if a substantial change of circumstances has not occurred, a court may modify a parenting plan if it finds that the plan arrangements are not working as contemplated and in some specific way cause harm to the child.
- C. **Not Considered Substantial Change.** Unless the parents have agreed otherwise, none of the following circumstances is sufficient to justify a significant modification of a parenting plan except where harm to the child is shown:
  - 1. Circumstances resulting in an involuntary loss of income, by loss of employment or otherwise, affecting the parent's economic status;
  - 2. A parent's remarriage or cohabitation;
  - 3. A parent's choice of reasonable caretaking arrangements for the child, including the child's placement in day care.
- D. For purposes of section 7.10(A), the onset or significant worsening of any limiting factor defined in section 7.07(A) constitutes a substantial change of circumstances under this section.

**SECTION 7.11. MODIFICATION WITHOUT SHOWING OF CHANGED CIRCUMSTANCES**

- A. **By Agreement.** The court should modify a parenting plan in accordance with an agreement between the parents, unless it finds that the agreement is not knowing or voluntary, or would be harmful to the child.
- B. **Best Interest of the Child.** The court may modify a parenting plan without a showing of changed circumstances otherwise required by section 7.10(A) if the modification is in the child's best interests and:
  - 1. Reflects the de facto arrangement under which the child has been receiving care, without parental objection, for the six months preceding filing of the petition for modification, provided the arrangement is not the result of a parent's acquiescence resulting from domestic violence or from other conditions or circumstances that impeded the parent's capacity to give meaningful consent;
  - 2. Constitutes a minor modification in the plan;
  - 3. Is necessary to accommodate the firm preferences of a child who has attained the age of fourteen; or
  - 4. Is necessary to change a parenting plan that was based on an agreement that the court would not have ordered under section 7.03 had the court been aware of the circumstances at the time the plan was ordered, if modification is sought under this section within six months of the issuance of the parenting plan.

SECTION 7.12. RELOCATION OF A PARENT

- A. **When Substantial Change in Circumstances.** The relocation of a parent constitutes a substantial change in circumstances under section 7.10(A) only when the relocation significantly impairs either parent's ability to exercise responsibilities the parent has been exercising or attempting to exercise under the parenting plan.
- B. **Required Notice.** Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than 90 days shall give a minimum of 60 days' advanced notice, or the earliest notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include all of the following:
1. The intended date of the relocation,
  2. The address of the intended new residence,
  3. The specific reasons for the intended relocation,
  4. A proposal for how custodial responsibility should be modified, if necessary, in light of the intended move.
- C. **Failure to Follow Notice Requirements.** A court may consider a failure to comply with the notice requirements of section 7.12(B) without good cause as a factor in determining whether the relocation is in good faith under section 7.12(E), and as a basis for awarding reasonable expenses and reasonable attorney's fees attributable to such failure.
- D. **Try To Keep Proportion of Custodial Responsibilities.** When changed circumstances are shown under section 7.12(A), if practical the court should revise the parenting plan to accommodate the relocation without changing the proportion of custodial responsibilities each parent is exercising.
- E. **Best Interest of the Child.** When a relocation constituting changed circumstances under section 7.12(A) renders it impractical to maintain the same proportion of custodial responsibility to each parent, the court should modify the parenting plan in accordance with the child's best interests, and in accordance with the following principles:
1. The court should allow a parent who has been exercising the clear majority of custodial responsibility to relocate with the child if that parent shows that the relocation is for a valid purpose, in good faith, and to a location that is reasonable in light of the purpose.
    - a. Any of the following purposes for a relocation are valid:
      - i. To be close to significant family or other sources of support,
      - ii. To address significant health problems,
      - iii. To protect the safety of the child or another member of the child's household from a significant risk of harm,
      - iv. To pursue a significant employment or educational opportunity,
      - v. To be with one's spouse or domestic partner who lives in, or is pursuing a significant employment or educational opportunity in, the new location,

- vi. To significantly improve the family's quality of life. The relocating parent should have the burden of proving the validity of any other purpose.
      - b. A move for a valid purpose is reasonable unless its purpose is shown to be substantially achievable without moving, or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.
  2. If a parent who has been exercising the clear majority of custodial responsibility does not establish that the purpose for that parent's relocation is valid, in good faith, and to a location that is reasonable in light of the purpose, the court should order the plan modifications most consistent with the child's best interests. Among the modifications the court should consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation should not be ordered if the relocating parent demonstrates that the child's best interests would be served by the child's relocation with the parent.
  3. If neither parent has been exercising a clear majority of custodial responsibility for the child, the court should modify the plan in accordance with the child's best interests, taking into account all relevant factors including the effects of the relocation on the child.
  4. The court should deny the request of a parent for a reallocation of custodial responsibility to enable the parent to relocate with the child if the parent has been exercising substantially less custodial responsibility for the child than the other parent, unless the relocating parent demonstrates that the reallocation is necessary to prevent harm to the child.
  5. The court should minimize the impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.

#### SECTION 7.13. ENFORCEMENT OF PARENTING PLANS

- A. Enforcement on Finding of Intentional Violation. If, upon a complaint from an individual with responsibility under a parenting plan, the court finds that another individual intentionally and without good cause violated a provision of a court ordered parenting plan, it shall enforce the remedies specified in the plan or, if no remedies are specified or they are inadequate, it should find that the plan has been violated and order an appropriate remedy, which may include one or more of the following:
  1. In the case of interference with the exercise of custodial responsibility for a child by the other parent, an award of substitute time for that parent to make up for time missed with the child;
  2. In the case of missed time by a parent, an award of costs in recognition of lost opportunities by the other parent, child-care costs, and other reasonable expenses in connection with the missed time;
  3. A modification of the plan, if the requirements for a modification are otherwise met;
  4. An order that the parent who violated the plan obtain appropriate counseling;
  5. An award of court costs, reasonable attorney's fees, and any other reasonable expenses in enforcing the plan;
  6. Any other appropriate remedy.

- B. Each Parent Independently Obligated. Except as provided in a jointly submitted plan that has been ordered by the court, the court should treat obligations established in a parenting plan as independent obligations, and it should not recognize as a defense to an action under this section by one parent that the other parent failed to meet obligations under a parenting plan or child-support order.
- C. Agreed Deviations. A court may treat an agreement between parents to depart from a parenting plan as a defense to a claim that the plan has been violated, even though the agreement was not made part of a court order, but only as to acts or omissions consistent with the agreement that occur before the agreement is disaffirmed by either parent.

## **CHAPTER 8. CHILD SUPPORT AND SUPPORT ENFORCEMENT**

### **SECTION 8.01. CHILD SUPPORT.**

- A. Generally. In a proceeding for dissolution of marriage, legal separation, annulment, paternity, or child support, after considering all relevant factors but without regard to marital misconduct, the court shall order either or both parents owing a duty of support to any child dependent upon either or both spouses to pay an amount determined under this chapter. When the court deems it appropriate child support may be ordered, pursuant to the provisions of this chapter, in a Minor In Need Of Care case.
- B. To Whom Paid.
  - 1. The court shall order child support payments to be made to the Office of Child Support Enforcement, or the person entitled to receive the payments under an order approved by the court.
  - 2. In any case in which the obligee under a child support order receives services from the Department of Children and Family Services, payments shall be made to the Office of Child Support Enforcement.
  - 3. If support payments are made to the clerk of court, the clerk:
    - a. Shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order, and
    - b. May accept only certified funds or cash as payment.
  - 4. Changes of Address or Employment. The parties affected by the order shall inform the Office of Child Support Enforcement of any change of address, employment, or of other conditions that may affect the administration of the order.
- C. Automatic Adjustments. The court may require automatic periodic adjustments or modifications of child support. That portion of any decree that requires periodic adjustments or modifications of child support shall use the provisions in this chapter as the basis for the adjustment or modification. Provisions in the decree for periodic adjustment or modification shall not conflict with section 8.05 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to section 8.05. Upon motion of a party and without a substantial change of circumstances, the court shall modify the decree to comply with this subsection as to installments accruing subsequent to entry of the court's order on the motion for modification.
- D. Economic Hardship. The adjustment or modification provision may be modified by the court due to economic hardship consistent with the provisions of section 8.05(D)(1).

**SECTION 8.02. OFFICE OF CHILD SUPPORT ENFORCEMENT**

- A. Support Enforcement Services. The Department of Justice Office of Child Support Enforcement (OCSE) may provide support enforcement services when:
1. A person provides the Office of Child Support Enforcement a written application for services. An application for services may be made by an obligee, an obligor, a person having physical custody of a minor, or by a child over the age of 18 years attending school who may be eligible for (or is a beneficiary of) a child support award as set forth in section 8.17,
  2. The child who is the subject of a child support order is receiving services from the Department of Children and Family Services, or
  3. A case is referred from a child support enforcement agency of another jurisdiction.
- B. OCSE Services.
1. When a support case is opened, and when there is sufficient evidence to support an action to be taken, the Office of Child Support Enforcement may take the following actions on behalf of persons described above:
    - a. Locate obligors or obligees,
    - b. Establish paternity,
    - c. Establish child support obligations,
    - d. Enforce child support obligations,
    - e. Initiate or respond to child support modification proceedings of any type,
    - f. Provide services under chapter 9 (Paternity), chapter 10 (Uniform Recognition and Enforcement of Family Support Orders), and chapter 11 (Full Faith and Credit of Foreign Child Support Orders) of this Code.
  2. The provision of services by the OCSE pursuant to this Code is at the discretion of the OCSE and does not constitute an attorney-client relationship.
- C. Reasonable Effort to Verify Employment, Compensation, Benefits or Assets: The Office of Child Support Enforcement shall make a reasonable effort to obtain all relevant information, including information as to income and property of the parties. Upon the request of the program manager or caseworker, any person or entity subject to the jurisdiction of the Confederated Tribes (including for-profit, non-profit and governmental employers) shall verify the employment of an individual and provide, if requested, information about the assets of the individual or the compensation and benefits paid to the individual whether as an employee, contractor, or other payee.

**SECTION 8.03. MANDATORY HEALTH INSURANCE COVERAGE**

- A. Health Insurance Mandatory. In entering or modifying a support order under this chapter, the court shall require either or both parents to maintain or provide health insurance coverage except as provided in subsection (B), below, for any child named in the order if:
1. Coverage that can be extended to cover the child is or becomes available to that parent through employment or is union-related; and
  2. The cost of such coverage does not exceed twenty-five percent of the obligated parent's basic child support obligation. The court shall consider the best interest of the



child and have discretion to order health insurance coverage when entering or modifying a support order under this chapter if the cost of such coverage exceeds twenty-five percent of the obligated parent's basic support obligation.

- B. Termination Date. The parents shall maintain such coverage required under this section until:
1. Further order of the court;
  2. The child is emancipated, if there is no express language to the contrary in the order; or
  3. Health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.
- C. Liability for Payments Received. A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.
- D. Court Not Limited. This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.
- E. To Whom Proof is to Be Given. A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order to:
1. The custodial parent; or
  2. The Office of Child Support Enforcement if the parent has been notified or ordered to make support payments to the Office of Child Support Enforcement or accounting office.
- F. Subject to Enforcement Provisions. Every order requiring a parent to provide health care or insurance coverage is subject to direct enforcement as provided under this chapter.

#### SECTION 8.04. FAILURE TO COMPLY WITH SUPPORT ORDER

- A. Petition. If an obligor fails to comply with a support order, a petition or motion may be filed to initiate a contempt action. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.
- B. Service. Service of the order to show cause shall be by personal service, or in a manner authorized by the court through order, rule, or custom.
- C. Arrest Warrant. If the order to show cause served upon the obligor included a warning that an arrest warrant could be issued for failure to appear, the court may issue a bench warrant for the arrest of the obligor if the obligor fails to appear on the return date provided in the order provided the obligor is subject to the criminal jurisdiction, or has otherwise consented to jurisdiction, of the Confederated Tribes.
- D. Defenses. If the obligor contends at the hearing that he or she lacked the means to comply with the support order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order.

