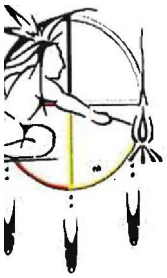


FOREST COUNTY POTAWATOMI FAMILY LAW ORDINANCE

CHAPTER 3-3 (02/09/2019)



FOREST COUNTY POTAWATOMI
FAMILY LAW ORDINANCE

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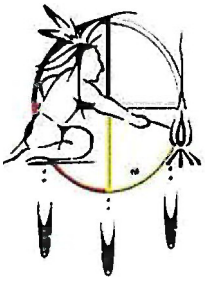
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FOREST COUNTY POTAWATOMI FAMILY LAW ORDINANCE

§ 1. General

1.1. Purpose

The purpose of this Ordinance shall be to protect the general health and wellness of Tribal Members and their families.

1.2. Liberal Construction

This Ordinance shall be liberally construed to affect its stated intent.

1.3. Authority

The Forest County Potawatomi General Council enacts this ordinance pursuant to its authority granted under the Forest County Potawatomi Tribal Constitution, Article IV, §l(d).

1.4. Effective Date and Title

This ordinance is hereby adopted immediately following the Majority approval by the Forest County Potawatomi General Council and it shall be known as the Forest County Potawatomi Family Law Ordinance.

1.5. Sovereign Immunity

The Tribe, by adoption of this ordinance, does not waive its sovereign immunity in any respect. Any person acting under good faith of this ordinance shall be immune from any civil liability arising out of such actions.

1.6. Amendment or Repeal

This ordinance may be amended or repealed only by a Supermajority vote of the quorum present at the Forest County Potawatomi General Council. All rules and regulations heretofore adopted by the Forest County Potawatomi General Council which are in conflict with the provisions of this ordinance are hereby repealed.

1.7. Others Voided

With the adoption of this ordinance, all preceding Child support ordinances or resolutions are hereby void.

1.8. Jurisdiction

The Forest County Potawatomi Tribal Court shall have original jurisdiction over all proceedings under this ordinance.

1.9. Severability and Non-Liability

If any portion or section of this ordinance is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining sections of this ordinance shall not be affected.

1.10. Limitation

None of the determinations made pursuant to any Action Affecting the Family shall govern any actions or any procedural or substantive requirements under the Tribe's Membership Ordinance.

1.11. Full Faith and Credit

The Tribal Court shall grant full faith and credit to judgments and orders in any Action Affecting the Family made by a court of competent jurisdiction that grants full faith and credit to the judgments and orders in Actions Affecting the Family made by the Forest County Potawatomi Community Tribal Court.

§ 2. Definitions

"Actions Affecting the Family" means any of the following actions:

(A) Marriage;

(B) Affirmation of Marriage;

(C) Annulment;

(D) Divorce;

(E) Legal separation;

(F) Custody;

(G) For Child support;

(H) For maintenance payments;

(I) For property division, to enforce or modify a judgment or order in an Action Affecting the Family granted in Tribal Court(s) or elsewhere;

(J) concerning periods of Physical Placement or visitation rights to Child(ren), including an action to prohibit an unauthorized move with, or the Removal of, a Child;

(K) to determine paternity; and

(L) to enforce or modify an order for support.

"Alleged Father" includes any male who has engaged in sexual intercourse with the Child's mother during the possible time of conception of the Child.

"Annulment" means the nullification, abolishment, or voiding of the Marriage by the Tribal Court. An Annulment establishes that a marital status never existed as if the Marriage had never taken place.

"Child" means a person under the age of eighteen (18).

"Child Custody" means the Legal Custody and Physical Placement of a minor Child. "Divorce" means

the dissolution of the Marriage relationship.

"Domicile" means that place where a person has his or her true, fixed, and permanent home and principal establishment, and to which whenever that person is absent he or she has the intention of returning. A person may have more than one residence but only one Domicile.

"Electronic Communication" means time during which a parent and his/her Child communicate by using communication tools such as the telephone, electronic mail, instant messaging, video conferencing, or other wired or wireless technologies via in the internet or another medium of communication.

"Extraordinary Circumstances" means rare or unusual situations in which a maintenance payee is so incapacitated as to render denial of support substantially inequitable.

"Genetic Test" means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells, or cells of another body material for the purpose of determining the statistical probability of an alleged father's paternity.

"Gross Income" means income, before taxes, including but not limited to per capita payments, salaries, wages, commissions, bonuses, dividends, interest, capital gains,

unemployment compensation, worker's compensation, disability insurance benefits, military allowances, tips, gifts, prizes, gaming winnings, and income tax refunds.

