

**POKAGON BAND OF POTAWATOMI INDIANS
DIVORCE CODE**

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CHAPTER 1

Short Title; Authority; Purpose; Construction; No Waiver of Sovereign Immunity; Severability; Effective Date; Reference; and Definitions

Section 1.01 Short Title

This Code shall be known as the "Divorce Code."

Section 1.02 Authority

The Tribal Council enacts this Code pursuant to the duties of the Tribal Council stated in Article IX, Subsections 1(a) and (c) of the Constitution and the legislative powers of the Tribal Council as enumerated in Article IX, Subsection 2(a) of the Constitution.

Section 1.03 Purpose

The purpose of this Code is to promote the health, safety and general welfare of the Band by codifying a uniform, efficient and equitable process and procedure governing dissolution of marriage.

Section 1.04 Construction

This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution; provided that in the event of any inconsistency, the Constitution shall control.

Section 1.05 No Waiver of Sovereign Immunity

Nothing in this Code shall be construed to waive the sovereign immunity of the Band or any of its governmental officers, representatives, employees, or agents.

Section 1.06 Severability

If any provision of this Code, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

Section 1.07 Effective Date

This Code shall become effective on the date of enactment of this Code by the Tribal Council.

Section 1.08 References

The reference or citation to any Section or Subsection in this Code shall refer to a Section or Subsection of this Code, except as otherwise expressly stated.

Section 1.09 Definitions

For the purpose of this Code, the following terms are defined:

- (a) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign federally recognized Indian tribe.
- (b) “Best Interests of the Child” shall have the same meaning as set forth in the Band’s Child Protection Code, as amended from time to time.
- (c) “Code” means this Divorce Code.
- (d) “Complaint” means a complaint for divorce.
- (e) “Constitution” means the Band’s Constitution.
- (f) “Court of Appeals” means the appellate level court of the Band.
- (g) “Child” or “Children” means any biological or adopted child or children who are under eighteen (18) years of age.
- (h) “Custody” means Legal Custody or Physical Custody, or both, as the context requires.
- (i) “Defendant” means the party against whom a Complaint has been filed.
- (j) “Legal Custody” means a determination as to which Parent shall have the decision making authority as to the important decisions affecting the welfare of a Child, including decisions involving education, religion and medical treatment, and includes “Joint Legal Custody” under which Legal Custody is shared by the Parents, a Third Person or a combination thereof, or “Sole Legal Custody” under which Legal Custody is held by one Parent or a Third Person.
- (k) “Marriage Code” means the Band’s Marriage Code.
- (l) “Parent” means the natural or adoptive parent of any Child.
- (m) “Parenting Time” means the schedule during which each Parent shall parent a Child.
- (n) “Plaintiff” means the party who has filed a Complaint.
- (o) “Physical Custody” means a determination where a Child will reside, and includes “Joint Physical Custody” under which a Child will reside alternately for specified periods with each

Parent, a Third Person, or a combination thereof, and “Sole Physical Custody” under which a Child will reside with one Parent or a Third Person.

(p) "Third Person" means an individual other than a Parent.

(q) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.

(r) “Tribal Court” means the trial level court of the Band.

(s) “Trust Land” means all land held in trust by the United States of America for the benefit of the Band, and all other land of the Band which qualifies as Indian country under 25 U.S.C. 1151.

CHAPTER 2

Tribal Court Jurisdiction and Tribal Court Authority

Section 2.01 Tribal Court Jurisdiction

(a) The Tribal Court shall have jurisdiction to dissolve a marriage and grant a judgment of divorce if:

(1) The Defendant has resided on Trust Land for one-hundred eighty (180) days immediately preceding the filing of the Complaint; or

(2) The marriage which is the subject of the Complaint occurred under the Marriage Code.

(b) In accordance with the Constitution, the Court of Appeals shall have jurisdiction to hear all appeals arising from Tribal Court decisions or proceedings under this Code.

