

DOMESTIC RELATIONS CODE

ARTICLE 4

PATERNITY AND MATERNITY

		PAGE NO.
CHAPTER 1.	PATERNITY	
Section 4-101	Purpose.....	1
Section 4-102	Jurisdiction.....	1
Section 4-103	Paternity Actions; General Provisions.....	1
Section 4-104	Definitions.....	2
Section 4-105	Who May Initiate a Paternity Proceeding.....	3
Section 4-106	Good Cause Not to Establish Paternity.....	3
Section 4-107	Contents of Paternity Petition.....	3
Section 4-108	Presumption of Paternity.....	4
Section 4-109	Agreed Acknowledgment of Paternity.....	4
Section 4-110	Evidence in a Paternity Action.....	5
Section 4-111	Genetic Testing.....	6
Section 4-112	Paternity Hearing.....	6
Section 4-113	Disestablishment of Presumed Paternity.....	7
Section 4-114	Reporting Paternity Findings.....	7
Section 4-115	Locating Custodial and Non-Custodial Parents.....	7
Section 4-116	Paternity Established by Other Jurisdictions.....	7
CHAPTER 2.	MATERNITY	
(Reserved)	8

DOMESTIC RELATIONS CODE

ARTICLE 4

PATERNITY AND MATERNITY

[NOTE: Except as otherwise noted, the provisions of Article 4 of the Domestic Relations Code were enacted on June 8, 2017 by Ordinance No. 17-01 which became effective on July 8, 2017.]

CHAPTER 1. PATERNITY

Section 4-101. Purpose.

The purpose of this Chapter is to ensure that the father of each Colorado River Indian Tribes' child or child residing on the Colorado River Indian Reservation is identified and paternity established in order to protect the best interest of all children regarding such matters as enrollment, customs and traditions of the Tribes, survivorship and inheritance, health, support, and Social Security benefits. Indian children are the most vital and valued resource to the continued existence, the future, and integrity of the Colorado River Indian Tribes. The Tribes has a compelling interest in promoting and maintaining the health and well-being of all Indian children.

Section 4-102. Jurisdiction

(A) The Tribal Court shall have jurisdiction over any action to determine paternity under this Chapter. Any person who has sexual intercourse with a person who is a member or is eligible to become a member of the Colorado River Indian Tribes thereby submits to the jurisdiction of the Tribal Court as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the Tribal law as now or hereafter amended.

(B) In a paternity action brought in combination with any action under the Children's Code, the Juvenile Court shall have exclusive jurisdiction over the paternity action.

Section 4-103. Paternity Actions; General Provisions

(A) Paternity of a child may be initiated as provided by this Chapter in an action in the Tribal Court.

(B) A paternity action may be combined with another related Court action concerning the child, including, but not limited to a child support action, a guardianship action, a custody action, and a child-in-need-of-care action.

(C) A paternity action shall be governed in accordance with the practice in civil cases

before the Colorado River Indian Tribal Court that does not conflict with any provisions in this Chapter.

(D) A paternity action may be commenced at any time, even if the child is above the age of eighteen (18). No Statute of Limitations shall apply to an action to establish paternity.

(E) Nothing herein shall preclude the establishment of paternity pursuant to any section of the Children's Code, provided that such action does not conflict with the provisions of this Chapter. A final paternity ruling in an action under the Children's Code will be binding on the Court, if conducted in compliance with the provisions of this Chapter.

Section 4-104. Definitions

(A) "Putative father" means any man who might be the biological father of a child.

(B) "Child" means a person who is the subject of a paternity action, regardless of the age of the person.

(C) "Court" means the Tribal Court of the Colorado River Indian Tribes.

(D) "Custodian" means either:

(1) A person other than a parent or legal guardian to whom physical custody and control of the child has been given by a parent, or

(2) A person other than a parent or legal guardian to whom legal custody of the child has been given by order of the Court.