"Intimate Partner Violence" means any behavior by a current or former intimate partner that causes physical, psychological, or sexual harm to those in the relationship. This includes, but is not limited to acts of physical violence (slapping, hitting, kicking and beating), forced sexual intercourse and sexual coercion, belittling, constant humiliation, intimidation, threats of harm, threats to take away Children, and controlling behaviors.

"Joint Legal Custody" means both parties share Legal Custody of a minor Child and neither party's rights are superior, except as specifically provided by the Tribal Court or by the parties in the final order.

"Legal Custody" means the right of a parent awarded Legal Custody of a minor Child through a Tribal Court order to make Major Decisions concerning the minor Child, except as specifically provided by the Tribal Court or the parties in the final order.

"Legal Separation" means a court order arranging the te1ms under which a married couple will live separately.

"Majority" means fifty percent (50%) plus one (1) of the annually established quorum of the Forest County Potawatomi General Council.

"Major Decisions" means decisions regarding consent (i.e., to marry, entering into military service, obtaining a motor vehicle operator's license, authorizing non-emergency health care, and choosing a school or religion).

"Marriage Documents" means the following:

(A) "Marriage License," means that portion of the Marriage Document designated as such, which is the authorization for the Marriage to take place;

(B) "Marriage Certificate" means that portion of the Marriage Document designated as such, which includes the Marriage License as well as the information concerning the Marriage ceremony, signatures from Tribal Court resulting from the ceremony and proof of filing; and

(C) "Marriage Document" is that record consisting of the Marriage License, a copy of the Marriage Certificate, and the statistical sheet for the Bureau of Vital Statistics.

"Paternity" means the status of being a Child's father biologically, through the result of a Genetic Test, or by Tribal custom.

"Physical placement" means the right of a party to have a minor Child physically residing with him/her and during that residence, to make routine daily decisions regarding the minor Child's care, consistent with Major Decisions made by a person having Legal Custody.

"Relocation" for the purposes of Physical Placement of a Child pursuant to an order of the Tribal Court, means relocating and residing one hundred (100) miles or more from the other parent with a Child that currently lives less than one hundred (100) miles from the other parent, and that is already subject to a court order granting any periods of Physical Placement. If the non-relocating parent objects, the parent who intends to relocate and reside with the Child shall file a motion with the Tribal Court seeking permission for the Relocation. The requirement to file such a motion shall not apply if the Child's parents already live more than one hundred (100) miles apart when a parent proposes to relocate and reside with the Child.

"Removal" for the purposes of Physical Placement of a Child pursuant to an order of the Tribal Court, means when a person who has Legal Custody of and periods of Physical Placement with the Child removes the Child from the Child's residence for a period of more than fourteen (14) consecutive days. In such cases, the person removing the Child shall notify any other person who has periods of Physical Placement with the Child, before removing the Child.

"Service Member" means a member of the National Guard, Coast Guard, or of a reserve unit of the U.S. armed forces.

"Sole Legal Custody" means the right of only one parent to have Legal Custody of a minor Child.

"Supermajority" means a two-thirds (21_3) Majority vote.

"Tribal Child Support Agency" or "TCSA" means the Forest County Potawatomi Community Child Support Agency.

"Tribal Member" means any enrolled Member of the Forest County Potawatomi Community.

"Tribe" or "Tribal" means the Forest County Potawatomi Community. "Tribal Court" or

"Court" means the Forest County Potawatomi Tribal Court.

"Tribal Lands" means all lands over which the Tribe exercises jurisdiction, including, without limitation, those lands held in trust by the federal government for the benefit of the Forest County Potawatomi Community or individual members of the Tribe, and including any fee lands purchased by or for the Tribe.

"Trustee" means one in whom an estate, interest, or power is vested under an expressed or implied agreement to administer or exercise it for the benefit or the use of another.

"Voluntary Paternity Acknowledgement Form" means a court approved acknowledgment form, recognized in the state in which the Child was born, which allows a potential father the opportunity to voluntarily acknowledge paternity.

§ 3. General Procedure

3.1. Civil procedure; Parties

(A) All procedural matters for Actions Affecting the Family shall be in accordance with the Forest County Potawatomi Community Tribal Court Code, Rules of Civil Procedure, and other applicable Court Rules.

(B) The party initiating any Action Affecting the Family is the petitioner. The party responding to the action is the respondent. Both parties may initiate the petition together by signing and filing a joint petition. The parties to a joint petition shall state in the petition that both parties consent to personal jurisdiction and waive service of summons from the Tribal Court.