Section 2.02 Tribal Court Authority

Without limiting the authority of the Tribal Court under any Band law or the Constitution, the Tribal Court may:

(a) Require any party to provide additional information under oath as required by the Tribal Court, including without limitation, on matters pertinent to the jurisdiction and disposition of the case;

(b) Appoint a lawyer-guardian ad litem to represent a Child if, at any time in a divorce proceeding, the Tribal Court determines that the Best Interests of the Child are inadequately represented and may order the parties to bear the cost of the lawyer-guardian ad litem. The lawyer-guardian ad litem may file a written report and recommendation with the Tribal Court which:

(1) May be reviewed by the Tribal Court in making determinations regarding Custody and Parenting Time;

(2) May not be admitted into evidence unless all parties stipulate the admission; and

(3) May be used by the parties for purposes of any settlement conference; and

(c) At the request of a person who changed his or her name upon marriage, restore his or her birth name, or the surname he or she legally bore prior to his or her marriage to the spouse in the divorce action, or allow him or her to adopt another surname if the change is not sought with any fraudulent or evil intent;

(d) Enter orders, judgments, award costs and reasonable fees and enforce orders and judgments in matters under this Code; and

(e) Exercise any other power granted under the Constitution or Band law, including without limitation, this Code.

CHAPTER 3

Complaint; Summons; Service; Answer; Counterclaim; Default; and Attorney Fees

Section 3.01 Complaint

(a) A Complaint may be filed in the Tribal Court upon the allegation that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(b) In the Complaint, the Plaintiff shall make no other explanation of the grounds for divorce other than by the use of the language stated in Subsection 3.01(a).

(c) A Complaint shall be filed with the Tribal Court on a form provided by the Tribal Court and must be dated, signed and verified by the Plaintiff.

(d) The Complaint shall include the following:

(1) The factual grounds for the action, except that the grounds shall be stated in the language required under Subsection 3.01(a) without further particulars;

(2) The basis for jurisdiction under Subsection 2.01(a);

(3) The complete current names and names before the marriage of all parties;

(4) The date and location of the marriage;

(5) Whether a party is pregnant;

(6) Whether there are any Children of the parties or Children born or adopted during the marriage;

(7) The complete names and dates of birth of any Children born or adopted during the marriage;

(8) If the case involves any Child, or if child support is requested, whether any other court has prior continuing jurisdiction of the Child and, if so, the name of the court and file number;

(9) Whether there is real or personal property or debt to be divided;

(10) If the Plaintiff requests spousal support, facts sufficient to show a need for such support and that the other party is able to pay;

(11) If the Plaintiff requests an order for personal protection or for the protection of property, facts sufficient to support the relief requested.

(e) Each party shall attach to its first pleading a verified statement disclosing what real and personal estate has come to either party by reason of the marriage, and how it has been disposed of, and what portion thereof still remains in the hands of either party. This statement shall not be made part of the public Tribal Court file.

(f) If Custody of any Child is to be determined, then except as otherwise provided in Subsection 3.01(g), each party, in its first pleading or in an attached verified statement, shall state:

(1) If reasonably ascertainable, the present address and the places where any Child has lived during the last five (5) years, and the names and present addresses of the persons with whom the Child has lived during that period;

(2) Whether the party has participated, as a party or witness or in another capacity, in another child custody proceeding with any Child and, if so, the name of the court, case number of the child custody proceeding, and date of the child custody determination, if any;

(3) Whether the party knows of a proceeding that could affect the current child custody proceeding, including a proceeding for enforcement or a proceeding relating to domestic violence, a protective order, termination of parental rights, or adoption, and, if so, the name of the court, the case number, and the nature of the proceeding;

(4) The name and address of each person that the party knows who is not a party to the child custody proceeding and who has Custody of any Child or claims rights of Custody or Parenting Time with any Child.

(g) Notwithstanding Subsection 3.01(f), a party is not required to disclose identifying

information:

(1) To the extent such information is treated as confidential under applicable law; or

(2) If a party alleges in a sworn statement or the Complaint under oath that the health, safety, or liberty of any party or any Child would be put at risk by the disclosure of any identifying information. In such event, the Tribal Court shall seal and not disclose that information to the other party or the public unless the Tribal Court orders the disclosure after a hearing in which the Tribal Court considers the health, safety, and liberty of the party and the Child and determines that the disclosure is in the interest of justice.