- E. Continuing Jurisdiction. The court retains continuing jurisdiction under this chapter and may use a contempt action to enforce a support order until the obligor satisfies all duties of support, including arrearages, that accrued pursuant to the support order.

#### SECTION 8.05. GROUNDS FOR MODIFICATION AND TERMINATION

- A. The provisions of any decree respecting child support may be modified:
1. Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and,
  2. Except as otherwise provided in subsections section 8.05(D), (E), and (F), of this section, only upon a showing of a substantial change of circumstances.
- B. Emancipation and Death. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.
- C. Marriage and Re-Marriage to Each Other. Unless expressly provided by an order of the court, the support provisions of the order are terminated upon the marriage to each other of parties to a paternity order, or upon remarriage to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.
- D. An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:
1. If the order in practice works a severe economic hardship on either party or the child;
  2. If a party requests an adjustment in an order for child support which was based on guidelines which have been subsequently changed;
  3. If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or
  4. To add an automatic adjustment of support provision consistent with section 8.01.
- E. Voluntary Unemployment. An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.
- F. OCSE Action. The Office of Child Support Enforcement may file an action to modify an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is twenty-five percent or more below the appropriate child support amount set forth in the standard calculation and reasons for the deviation are not set forth in the findings of fact or order. The determination of twenty-five percent or more shall be based on the current income of the parties and the Office of Child Support Enforcement shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.
- G. Adjustments.
1. All child support decrees may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the adjustment by filing a motion and child support worksheets.

2. A party may petition for modification in cases of substantially changed circumstances under section 8.05(A) at any time. However, if relief is granted under section 8.05(A), twenty-four months must pass before a motion for an adjustment under section 8.05(G)(1) may be filed.
  3. If, pursuant to section 8.05(G)(1) or 8.05(H), the court adjusts or modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for an adjustment under section 8.05(G)(1) may be filed.
  4. A parent who is receiving support payments who receives a wage or salary increase may not bring a modification action pursuant to section 8.05(A) alleging that increase constitutes a substantial change of circumstances.
  5. The Office of Child Support Enforcement may file an action at any time to modify an order of child support in cases of substantially changed circumstances if public assistance money is being paid to or for the benefit of the child. The determination of the existence of substantially changed circumstances by the Office of Child Support Enforcement that lead to the filing of an action to modify the order of child support is not binding upon the court.
- H. An order of child support may be adjusted twenty-four months from the date of the entry of the decree or the last adjustment or modification, whichever is later, based upon changes in the economic table or standards in this chapter.

#### SECTION 8.06. PETITION OR MOTION FOR MANDATORY WAGE ASSIGNMENT

- A. When Motion Can Be Brought. A petition or motion seeking a mandatory wage assignment in an action under this chapter may be filed by an obligee if the obligor is:
1. Subject to a support order allowing immediate income withholding; or
  2. More than fifteen days past due in support payments in an amount equal to or greater than the obligation payable for one month.
- B. Contents of Motion or Petition. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the wage assignment order, including:
1. That the obligor, stating his or her name and residence, is:
    - a. Subject to a support order allowing immediate income withholding; or
    - b. More than fifteen days past due in support payments in an amount equal to or greater than the obligation payable for one month;
  2. A description of the terms of the order requiring payment of support, and the amount past due, if any;
  3. The name and address of the obligor's employer;
  4. That notice by personal service or any form of mail requiring a return receipt, has been provided to the obligor at least fifteen days prior to the obligee seeking a mandatory wage assignment, unless the order for support states that the obligee may seek a mandatory wage assignment without notice to the obligor; and
  5. In cases not filed by the Tribe or the Office of Child Support Enforcement, whether the obligee has received public assistance from any source and, if the obligee has

received public assistance, that the Office of Child Support Enforcement has been notified in writing of the pending action.

- C. Copy of Order. The obligee shall attach a copy of the support order to the petition or motion seeking the wage assignment.
- D. Dividends. Dividends of Tribal Members may be garnished only in accordance with the provisions of this section.
1. When Motion For Garnishment Can Be Brought. A motion seeking garnishment of a Tribal Member's dividends in an action under this chapter may be filed by an obligee if all of the following has been shown by a preponderance of the evidence:
    - a. The Obligor has not voluntarily agreed to garnish their wages, assign dividends, provide adequate goods and services in lieu of payment pursuant to Section 8.15(A)(1) that the court finds acceptable, or otherwise pay the child support owed; and
    - b. A wage assignment order has been obtained by the obligee, but has not reasonably satisfied the child support owed.
  2. Contents of Motion For Garnishment Of Dividends. The motion seeking garnishment of a Tribal Member's dividends shall include the following:
    - a. A sworn statement by the obligee, stating the facts authorizing issuance of the wage assignment order, including the factors set forth in Section 8.06(D)(1);
    - b. A description of the terms of the order requiring payment of support, and the amount past due, if any; and
    - c. That notice by personal service or any form of mail requiring a return receipt, has been provided to the obligor at least fifteen days prior to the obligee seeking garnishment of dividends.
  3. Multiple Support Orders. If an obligor is subject to two or more attachments for support on account of different obligees, Tribal Enrollment shall, if the amount of the dividend to be garnished is not sufficient to respond fully to all the attachments, apportion the obligor's dividend among the various obligees equally. Any obligee may seek a court order reapportioning the obligor's nonexempt disposable earnings upon notice to all interested obligees. Notice shall be by personal service, or in the manner provided by the court or applicable statute.
  4. Issuance of Dividend Garnishment Order. Upon receipt of a motion seeking garnishment of a Tribal Member's dividends that complies with this chapter, the court shall issue a dividend garnishment order indicating the amount to be garnished and duration of garnishment, directed to Tribal Enrollment. The clerk of the court shall forward a copy of the order to the Office of Child Support Enforcement for their records within five days of the entry of the order.
  5. For purposes of this Section 8.06(D), a Tribal Member's dividend shall include the Tribal Quarterly General Welfare Assistance (Tribal Quarterly Assistance) paid to the Tribal Member pursuant to the Confederated Tribes' Annual Budget Resolution, which Tribal Quarterly Assistance is funded by the Gaming Revenue Allocation Plan, Enterprise Revenue Allocation Plan and other sources, and which Tribal Quarterly Assistance shall be subject to garnishment as provided in this Section 8.06.

**SECTION 8.07. ISSUANCE OF WAGE ASSIGNMENT ORDER**

- A. Issuing Order. Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with this chapter, the court shall issue a wage assignment order, as provided in section 8.09 and including the information required in section 8.08(A), directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with section 8.09 within twenty days after service of the order upon the employer.
- B. Forward to OCSE. The clerk of the court shall forward a copy of the mandatory wage assignment order, a true and correct copy of the support orders in the court file, and a statement containing the obligee's address to the Office of Child Support Enforcement for their records within five days of the entry of the order in all cases in which an obligee or their children receive services from the Department of Children and Family Services or the Office of Child Support Enforcement.

**SECTION 8.08. CONTENTS OF WAGE ASSIGNMENT ORDER**

- A. Contents. The wage assignment order shall include:
  - 1. The maximum amount of current support to be withheld from the obligor's earnings each month, or from each earnings disbursement; and
  - 2. The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.
- B. Not More Than Fifty Percent. The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed fifty percent of the disposable earnings of the obligor. If the amounts to be paid toward the arrearage are specified in the support order, then the maximum amount to be withheld is the sum of the current support ordered and the amount ordered to be paid toward the arrearage, or fifty percent of the disposable earnings of the obligor, whichever is less.
- C. Equal Division for Multiple Attachments. If an obligor is subject to two or more attachments for support on account of different obligees, the employer shall, if the nonexempt portion of the obligor's earnings is not sufficient to respond fully to all the attachments, apportion the obligor's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the obligor's nonexempt disposable earnings upon notice to all interested obligees. Notice shall be by personal service, or in the manner provided by the court or applicable statute.

**SECTION 8.09. WAGE ASSIGNMENT ORDER FORM**

Form. The wage assignment order used shall be the federal form.

**SECTION 8.10. EMPLOYER'S ANSWER TO WAGE ASSIGNMENT ORDER**

- A. Answer. An employer upon whom service of a wage assignment order has been made shall answer the order within twenty days after the date of service. The answer shall be on the federal form.
- B. Immediate Withholding. If the employer possesses any earnings or remuneration due and owing to the obligor, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The withheld earnings shall be delivered to the Office of Child Support Enforcement within five working days of each regular pay interval.
- C. Continued Withholding. The employer shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

1. The court that the wage assignment has been modified or terminated; or
  2. The Office of Child Support Enforcement or obligee that the accrued support debt has been paid. The employer shall promptly notify the addressee specified in the assignment when the employee is no longer employed. If the employer no longer employs the employee, the wage assignment order shall remain in effect for one year after the employee has left the employment or the employer has been in possession of any earnings or remuneration owed to the employee, whichever is later. The employer shall continue to hold the wage assignment order during that period. If the employee returns to the employer's employment during the one-year period the employer shall immediately begin to withhold the employee's earnings or remuneration according to the terms of the wage assignment order. If the employee has not returned within one year, the wage assignment shall cease to have effect at the expiration of the one-year period, unless the employer continues to owe remuneration for employment to the obligor.
- D. Processing Fee. The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order. The processing fee may not exceed:
1. Ten dollars for the first disbursement made by the employer to the Office of Child Support Enforcement; and
  2. One dollar for each subsequent disbursement to the clerk.
- E. Priority. An order for wage assignment for support for a dependent child entered under this chapter shall have priority over any other wage assignment or garnishment.
- F. Liability. An employer, except as provided in section 8.10(K), who fails to withhold earnings as required by a wage assignment issued under this chapter may be held liable to the obligee for one hundred percent of the support, or the amount of support that should have been withheld from the employee's earnings whichever is the lesser amount, if the employer:
1. Fails or refuses, after being served with a wage assignment order, to deduct and promptly remit from the unpaid earnings the amounts of money required in the order;
  2. Fails or refuses to submit an answer to the notice of wage assignment after being served; or
  3. Is unwilling to comply with the other requirements of this section.
- G. Immunity. No employer who complies with a wage assignment issued under this chapter may be liable to the employee for wrongful withholding.
- H. Cannot Discharge Employee. With the exception of the Tribe or tribal entity, no employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment issued and executed under this chapter. If an employer discharges, disciplines, or refuses to hire an employee in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of damages suffered as a result of the violation and for costs and reasonable attorneys' fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.
- I. Bulk Payment. For wage assignments payable to the Office of Child Support Enforcement, an employer may combine amounts withheld from various employees into a single payment to the Office of Child Support Enforcement, if the payment includes a listing of the amounts attributable to each.

- J. Serve on Obligor. An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible.
- K. The Confederated Tribes does not waive sovereign immunity for itself, any of its entities, businesses, or agents including but not limited to the tribe's information agency, court, and personnel, or otherwise, in any form under this chapter and the Family Law Code.

#### SECTION 8.11. WAGE ASSIGNMENT ORDER ANSWER FORM

Form. The answer of the employer shall be made on the federal form.

#### SECTION 8.12. GROUNDS TO QUASH, MODIFY, OR TERMINATE WAGE ASSIGNMENT

Grounds to Terminate Wage Assignment. In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice or the obligee requests termination or modification. Satisfaction by the obligor of all past due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order.