(C) The party initiating the action or his or her attorney shall sign the petition. Both parties or their respective attorneys shall sign a joint petition. The Tribe may be a real party in interest for cases in which Tribal funds or benefits have been expended on behalf of a party, including, but not limited to: an action to establish paternity, an action to establish or enforce a Child support order or maintenance obligation, or an action to recover aid to a dependent Child, etc.

3.2. Temporary Orders During Pendency of Action

During the pendency of any Action Affecting the Family, the Tribal Court may make just and reasonable temporary orders concerning the following:

(A) Upon request of one party, granting Legal Custody of any minor Child(ren) to the parties jointly, to one party solely, or to a relative or the Tribe's Indian Child Welfare Department. A temporary order made pursuant to this subsection shall not be binding on a final custody determination.

(B) Within thirty (30) days of the request from a party, granting periods of Physical Placement of the minor Child(ren).

(C) Within thirty (30) days of a request from a party, granting periods of Electronic Communication to a party.

(D) Prohibiting the Removal of minor Child(ren) from the jurisdiction of the Court.

(E) Allowing a party to relocate and reside with a Child pending a final hearing on the matter.

(F) Requiring either or both parties to make payments for the support of minor Child(ren).

(G) Requiring either party to pay for the maintenance of the other party, including costs associated with responding to the Action Affecting the Family.

(H) Requiring either party to execute an assignment of income.

(I) Requiring either or both parties to pay debts or perform other actions in relation to the persons or property of the parties.

(J) Prohibiting either party from disposing of assets within the jurisdiction of the Tribal Court.

(K) Requiring counseling of either or both parties.

(L) Requiring either or both parties to maintain minor Child(ren) as beneficiaries on insurance plans.

3.3. Prohibited Acts During Pendency of Action

After the commencement of any Action Affecting the Family upon service, the parties are prohibited from doing any of the following:

(A) Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor Child of either of the parties. If the Tribal Court determines by a preponderance of the evidence that a party has engaged in a pattern or serious incident of Intimate Partner Violence as those crimes are defined herein, or abuse of the Child, the Tribal Court may presume that joint or sole Legal Custody with the offending party is detrimental to the Child(ren) and contrary to the best interest of the Child(ren). Such presumption shall be a rebuttable presumption.

(B) Encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, without the consent of the other party or an order of the Tribal Court except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney's fees.

(C) Without the consent of the other party or an order of the Tribal Court, establishing a residence with a minor Child of the parties more than one hundred (100) miles from the residence of the other party, removing a minor Child of the parties from the state for more than thirty (30) consecutive days, or concealing a minor Child of the parties from the other party, unless such action is taken to protect a party or the minor Child(ren) from physical abuse and there is no reasonable opportunity to obtain a Tribal Court order prior to removing the minor Child(ren).

(D) The prohibitions under §3.3 (A)-(C) shall apply until the action is dismissed, until a final judgment in the action is entered, or until the Court orders otherwise.

(E) The Tribal Court may find any party in contempt of court for violation of these prohibitions.

3.4. Required Financial Disclosures

(A) After commencement of an Action Affecting the Family, but not later than ninety (90) days after the action is filed, each party shall furnish to the Court, on standard forms furnished by the Court, full disclosure of all assets and liabilities owned by or attributable to, in full or in part, either party separately or by the parties jointly. Said disclosure shall also include each party's income and deductions.

(B) All financial information shall be confidential and filed under seal with the Court.

(C) If either party fails timely to file, a complete disclosure statement as required by this section, the Court may accept as accurate any information provided by the disclosing party or obtained by the Tribe's Child Support Agency.

(D) Upon the petition of an aggrieved party, the Court may declare the creation of a constructive trust as to all undisclosed assets for the benefit of the parties or their minor or dependent Child(ren), if any, with the party in whose name the assets are held declared the constructive Trustee. The Court shall grant the petition upon a finding of a failure to disclose assets.

(E) Upon discovery of deliberate or negligent omission from the form of assets with a fair market value of more than $500, a party may file a request for a fair division of such property. If either party sells or otherwise disposes of an asset with a fair market value of $500 or more within one year prior to the filing of a petition, for inadequate or no consideration, the prope11y shall be presumed to be part of the party's estate for the purposes of the division of property and the disclosure requirement.

3.5. Required Health Insurance Disclosures

In any Action Affecting the Family that involves a minor Child in addition to the financial disclosure, each party shall furnish the Court with information regarding the types and costs of any health insurance policies or plans offered through each party's employer or other organization.