(E) "Genetic testing" means a DNA paternity test or other approved testing used to establish that the alleged father is the child's biological father with a probability of paternity of 99 percent or higher.

(F) "Guardian" means a person who has been appointed by a court of competent jurisdiction to care for the person and property of a child.

(H) "Mother" means the natural or adoptive mother of a child.

(I) "Paternity" means fatherhood. "Establishing paternity" means identifying the father of a child and legally determining that he is the father.

(I) "Presumption" means a fact assumed to be true under law.

Section 4-105. Who May Initiate a Paternity Action

(A) The following individuals may bring a paternity action in the Court:

- (1) The adult child;
- (2) A guardian, custodian, or conservator on behalf of a child who is under the age of eighteen;
- (3) The mother of a child who is under the age of eighteen;
- (4) The putative father;
- (5) A public welfare agency where the child under the age of eighteen resides;
- (6) The Colorado River Indian Tribes.

(B) In addition to the individuals identified in Subpart A, any public child support enforcement agency shall bring a paternity action pursuant to an application for services if the paternity of the child has not been established. However, such an agency shall not be required to initiate a paternity action in a case for which an action involving incest or rape, or the equivalent criminal offense as defined under applicable law, and that may have resulted in the conception of the child.

Section 4-106. Good Cause to Not Establish Paternity

A Mother may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to:

- (A) Cases involving domestic violence; or
- (B) Cases involving incest or rape resulting in the conception of the child; or
- (C) Cases where identification of the father is not in the best interest of the child.

Section 4-107. Contents of Paternity Petition

- (A) A petition to establish paternity shall state:
 - (1) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the putative father(s), the child, all others who have legal rights of custody, visitation, or support of the child, and of the petitioner;
 - (2) Whether the natural mother and the putative father are or were married, and the dates of marriage, separation, and divorce, if any;
 - (3) Whether the natural mother and putative father agree that the putative father is the natural father of the child; and

(4) Whether there are other Court or administrative paternity actions or State paternity affidavits concerning the child or whether parental rights have been terminated.

Section 4-108. Presumption of Paternity

(A) A man is presumed to be the natural father of a child if:

(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a Court; or

(2) Within ten months before, or at any time after the child's birth,

(a) He has acknowledged his paternity of the child in writing filed with the Registrar of Vital Statistics or the Colorado River Indian Tribes Enrollment Office; or

(b) With his consent, he is named as the child's father on the child's birth certificate; or

(c) He is obligated to support the child under a written voluntary promise or by Court order.

(B) A presumption under this section may be rebutted in an appropriate action by a preponderance of evidence. The presumption is rebutted by a Court decree establishing paternity of the child by another man or an order of the Court disestablishing paternity.

(C) A presumption of fatherhood is not conclusive or binding for purposes of enrollment of a child with the Colorado River Indian Tribes. Any child seeking enrollment with the Colorado River Indian Tribes must meet the requirements as set forth by the provisions of the Government Code.

Section 4-109. Agreed Acknowledgement of Paternity

(A) The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the Judge shall discuss the agreed order with each party and shall:

(1) Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;

(2) Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of

any person;

(3) Explain the person's right to an attorney or advocate at their own expense;

(4) Explain the burden of proof as to each issue;

(5) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

(B) If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

(C) The Court must make a finding of good cause to not require genetic testing.

(D) An agreed acknowledgment of paternity is not conclusive or binding for purposes of enrollment of a child with the Colorado River Indian Tribes. Any child seeking enrollment with the Colorado River Indian Tribes must meet the requirements as set forth by the provisions of the Government Code.

Section 4-110. Evidence in a Paternity Action

(A) Evidence in a paternity action may include all relevant and material evidence, subject to the rules governing the admissibility of evidence not in conflict with this Chapter, including the following:

(1) Evidence pertaining to the relationship between the mother and putative father, including evidence of sexual relations at any possible time of conception;

(2) Medical, scientific or genetic and statistical evidence relating to the putative father's paternity of the child based on tests performed by experts;

(3) All other evidence relevant to the issue of paternity of the child, including evidence of traditional customs or practices which may confirm or ratify the paternity of a child.