#### SECTION 8.13. LOWER LIMITS ON CHILD SUPPORT AMOUNTS

- A. Limit at Forty-Five Percent of Net Income. Neither parent's total child support obligation may exceed forty-five percent of net income except for good cause shown. Good cause includes but is not limited to:
  - 1. Possession of substantial wealth,
  - 2. Children with day care expenses,
  - 3. Special medical, educational or psychological need, and
  - 4. Larger families.
- B. Income Below Six Hundred Dollars. When combined monthly net income is less than six hundred dollars, a support order of not less than twenty-five dollars per child per month shall be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interest of the child and the circumstances of each parent. Such circumstances can include comparative hardship to the affected households, assets or liabilities, and earning capacity. A parent's support obligation shall not reduce his or her net income below ten percent of the Federal poverty level for one person, except for the presumptive minimum payment of twenty-five dollars per child per month or in cases where the court finds reasons for deviation. This section shall not be construed to require monthly substantiation of income.

#### SECTION 8.14. STANDARDS FOR DETERMINATION OF INCOME

- A. Consideration of all income. All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.
- B. Verification of income. Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

- C. Income sources included in gross monthly income. Except as specifically excluded in section 8.14(D), monthly gross income shall include income from any source, including:
1. Salaries;
  2. Wages;
  3. Commissions;
  4. Deferred compensation;
  5. Overtime;
  6. Contract-related benefits;
  7. Income from second jobs;
  8. Dividends;
  9. Interest;
  10. Trust income;
  11. Severance pay;
  12. Annuities;
  13. Capital gains;
  14. Pension retirement benefits;
  15. Workers' compensation;
  16. Unemployment benefits;
  17. Spousal maintenance actually received;
  18. Bonuses;
  19. Social security benefits; and
  20. Disability insurance benefits.
- D. Income sources excluded from gross monthly income. The following income and resources shall be disclosed but shall not be included in gross income:
1. Income of a new spouse or income of other adults in the household;
  2. Child support received from other relationships;
  3. Gifts and prizes;
  4. Temporary assistance for needy families, supplemental security income, general assistance, and food stamps. Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.



- E. Determination of net income. The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income, but shall not be a reason to deviate from the standard calculation:
1. Federal and state income taxes;
  2. Federal insurance contributions act deductions;
  3. Mandatory pension plan payments;
  4. Mandatory union or professional dues;
  5. State industrial insurance premiums;
  6. Court-ordered spousal maintenance to the extent actually paid;
  7. Up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the
    - a. Tax year in which the parties separated with intent to live separate and apart, or
    - b. Tax year in which the parties filed for dissolution; and
  8. Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.
- F. Imputation of income. The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under a juvenile dependency case or under a voluntary placement agreement with an agency supervising the child. In the absence of information to the contrary, a parent's imputed income shall be based on 68% of the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census, or as the Board of Trustees otherwise designates.

#### SECTION 8.15. STANDARDS FOR DEVIATION FROM THE STANDARD CALCULATION

- A. Basis for Deviation. Reasons for deviation from the standard calculation include but are not limited to the following:
1. Goods and Services. In the sole discretion of the court and with consideration of any written agreements between the parents, provision of goods or services by the non-custodial parent to the custodial parent may be a basis for deviation. If the court finds deviation appropriate, the court shall determine the reasonable monetary value of the goods and services and deduct this amount from the standard calculation. The standard calculation, goods and services qualifying for deviation, and monetary value of those goods and services, shall be expressly stated in a written order.
  2. Sources of income and tax planning. The court may deviate from the standard calculation after consideration of the following:

- a. Income of a new spouse if the parent who is married to the new spouse is asking for a deviation based on any other reason. Income of a new spouse is not, by itself, a sufficient reason for deviation;
  - b. Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;
  - c. Child support actually received from other relationships;
  - d. Gifts;
  - e. Prizes;
  - f. Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;
  - g. Extraordinary income of a child; or
  - h. Tax planning considerations. A deviation for tax planning may be granted only if the child would receive an equal or greater economic benefit due to the tax planning.
3. Nonrecurring income. The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.
4. Debt and high expenses. The court may deviate from the standard calculation after consideration of the following expenses:
- a. Extraordinary debt not voluntarily incurred;
  - b. A significant disparity in the living costs of the parents due to conditions beyond their control;
  - c. Special needs of disabled children;
  - d. Special medical, educational, or psychological needs of the children; or
  - e. Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under a child dependency matter or under a voluntary placement agreement with an agency supervising the child.
5. Residential schedule. The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

6. Children from other relationships. The court may deviate from the standard calculation when either or both of the parents that are parties to the action have children from other relationships to whom the parent owes a duty of support.
  - a. The child support schedule shall be applied to the mother, father, and children of the family that are parties to the action to determine the presumptive amount of support.
  - b. Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.
  - c. When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.
  - d. When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.
- B. Child Support Guidelines Scale. All income and resources of the parties before the court, new spouses, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support guidelines scale adopted by the State of Oregon at the time of the action or a schedule otherwise adopted by the Board of Trustees. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.
- C. Findings. The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.
- D. Court Discretion. When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.
- E. Agreement Not Per-Se Adequate Basis. Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

#### SECTION 8.16. ALLOCATION OF CHILD SUPPORT OBLIGATION BETWEEN PARENTS

- A. Allocated Between Both Parents. The basic child support obligation derived from the State of Oregon's child support guidelines scale, or a table otherwise adopted by the Board of Trustees, shall be allocated between the parents based on each parent's share of the combined monthly net income.
- B. Ordinary Health Care Expenses. Ordinary health care expenses are presumed to be included in the child support guidelines scale. Monthly health care expenses that exceed five percent of the basic support obligation shall be considered extraordinary health care expenses. Extraordinary health care expenses shall be shared by the parents in the same proportion as the basic child support obligation.
- C. Day Care and Special Expenses. Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not

included in the child support guidelines scale. These expenses shall be shared by the parents in the same proportion as the basic child support obligation.

1. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses.
  2. The obligor may institute an action in the court for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses.
  3. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments.
  4. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period.
  5. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.
- D. Court Discretion. The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.

#### SECTION 8.17. POSTSECONDARY EDUCATIONAL SUPPORT AWARDS

- A. Schedule Advisory Only. The State of Oregon's child support guidelines scale, or scale otherwise adopted by the Board of Trustees, shall be advisory and not mandatory for postsecondary educational support.
- B. Grounds. When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following:
1. Age of the child;
  2. The child's needs;
  3. The expectations of the parties for their children when the parents were together;
  4. The child's prospects, desires, aptitudes, abilities or disabilities;
  5. The nature of the postsecondary education sought;
  6. The parents' level of education, standard of living, and current and future resources; and
  7. The amount and type of support that the child would have been afforded if the parents had stayed together.
- C. Suspension of Postsecondary Support. Any court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to:

1. Be enrolled in an accredited academic or vocational school,
  2. Be actively pursuing a course of study commensurate with the child's vocational goals, or
  3. Be in good academic standing as defined by the institution.
- D. All Records Available. The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Absent good cause shown, each parent shall have full and equal access to the postsecondary education records as is otherwise permitted by law.
- E. None Past Twenty Three. The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.
- F. To Whom Paid. The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

#### SECTION 8.18. INCOME TAX EXEMPTIONS AND DIVIDENDS

In any child support order, the court shall address federal and state income tax exemptions. The parties may agree which parent is entitled to claim the child or children as dependents for income tax exemptions. The court may award the exemption or exemptions and order a party to sign the income tax dependency exemption waiver. The court may divide the exemptions between the parties, alternate the exemptions between the parties, or both. In any child support order, the court shall also award all parental rights to children's dividends to the custodial parent.

### CHAPTER 9. PATERNITY

#### SECTION 9.01. DEFINITIONS.

In this Chapter:

- A. "Acknowledged father" means a man who has established a father-child relationship under section 9.08 to 9.17.
- B. "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
- C. "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:
  1. A presumed father; or
  2. A man whose parental rights have been terminated or declared not to exist
- D. "Child" means an individual of any age whose parentage may be determined under this Chapter.
- E. "Commence" means to file the initial pleading seeking an adjudication of parentage in the court.

- F. "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under section 9.08 to 9.17 or adjudication by the court.
- G. "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.
- H. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
1. Deoxyribonucleic acid; and
  2. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
- I. "Man" means a male individual of any age.
- J. "Parent" means an individual who has established a parent-child relationship under section 9.04.
- K. "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
- L. "Paternity index" means the likelihood of paternity calculated by computing the ratio between:
1. The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child; and
  2. The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.
- M. "Presumed father" means a man who, by operation of law under section 9.07, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.
- N. "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.
- O. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- P. "Signatory" means an individual who authenticates a record and is bound by its terms.
- Q. "Support-enforcement agency" means a public official or agency authorized to seek:
1. Enforcement of support orders or laws relating to the duty of support;
  2. Establishment or modification of child support;
  3. Determination of parentage; or
  4. Location of child-support obligors and their income and assets.

SECTION 9.02. SCOPE OF CHAPTER; CHOICE OF LAW.

- A. This Chapter applies to determination of parentage.
- B. The court shall apply the law of the tribe to adjudicate the parent-child relationship. The applicable law does not depend on:
  - 1. The place of birth of the child; or
  - 2. The past or present residence of the child.
- C. This Chapter does not create, enlarge, or diminish parental rights or duties under other law of this tribe.

SECTION 9.03. PROTECTION OF PARTICIPANTS.

Proceedings under this Chapter are subject to other law of the tribe governing the health, safety, privacy, and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's day-care facility and school.

SECTION 9.04. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.

- A. The mother-child relationship is established between a woman and a child by:
  - 1. The woman's having given birth to the child;
  - 2. An adjudication of the woman's maternity; or
  - 3. Adoption of the child by the woman.
- B. The father-child relationship is established between a man and a child by:
  - 1. An un rebutted presumption of the man's paternity of the child under section 9.07;
  - 2. An effective acknowledgment of paternity by the man under section 9.08 to 9.17, unless the acknowledgment has been rescinded or successfully challenged;
  - 3. An adjudication of the man's paternity; or
  - 4. Adoption of the child by the man.

SECTION 9.05. NO DISCRIMINATION BASED ON MARITAL STATUS.

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

SECTION 9.06. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE.

Unless parental rights are terminated, a parent-child relationship established under this Chapter applies for all purposes, except as otherwise specifically provided by other law of the tribe.

SECTION 9.07. PRESUMPTION OF PATERNITY.

- A. A man is presumed to be the father of a child if:
  - 1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or after a decree of separation;
  3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, divorce, or after a decree of separation;
  4. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
    - a. The assertion is in a record filed with an agency maintaining birth records of any state or tribe;
    - b. He agreed to be and is named as the child's father on the child's birth certificate; or
    - c. He promised in a record to support the child as his own; or
  5. For the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.
- B. A presumption of paternity established under this section may be rebutted only by an adjudication under section 9.29 to 9.50.

#### SECTION 9.08. ACKNOWLEDGMENT OF PATERNITY.

The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

#### SECTION 9.09. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.

- A. An acknowledgment of paternity must:
1. Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his paternity;
  2. State that the child whose paternity is being acknowledged:
    - a. Does not have a presumed father, or has a presumed father whose full name is stated; and
    - b. Does not have another acknowledged or adjudicated father;
  3. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
  4. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years.
- B. An acknowledgment of paternity is void if it:



1. States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the an agency maintaining the child's birth records;
  2. States that another man is an acknowledged or adjudicated father; or
  3. Falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.
- C. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

#### SECTION 9.10. DENIAL OF PATERNITY.

- A. A presumed father may sign a denial of his paternity. The denial is valid only if:
1. An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to section 9.12;
  2. The denial is signed, or otherwise authenticated, under penalty of perjury; and
  3. The presumed father has not previously:
    - a. Acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to section 9.13 or successfully challenged pursuant to section 9.14; or
    - b. Been adjudicated to be the father of the child.