3.6. Minimum Required Information for All Actions Affecting the Family

(A) All Actions Affecting the Family shall comply with and include the following:

(1) The name and birthdate of the parties, the date and place of the Marriage, if applicable, and the facts relating to the residence of both parties;

(2) Enrollment status of the parties;

(3) Name and birthdate of any minor Child(ren) (and whether any spouse is pregnant) and enrollment status;

(4) If the relief requested is a Divorce or, a statement by one or both parties that the Marriage is irretrievably broken;

(5) If the relief requested is a Legal Separation, a statement that both parties agree that the marital relationship is broken;

(6) Whether there is any action filed in any other court of competent jurisdiction;

(7) Whether there are any written agreements between the parties as to support, Legal Custody, Physical Placement of the Child(ren), maintenance of either party, or property division;

(8) What relief is being requested; and

(9) Specific reason for requesting that relief.

(B) In any Action Affecting the Family in which either party is a recipient of public benefits, the parties shall serve a copy of the Petition or motion on the Tribe's Child Support Agency.

(C) The Court is authorized to enter Temporary Orders to address any issue, financial or otherwise, during the pendency of the action. A Temporary Order may be based upon the written agreement of the parties, subject to the approval of the Court.

(D) After an original action has been commenced and a judgment entered, subsequent actions for modifications and enforcement of the judgment may be made by motion.

(E) Any written agreement of the parties that is incorporated into the Findings of Fact, Conclusions of Law and Judgment shall be attached to the judgment.

(F) All final judgments or orders in Actions Affecting the Family are appealable to the Tribal Court of Appeals pursuant to Court Rule. The Tribal Court is authorized to enter Temporary Orders regarding maintenance or support to the spouse or the Child(ren) during the pendency of the appeal by proper motion to the Court made and decided after entry of the order or judgment appealed from, and prior to, the issuance of a decision by the Court of Appeals.

§ 4. Marriage

4.1. Intent

It is the intent of this section of the ordinance to promote the stability and best interests of Marriage and the family, and to recognize the valuable contributions of both spouses during the Marriage and at termination of the Marriage by dissolution or death. It is established that Marriage is a legal relationship between two equal persons who owe to each other mutual responsibility and support. No spouse may be presumed primarily liable for support expenses under this subsection.

(A) The Tribal Court's authority extends to Marriages involving at least one Tribal Member or resident of Tribal Lands.

(B) Marriages performed by the Tribal Court, or a person authorized by the Tribal Court, as a legal matter, are a civil contract, to which the consent of the parties capable in law of contracting is essential.

4.2. Who May Marry

(A) Any competent individual who is eighteen (18) years of age or older; or

(B) Any competent person between the ages of sixteen and eighteen (16-18) with the prior written consent of the individual's parents, guardian, or legal custodian, or a parent having the actual care, custody, and control of the person. The written consent must be given before the Clerk of Court under oath, or certified in writing and verified by affidavit or affirmation before a notary public or other official authorized to take affidavits. The written consent shall be filed with the Clerk of Court at the time of the application for a Marriage License.

4.3. Marriages Not Recognized

The Tribal Court (or a person authorized by the Tribal Court) shall not perform, nor shall the Tribe recognize, Marriages between close family members *(e.g.* parent and Child, brother and sister, first cousins), bigamous or polygamous Marriages, common law Marriages, custom or traditional marriages not authorized by the Tribal Court, or Marriages wherein either party so fails to understand the Marriage relationship as to render him or her incapable of assenting to Marriage.

4.4. Recognition of Foreign Marriages

Marriages other than those authorized under this Ordinance shall be recognized by the Tribal Court if valid under the laws of the jurisdiction where the Marriage occurred.

4.5. Marriage Licenses

(A) The Tribal Clerk of Court shall issue a Marriage License upon application of the parties and payment of any applicable fees. The Clerk of Court may require any reasonable identification to determine both the identity and the Domicile of the parties.

(B) The application for license shall include the full legal name of each party, his/her social security number, current address, and date of birth.

(C) Each applicant for a Marriage License shall swear to or affirm the veracity of the information provided in the application submitted to the Clerk of Court before issuance of the Marriage License.

(D) The parties shall exhibit to the Clerk of Court a certified copy of a Birth Certificate and submit a copy of any Judgment or Death Certificate affecting the applicant's marital status.

(E) If the Clerk of Court is not satisfied with the documentary proof presented, he or she shall submit the presented proof to a Tribal Court judge authorized to conduct a Marriage ceremony for an opinion as to the sufficiency of the proof presented.