(h) In an action involving any Children, or if child support or spousal support is requested, then except as otherwise provided in Subsection 3.01(i), the party seeking relief must attach a verified statement to the Complaint, stating:

(1) The last known telephone number, post office address, residence address, and business address of each party;

(2) The social security number and occupation of each party;

(3) The name and address of each party's employer;

(4) The estimated weekly gross income of each party;

(5) The driver's license number and physical description of each party, including eye color, hair color, height, weight, race, gender, and identifying marks;

(6) Any other names by which the parties are or have been known;

(7) The name, age, birth date, social security number and residence address of each Child involved in the action, as well as of any other Child of either party;

(8) The name and address of any person, other than the parties, who may have Custody of any Child during the pendency of the action;

(9) The kind of public assistance that has been applied for or is being received by either party or on behalf of any Child, and any corresponding assistance identification numbers, provided that if public assistance has not been requested or received, that fact must be stated; and

(10) The health care coverage, if any, that is available for any Child; the name of the policy holder; the name of the insurance company, health care organization, or health maintenance organization; and the policy, certificate, or contract number.

(i) The information in the verified statement under Subsection 3.01(h) is confidential and shall not be released other than to the Tribal Court, the parties, or the attorneys for the parties,

except on Tribal Court order and shall not be made a part of the public Tribal Court file. For good cause, the addresses of a party and any Child may be omitted from the copy of the statement that is served on the other party. If any of the information required to be included in the verified statement is omitted, the party seeking relief shall explain the omission in a sworn affidavit, to be filed with the Tribal Court.

(j) The Complaint shall be accompanied by a filing fee for a civil action as may be specified by rules of the Tribal Court.

Section 3.02 Summons

(a) When a Complaint is filed in the Tribal Court, the Tribal Court shall issue a summons, signed by the judge or the Tribal Court clerk.

(b) The Tribal Court shall retain the original executed summons and immediately return a copy of the executed summons to the Plaintiff.

(c) A summons shall expire ninety-one (91) days after the date of issuance. However, within such time, on a showing of due diligence by the Plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding one (1) year from the date the Complaint is filed. The running of the ninety-one (91) day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

Section 3.03 Service

(a) After the Tribal Court issues the summons, the Plaintiff shall cause the Defendant to be served with the summons and a copy of the Complaint along with all other documents filed with the Tribal Court, by:

(1) Causing the summons and copy of the Complaint to be delivered to the Defendant personally; or

(2) Sending the summons and copy of the Complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee, with service being made when the Defendant acknowledges receipt.

(b) Proof of service must be filed with the Court indicating the date of service and, in the case of service under Subsection 3.03(a)(2), a copy of the return receipt signed by the Defendant must be attached to the proof of service.

(c) On a showing that service of process cannot reasonably be made as provided above, the Tribal Court may, by order, permit service of process to be made in any other manner reasonably calculated to give the Defendant actual notice of the proceedings and an opportunity to be heard.

(d) Process may be served by any legally competent adult who is not a party to the action, and proof of service may be made by affidavit, made before a notary public, stating the means of service made by such person as provided in this Section 3.03.

Section 3.04 Answer

(a) The Defendant shall file an answer with the Tribal Court, or take other action permitted by Band law or Tribal Court rules, within twenty-one (21) calendar days after being served with the summons and a copy of the Complaint.

(b) The Defendant, by answer, shall either admit the grounds for divorce alleged or deny them without further explanation.

(c) An admission by the Defendant of the grounds for divorce may be considered by the Tribal Court but is not binding on the Tribal Court's determination.

(d) The Defendant shall cause the Plaintiff to be served with the answer in the manner provided under Section 3.03 and shall cause proof of service to be filed with the Tribal Court in accordance with Subsection 3.03(b).

Section 3.05 Counterclaim

(a) The Defendant may file a counterclaim under this Code, which shall be combined with the answer and clearly designated as such.

(b) The counterclaim shall comply with the pleading requirements of Section 3.01.

Section 3.06 Default

(a) If the Defendant fails to answer within the time stated in Subsection 3.04(a), or to otherwise defend under Band law or Tribal Court rules, the Plaintiff may file a motion for a default and a proposed default judgment with the Tribal Court.

(b) The Plaintiff must cause the Defendant to be served with the motion for default and the proposed default judgment in the manner provided under Section 3.03, and shall cause proof of service to be filed with the Tribal Court in accordance with Subsection 3.03(b), if:

(1) The Defendant has appeared in the action;

(2) The motion for a default judgment seeks relief different in kind from, or greater in amount than, that stated in the Complaint, or

(3) The Complaint does not state a specific amount demanded.