#### SECTION 9.11. RULES FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.

- A. An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgement and denial are both necessary, neither is valid until both are filed.
- B. An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.
- C. Subject to section 9.11(A), an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with an agency maintaining birth records, whichever occurs later.
- D. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this Chapter.

#### SECTION 9.12. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY.

- A. Except as otherwise provided in section 9.13 and 9.14, a valid acknowledgment of paternity filed with the an agency maintaining birth records is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.
- B. Except as otherwise provided in section 9.13 and 9.14, a valid denial of paternity by a presumed father filed with the an agency maintaining birth records in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

#### SECTION 9.13. PROCEEDING FOR RESCISSION.

A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

- A. 60 days after the effective date of the acknowledgment or denial, as provided in section 9.11; or
- B. The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

**SECTION 9.14. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION.**

- A. After the period for rescission under section 9.13 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:
  - 1. On the basis of fraud, duress, or material mistake of fact; and
  - 2. Within two years after the acknowledgment or denial is filed with an agency maintaining birth records.
- B. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

**SECTION 9.15. PROCEDURE FOR RESCISSION OR CHALLENGE.**

- A. Every signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.
- B. For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to personal jurisdiction of this Tribe by signing the acknowledgment or denial, effective upon the filing of the document with an agency maintaining birth records.
- C. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.
- D. A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under section 9.29 to 9.50.
- E. At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court shall order an agency maintaining birth records to amend the birth record of the child, if appropriate.

**SECTION 9.16. RATIFICATION BARRED.**

The court shall not ratify an unchallenged acknowledgment of paternity.

**SECTION 9.17. FULL FAITH AND CREDIT.**

The court shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another Tribe or State if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other jurisdiction.

**SECTION 9.18. SCOPE OF SECTIONS COVERING GENETIC TESTING.**

Sections 9.18 to 9.28 governs genetic testing of an individual to determine parentage, whether the individual:

- A. Voluntarily submits to testing; or

- B. Is tested pursuant to an order of the court or a support-enforcement agency.

**SECTION 9.19. ORDER FOR TESTING.**

- A. Except as otherwise provided in sections 9.08 to 9.50, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:
1. Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or
  2. Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
- B. A support-enforcement agency may order genetic testing only if there is no presumed, acknowledged, or adjudicated father.
- C. If a request for genetic testing of a child is made before birth, the court or support-enforcement agency may not order in-utero testing.
- D. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

**SECTION 9.20. REQUIREMENTS FOR GENETIC TESTING.**

- A. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
1. The American Association of Blood Banks, or a successor to its functions;
  2. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
  3. An accrediting body designated by the federal Secretary of Health and Human Services.
- B. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.
- C. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:
1. The individual objecting may require the testing laboratory, within 30 days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory.
  2. The individual objecting to the testing laboratory's initial choice shall:
    - a. If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
    - b. Engage another testing laboratory to perform the calculations.
  3. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing

laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

- D. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child under section 9.22, an individual who has been tested may be required to submit to additional genetic testing.

#### SECTION 9.21. REPORT OF GENETIC TESTING.

- A. A report of genetic testing must be signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of sections 9.18 to 9.28 is self-authenticating.
- B. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:
1. The names and photographs of the individuals whose specimens have been taken;
  2. The names of the individuals who collected the specimens;
  3. The places and dates the specimens were collected;
  4. The names of the individuals who received the specimens in the testing laboratory; and
  5. The dates the specimens were received.

#### SECTION 9.22. GENETIC TESTING RESULTS; REBUTTAL.

- A. Under this Chapter, a man is rebuttably identified as the father of a child if the genetic testing complies with sections 9.18 to 9.28 and the results disclose that:
1. The man has at least a 99 percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
  2. A combined paternity index of at least 100 to 1.
- B. A man identified under section 9.21(A) as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of sections 9.18 to 9.28 which:
1. Excludes the man as a genetic father of the child; or
  2. Identifies another man as the possible father of the child.
- C. Except as otherwise provided in section 9.27, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

#### SECTION 9.23. COSTS OF GENETIC TESTING.

- A. Subject to assessment of costs under section 9.29 to 9.50, the cost of initial genetic testing must be advanced:
1. By a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services;
  2. By the individual who made the request;

3. As agreed by the parties; or
  4. As ordered by the court.
- B. In cases in which the cost is advanced by the support-enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

**SECTION 9.24. ADDITIONAL GENETIC TESTING.**

The court or the support-enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under section 9.21, the court or agency may not order additional testing unless the party provides advance payment for the testing.

**SECTION 9.25. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE.**

- A. Subject to section 9.25(B), if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, the court may order the following individuals to submit specimens for genetic testing:
1. The parents of the man;
  2. Brothers and sisters of the man;
  3. Other children of the man and their mothers; and
  4. Other relatives of the man necessary to complete genetic testing.
- B. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

**SECTION 9.26. IDENTICAL BROTHERS.**

- A. The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.
- B. If each brother satisfies the requirements as the identified father of the child under Section 9.21 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

**SECTION 9.27. CONFIDENTIALITY OF GENETIC TESTING.**

- A. Release of the report of genetic testing for parentage is controlled by the laws of the tribe.
- B. An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen commits a gross misdemeanor.

**SECTION 9.28. PROCEEDING AUTHORIZED.**

A civil proceeding may be maintained to adjudicate the parentage of a child.

**SECTION 9.29. STANDING TO MAINTAIN PROCEEDING.**

- A. Subject to sections 9.08 to 9.17 and sections 9.34 and 9.36, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The support-enforcement agency;
5. An authorized adoption agency or licensed child-placing agency; or
6. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

**SECTION 9.30. PARTIES TO PROCEEDING.**

The following individuals must be joined as parties in a proceeding to adjudicate parentage:

- A. The mother of the child; and
- B. A man whose paternity of the child is to be adjudicated.

**SECTION 9.31. PERSONAL JURISDICTION.**

- A. An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.
- B. The court having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in section 10.04 are fulfilled.
- C. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

**SECTION 9.32. NO LIMITATION: CHILD HAVING NO PRESUMED, ACKNOWLEDGED, OR ADJUDICATED FATHER.**

A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

- A. The child becomes an adult, but only if the child initiates the proceeding; or
- B. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

**SECTION 9.33. LIMITATION: CHILD HAVING PRESUMED FATHER.**

- A. Except as otherwise provided in section 9.24(B), a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two years after the birth of the child.
- B. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:
  1. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
  2. The presumed father never openly held out the child as his own.

**SECTION 9.34. AUTHORITY TO DENY MOTION FOR GENETIC TESTING.**

- A. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the court determines that:
1. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and
  2. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.
- B. In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:
1. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
  2. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;
  3. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;
  4. The nature of the relationship between the child and the presumed or acknowledged father;
  5. The age of the child;
  6. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
  7. The nature of the relationship between the child and any alleged father;
  8. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and
  9. Other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.
- C. In a proceeding involving the application of this section, a minor must be represented by a guardian ad litem.
- D. Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.
- E. If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

**SECTION 9.35. LIMITATION: CHILD HAVING ACKNOWLEDGED OR ADJUDICATED FATHER.**

- A. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgement or denial or challenge the paternity of the child only within the time allowed under section 9.13 or 9.14.

- B. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than two years after the effective date of the acknowledgment or adjudication.
- C. A proceeding under this section is subject to the application of the principles of estoppel established in section 9.35.

**SECTION 9.36. JOINDER OF PROCEEDINGS.**

- A. Except as otherwise provided in section 9.37(B), a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, or legal separation, probate or administration of an estate, or other appropriate proceeding.
- B. A respondent may not join a proceeding described in section 9.37(A) with a proceeding to adjudicate parentage brought under Chapter 10.

**SECTION 9.37. PROCEEDING BEFORE BIRTH.**

A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

- A. Service of process;
- B. Discovery; and
- C. Except as prohibited by section 9.19, collection of specimens for genetic testing.

**SECTION 9.38. CHILD AS PARTY; REPRESENTATION.**

- A. A minor child is a permissible party, but is not a necessary party to a proceeding under sections 9.29 to 9.50.
- B. The court shall appoint an attorney or guardian ad litem to represent a minor if the child is a party or the court finds that the interests of the child are not adequately represented.

**SECTION 9.39. ADMISSIBILITY OF RESULTS OF GENETIC TESTING; EXPENSES.**

- A. Except as otherwise provided in section 9.40(C), a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within 14 days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:
  - 1. Voluntarily or pursuant to an order of the court or a support-enforcement agency; or
  - 2. Before or after the commencement of the proceeding.
- B. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.
- C. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:



1. With the consent of both the mother and the presumed, acknowledged, or adjudicated father; or
  2. Pursuant to an order of the court under section 9.22.
- D. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than 10 days before the date of a hearing are admissible to establish:
1. The amount of the charges billed; and
  2. That the charges were reasonable, necessary, and customary.

**SECTION 9.40. CONSEQUENCES OF DECLINING GENETIC TESTING.**

- A. An order for genetic testing is enforceable by contempt.
- B. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.
- C. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

**SECTION 9.41. ADMISSION OF PATERNITY AUTHORIZED.**

- A. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.
- B. If the court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

**SECTION 9.42. TEMPORARY ORDER.**

- A. In a proceeding under sections 9.29 to 9.50, the court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:
  1. A presumed father of the child;
  2. Petitioning to have his paternity adjudicated;
  3. Identified as the father through genetic testing under section 9.22;
  4. An alleged father who has declined to submit to genetic testing;
  5. Shown by clear and convincing evidence to be the father of the child; or
  6. The mother of the child.
- B. A temporary order may include provisions for custody and visitation as provided by other law of the tribe.

**SECTION 9.43. RULES FOR ADJUDICATION OF PATERNITY.**

The court shall apply the following rules to adjudicate the paternity of a child:

- A. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.
- B. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under section 9.22 must be adjudicated the father of the child.
- C. If the court finds that genetic testing under section 9.22 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.
- D. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

**SECTION 9.44. JURY PROHIBITED.**

The court, without a jury, shall adjudicate paternity of a child.

**SECTION 9.45. HEARINGS; INSPECTION OF RECORDS.**

- A. On request of a party and for good cause shown, the court may close a proceeding under section 9.29 to 9.50.
- B. A final order in a proceeding under section 9.29 to 9.50 is available for public inspection. Other papers and records are available only with the consent of the parties or on order of the court for good cause.

**SECTION 9.46. ORDER ON DEFAULT.**

- A. The court shall issue an order adjudicating the paternity of a man who:
  - 1. After service of process, is in default; and
  - 2. Is found by the court to be the father of a child.

**SECTION 9.47. DISMISSAL FOR WANT OF PROSECUTION.**

The court may issue an order dismissing a proceeding commenced under this Chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

**SECTION 9.48. ORDER ADJUDICATING PARENTAGE.**

- A. The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.
- B. An order adjudicating parentage must identify the child by name and date of birth.
- C. Except as otherwise provided in section 9.49(D), the court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under sections 9.29 to 9.50. The court may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.
- D. The court may not assess fees, costs, or expenses against the support-enforcement agency, except as provided by other law.