(F) The Marriage License shall authorize the Marriage ceremony to be performed by Tribal Court within thirty (30) days of issuance.

(G) The Tribal Clerk of Court may refuse to issue a Marriage License if there are reasonable grounds to believe that statements in the application are willfully false or insufficient, or that either or both parties are legally incompetent to marry.

4.6. Marriage Ceremony

A Tribal Judge, or any other person authorized by the Tribal Court, may perform the Marriage ceremony following the issuance of a Marriage License and upon the mutual declarations of the parties to be joined in Marriage in the presence of two competent adult witnesses other than the Tribal Court Judge.

4.7. Delivery and Filing of Marriage Documents

The Tribal Clerk of Court shall submit the Marriage Document, legibly and completely filled out with unfading black ink, to the State Registrar of Vital Statistics, with a copy retained in the official records of the Tribal Court.

4.8. Who May Object to a Marriage

(A) If any parent, brother, sister, grandparent, Child, a guardian of a minor applicant, a guardian of either applicant for a Marriage License, or the Tribal Prosecutor believes that the statements on or related to the application are false or insufficient, or that the applicant has been adjudicated incompetent, that person may file with the Tribal Court a petition under oath, setting forth the grounds for his or her objections to the Marriage, and asking for an order requiring the parties to show cause why the Marriage License should not be refused.

(B) If the Tribal Court determines that the stated grounds for the objection are likely valid, the Court shall issue an order to show cause and cause it to be served upon the applicants for the Marriage License as soon as practicable after issuance.

(C) If, upon hearing, the Tribal Court finds that the statements in the application are willfully false or insufficient, or that either or both of the parties lack the competency to man-y, the Tribal Court shall make an order refusing the Marriage License.

4.9. Penalties for Violation

Any person who willfully makes false statements or otherwise engages in fraudulent behavior to procure a Marriage License shall be subject to penalties not exceeding $5,000. Any fine or forfeiture imposed under this ordinance may be recovered pursuant to the Debts Owed to the Tribe Ordinance.

4.10. Actions to Affirm Marriage

If the validity of a Marriage is denied or doubted by either of the parties, the other party may commence an action to affirm the Marriage. The judgment in an action to affirm

Marriage shall declare the Marriage valid or annul the Marriage, and is conclusive upon all persons concerned.

§ 5. Annulment, Divorce, and Legal Separation

5.1. Jurisdiction

The Tribe shall have jurisdiction in all actions to affirm Marriage, to annul Marriages, to Divorce or legally separate parties if:

(A) At least one of the parties 1s an enrolled Member of Forest County Potawatomi Community; or

(B) At least one party has resided on Tribal Lands for thirty (30) days immediately preceding the commencement of the action.

5.2. Annulment

(A) A judicial proceeding is required to annul a Marriage. The Tribal Court shall have the authority to annul a Marriage upon any of the following grounds:

(1) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of age, because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage.

(2) A party lacked the physical capacity to consummate the Marriage by sexual intercourse, and at the time of the Marriage the other party did not know of the incapacity. Suit may be brought by either party no later than one year after the petitioner obtained knowledge of the incapacity.

(3) A sixteen (16) or seventeen (17) year old minor party failed to obtain consent of his/her parent or guardian for the Marriage; or a party was under 16 years of age. Suit may be brought by the underaged party or a parent or guardian at any time prior to the party's attaining the age of 18 years, but a parent or guardian must bring suit within one year of obtaining knowledge of the marriage.

(4) The Marriage is otherwise prohibited by Tribal law. Suit may be brought by either party within 10 years of the marriage, except that the 10-year limitation shall not apply where the marriage is prohibited because either party has another spouse living at the time of the marriage and the impediment has not been removed.

(B) A Marriage may not be annulled after the death of a party to the Marriage.

5.3. Contents of Petition for Annulment

(A) A petition seeking an order annulling a Marriage believed to be sanctioned by or dissolving a Marriage valid under the laws of another jurisdiction where the Marriage occurred shall include the following information:

(1) The name, date of birth, date and place of Marriage, place of residence, and Tribal enrollment status of the parties;

(2) If minor Child(ren) are involved, the name, date of birth, of each minor Child born to or adopted by the parties and each minor Child born to the wife during the Marriage, and whether the wife is pregnant;

(3) The grounds on which the petition for Annulment is based:

(4) Whether an action for Annulment by either of the parties was or has been commenced or is pending in any other jurisdiction or Tribal Court and, if either party was previously married, when that previous Marriage was terminated and the name of the Court that issued the order terminating the previous Marriage;

(5) Whether the parties have entered into an agreement as to Child Custody, Child Support, spousal maintenance, or the division of property.