(c) The Tribal Court may grant Plaintiff's motion for default judgment and enter a default judgment if the time under Section 4.02 has run, provided that the Tribal Court shall not enter a

judgment of divorce as a matter of course on the default of the Defendant because of failure to appear at the hearing or by consent, but rather the Tribal Court shall hear each such case in open court on proofs taken, except as otherwise provided by Band law or Tribal Court rule.

(d) The Tribal Court clerk shall promptly mail notice of entry of a default judgment to all parties. The notice to the Defendant shall be mailed to the Defendant's last known address or the address of the place of service. The clerk shall keep a record that notice was given.

Section 3.07 Attorney Fees

Any party may, at any time, request that the Tribal Court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding under this Code, including a post-judgment proceeding. A party who requests attorney fees and expenses must allege facts sufficient to show that:

(a) The party is unable to bear the expense of the action, and that the other party is able to pay; or

(b) The attorney fees and expenses were incurred because the other party refuses to comply with a previous Tribal Court order, despite having the ability to comply.

CHAPTER 4

Grounds for Divorce; Hearing on Complaint; Temporary Orders; and Settlement Agreements

Section 4.01 Grounds for Divorce

(a) The Tribal Court shall enter a judgment of divorce dissolving the bonds of matrimony if evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(b) The Tribal Court shall decide all issues of fact and law and there shall be no right to trial by jury.

Section 4.02 Hearing on Complaint

(a) No proofs or testimony shall be taken in any case for divorce until the expiration of sixty (60) days from the time of filing the Complaint, except when the testimony is taken conditionally for the purpose of perpetuating such testimony.

(b) In every case where there is a dependent Child, no proofs or testimony shall be taken in any case for divorce until the expiration of six (6) months from the day the Complaint is filed, provided that in cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the Tribal Court, upon motion and proper showing, the Tribal Court may take

testimony at any time after the expiration of sixty (60) days from the time of filing the Complaint.

(c) Testimony may be taken conditionally at any time for the purpose of perpetuating such testimony.

(d) Testimony shall be taken in person, except that in extraordinary circumstance the Tribal Court may allow testimony to be taken by telephone or other electronically reliable means.

Section 4.03 Temporary Orders

After the Complaint has been filed, but before a final judgment of divorce has entered, the Tribal Court may, upon the motion of either party or on the Tribal Court's own motion:

(a) Require either party to pay, during the pendency of the action, spousal support for the suitable maintenance of the adverse party, to pay such sums as shall be deemed proper and necessary to conserve any real or personal property owned by the parties or either of them, and to pay any sums necessary to enable the adverse party to carry on or defend the action.

(b) Enter orders concerning the care, Parenting Time, Custody, and support of any Child of the parties during the pendency of the action, as the Tribal Court shall deem just, proper, and necessary for the benefit of such Child. Such orders are not intended to be a final determination of such matters.

Section 4.04 Settlement Agreements

(a) A settlement agreement between the parties or their attorneys respecting the proceedings in a divorce action, subsequently denied by either party, is not binding unless it was made in open court or evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

(b) All settlement agreements respecting any proceedings in a divorce action are subject to the approval of the Tribal Court and shall be approved unless the Tribal Court determines that the terms are not fair and equitable.

(c) Custody agreements shall be approved by the Tribal Court upon a finding that the Custody agreement is in the Best Interests of the Child.

(d) The parties may specify whether a settlement agreement is to be merged with the judgment of divorce or to be a separate settlement agreement.

CHAPTER 5

Equitable Distribution; Restoration of Property; Further Award of Property; Valuation of Marital Estate; Retirement Benefits; Disclosure of Property; and Amendment

Section 5.01 Equitable Distribution

The Tribal Court may include in any judgment of divorce appropriate provisions awarding to a party all or a portion of the property, either real or personal, owned by his or her spouse, as appears to the Tribal Court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property. The judgment, upon becoming final, shall have the same force and effect as a quitclaim deed of the real estate, if any, or a bill of sale of the personal property, if any, given by the party's spouse to the party.