(B) The petitioner must provide to the Court a certified copy of the child's birth certificate from the jurisdiction where the child is born so that the Court is made aware of whether a father was named on the birth certificate. This requirement shall be waived by the Court if there is evidence of good reason why a certified copy of the birth certificate is not available.

Section 4-111. Genetic Testing

(A) In all paternity actions, the Court shall require the child, mother, and putative father(s) to submit to genetic tests, unless good cause exists not to require such testing. The following

requirements apply to genetic testing under this section:

- (1) Lab Accredited. The tests shall be performed by an accredited paternity genetic testing lab that performs legally and medically acceptable tests, approved by the Tribes or the Court.
- (2) Admission into Evidence. Unless a party objects to the results of genetic tests in writing at least five days before the hearing, the tests shall be admitted as evidence of paternity without the need for expert testimony, foundation testimony or other proof of authenticity.
- (3) The Petitioner shall bear the costs of genetic tests, unless the Court orders otherwise.

Section 4-112. Paternity Hearing

(A) The following rules shall apply to paternity hearings:

- (1) Only those persons the Court finds to have a legitimate interest in the proceedings and those identified in Section 4-105(A) may attend hearings under this Chapter;
- (2) The mother of the child and the putative father may be compelled to testify or to provide DNA samples at the paternity hearing;
- (3) The Court may permit DNA testing of close relatives in the event the putative father is deceased or cannot be located;
- (4) The Court may enter a judgment of paternity by default if it has admitted evidence of genetic testing statistically proving that the man putative in the petition to be the natural father is the biological father;
- (5) After hearing the evidence presented, the Court shall make a finding whether paternity of the putative father to the child has been established by preponderance of the evidence.
- (6) A judgment of paternity may also be made after failure to appear. If the putative father fails to appear at any time not waived by the Court after notice, and if there is no good cause to the contrary, the Court may enter an order adjudicating the respondent as the father. Such order shall take effect 30 days after service by registered or certified mail to his last known address unless the respondent presents to the Court evidence of good cause for his failure to appear or undergo genetic testing.

Section 4-113. Disestablishment Of Presumed Paternity.

(A) A man presumed to be a child's father under Section 4-108 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is

brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(B) Any other interested party may bring an action at any time for the purpose of declaring the nonexistence a biological relationship between father and child.

(C) Regardless of its terms, no agreement between a putative father and the mother or child shall bar an action under this section.

(D) If an action under this section is brought before the birth of the child, all actions may be stayed until after the birth, except service of process and discovery, including the taking of depositions.

Section 4-114. Reporting Paternity Results

The Court or any public child support enforcement agency shall provide a report of a finding of paternity made in a paternity action to the office of vital records in the jurisdiction in which the child was born.

Section 4-115. Locating Custodial and Non-Custodial Parents

Any public child support enforcement agency shall have authority to request information of all entities, whether commercial, private or governmental for all records which may help to identify the location of the custodial or non-custodial parents or their assets. Such an agency must attempt, and shall use all sources of information and records, to locate custodial or non-custodial parents and their assets. The Tribe is authorized and directed to provide such information when requested pursuant to the authority of this Act.

Section 1-416. Paternity Established By Other Jurisdictions.

Properly issued court and administrative orders, judgments, or decrees of other tribes, states, or Federal agencies establishing paternity will be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according to the laws of that jurisdiction and does not violate the public policy of the Colorado River Indian Tribes. The Court shall not, however, recognize any paternity judgments entered by default in the absence of evidence of genetic testing statistically proving that the man alleged is actually the biological father.

CHAPTER 2. MATERNITY

(Reserved)