(B) The Tribal Court, upon granting the relief sought in the petition, may authorize the resumption of former legal surname(s) of the party seeking the change.

(C) In an Annulment action where the parties have been unable to agree on division of property, the Court shall have the authority to order an equitable division of property.

5.4. Requirements for Divorce

(A) The Tribal Court shall have jurisdiction to issue an order dissolving a Marriage if it finds that the Marriage is irretrievably broken.

(B) During the pendency of an action for Divorce, the Tribal Court may suspend, for not more than ninety (90) days, all proceedings upon a request by both parties to attempt a reconciliation, and such a suspension shall not prejudice the rights of the parties to seek a Divorce if reconciliation fails and shall not constitute an admission that the Marriage is not irretrievably broken. If reconciliation efforts are successful, the Tribal Court shall dismiss the action. If reconciliation efforts fail, the action shall proceed.

5.5. Contents of Petition for Divorce or Legal Separation

(A) An action for Divorce or Legal Separation may not be brought to final hearing or trial until the expiration of one hundred and twenty (120) days

after the service of the summons and petition upon the respondent or one hundred and twenty (120) days after the filing of a joint petition. To protect the health and safety of either of the parties or of any Child of the Marriage, the Tribal Court may hold an expedited hearing and grant the requested Divorce or Legal Separation.

(B) The petition for Divorce or Legal Separation shall include the following:

(1) The name, date of birth, date and place of Marriage, place of residence, and Tribal enrollment status of the parties;

(2) If minor Child(ren) are involved, the name, date of birth, of each minor Child born to or adopted by the parties and each minor Child born to the wife during the Marriage, and whether the wife is pregnant;

(3) The grounds on which the petition is based:

(i) The grounds for a Divorce are that the Marriage 1s irretrievably broken.

(ii) The grounds for a Legal Separation are that the Marriage is currently broken, the parties are living apart, and the parties seek legal protection.

(4) Whether an action for Divorce or Legal Separation by either of the parties was or has been commenced or is pending in any other jurisdiction or Tribal Court and, if either party was previously married, when that previous Marriage was terminated and the name of the Court that issued the order terminating the previous Marriage;

(5) Whether the parties have entered into an agreement as to Child Custody, Child support, spousal maintenance, or the division of property.

(C) A Tribal Court, upon granting the relief sought in the petition, may grant a request for the resumption of former legal surname(s).

(D) In a Divorce or Legal Separation action where the parties have been unable to agree on division of property, the Court shall have the authority to order an equitable division of property upon full financial disclosure in accordance with §5.7.

5.6. Judgment of Divorce or Legal Separation

When a party requests a Legal Separation rather than a Divorce, the Court shall grant a judgment of Legal Separation unless the other party requests a Divorce, in which case the Court shall hear and determine which judgment shall be granted.

(A) A judgment of Divorce is effective when granted. So far as a judgment of Divorce affects the marital status of the parties, the Tribal Court may vacate or modify the judgment for sufficient cause shown, upon its own motion, or upon the application of both parties to the action, at any time within six (6) months from the granting of the judgment.

(B) A judgment of Legal Separation shall provide that, if a reconciliation occurs at any time after the judgment, the parties may apply for a revocation of the judgment.

(C) Both parties may stipulate, or one party may move the Tribal Court no less than one year after a Legal Separation is granted, to convert a Legal Separation to a Divorce.

5.7. Property Division Following Annulment, Divorce, or Legal Separation

(A) Division Required. Upon every judgment of Annulment, Divorce, or Legal Separation, or in rendering a judgment under this ordinance, the Tribal Court shall divide the property of the parties.

(B) Property subject to division. Any property shown to have been acquired by either party prior to or during the course of the Marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this section:

(1) As a gift from a person other than the other party, including Forest County Potawatomi Community Scheduled and Special Distributions made pursuant to the Minors' Trust Distribution Plan.

(2) By reason of the death of another, including, but not limited to, life insurance proceeds; payments made under a deferred employment benefit plan or an individual retirement account; and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer on death arrangement.

(3) Any property acquired with funds derived from any manner provided in subsections (A) or (B).

(4) Per capita payments are not subject to property division under this Ordinance.

5.8. Presumption of Equal Division

The Court shall presume that all property not described in §5.7 is to be divided equally between the parties, but may alter this distribution after considering all of the following:

(A) The length of the Marriage.

(B) The property brought to the Marriage by each party.