Section 5.02 Restoration of Property

The Tribal Court may make a determination for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

Section 5.03 Further Award of Property

Upon entry of a judgment of divorce if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any Children of the marriage who are committed to the care and Custody of either party, the Tribal Court may also award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the Tribal Court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

Section 5.04 Valuation of Marital Estate

The Tribal Court shall value the marital estate based upon the date of separation, filing, trial, judgment, or any other appropriate date to facilitate equitable distribution under all the circumstances of the case.

Section 5.05 Retirement Benefits

(a) Any rights in and to vested pension, annuity, or retirement benefits, or accumulated contributions in any pension, annuity, or retirement system, payable to or on behalf of a party on account of service credit accrued by the party during marriage shall be considered part of the marital estate and shall be valued, and may be divided, by the Tribal Court under this Code where just and equitable.

(b) Any rights or contingent rights in and to unvested pension, annuity, or retirement benefits payable to or on behalf of a party on account of service credit accrued by the party during marriage may be considered part of the marital estate and shall be valued, and may be divided, by the Tribal Court under this Code where just and equitable.

Section 5.06 Disclosure of Property

(a) Whenever the Tribal Court shall think proper to award to either party any of the real and personal estate of either party, or any money in lieu thereof, the Tribal Court may require either party to disclose on oath, what real and personal estate has come to either party by reason of the marriage, and how it has been disposed of, and what portion thereof still remains in the hands of either party.

(b) The Tribal Court may order each party to provide the other party with updated and current information of any changes to the declarations made in the financial affidavit filed with the Complaint.

Section 5.07 Amendment

Provisions relating to property settlement in a divorce judgment or settlement agreement shall not be modified absent a showing of fraud, duress or mutual mistake.

CHAPTER 6

Spousal Support; Termination; and Amendment

Section 6.01 Spousal Support

In any divorce action, the Tribal Court may require either party to pay spousal support for the suitable maintenance of the adverse party where just and equitable based upon consideration of the following factors:

- (a) The past relations and conduct of the parties;
- (b) The length of the marriage;
- (c) The ability of the parties to work;
- (d) The source of and amount of property awarded to the parties;
- (e) The age of the parties;
- (f) The ability of the parties to pay spousal support;
- (g) The present situation of the parties;

(h) The needs of the parties;

(i) The health of the parties;

(j) The prior standard of living of the parties and whether either is responsible for support of others; and

(k) General principles of equity.

Section 6.02 Termination

(a) An award of spousal support may be terminated by the Tribal Court as of the date the party receiving spousal support remarries unless a contrary agreement is specifically stated in the judgment of divorce.

(b) A party who is in receipt of spousal support pursuant to a Tribal Court order shall notify the other party in writing within fifteen (15) days if the party receiving spousal support remarries.

(c) Termination of an award under Subsection 6.02(a) shall not affect spousal support payments which have accrued prior to that termination, provided that if a party failed to provide written notice pursuant to Subsection 6.02(b), then upon motion of the other party, Tribal Court may waive any spousal support payments which have accrued after the date the party receiving spousal support remarried.

Section 6.03 Amendment

On motion of either party, after a judgment for spousal support, the Tribal Court may revise and alter the judgment, respecting the amount or payment of the spousal support, and may make any judgment respecting any of the matters that the Tribal Court might have made in the original action.

CHAPTER 7

Child Support and Amendment

Section 7.01 Child Support

(a) In all actions involving Custody of a Child, the Tribal Court shall declare the Child's inherent rights and establish the rights and duties as to the Child's support in accordance with this Code.

(b) Upon entering a judgment of divorce, the Tribal Court may enter the orders and judgments it considers just and proper concerning the support of any Child, and may order post-majority support for the benefit of a Child between the ages of 18 and 19 ½ if the Child:

- (1) Is regularly attending high school full-time;
- (2) Has a reasonable expectation of graduating from high school; and
- (3) Is living full-time with the payee of support or at an institution.

(c) An agreement between the parties stated on the record and made an order of the Tribal Court, or included in a judgment of divorce under which one party agrees to pay post-majority child support, is enforceable.

(d) The Tribal Court, in its discretion, may utilize the Michigan Child Support Formula in effect at the time of the determination of child support. If the Tribal Court does not utilize the Michigan Child Support Formula, the Tribal Court shall make findings of fact supporting the determination of child support and the means for calculating same.

Section 7.02 Amendment

After entry of a judgment of divorce and on the motion of either Parent, the Tribal Court may revise and alter a judgment of divorce concerning the maintenance and support of some or all of the Children, as the circumstances of the Parents and the benefit of the Children require.