**SECTION 9.49. BINDING EFFECT OF DETERMINATION OF PARENTAGE.**

- A. Except as otherwise provided in section 9.50(B), a determination of parentage is binding on:
1. All signatories to an acknowledgement or denial of paternity as provided in sections 9.08 to 9.17; and
  2. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 10.04.
- B. A child is not bound by a determination of parentage under this Chapter unless:
1. The determination was based on an unrescinded acknowledgment of paternity and the acknowledgement is consistent with the results of genetic testing;
  2. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
  3. The child was a party or was represented in the proceeding determining parentage by an attorney or guardian ad litem.
- C. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of section 10.04, and the final order:
1. Expressly identifies a child as a “child of the marriage,” “issue of the marriage,” or similar words indicating that the husband is the father of the child; or
  2. Provides for support of the child by the husband unless paternity is specifically disclaimed in the order.
- D. Except as otherwise provided in section 9.50(B) determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.
- E. A party to an adjudication of paternity may challenge the adjudication only under law of this Tribe relating to appeal, vacation of judgments, or other judicial review.

**CHAPTER 10. UNIFORM RECOGNITION AND ENFORCEMENT OF FAMILY SUPPORT ORDERS**

**SECTION 10.01. PURPOSE**

Purpose. This Chapter is intended to allow for the uniform enforcement of child and spousal support orders from tribes, states, and foreign governmental bodies, including other indigenous peoples, in the court of the Confederated Tribes. It substantially conforms to the Uniform Interstate Family Support Act.

**SECTION 10.02. DEFINITIONS**

As used in this chapter:

- A. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
- B. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state, tribe, or foreign governmental body.

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 23-105 (December 11, 2023, ratified December 18, 2023)*

- C. "Court" means the court or other authorized tribunal of the Confederated Tribes of the Umatilla Indian Reservation.
- D. "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.
- E. "Home Tribe or Nation" means the nation or tribe in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the nation or tribe in which the child lived from birth with a parent or a person acting as a parent. A period of temporary absence is counted as part of the six-month or other period.
- F. "Income" includes earnings or other periodic entitlements to moneys from any source and any other property subject to withholding for support under the laws of this tribe.
- G. "Income-withholding order" means an order or other legal process directed to an obligor's employer or other third party in possession of a monetary obligation owed to an obligor, as defined by the income-withholding law of this tribe, to withhold support from the income of the obligor.
- H. "Initiating Tribe or Nation" means a tribe or nation from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding nation under this chapter or a law or procedure substantially similar to this chapter or the Uniform Interstate Family Support Act.
- I. "Initiating tribunal" means the authorized tribunal in an initiating nation.
- J. "Issuing Tribe or Nation" means the tribe or nation in which a tribunal issues a support order or renders a judgment determining parentage.
- K. "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.
- L. "Law" includes decisional and statutory law and rules and regulations having the force of law.
- M. "Tribe or Nation" means any Tribe within the exterior boundaries of the United States, a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the laws of the United States, and any foreign government, including indigenous sovereigns of foreign governments, that have enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter or the Uniform Interstate Family Support Act.
- N. "Obligee" means:
1. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
  2. A tribe or nation, or political subdivision:
    - a. To which the rights under a duty of support or support order have been assigned;
    - b. That has independent claims based on financial assistance provided to an individual obligee; or
    - c. That has independent claims based on the care or custody of a child; or
  3. An individual seeking a judgment determining parentage of the individual's child.

- O. "Obligor" means an individual or the estate of a decedent:
1. Who owes or is alleged to owe a duty of support;
  2. Who is alleged but has not been adjudicated to be a parent of a child; or
  3. Who is liable under a support order.
- P. "Register" means to record or file a support order or judgment determining parentage in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.
- Q. "Registering tribunal" means a tribunal in which a support order is registered.
- R. "Responding Tribe or Nation" means a tribe or nation in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating tribe or nation under this chapter or a law substantially similar to this chapter or the Uniform Interstate Family Support Act, or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.
- S. "Responding tribunal" means the authorized tribunal in a responding tribe or nation.
- T. "Spousal support order" means a support order for a spouse or former spouse of the obligor.
- U. "Support enforcement agency" means the person or agency authorized by the tribe to:
1. Seek enforcement of support orders or laws relating to the duty of support;
  2. Seek establishment or modification of child support;
  3. Seek determination of parentage; or
  4. Locate obligors or their assets.
- V. "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages or reimbursement, and may include related costs and fees, interest, income withholding, attorney fees and other relief.
- W. "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

#### SECTION 10.03. REMEDIES CUMULATIVE

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

#### SECTION 10.04. BASES FOR JURISDICTION OVER NONRESIDENT

- A. **Maximum Personal Jurisdiction Accorded.** In a proceeding to establish, enforce or modify a support order or to determine parentage, the court may exercise personal jurisdiction over a nonresident individual if the individual otherwise falls within the personal jurisdiction of the court under the Family Law Code including, but not limited to, situations covered in section 1.08 and personal service with notice within the exterior boundaries of, or other lands of, the Confederated Tribes.
- B. **Rules to Apply.** When exercising personal jurisdiction over a nonresident under section 10.04(A) the court may apply section 10.26 to receive evidence from another tribe or nation, and section 10.28 to obtain discovery through a tribunal of another tribe or nation. In all other

respects, section 10.11 to 10.51 do not apply and the court shall apply the procedural and substantive law of the Confederated Tribes, including any rules on choice of law other than those established by this chapter.

#### SECTION 10.05. SIMULTANEOUS PROCEEDINGS

- A. Proceedings When Filing in Other Tribes or Nations. The court may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another tribe or nation only if:
1. The petition or comparable pleading in the court is filed before the expiration of the time allowed in the other tribe or nation for filing a responsive pleading challenging the exercise of jurisdiction by the other tribe or nation;
  2. The contesting party timely challenges the exercise of jurisdiction in the other tribe or nation; and
  3. If relevant, this Tribe is the home tribe or nation of the child.
- B. The court may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another tribe or nation if:
1. The petition or comparable pleading in the other tribe or nation is filed before the expiration of the time allowed in the court for filing a responsive pleading challenging the exercise of jurisdiction by this tribe or nation;
  2. The contesting party timely challenges the exercise of jurisdiction in this tribe or nation; and
  3. If relevant, the other tribe or nation is the home tribe or nation of the child.

#### SECTION 10.06. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD SUPPORT ORDER

- A. The court has continuing, exclusive jurisdiction over a child support order:
1. As long as the Umatilla Indian Reservation, or other lands owned by the Confederated Tribes, remains the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or
  2. Until all of the parties who are individuals have filed written consents with the court for a tribunal of another tribe or nation to modify the order and assume continuing, exclusive jurisdiction.
- B. The court may not exercise its continuing, exclusive jurisdiction to modify the order if the order has been modified by a tribunal of another tribe or nation pursuant to this chapter or a law substantially similar to this chapter.
- C. If a child support order of the court is modified by a tribunal of another tribe or nation pursuant to this chapter or a law substantially similar to this chapter, the court loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in the court and may only:
1. Enforce the order that was modified as to amounts accruing before the modification;
  2. Enforce nonmodifiable aspects of that order; and

3. Provide other appropriate relief for violations of that order that occurred before the effective date of the modification.
- D. The court shall recognize the continuing, exclusive jurisdiction of a tribunal of another tribe or nation that has issued a child support order pursuant to this chapter or a law substantially similar to this chapter.
- E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.
- F. The court has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. The court may not modify a spousal support order issued by a tribunal of another tribe or nation having continuing, exclusive jurisdiction over that order under the law of that tribe or nation.

#### SECTION 10.07. INITIATING AND RESPONDING TRIBUNAL OF THIS TRIBE

- A. Under this chapter, the court may serve as an initiating tribunal to forward proceedings to another tribe or nation and as a responding tribunal for proceedings initiated in another tribe or nation.
- B. The court may serve as an initiating tribunal to request a tribunal of another tribe or nation to enforce or modify a support order issued in that tribe or nation.
- C. The court, provided it has continuing, exclusive jurisdiction over a support order, may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing tribe or nation, in subsequent proceedings the tribunal may apply section 10.26 to receive evidence from another tribe or nation and section 10.28 to obtain discovery through a tribunal of another tribe or nation.
- D. If the court lacks continuing, exclusive jurisdiction over a spousal support order it may not serve as a responding tribunal to modify a spousal support order of another tribe or nation.

#### SECTION 10.08. DETERMINATION OF CONTROLLING CHILD SUPPORT ORDER

- A. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.
- B. If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this tribe or nation or another tribe or nation with regard to the same obligor and child, the court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:
  1. If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.
  2. If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home tribe or nation of the child controls and must be so recognized, but if an order has not been issued in the current home tribe or nation of the child, the order most recently issued controls and must be so recognized.
  3. If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the court shall issue a child support order, which controls and must be so recognized.
- C. If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this tribe or nation, a party may request a tribunal

of this tribe or nation to determine which order controls and must be recognized under section 10.08(B). The request must be accompanied by a certified copy of every support order in effect. Each requesting party shall give notice of the request to each party whose rights may be affected by the determination.

- D. The tribunal that issued the controlling order under section 10.08(A), (B) or (C) is the tribunal that has continuing, exclusive jurisdiction under section 10.06.
- E. When the court determines by order the identity of the controlling child support order under section 10.08(B)(1) or (2), or issues a new controlling child support order under section 10.08(B)(3) it shall state in that order the basis upon which it made the determination.
- F. Within 30 days after issuance of the order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that had issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

#### SECTION 10.09. CHILD SUPPORT ORDERS FOR TWO OR MORE OBLIGEEES

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another tribe or nation, the court shall enforce those orders in the same manner as if the multiple orders had been issued by the court.

#### SECTION 10.10. CREDIT FOR PAYMENTS

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another tribe or nation must be credited against the amounts accruing or accrued for the same period under a support order issued by the court.

#### SECTION 10.11. PROCEEDINGS UNDER THIS CHAPTER

- A. Except as otherwise provided in this chapter, this section applies to all proceedings under this chapter.
- B. This chapter provides for the following proceedings:
  - 1. Establishment of an order for spousal support or child support pursuant to section 10.30;
  - 2. Enforcement of a support order and income-withholding order of another tribe or nation without registration pursuant to section 10.31 to 10.37;
  - 3. Registration of an order for spousal support or child support of another tribe or nation for enforcement pursuant to section 10.38 to 10.50;
  - 4. Modification of an order for child support or spousal support issued by the court pursuant to section 10.05, 10.06, and 10.07;
  - 5. Registration of an order for child support of another tribe or nation for modification pursuant to section 10.38 to 10.50;
  - 6. Determination of parentage pursuant to section 10.51; and
  - 7. Assertion of jurisdiction over nonresidents pursuant to section 10.04.



- C. An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another tribe or nation that has or can obtain personal jurisdiction over the respondent.

#### SECTION 10.12. PROCEEDING BY MINOR PARENT

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

#### SECTION 10.13. APPLICATION OF LAW OF THE TRIBE

Except as otherwise provided in this chapter, a responding tribunal of this tribe or nation:

- A. Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this tribe and may exercise all powers and provide all remedies available in those proceedings; and
- B. Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of the tribe.

#### SECTION 10.14. DUTIES OF INITIATING TRIBUNAL

- A. Upon the filing of a petition authorized by this chapter, the court shall forward three copies of the petition and its accompanying documents:
1. To the responding tribunal or appropriate support enforcement agency in the responding tribe or nation; or
  2. If the identity of the responding tribunal is unknown, to the information agency of the responding tribe or nation with a request that the petition and documents be forwarded to the appropriate tribunal and that receipt be acknowledged.
- B. If a responding tribe or nation has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to the Uniform Interstate Family Support Act, the court may issue a certificate or other documents and make findings required by the law of the responding tribe or nation. If the responding tribe or nation is a foreign jurisdiction, the court may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding tribe or nation.