(C) The contribution of each party to the Marriage, g1vmg appropriate economic value to each party's contribution in homemaking and Child care services.

(D) The age and physical and emotional health of the parties.

(E) The contribution by one party to the education, training or increased earning power of the other.

(F) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for Child(ren) and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the Marriage.

(G) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having Physical Placement for the greater period of time.

(H) The amount and duration of an order granting maintenance payments to either party, any order for periodic maintenance or Child Support payments and whether the property division is in lieu of such payments.

(I) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

(J) The tax consequences to each party.

(K) Any written agreement made by the parties before or during the Marriage concerning any arrangement for property distribution; such agreements shall be binding upon the Tribal Court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The Tribal Court shall presume any such agreement to be equitable as to both parties.

(L) Such other factors as the Court may in each individual case determine to be relevant.

5.9. Separate Fund or Trust Option

In dividing the property of the parties under this section, the Court may protect and promote the best interests of a Child of the parties described by setting aside a portion of the property in a separate fund or trust for the support, maintenance, education, and general welfare of the Child.

5.10. Related Provisions of Judgment

In a judgment described under §5.6 the Tribal Court shall do all of the following:

(A) Direct that title to the property of the patties be transferred as necessary, in accordance with the division of property set forth in the judgment.

(B) Include all of the following in the judgment:

(1) Notification that it may be necessary for the parties to take additional actions in order to transfer interests in their property in accordance with the division of property set forth in the judgment, including such interests as interests in real property, interests m retirement benefits, and contractual interests.

(2) Notification that the judgment does not necessarily affect the ability of a creditor to proceed against a party or against that party's property even though the party is not responsible for the debt under the terms of the judgment.

(3) Notification that an instrument executed by a party before the judgment naming the other party as a beneficiary is not necessarily affected by the judgment and it may be necessary to revise the instrument if a change in beneficiary is desired.

5.11. Recording Judgment Affecting Real Property Sufficient

A certified copy of the portion of the judgment affecting title to real property, or a deed consistent with the judgment, shall be recorded in the office of the register of deeds of the county in which the real property is located for fee lands, or pursuant to the Tribe's Realty Ordinance for Trust lands. The Tribal Court shall determine which party shall file such document(s).

5.12. Disposed Assets

In an Action Affecting the Family, except an action to affirm a Marriage, any asset with a fair market value of $500 or more that would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action and that was transferred for inadequate consideration, wasted, given away, or otherwise

unaccounted for by one of the parties within one year prior to the filing of the petition or the length of the Marriage, whichever is shorter, is rebuttable presumed to be property subject to division under this Ordinance, and is subject to a disclosure requirement to the other party. Transfers that resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed if those assets are otherwise identified in the statement of net worth.

§ 6. Child Custody

6.1. Jurisdiction

Child Custody, spousal maintenance, and the division of property may be determined as part of an action seeking an Annulment or Divorce or in an independent action for Child Custody if at least one party is a Tribal Member or at least one party is a resident of Tribal Lands for at least thirty (30) days immediately preceding the filing of the action for Child Custody, Legal Separation, spousal maintenance, and the division of property.

6.2. General

In Child Custody, placement and visitation proceedings, the Court may:

(A) If the Tribal Court has reason for special concern as to the welfare of a minor Child, appoint a guardian ad litem to represent the best interests of the minor Child(ren) and/or;

(B) Order either or both parents to complete a parenting class, no longer than four (4) hours in length, subject to a contempt order for failure to attend.

6.3. Child Custody

(A) In rendering a judgment of Annulment, Divorce, Legal Separation, or paternity, the Tribal Court shall make such provisions as it deems just and reasonable concerning the Legal Custody and Physical Placement of any minor Child of the parties. Child Custody may be determined as part of an Action Affecting the Family or as an independent action for custody.

(B) Unless the Tribal Court orders otherwise, in an action for Annulment, Divorce or Legal Separation, or an action to determine paternity, in which Legal Custody or Physical Placement is contested, a party seeking Sole or Joint Legal Custody or periods of Physical Placement shall file a Parenting Plan with the Court. A Parenting Plan shall provide information about the following questions:

(1) What Legal Custody or Physical Placement the parent is seeking.

(2) Where the parent lives currently and where the parent intends to live during the next two (2) years. Any parent who is the victim of

Intimate Partner Violence is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next two (2) years.

(3) Where the parent works and the hours of employment. Victims of Intimate Partner Violence are not required to disclose the specific address but only a general description of where he or she works.

(4) Who will provide any necessary Child care when the parent cannot and who will pay for the Child care (if applicable).