CHAPTER 8

Child Custody; Joint Custody; Parenting Time; Change in Residence; and Amendment

Section 8.01 Child Custody

(a) In all actions involving dispute over Custody, the Tribal Court shall declare the Child's inherent rights and establish the rights and duties as to Custody based upon the Best Interests of the Child in accordance with this Code.

(b) The Tribal Court shall enter the orders and judgments it considers just and proper concerning care and Custody of the Children of the parties, including orders and judgments awarding Joint Legal Custody or Sole Legal Custody, and Joint Physical Custody or Sole Physical Custody, until each Child has attained the age of eighteen (18) years.

(c) When Custody of any Child is contested, the Tribal Court may interview the Child privately to determine if the Child is of sufficient age to express a preference regarding Custody and, if so, the reasonable preference of the Child, provided that the Tribal Court shall focus the interview on such determination, and the information received shall be applied only to the Custody determination. A record shall be made of such interview and sealed pending any review by the Court of Appeals.

(d) Each party has a continuing duty to inform the Tribal Court of any other proceeding that could affect any award of Custody of any Child under this Code.

Section 8.02 Joint Custody

In Custody disputes between Parents, the Tribal Court shall advise the Parents of Joint Legal Custody and Joint Physical Custody. At the request of either Parent, the Tribal Court shall consider an award of Joint Legal Custody or Joint Physical Custody, or both, and shall state on the record the reasons for granting or denying a request. Absent a request by either Parent, the Tribal Court may consider Joint Legal Custody or Joint Physical Custody, or both. The Tribal Court shall make determinations regarding Joint Legal Custody or Joint Physical Custody, or both, based upon the Best Interests of the Child.

Section 8.03 Parenting Time

(a) In all actions involving any dispute over Custody, the Tribal Court shall declare the Child's inherent rights and establish the rights and duties as to the Parenting Time in accordance with this Code.

(b) Parenting Time shall be granted in accordance with the Best Interests of the Child. It is presumed to be in the Best Interests of a Child for the Child to have a strong relationship with both of his or her Parents. Except as otherwise provided in this Section, Parenting Time shall be granted to a Parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the Child and the Parent granted Parenting Time.

(c) If the Parents agree on Parenting Time terms, the Tribal Court shall order the Parenting Time terms unless it determines on the record by clear and convincing evidence that the Parenting Time terms are not in the Best Interests of the Child.

(d) A Child has a right to Parenting Time with a Parent unless it is shown on the record by clear and convincing evidence that it would endanger the Child's physical, mental, or emotional health.

(e) The Tribal Court may consider the following factors when determining the frequency, duration and type of Parenting Time to be granted:

- (1) The existence of any special circumstances or needs of the Child;
- (2) Whether the Child is a nursing Child less than six (6) months of age, or less than one (1) year of age if the Child receives substantial nutrition through nursing;
- (3) The reasonable likelihood of abuse or neglect of the Child during Parenting Time;
- (4) The reasonable likelihood of abuse of a Parent resulting from the exercise of Parenting Time;
- (5) The inconvenience to, and burdensome impact or effect on, the Child of traveling for purposes of Parenting Time;

(6) Whether a Parent can reasonably be expected to exercise Parenting Time in accordance with the Tribal Court order;

(7) Whether a Parent has frequently failed to exercise reasonable Parenting Time;

(8) The threatened or actual detention of the Child with the intent to retain or conceal the Child from the other Parent or from a Third Person who has Custody, provided that a custodial Parent's temporary residence with the Child in a domestic violence shelter shall not be construed as evidence of the custodial Parent's intent to retain or conceal the Child from the other Parent; and

(9) Any other relevant factors.

(f) Parenting Time shall be granted in specific terms if requested by either party at any time.

(g) A Parenting Time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of Parenting Time by a Parent, including without limitation, one (1) or more of the following:

(1) Division of the responsibility to transport the Child;

(2) Division of the cost of transporting the Child;

(3) Restrictions on the presence of any Third Person during Parenting Time;

(4) Requirements that the Child be ready for Parenting Time at a specific time;

(5) Requirements that the Parent arrive for Parenting Time, and return the Child from Parenting Time, at specific times;

(6) Requirements that Parenting Time occur in the presence of a Third Person or agency;

(7) Requirements that a party posts a bond to assure compliance with a Parenting Time order;

(8) Requirements of reasonable notice when Parenting Time will not occur; and

(9) Any other reasonable condition determined to be appropriate in the particular case.

