

**DOMESTIC RELATIONS CODE
ARTICLE 2**

MARRIAGE AND DIVORCE

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DOMESTIC RELATIONS CODE

ARTICLE 2

MARRIAGE AND DIVORCE

[NOTE: Except as otherwise noted, the provisions of Article 2 of the Domestic Relations Code were enacted on November 13, 1982 by Section 1 of Ordinance No. 82-1.]

CHAPTER 1. MARRIAGES

Section 2-101. Recognition of Previous Marriages.

All Indian marriages heretofore consummated prior to May 15, 1940, whether according to State law or Tribal custom, are declared valid.

Section 2-102. Marriage.

(A) The Tribal Court shall have jurisdiction over marriages of all members of the Colorado River Indian Tribes and all residents of the Colorado River Indian Reservation. Indian custom marriage and divorce hereinafter consummated after May 15, 1940, shall not be recognized.

(B) A marriage between a man and a woman licensed, solemnized, and registered as provided in this Chapter is valid.

Section 2-103. Marriage License and Marriage Certificate.

(A) The Tribal Court shall prescribe the form for an application for a marriage license, which shall include the following information:

(1) The name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage.

(2) Whether either party was previously married, his name and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse.

(3) The name and address of the parents or guardian of each party.

(4) Whether the parties are related to each other and, if so, their relationship.

(C) The Tribal Court shall prescribe the form for the marriage license, the

marriage certificate, and the consent to marriage.

Section 2-104. License to Marry.

(A) When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the Judicial Clerk and paid the marriage license fee of five dollars (\$5.00), the Judicial Clerk shall issue and register each license to marry and a marriage certificate form upon being furnished:

(1) Satisfactory proof that each party to the marriage will have attained the age of eighteen (18) years at the time the marriage license is effective, or will have attained the age of sixteen (16) years and has either the consent to the marriage of both parents or his guardian, or judicial approval;

(2) Satisfactory proof that the marriage is not prohibited;

(3) A certificate signed by a recognized practicing physician reflecting that both parties are free from any communicable disease.

(B) The marriage ceremony shall be performed in the presence of the parties by the officiating officer and at least two (2) witnesses of lawful age and the certificate of such marriage shall be signed by the two (2) witnesses who are of lawful age.

Section 2-105. License, Effective Date.

A license to marry becomes effective when issued, and expires 180 days after it becomes effective.

Section 2-106. Judicial Approval.

(A) The Tribal Court, after a reasonable effort has been made to notify the parents or guardian of each underage party, may order the Judicial Clerk to issue a marriage license and a marriage certificate form:

(1) To a party aged sixteen (16) or seventeen (17) who has no parent capable of consenting to his marriage, or whose parents or guardian has not consented to his marriage.

(2) To a party under the age of sixteen (16) years who has the consent of both parents to his marriage, if capable of giving consent, or his guardian.

(B) A marriage license and a marriage certificate form may be issued under

this Section only if the court finds that the underage party is capable of assuming the responsibility of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served. In the event that a parent or guardian has not consented to a marriage, the Tribal Court shall convene a hearing, prior to issuing a marriage license and marriage certificate, to determine whether said license and certificate shall be issued.

Section 2-107. Solemnization and Registration.

A marriage may be solemnized by a judge of the Tribal Court, any duly authorized public official, or a regularly licensed or ordained clergy person. The person solemnizing the marriage shall complete the marriage certificate and forward it to the Judicial Clerk of the Court within thirty (30) days after solemnization of the marriage.

Upon receipt of the marriage certificate, the Judicial Clerk shall register the marriage. The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

Section 2-108. Prohibited.

(A) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties. Parties to a marriage prohibited under this Section who cohabit after removal of the impediment are lawfully married as of the removal of the impediment. A marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters, of the one-half (¹) as well as the whole blood, and between uncles and nieces, aunts and nephews, between first cousins, first cousins once removed and second cousins.

Section 2-109. Determination of Paternity and Support.

The Tribal Court shall have jurisdiction over all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Tribal Court.

CHAPTER 2. DIVORCE

Section 2-201. Jurisdiction; Form of Petition; Award of Decree.

(A) The Tribal Court is vested with original jurisdiction to hear and decide all matters arising pursuant to this Section.

(B) A proceeding for dissolution of marriage or legal separation shall be entitled, "in re the marriage of _____ and _____." A custody or support proceeding shall be entitled, "in re the (custody) (support) of _____."