#### SECTION 10.15. DUTIES AND POWERS OF RESPONDING COURT

- A. When the court serves as a responding tribunal and receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 10.11(C), the responding tribunal shall cause the petition or pleading to be filed and notify the petitioner by first-class mail, electronic mail or facsimile, where and when it was filed.
- B. The court serving as a responding tribunal, to the extent otherwise authorized by law, may do one or more of the following:
1. Issue or enforce a support order, modify a child support order or render a judgment to determine parentage;
  2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
  3. Order income withholding;
  4. Determine the amount of any arrearages, and specify a method of payment;

5. Enforce orders by civil or criminal contempt, or both;
  6. Set aside property for satisfaction of the support order;
  7. Place liens and order execution on an obligor's property;
  8. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment;
  9. Issue a warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the warrant in any computer system for criminal warrants;
  10. Order the obligor to seek appropriate employment by specified methods;
  11. Award reasonable attorney fees and other fees and costs; and
  12. Grant any other available remedy.
- C. The court shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.
- D. The court may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for parenting time.
- E. If the court issues an order under this chapter, it shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

#### SECTION 10.16. INAPPROPRIATE TRIBUNAL

If a petition or comparable pleading is received by the court and the court deems it is an inappropriate tribunal, it shall forward the pleading and accompanying documents to an appropriate tribunal in another tribe or nation and notify the petitioner by first-class mail where and when the pleading was sent.

#### SECTION 10.17. DUTIES OF SUPPORT ENFORCEMENT AGENCY

- A. A support enforcement agency of this tribe, upon request, shall provide services to a petitioner in a proceeding under this chapter.
- B. A support enforcement agency that is providing services to the petitioner as appropriate shall:
1. Take all steps necessary to enable the court or an appropriate tribunal in another state to obtain jurisdiction over the respondent;
  2. Request an appropriate tribunal to set a date, time and place for a hearing;
  3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
  4. Within seven days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice from an initiating, responding or registering tribunal, send a copy of the notice by first-class mail to the petitioner;
  5. Within seven days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first-class mail to the petitioner; and

6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.
- C. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

#### SECTION 10.18. DUTY OF ATTORNEY GENERAL

If the Attorney General determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Attorney General may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

#### SECTION 10.19. PRIVATE COUNSEL

An individual may employ private counsel to represent the individual in proceedings under this chapter.

#### SECTION 10.20. DUTIES OF INFORMATION AGENCY

- A. The Office of Child Support Enforcement is the information agency for the tribe under this chapter.
- B. The information agency shall:
  1. Compile and maintain a current list, including address, of the court and transmit a copy to the information agency of every other tribe or nation;
  2. Maintain a register of tribunals and support enforcement agencies received from other tribes or nations;
  3. Forward to the court all documents concerning a proceeding under this chapter received from an initiating tribunal or the information agency of the initiating tribe or nation; and
  4. Obtain information concerning the location of the obligor and the obligor's property within the reservation not exempt from execution, by such means as tribal enrollment records, postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver licenses and Social Security.

#### SECTION 10.21. PLEADINGS AND ACCOMPANYING DOCUMENTS

- A. A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter may verify the petition. Unless otherwise ordered under section 10.22, the petition or accompanying documents must provide, so far as known, the names, residential addresses and Social Security numbers of the obligor and the obligee, and the name, sex, residential address, Social Security number and date of birth of each child for whom support is sought. The petition must be accompanied by a copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.
- B. The petition must specify the relief sought. The petition and accompanying documents should conform substantially with the requirements imposed by the forms mandated to states by federal law for use in cases filed by a support enforcement agency under the Uniform Interstate Parentage Act.

**SECTION 10.22. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES**

Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if any existing order so provides, the court shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

**SECTION 10.23. COSTS AND FEES**

- A. The petitioner may not be required to pay a filing fee or other costs.
- B. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.
- C. The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under section 10.47, 10.48, 10.49 and 10.50, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

**SECTION 10.24. LIMITED IMMUNITY OF PETITIONER**

- A. Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.
- B. A petitioner is not amenable to service of civil process while physically present on the reservation to participate in a proceeding under this chapter.
- C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present on the reservation to participate in the proceeding.
- D. The Confederated Tribes does not waive sovereign immunity for itself, any of its entities, businesses, or agents including but not limited to the tribe's information agency, court, and personnel, or otherwise, in any form under this chapter and the Family Law Code

**SECTION 10.25. NONPARENTAGE AS DEFENSE**

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

**SECTION 10.26. SPECIAL RULES OF EVIDENCE AND PROCEDURE**

- A. The physical presence of the petitioner in a responding tribunal of this tribe or nation is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.
- B. A verified petition, affidavit, document substantially complying with federally mandated forms to states and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, are admissible in evidence if given under oath by a party or witness residing in another tribe or nation.

- C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.
- D. Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child furnished to the adverse party at least 20 days before trial are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.
- E. Documentary evidence transmitted from another tribe or nation to the court by telephone, telecopier or other means that does not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.
- F. In a proceeding under this chapter, the court may permit a party or witness residing in another tribe or nation to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that tribe or nation. The court shall cooperate with tribunals of other tribes or nations in designating an appropriate location for the deposition or testimony.
- G. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.
- H. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

#### SECTION 10.27. COMMUNICATION BETWEEN TRIBUNALS

The court may communicate with a tribunal of another tribe or nation in writing, by telephone or other means to obtain information concerning the laws of that tribe or nation, the legal effect of a judgment, decree or order of that tribunal and the status of a proceeding in the other tribe or nation. The court may furnish similar information by similar means to a tribunal of another tribe or nation.

#### SECTION 10.28. ASSISTANCE WITH DISCOVERY

The court may request a tribunal of another tribe or nation to assist in obtaining discovery and upon request, compel a person over whom the court has jurisdiction to respond to a discovery order issued by a tribunal of another tribe or nation.

#### SECTION 10.29. RECEIPT AND DISBURSEMENT OF PAYMENTS

A support enforcement agency or court of this tribe shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or court shall furnish to a requesting party or tribunal of another tribe or nation a certified statement by the custodian of the record of the amounts and dates of all payments received.

#### SECTION 10.30. PETITION TO ESTABLISH SUPPORT ORDER

- A. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this tribe or nation may issue a support order if:
  - 1. The individual seeking the order resides in another tribe or nation; or
  - 2. The support enforcement agency seeking the order is located in another tribe or nation.
- B. The tribunal may issue a temporary child support order if:
  - 1. The respondent has signed a verified statement acknowledging parentage;
  - 2. The respondent has been determined by or pursuant to law to be the parent; or

3. There is other clear and convincing evidence that the respondent is the child's parent.
- C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 10.15.

**SECTION 10.31. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING ORDER OF ANOTHER TRIBE OR NATION**

An income-withholding order issued in another tribe or nation may be sent by first-class mail to the person or entity defined as the obligor's employer under the Family Law Code income-withholding law of the tribe without first filing a petition or comparable pleading or registering the order with the court.

**SECTION 10.32. EMPLOYER'S COMPLIANCE WITH INCOME-WITHHOLDING ORDER OF ANOTHER TRIBE OR NATION**

- A. Upon receipt of the order described in section 10.31, the obligor's employer shall immediately provide a copy of the order to the obligor.
- B. The employer shall treat an income-withholding order issued in another tribe or nation that appears regular on its face as if it had been issued by a tribunal of this tribe or nation.
- C. Except as provided by section 10.32(D) and 10.33, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order that specify:
  1. The duration and the amount of periodic payments of current child support, stated as a sum certain;
  2. The person or agency designated to receive payments and the address to which the payments are to be forwarded;
  3. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
  4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as sums certain; and
  5. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.
- D. An employer shall comply with the law of the tribe or nation of the obligor's principal place of employment for withholding from income with respect to:
  1. The employer's fee for processing an income-withholding order.
  2. The maximum amount permitted to be withheld from the obligor's income.
  3. The times within which the employer must implement the withholding order and forward the child support payment.

**SECTION 10.33. EMPLOYER'S COMPLIANCE WITH TWO OR MORE INCOME-WITHHOLDING ORDERS**

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies

with the law of the tribe or nation of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

#### SECTION 10.34. IMMUNITY FROM CIVIL LIABILITY

- A. An employer who complies with an income-withholding order issued in another tribe or nation in accordance with section 10.31 to 10.35 is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.
- B. The Confederated Tribes does not waive sovereign immunity for itself, any of its entities, businesses, or agents including but not limited to the tribe's information agency, court, and personnel, or otherwise, in any form under this chapter and the Family Law Code.

#### SECTION 10.35. PENALTIES FOR NONCOMPLIANCE

- A. An employer who willfully fails to comply with an income-withholding order issued by another tribe or nation and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this tribe or nation.
- B. The Confederated Tribes does not waive sovereign immunity for itself, any of its entities, businesses, or agents including but not limited to the tribe's information agency, court, and personnel, or otherwise, in any form under this chapter and the Family Law Code.

#### SECTION 10.36. CONTEST BY OBLIGOR

- A. An obligor may contest the validity or enforcement of an income-withholding order issued in another tribe or nation and received directly by an employer in this tribe or nation in the same manner as if the order had been issued by a tribunal of this tribe or nation. Section 10.40 applies to a contest under this section.
- B. The obligor shall give notice of the contest to:
  - 1. A support enforcement agency providing services to the obligee;
  - 2. Each employer that has directly received an income-withholding order; and
  - 3. The person or agency designated to receive payments in the income-withholding order or, if no person or agency is designated, to the obligee.

#### SECTION 10.37. ADMINISTRATIVE ENFORCEMENT OF ORDER

- A. A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another tribe or nation may send the documents required for registering the order to a support enforcement agency of this tribe or nation.
- B. Upon receipt of the documents, the support enforcement agency, shall register the order with the court, and consider, if appropriate, use of any administrative procedure authorized by the laws of this tribe or nation to enforce a support order or an income-withholding order, or both.

#### SECTION 10.38. REGISTRATION OF ORDER FOR ENFORCEMENT; PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT

- A. A support order or an income-withholding order issued by a tribunal of another tribe or nation may be registered with this tribe for enforcement.
- B. A support order or income-withholding order of another tribe or nation may be registered in this tribe or nation by sending the following documents and information to the Office of Child Support Enforcement to forward to the registering tribunal as directed in section 10.20:

1. A letter of transmittal to the tribunal requesting registration and enforcement;
  2. Two copies of all orders to be registered, including any modification of an order;
  3. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
  4. The name of the obligor and, if known:
    - a. The obligor's address and Social Security number;
    - b. The name and address of the obligor's employer and any other source of income of the obligor; and
    - c. A description and the location of property of the obligor in this state not exempt from execution; and
  5. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
- C. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment under the Family Law Code, together with one copy of the documents and information, regardless of their form.
- D. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other laws of this tribe or nation may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

#### SECTION 10.39. EFFECT OF REGISTRATION FOR ENFORCEMENT

- A. A support order or income-withholding order issued in another tribe or nation is registered when the order is filed in the tribal court.
- B. A registered order issued in another tribe or nation is enforceable in the same manner and is subject to the same procedures as an order issued by the court.
- C. Except as otherwise provided in section 10.38 to 10.50, a tribunal of this tribe or nation shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

#### SECTION 10.40. CHOICE OF LAW

- A. The law of the issuing tribe or nation governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearages under the order.
- B. In a proceeding for arrearages, the statute of limitation under the laws of this tribe or nation or of the issuing tribe or nation, whichever is longer, applies.

#### SECTION 10.41. NOTICE OF REGISTRATION OF ORDER

- A. When a support order or income-withholding order issued in another tribe or nation is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified or registered mail or by any means of personal service authorized by the law of this tribe or nation. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
- B. The notice must inform the nonregistering party:



1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this tribe or nation;
  2. That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;
  3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
  4. Of the amount of any alleged arrearages.
- C. Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this tribe or nation.