(h) Except as provided in this Subsection, a Parenting Time order shall contain a prohibition on exercising Parenting Time in a country that is not a party to the Hague convention on the civil aspects of international child abduction, provided that this Subsection does not apply if both Parents provide the Tribal Court with written consent to allow a Parent to exercise Parenting Time in a country that is not a party to the Hague convention on the civil aspects of international child abduction.

(i) During the time a Child is with a Parent to whom Parenting Time has been awarded, that Parent shall decide all routine matters concerning the Child.

(j) Upon motion, the Tribal Court shall consider, and may provide for, reasonable Parenting Time by maternal or paternal grandparents and, if denied, shall make a record of the denial.

Section 8.04 Change in Residence

(a) Any Child whose Custody is governed by Tribal Court order has, for the purposes of this Section, a legal residence with each Parent. Except as otherwise provided in this Section, a Parent of any Child whose Custody is governed by Tribal Court order shall not change a legal residence of the Child to a location that is more than one-hundred (100) miles from the Child's legal residence at the time of filing of the Complaint.

(b) Subsection 8.04(a) does not apply if:

(1) The other Parent consents to the residence change and the Tribal Court enters an order in permitting the residence change;

(2) The Tribal Court, after complying with Subsection 8.05(c) permits the residence change;

(3) The Tribal Court order governing the Custody grants sole Legal Custody and Sole Physical Custody to one (1) of the Parents;

(4) At the time of the commencement of the action in which the Custody order is issued, the Child's two (2) residences were more than one-hundred (100) miles apart; or

(5) The legal residence change results in the Child's two (2) legal residences being closer to each other than before the change.

(c) Before permitting a legal residence change otherwise restricted by Subsection 8.04(a), the Tribal Court shall consider each of the following factors, with the Child as the primary focus in the deliberations:

(1) Whether the legal residence change has the capacity to improve the quality of life for both the Child and the relocating Parent;

(2) The degree to which each Parent has complied with, and utilized his or her time under, a court order governing Parenting Time with the Child, and whether the Parent's plan to change the Child's legal residence is inspired by that Parent's desire to defeat or frustrate the parenting time schedule;

(3) The degree to which the Tribal Court is satisfied that, if it permits the legal residence change, it is possible to order a modification of the Parenting Time schedule and other arrangements governing the Child's schedule in a manner that can provide an adequate basis

for preserving and fostering the parental relationship between the Child and each Parent; and whether each Parent is likely to comply with the modification;

(4) The extent to which the Parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation;

(5) Domestic violence, regardless of whether the violence was directed against or witnessed by the Child.

(d) Each Tribal Court order determining or amending Custody or Parenting Time of any Child shall include a provision stating the Parent's agreement as to how a change in either of the Child's legal residences will be handled. If such a provision is included in the order and the Child's legal residence change is done in compliance with that provision, this Section shall not apply. If the Parents do not agree on such a provision, the Tribal Court shall include in the order the following provision: "A Parent whose Custody or Parenting Time of a Child is governed by this order shall not change the legal residence of the Child except in compliance with this Code."

(e) If this Section applies to a change of Child's legal residence, and the Parent seeking to change that legal residence needs to seek a safe location from the threat of domestic violence, the Parent may move to such a location with the Child until the Tribal Court makes a determination under this Section.

Section 8.05 Amendment

(a) After entry of a judgment of divorce and on the motion of either Parent, the Tribal Court may modify the judgment concerning the Custody of some or all of the Children, as the circumstances of the Parents and the benefit of the Children require, subject to the requirements of this Section.

(b) The Tribal Court may modify Custody provisions of a judgment of divorce upon a showing of proper cause or changed circumstances. The Tribal Court shall not modify the Custody provisions of a judgment of divorce so as to change the established custodial environment of a Child unless there is presented clear and convincing evidence that it is in the Best Interests of the Child. The established custodial environment of a Child is determined if over an appreciable time the Child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the Child, the physical environment, and the inclination of the custodian and the Child as to permanency of the relationship shall also be considered.