(C) The initial pleading in all proceedings under this Section shall be denominated a petition. A responsive pleading shall be denominated a response.

(D) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

Section 2-202. Dissolution of Marriage; Findings Necessary.

The court shall enter a decree of dissolution of marriage if it finds each of the following:

(A) That one of the parties, at the time the action was commenced, was domiciled in this Reservation for ninety (90) days prior to the filing of the dissolution action.

(B) The conciliation provisions of this Section either do not apply or have been met.

(C) The marriage is irretrievably broken.

(D) To the extent it has jurisdiction to do so, the court has considered, approved, and made provision for child custody, the support of any, natural or adopted, child common to the parties of the marriage entitled to support, the maintenance of either spouse and the disposition of property.

Section 2-203. Decree of Legal Separation; Findings Necessary.

The court shall enter a decree of legal separation if it finds each of the following:

(A) That one of the parties at the time the action commenced was domiciled in this Reservation.

(B) The conciliation provisions of this Section or if ordered by the court either do not apply or have been met.

(C) The marriage is irretrievably broken.

(D) The other party does not object to a decree of legal separation. If the other party objects to a decree of legal separation, the court shall upon one of the parties meeting the required domicile for dissolution of marriage direct that the pleading be amended to seek a dissolution of the marriage.

(E) To the extent it has jurisdiction to do so, the court has considered, approved or made provisions for child custody, the support of any natural or adopted child common to the parties of the marriage entitled to support, the maintenance of either spouse and the disposition of the property.

Section 2-204. Pleading; Contents; Defense; Joinder of Parties.

(A) The verified Detention in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

- (1) The age, occupation and address of each party and his length of domicile in this Reservation
- (2) The date of the marriage and the place at which it was performed.
- (3) The names, ages and addresses of all living children, natural or adopted, common to the parties and whether the wife is pregnant.
- (4) The details of any agreements between the parties as to support, custody and visitation of the children and maintenance of a spouse.
- (5) The relief sought.

(B) Either or both parties to the marriage may initiate the proceeding.

(C) The only defense to a petition for the dissolution of a marriage or legal separation shall be that the marriage is not irretrievably broken.

(D) The court may join additional parties necessary for the exercise of its authority.

Section 2-205. Temporary Order or Preliminary Injunction; Effect.

(A) In a proceeding for dissolution of marriage or for legal separation, or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child, natural or adopted, common to the parties entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(B) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a preliminary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities in life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued.

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child.

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

(4) Enjoining a party from removing a child from the jurisdiction of the court.

(5) Providing other injunctive relief proper in the circumstances.

(C) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the Court deems it appropriate.

(D) On the basis of the showing made, and in conformity with Sections 466 and 467, the court may issue a preliminary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstances.

(E) A temporary order or preliminary injunction:

(1) Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceeding.

(2) May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree.

(3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is dismissed.

Section 2-206. Irretrievable Breakdown; Finding.

(A) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether or not the marriage is irretrievably broken.

(B) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court, after hearing, shall make a finding whether or not the marriage is irretrievably broken.

(C) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall, upon hearing, consider all relevant factors as to the prospect of reconciliation, and shall either:

(1) Make a finding whether or not the marriage is irretrievably broken.

(2) Continue the matter for further hearing, not more than sixty (60) days later. The court, at the request of either party, or on its own motion may order a conciliation conference. At the adjourned hearing the court shall make a finding whether or not the marriage is irretrievably broken.

(D) A finding that the marriage is irretrievably broken is a determination that there is no reasonable prospect of reconciliation.

Section 2-207. Separation Agreement; Effect.

(A) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of the marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children.

(B) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request by the court, that the separation agreement is unfair.

(C) If the court finds the separation agreement unfair as to disposition of property or maintenance, it may request the parties to submit a revised separation agreement or make orders for the disposition of property or maintenance.

(D) If the court finds that the separation agreement is not unfair as to disposition

of property or maintenance, and that it is reasonable as to support, custody and visitation of children, the separation agreement shall be set forth or incorporated by reference in the decree of dissolution or legal separation and the parties shall be ordered to perform them. If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement as incorporated by reference and state that the court has found the terms as to property disposition and maintenance not unfair and the terms as to support, custody and visitation of children reasonable.

(E) Terms of the agreement set forth or incorporated by reference in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt.