#### SECTION 10.42. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER

- A. A nonregistering party seeking to contest the validity or enforcement of a registered order in this tribe or nation shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 10.43.
- B. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
- C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the court shall schedule the matter for hearing and give notice to the parties by first-class or electronic mail of the date, time and place of the hearing.

#### SECTION 10.43. CONTEST OF REGISTRATION OR ENFORCEMENT

- A. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
1. The issuing tribunal lacked personal jurisdiction over the contesting party;
  2. The order was obtained by fraud;
  3. The order has been vacated, suspended or modified by a later order;
  4. The issuing tribunal has stayed the order pending appeal;
  5. There is a defense under the law of this tribe or nation to the remedy sought;
  6. Full or partial payment has been made;
  7. The statute of limitation under section 10.40 precludes enforcement of some or all of the arrearages; or
  8. The order was issued in violation of the Indian Child Welfare Act.
- B. If a party presents evidence establishing a full or partial defense under section 10.43(A), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested

portion of the registered order may be enforced by all remedies available under the laws of this tribe or nation.

- C. If the contesting party does not establish a defense under section 10.43(A) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

#### SECTION 10.44. CONFIRMED ORDER

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

#### SECTION 10.45. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF ANOTHER TRIBE OR NATION FOR MODIFICATION

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another tribe or nation shall register that order in this tribe or nation in the same manner provided in section 10.38, 10.39, and 10.40 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

#### SECTION 10.46. EFFECT OF REGISTRATION FOR MODIFICATION

The court may enforce a child support order of another tribe or nation registered for purposes of modification, in the same manner as if the order had been issued by the court, but the registered order may be modified only if the requirements of section 10.47 have been met.

#### SECTION 10.47. MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER TRIBE OR NATION

- A. After a child support order issued in another tribe or nation has been registered with the court, the court may modify that order only if section 10.49 does not apply and, after notice and hearing, the responding tribunal finds that:
1. The following requirements are met:
    - a. The child, the individual obligee and the obligor do not reside in the issuing tribe or nation;
    - b. A petitioner who is a nonresident of the tribe seeks modification; and
    - c. The respondent is subject to the personal jurisdiction of the court; or
  2. The child or a party who is an individual is subject to the personal jurisdiction of the court and all of the parties who are individuals have filed a written consent in the issuing tribunal for the court to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing tribe or nation is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing on the reservation is not required for the tribunal to assume jurisdiction to modify the child support order.
- B. Modification of a registered child support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this tribe or nation and the order may be enforced and satisfied in the same manner.
- C. The court may not modify any aspect of a child support order that may not be modified under the law of the issuing tribe or nation. If two or more tribunals have issued child support orders

for the same obligor and child, the order that controls and must be so recognized under the provisions of section 10.08 establishes aspects of the support order that are nonmodifiable.

- D. On issuance of an order modifying a child support order issued in another tribe or nation, a tribunal of this tribe or nation becomes the tribunal having continuing, exclusive jurisdiction.

#### SECTION 10.48. RECOGNITION OF ORDER MODIFIED IN ANOTHER TRIBE OR NATION

The court shall recognize a modification of its earlier child support order by a tribunal of another tribe or nation which assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

- A. Enforce the order that was modified only as to amounts accruing before the modification;
- B. Enforce only nonmodifiable aspects of that order;
- C. Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
- D. Recognize the modifying order of the other tribe or nation, upon registration, for the purpose of enforcement.

#### SECTION 10.49. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF ANOTHER TRIBE OR NATION WHEN INDIVIDUAL PARTIES RESIDE ON THE RESERVATION

- A. If all of the parties who are individuals reside on the reservation and the child does not reside in the issuing tribe or nation, the court has jurisdiction to enforce and to modify the issuing tribe's or nation's child support order in a proceeding to register that order.
- B. The court, when exercising jurisdiction under this section, shall apply the provisions of section 10.02 to 10.10 and 10.38 to 10.50 and the procedural and substantive law of this tribe to the proceeding for enforcement or modification. Section 10.11 to 10.29, 10.30, 10.31 to 10.37, 10.51, 10.52 and 10.53 do not apply.

#### SECTION 10.50. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.

#### SECTION 10.51. PROCEEDING TO DETERMINE PARENTAGE

- A. The court may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter, or under a law or procedure substantially similar to the Uniform Interstate Family Support Act, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.
- B. In a proceeding to determine parentage, a responding tribunal of this tribe or nation shall apply the procedural and substantive law of this tribe or nation and the rules of this tribe or nation on choice of law.

SECTION 10.52. GROUNDS FOR RENDITION

- A. For purposes of this section and 10.53, "chairman" includes an individual performing the functions of a tribal chairman, state governor, or the executive authority of a tribe or nation covered by this chapter.
- B. The Chairman may:
  - 1. Demand that the chairman of another tribe or nation surrender an individual found in the other tribe or nation who is charged criminally in this tribal court with having failed to provide for the support of an obligee; or
  - 2. On the demand by the chairman of another tribe or nation surrender an individual found on the reservation who is charged criminally in the other tribe or nation with having failed to provide for the support of an obligee.
- C. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding tribe or nation when the crime was allegedly committed and has not fled from that tribe or nation.

SECTION 10.53. CONDITIONS OF RENDITION

- A. Before making demand that the chairman of another tribe or nation surrender an individual charged criminally in this tribe or nation with having failed to provide for the support of an obligee, the chairman of the board of trustees may require a tribal prosecutor to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.
- B. If, under this chapter or a law substantially similar to this chapter, the Uniform Interstate Family Support Act, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act, the chairman of another tribe or nation makes a demand that the chairman of this tribe or nation surrender an individual charged criminally in that tribe or nation with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the chairman may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the chairman may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.
- C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the chairman may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the chairman may decline to honor the demand if the individual is complying with the support order.

SECTION 10.54. UNIFORMITY OF APPLICATION AND CONSTRUCTION

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among tribes or nations enacting it or the Uniform Interstate Family Support Act.

SECTION 10.55. RESOLVING CONFLICTS WITH CHAPTER 11

If a conflict arises between application of Chapter 10 and Chapter 11, the provisions of Chapter 11 shall apply.

## **CHAPTER 11. FULL FAITH AND CREDIT OF FOREIGN CHILD SUPPORT ORDERS**

### **SECTION 11.01. GENERAL RULE.**

The court shall enforce according to its terms a child support order made consistently with this chapter by a court of another nation; and shall not seek or make a modification of such an order except in accordance with sections 11.05, 11.06, and 11.09.

### **SECTION 11.02. DEFINITIONS.**

- A. "Child" means:
1. A person under 18 years of age; and
  2. A person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.
- B. "Child's State" means the State in which a child resides.
- C. "Child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.
- D. "Child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.
- E. "Child support order" means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and includes:
1. A permanent or temporary order; and
  2. An initial order or a modification of an order.
- F. "Contestant" means
1. A person (including a parent) who:
    - a. Claims a right to receive child support;
    - b. Is a party to a proceeding that may result in the issuance of a child support order; or
    - c. Is under a child support order; and
  2. A State or political subdivision of a State to which the right to obtain child support has been assigned.
- G. "Court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.
- H. "Modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

- I. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in 18 USC 1151).

#### SECTION 11.03. REQUIREMENTS OF CHILD SUPPORT ORDERS.

- A. A child support order made by a court of a State is made consistently with this section if:
1. A court that makes the order, pursuant to the laws of the State in which the court is located and sections 11.05, 11.06, and 11.07:
    - a. Has subject matter jurisdiction to hear the matter and enter such an order; and
    - b. Has personal jurisdiction over the contestants; and
  2. Reasonable notice and opportunity to be heard is given to the contestants.

#### SECTION 11.04. CONTINUING JURISDICTION.

A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with section 11.05 and 11.06, has made a modification of the order.

#### SECTION 11.05. AUTHORITY TO MODIFY ORDERS.

A court of a State may modify a child support order issued by a court of another State if the court has jurisdiction to make such a child support order pursuant to section 11.09; and

- A. The court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or
- B. Each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

#### SECTION 11.06. RECOGNITION OF CHILD SUPPORT ORDERS.

- A. If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:
1. If only 1 court has issued a child support order, the order of that court must be recognized.
  2. If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.
  3. If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.
  4. If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this

section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

5. The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under section 10.04.

#### SECTION 11.07. ENFORCEMENT OF MODIFIED ORDERS.

A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under sections 11.05 and 11.06.

#### SECTION 11.08. CHOICE OF LAW.

- A. In general. In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in sections 11.08(B) and (C).
- B. Law of State of issuance of order. In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.
- C. Period of limitation. In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

#### SECTION 11.09. REGISTRATION FOR MODIFICATION.

If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

### **CHAPTER 12. GUARDIANSHIP**

#### SECTION 12.01. PURPOSE

This Chapter pertains to guardianships over adult incapacitated persons. The Juvenile Code governs matters involving guardianships and adoptions of minors.

#### SECTION 12.02. GENERAL DEFINITIONS

As used in this Chapter, unless the context requires otherwise:

1. "Court" shall mean Tribal Court.
2. "Guardian" shall mean a person appointed as guardian of an incapacitated person.
3. "Incapacitated" person shall mean a person who is unable, without assistance, to properly manage or take care of himself or his personal affairs.
4. "Ward" is a person for whom a guardian has been appointed.

#### SECTION 12.03. NOTICE OF PROCEEDINGS

- A. Notice. Notice, where required under this chapter, means information concerning a proceeding, given by mail or delivered personally by the petitioner, requiring the person notified to file written objections to the petition or other matter on or before a date specified in the notice, which date shall be not less than ten (10) days after the mailing or personal delivery of the notice.

- B. Hearing Date. If a date for a hearing has been set, the notice shall specify the date, time and place of the hearing.
- C. Publication. If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, information concerning a proceeding may be given by publishing at least once a week for three consecutive weeks, a copy thereof in a local newspaper having general circulation, the last publication of which is to be at least ten days before the time set for hearing.
- D. Alternative Method. The Court for good cause shown may provide for a different method or time of giving notice for any hearing.
- E. Proof of Notice. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

#### SECTION 12.04. WAIVER OF NOTICE

A person to whom notice is required may waive notice by a writing signed by him or his attorney and filed in the proceeding.

#### SECTION 12.05. DELIGATION OF POWERS BY GUARDIAN

Except as provided herein, a guardian of an incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceed six (6) months, any of the powers of the guardian regarding care, custody or property of the ward, except the power to consent to marriage.

#### SECTION 12.06. PREFERENCE IN APPOINTING GUARDIAN

The Court shall appoint as guardian for an incapacitated person the qualified person most suitable who is willing to serve, having due regard to any request for the appointment as guardian for an incapacitated person contained in a written instrument executed by the incapacitated person while competent, and the relationship by blood or marriage of the proposed guardian to the proposed ward.

#### SECTION 12.07. LETTERS OF GUARDIANSHIP

Upon acceptance by a guardian or upon appointment by the Court, the Court shall cause to be issued letters of guardianship to the guardian. Letters of guardianship shall affirm that the named guardian has the authority to and shall perform the duties of a guardian of the ward as provided by law.

#### SECTION 12.08. PERSONS NOT QUALIFIED TO ACT AS GUARDIAN

A person is not qualified to act, or to continue to act, as guardian who is a minor; an incompetent, or a person who has been convicted of a felony if the Court finds that the facts underlying the conviction are such as to give a reasonable suspicion that such person will be unfaithful to or neglectful of his trust or that the appointment will not be in the best interests of the ward.