(c) If a motion to amend a judgment of divorce with respect to Custody is filed during the time a Parent is in active military duty, the Tribal Court shall not enter an order amending the judgment, or issue a new order, that changes the Child's placement that existed on the date the Parent was called to active military duty, except the Tribal Court may enter a temporary Custody order if there is clear and convincing evidence that it is in the Best Interests of the Child. Upon a Parent's return from active military duty, the Tribal Court shall reinstate the Custody order in effect immediately before that period of active military duty. If a motion for change of Custody

is filed after a Parent returns from active military duty, the Tribal Court shall not consider a Parent's absence due to that military duty in a Best Interests of the Child determination.

CHAPTER 9

Form of Judgment; Uniform Support Orders; Timing of Judgment; and Enforcement

Section 9.01 Form of Judgment

(a) Each separate subject in a judgment or order entered under this Code shall be set forth in a separate paragraph that is prefaced by an appropriate heading.

(b) A judgment of divorce shall include:

(1) A determination of all rights of the parties in and to all property rights of the parties, which, as applicable, shall be in lieu of the dower of any wife in the property of the husband and shall be full satisfaction of all claims that any wife may have in any property whatsoever;

(2) A determination of all rights of the parties in and to any policy or contract of life insurance, endowment, or annuity;

(3) A determination of all rights of the parties in and to any vested pension, annuity, or retirement benefits; and

(4) A determination of all rights of the parties concerning spousal support provided that if spousal support is not granted, a provision reserving or denying spousal support (a judgment silent with regard to spousal support reserves it).

(c) A judgment or order awarding Custody must provide that:

(1) The domicile or residence of the Child may not be removed from the state of domicile or residence without the approval of the judge who awarded Custody or the judge's successor;

(2) The person awarded Custody must promptly notify the Tribal Court in writing when any Child is moved to another address; and

(3) A Parent whose Custody or Parenting Time of any Child is governed by the order shall not change the legal residence of the Child except in compliance with Section 8.04.

Section 9.02 Uniform Support Orders

(a) Any provisions regarding child support or spousal support shall be prepared on the most current version of the Uniform Support Order utilized within the State of Michigan. The order must accompany any judgment or order affecting child support or spousal support, and both documents must be signed by the judge. The Uniform Support Order shall govern if the terms of

the judgment or order conflict with the Uniform Support Order.

(b) No judgment or order concerning a Child or a spouse shall be entered unless either:

(1) The final judgment of divorce incorporates by reference the Uniform Support Order;
or

(2) The final judgment of divorce states that no Uniform Support Order is required because support is reserved or spousal support is not ordered.

Section 9.03 Timing of Judgment

Within twenty-one (21) days after the Tribal Court renders an opinion or a settlement agreement is placed on the record, the moving party shall submit a judgment of divorce approved by the opposing party or a motion to settle the judgment or order. The Tribal Court may extend the time for filing of the final judgment of divorce.

Section 9.04 Enforcement

(a) When either party to a divorce proceeding fails to comply with the terms of the judgment of divorce, the other party may file a motion with the Tribal Court alleging such failure. The moving party shall cause the motion, along with a notice of hearing, to be served on the other party in accordance with Section 3.03 and shall cause proof of service to be filed with the Tribal Court in accordance with Subsection 3.03(b).

(b) At the hearing, the Tribal Court shall take testimony as to the alleged failure to comply with the order or judgment and may issue any order which it deems just and proper under the circumstances.

(c) Without limitation, if the Tribal Court orders periodic support payments under this Code, and the Parent does not pay as ordered, the Tribal Court may utilize all enforcement methods that are available to enforce any money judgment in a civil action, including without limitation, the power of contempt.

CHAPTER 10

Legitimacy; Closed Session; and Code Conflict

Section 10.01 Legitimacy

The legitimacy of all children begotten before the commencement of any action under this Code shall be presumed until the contrary be shown.

Section 10.02 Closed Session

If legitimacy is an issue in any action under this Code, any testimony shall be taken in a closed session of the Tribal Court.

Section 10.03 Code Conflict

In the event of any conflict between this Code and the Enrollment Code, or any determination thereunder, the Enrollment Code or such determination shall control and be valid.

LEGISLATIVE HISTORY

Divorce Code, enacted November 14, 2013 by Res. No. 13-11-14-03