(F) Except for terms concerning the maintenance of either party and the support, custody or visitation of children, entry of the decree shall thereafter preclude the modification of the terms of the decree and the property settlement agreement, if any, set forth or incorporated by reference therein.

Section 2-208. Disposition of Property.

In a proceeding for a dissolution of the marriage, or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which previously lacked personal jurisdiction over the absent spouse or previously lacked jurisdiction to dispose of the Property, the court shall assign each spouse's sole and separate property to him. It shall divide property held in common equitably, though not necessarily in kind, without regard to marital misconduct. Nothing in this Section shall prevent the court from considering excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of any property held in common by the parties to a marriage. However, if any party holds an interest in tribal land, to include a Standard Assignment, Exchange Assignment, or leased land, that disposition of such land shall be governed by the Land Code of the Tribes.

Section 2-209. Maintenance; Computation Factors.

(A) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(1) Lacks sufficient property, including property apportioned to him, to provide for his reasonable needs; and

(2) Is unable to support himself through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home.

(B) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

- (1) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently.
- (2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment.
- (3) The standard of living established during the marriage.
- (4) The duration of the marriage.
- (5) The age and the physical and emotional condition of the spouse seeking maintenance.
- (6) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.
- (7) Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

Section 2-210. Child Support; Factors.

(A) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for his support, without regard to marital misconduct, after considering all relevant factors, including:

- (1) The financial resources and needs of the child.
- (2) The financial resources and needs of the custodial parent.
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved.
- (4) The physical and emotional condition of the child, and his educational needs.
- (5) The financial resources and needs of the noncustodial parent.

(6) Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

(B) In the case of a mentally or physically disabled child, if the court, after considering the factors set forth in subsection (A) deems it appropriate, the court may order support to continue past the age of emancipation and to be paid to the custodial parent, guardian or child.

Section 2-211. Representation of Child by Counsel; Fees.

The court may appoint an attorney to represent the interests of a minor or dependent child with respect to his support, custody and visitation. The court may enter an order for costs, fees and disbursements in favor of the child's attorney. The order may be made against either or both parents.

Section 2-212. Payment of Maintenance or Support to Courts; Records.

(A) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the Judicial Clerk for remittance to the person entitled to receive the payments.

(B) The Judicial Clerk shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(C) The parties affected by the order shall inform the Judicial Clerk any change of address.

(D) If the person obligated to pay support has left or is beyond the jurisdiction of the court, any party may institute any other proceeding available under the laws of this Reservation for enforcement of the duties of support and maintenance.

Section 2-213. Assignments.

In the event a person obligated to pay child support is in arrears for at least two (2) months the court may order the person obligated to pay child support to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon such person of notice that the assignment has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the Judicial Clerk of the court. The payor may deduct from each payment a

sum not exceeding one dollar (\$1.00) as reimbursements for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment by this Section.

Section 2-214. Attorney's Fees.

The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under Chapter D or Chapter E.

For the purpose of this Section costs and expenses may include attorney's fees, deposition costs and such other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal. The court may order all such amounts paid directly to the attorney, who may enforce the order in his name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Section 2-215. Decree; Finality; Restoration of Maiden Name.

(A) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from the provision, and either of the parties may remarry pending appeal. An order directing payment of money for support or maintenance of the spouse or the minor child or children, shall not be suspended or the execution thereof stayed pending the appeal.

(B) The court may upon hearing within six (6) months after the entry of a decree of legal separation, convert the decree to a decree of dissolution of marriage.

(C) The court shall upon motion of either party after expiration of six (6) months from the entry of legal separation, convert the decree to a decree of dissolution of marriage.

(D) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

Section 2-216. Independence of Provisions of Decree or Temporary Order.

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but he may move the court to grant an appropriate order.

Section 2-217. Modification and Termination of Provisions for Maintenance, Support and Property Disposition.

(A) Except as otherwise provided in subsection (F) of Section 2-207, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances which are substantial and continuing.

(B) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(C) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a minor child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment to the extent just and appropriate in the circumstances.

Section 2-218. Separate Trials When Custody or Visitation is an Issue.

(A) In all cases when custody or visitation is a contested issue, the court shall first hear all other issues including maintenance and child support. The contested issue of custody or visitation shall not be heard at any hearing involving other issues even upon agreement of attorneys.

(B) After all other issues have been decided and the amount of maintenance and child support established by the court, then the issues of custody or visitation may be heard.