#### SECTION 12.09. CONTENTS OF PETITION

A petition for guardianship shall contain, among other things: The name and address of petitioner(s); The name and address of the person alleged to be incapacitated; The relationship, if any, between the petitioner(s) and the person alleged to be incapacitated; The facts that indicate incapacity; The reasons why petitioner(s) seek to be appointed guardians, if they do, and their capacity to so serve; How the appointment of a guardian will be in the best interest of the person alleged to be incapacitated.



SECTION 12.10. PROCEDURE FOR APPOINTMENT OF GUARDIAN

- A. Objections. Upon the filing of the petition, notice shall be given as required in this Chapter. On hearing of objections to the petition, if any, the Court may appoint an attorney to represent the alleged incapacitated person in the proceeding unless he has counsel of his own choice.
- B. Examination of Ward. The person alleged to be incapacitated may be examined by a physician who shall submit his report in writing to the Court.
- C. Court Appointed Interviewer. The Court may also appoint and direct an officer, employee or appointee of the Court who does not have a personal interest in the proceeding, to interview the person seeking appointment as guardian, the physician examining the alleged incapacitated person, the person or officer of the institution having the care, custody or control of the alleged incapacitated person or any others having relevant knowledge about his condition and to visit the present place of abode of the alleged incapacitated person. The person thus appointed shall submit his report in writing to the Court.
- D. Ward. Upon hearing of objections to the petition, if any, the person alleged to be incapacitated may be present in person to see or hear all evidence bearing upon his condition. He may be present by counsel to present evidence, to cross-examine witnesses, including the Court-appointed physical and the person appointed by the Court. The issue may be determined at the closed hearing if the person alleged to be incapacitated or his counsel so requests.

SECTION 12.11. FINDINGS, APPOINTMENT

The Court may appoint a guardian as requested if the Court is satisfied that the person for whom a guardian is sought is incapacitated; and the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person.

SECTION 12.12. EFFECT OF ACCEPTING APPOINTMENT AS GUARDIAN

By accepting appointment, a guardian whether a resident or nonresident of this state, submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship. Notice of proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as known to the petitioner.

SECTION 12.13. TERMINATING GUARDIANSHIP

The authority and responsibility of a guardian under this Chapter terminates upon: the death of the guardian or ward, an order of the Court determining the incapacity of the guardian, or removal or resignation.

SECTION 12.14. REMOVAL OR RESIGNATION OF GUARDIAN; ORDER THAT INCAPACITY NO LONGER EXISTS

- A. Removal. On petition of the ward or any other person, the Court may remove a guardian and make any other order that may be appropriate.
- B. Resignation. On petition of the guardian, the Court may accept his resignation and make any other order that may be appropriate.
- C. No Longer Incapacitated. On petition of the ward or any other person, the Court may order that he is no longer incapacitated.
- D. Same Procedures as Appointment. Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the Court shall follow the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, and may send an officer, employee or appointee of the Court to the residence of the

present guardian and to the place where the ward resides or is detained to observe conditions and report in writing to the Court.

#### SECTION 12.15. NOTICE ON APPOINTMENT OR REMOVAL OF GUARDIAN

In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice shall be given as required to: The ward or the person alleged to be incapacitated and his spouse, parents and adult children; Any person who is serving as guardian or conservator or who has the care and custody of the ward or alleged incapacitated person; and If a spouse or parent of the ward or the alleged incapacitated person is not available, one of his closest adult relatives, if any can be found.

#### SECTION 12.16. APPOINTMENT OF TEMPORARY GUARDIAN

If the Court finds that an emergency exists and no guardian has been appointed or that a guardian is not effectively performing his duties or that the welfare of the incapacitated person requires immediate action, the Court may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period and specified purpose. A temporary guardian has the care and custody of the ward for the purpose so specified. The authority of the permanent guardian previously appointed by the Court is suspended while the temporary guardian has authority. A temporary guardian may be removed at any time and shall make any report the Court requires.

#### SECTION 12.17. GENERAL POWERS AND DUTIES OF GUARDIAN

- A. Powers of Guardian. A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian, except as modified by order of the Court:
1. May to the extent that it is consistent with the terms of the Court order relating to detention or commitment of the ward, have custody of the person of his ward and establish the ward's place of abode within or without the territorial jurisdiction of the Tribe.
  2. If entitled to custody of his ward, shall provide for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and begin protective proceedings if other property of his ward is in need of protection.
  3. May consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward.
  4. Begin proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty; and
  5. Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward except, he may not use funds from his ward's estate for room and board which he, his spouse, parent or child have furnished the ward unless a charge for the service is approved by order of the Court made upon notice to at least one of the next of kin of the ward, if notice is possible. He shall exercise care to conserve any excess for the ward's needs. The guardian shall file a detailed accounting with the Tribal Court on an annual basis describing money and property received on behalf of the ward, and the disposition thereof.
- B. Bond. A guardian shall give bond and report the condition of his ward and of the estate which has been subject to his possession and control as required by law.

## **CHAPTER 13. DOMESTIC PARTNERSHIPS**

### **SECTION 13.01. DOMESTIC PARTNESHIPS RECOGNIZED**

Domestic Partnerships Recognized. The Tribes have a strong interest in promoting stable and lasting families, including the families of same-sex couples and their children. All families should be provided with the opportunity to obtain necessary legal protections and status and the ability to achieve their fullest potential. The establishment of a domestic partnership system will provide legal recognition to same-sex relationships, thereby ensuring more equal treatment of Tribal Members and their families under Tribal laws.

### **SECTION 13.02. DOMESTIC PARTNERSHIPS DEFINED**

“Domestic Partnership” means a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a member of the Confederated Tribes of the Umatilla Indian Reservation. Such partnerships are subject to the same limitations and rights as void and voidable marriages.

### **SECTION 13.03. FUTURE DOMESTIC PARTNERSHIPS**

- A. Other Jurisdictions. All domestic partnerships formed other than as provided for in the Family Law Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Confederated Tribes, provided further that they are not also in violation of section 2.08(A) or 2.08(B).
- B. Tribal Domestic Partnerships. All domestic partnerships entered into subsequent to the adoption of the Family Law Code must be performed in accordance with the provisions of the Code.

### **SECTION 13.04. DOMESTIC PARTNERSHIP LICENSES AND CERTIFICATES**

- A. Licenses Required. No domestic partnership shall be authorized pursuant to the Family Law Code unless the parties have first obtained a domestic partnership license from the clerk of the court.
  - 1. Contents of Application. The application for domestic partnership license shall include at a minimum the applicant’s full legal name, tribal affiliation if any, date of birth, age, place of birth, occupation, gender, residence, and signature affirming that the information provide is true and correct.
  - 2. Mandatory Language. All domestic partnership license applications shall contain the following language: “Applicant hereby consents to the jurisdiction of the courts of the Umatilla Indian Reservation for the purpose of any action to obtain a judgment of dissolution, annulment, separation, or for any other action related to the rights and obligations of the applicant, and to any other civil action under the Umatilla Indian Reservation Family Law Code or any other relevant Tribal code governing or concerning family relationships. The applicant grants this consent regardless of whether or not the applicant is a member of the Confederated Tribes of the Umatilla Indian Reservation, another Tribe, or an Indian. The applicant further grants this consent regardless of the location of their present or future domicile.”
  - 3. Blood Test. Prior to issuance of a license applicants shall obtain a blood test to detect sexually transmitted disease and file an affidavit that the test results have been disclosed to the other applicant.
  - 4. Issuance of License. Upon payment of a fee to be set by the court and completion of an application for a license, the clerk shall issue a license to persons who appear entitled to enter into domestic partnerships as provided for in this Code.

5. Recommendation of Counseling. At the time of issuance of the license the clerk shall inform the applicants that it is recommended that they engage in counseling to assist them in understanding the importance of a domestic union and the legal and spiritual duties and obligations it carries.
  6. To Whom Directed. The license shall be directed to any person authorized to solemnize marriages under section 2.06 and authorize them to join together in domestic partnership the persons named in the license.
  7. Effective Date. The license shall become effective three days after the date on which the application was signed by the applicants, which date the clerk shall indicate on the license.
  8. Length of Validity. A license shall be valid for 60 days after the effective date.
- B. Domestic Partnership Certificate. Upon issuing a domestic partnership license as set forth above the clerk of the court shall also provide the applicants with two blank domestic partnership certificate forms to be completed by the person performing the ceremony.
- C. Contents of Certificate. The forms shall contain the names and addresses of the parties and of at least two witnesses, the date and place of the domestic partnership, the signature of the person who solemnized the domestic partnership, the date of the license for the domestic partnership and the name of the court clerk who issued the license.
- D. Retention of Records. The court clerk shall keep a public record of all domestic partnership licenses, license applications, and certificates issued.

#### SECTION 13.05. PERSONS PERMITTED TO SOLEMNIZE DOMESTIC PARTNERSHIPS AND DUTIES

- A. Who May Solemnize. A domestic partnership may be solemnized and performed by any of the following:
1. A person recognized by his or her religion as having authority to do so;
  2. An active or retired judge of any court of the Confederated Tribes;
  3. Any person recognized by the laws of the State of Oregon as having authority to solemnize marriages.
- B. Certificate of Domestic Partnership Provided to the Parties and Filed with the Court Clerk. The person solemnizing a domestic partnership shall ensure both certificates are completed. One certificate is to be given to the parties of the partnership and the other shall be delivered to the clerk of the court within 30 days after performance of the ceremony.

#### SECTION 13.06. FORM OF SOLEMNIZATION

No Particular Form Required. In the solemnization of a domestic partnership no particular form is required except that the parties thereto shall assent or declare in the presence of the person solemnizing the partnership and in the presence of at least two witnesses, that they take each other in domestic partnership.

#### SECTION 13.07. RIGHTS OF A DOMESTIC PARTNERSHIP

- A. Same Statutory Rights. Any privilege, immunity, right or benefit granted by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an

individual because the individual is or was in a domestic partnership or because the individual is or was, based on a domestic partnership, related in a specified way to another individual.

- B. Same Statutory Responsibilities. Any responsibility imposed by statute, administrative or court rule, policy, common law or any other law on an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is imposed on equivalent terms, substantive and procedural, on an individual because the individual is or was in a domestic partnership or because the individual is or was, based on a domestic partnership, related in a specified way to another individual.
- C. Same Statutory Rights Regarding Children. Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a partner with respect to a child of either of the partners.
- D. Same Former Partner Rights and Responsibilities. Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a former or surviving spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a former or surviving partner with respect to a child of either of the partners.
- E. Conflicts With Other Laws. Many of the laws of this Tribe are intertwined with federal and state law, and the Board of Trustees recognizes that it may not have the jurisdiction to control federal and state laws or the privileges, immunities, rights, benefits and responsibilities related to federal and state laws in some limited circumstances. If any federal or state laws or grants or regulations, that are binding upon the Tribes, prohibit the extension of privileges, immunities, rights, benefits, or responsibilities to domestic partners, or have negative consequences to the Tribes for the extension of such to domestic partnerships, then such privilege, immunity, right, benefit, or responsibility shall not be extended to domestic partners.

## APPENDIX A

### LEGISLATIVE HISTORY

**FAMILY LAW CODE**

**LEGISLATIVE HISTORY**

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Family Law Code in Resolution No. 07-066 (June 25, 2007). In Resolution No. 10-093 (November 15, 2010) the Board amended chapter 8 of the Code to clarify the provisions relating to: 1) authority and functions of the Office of Child Support Enforcement, 2) the verification of information regarding ability to pay child support, and 3) the garnishment of tribal dividends.

In Polled Resolution 23-105 (December 11, 2023, Ratified December 18, 2023), the Board of Trustees amended to Section 8.06 of the Family Law Code to add a new subsection D specifying that Tribal Quarterly General Welfare Assistance Payments to Tribal Members are considered dividends subject to the garnishment provisions set forth in the Family Law Code.