(5) Where the Child will go to school.

(6) What doctor or health care facility will provide medical care for the Child.

(7) How the Child's medical expenses will be paid.

(8) What the Child's religious/cultural commitment will be, if any.

(9) Who will make decisions about the Child's education, cultural needs, medical care, choice of Child care providers, and extracurricular activities.

(10) How the holidays will be divided.

(11) What the Child's summer schedule will be.

(12) Whether and how the Child will be able to contact the other parent when the Child has Physical Placement with the parent providing the parenting plan, and what Electronic Communication, if any, the parent is seeking.

(13) Whether equipment for providing Electronic Communication is reasonably available to both parties.

(14) How the parent proposes to resolve disagreements related to matters over which the Court orders joint decision making.

(15) What Child support, maintenance, or other income transfer there will be.

(16) If there is evidence or a history of Intimate Partner Violence, how the Child will be transferred between the parties for the exercise of Physical Placement to ensure the safety of the Child and the parties.

(C) The Tribal Court may give Sole Legal Custody only if it finds that doing so is in the Child's best interest and that either of the following applies.

(1) Both parties agree to Sole Legal Custody with the same party.

(2) The parties do not agree to Sole Legal Custody with the same party, but at least one party requests Sole Legal Custody and the Court specifically finds:

(i) One party is not capable of performing parental duties or does not wish to have an active role in raising the Child.

(ii) Conditions exist that would substantially interfere with the exercise of Joint Legal Custody.

(iii) The parties will not be able to cooperate in the future decision making required under an award of Joint Legal Custody. Evidence of abuse of the Child, or Intimate Partner Violence shall create a rebuttable presumption that the parties will not be able to cooperate in the future decision making required.

(3) The Tribal Court's judgment on Legal Custody shall provide for the exchange of and access to the minor Child's medical, school, court, or other records.

(4) If a party is a Service Member, the Tribal Court may not consider as a factor in determining the Legal Custody of a Child whether the Service Member has been or may be called to active duty in the U.S. armed forces and consequently is, or in the future will be or may be, absent from the Service Member's home.

6.4. Contents of Petition for Independent Action on Child Custody A

petition seeking an order on Child Custody shall include:

(A) The name, date of birth, occupation, place of residence, and Tribal enrollment status of the parties;

(B) The name and date of birth of each minor Child born to or adopted by the parties; and

(C) Whether the parties have entered into an agreement as to Child Custody.

6.5. Factors Considered By Tribal Court in Making Determination in the Absence of a Stipulated Parenting Plan

Any Tribal Court determination regarding the Legal Custody and Physical Placement of any minor Child of the parties shall be just, reasonable, and in the best interest of the minor Child. The Court shall presume Joint Legal Custody is in the best interest of the minor Child and each parent shall be entitled to substantial meaningful placement time. In making the determination of best interests of the Child, the Tribal Comi shall not prefer one party over the other on the basis of sex and shall consider each of the following factors:

(A) The ability of each parent to meet the cultural and religious needs of a Tribal Member Child;

(B) The wishes of the minor Child, communicated by the minor Child or the minor Child's guardian ad litem, if one has been appointed by the Tribal Court;

(C) The amount and quality of time each parent has spent with the minor Child in the past, any necessary changes to the parents' custodial roles, and any reasonable life-style changes that a parent proposes to make to be able to spend time with the minor Child in the future;

(D) The minor Child's adjustment to the home, school, religion, culture, and community;

(E) The minor Child's age and the minor Child's developmental, cultural, and educational needs at different ages;

(F) The mental, emotional, and physical health of the parties, including whether either party has had a problem with alcohol or drug abuse, and the mental, emotional, and physical health of the minor Child and other persons living in the proposed custodial household;

(G) The need for predictability and stability in the minor Child's Physical Placement;

(H) The parties' ability or lack of ability to cooperate and communicate, especially with respect to the needs of the minor Child;

(I) The availability of public or private Child care services to either parent;

(J) Whether each party is willing to facilitate a positive and meaningful relationship between the other party and the minor Child, and to maintain continuing contact and visits between the minor Child with the other party, or whether either party is likely to unreasonably interfere with the minor Child's development of a positive and meaningful relationship and/or contact and visits with the other party;

(K) Whether either party has physically or otherwise abused the minor Child;

(L) Whether either or both parties have physically or otherwise abused each other;

(M) Any reports of professionals regarding the placement and admitted by the Tribal Court into evidence; and

(N) Any other factors the Tribal Court deems relevant to determining what is in the best interest of the minor Child.

6.6. Contents of Parenting Plan or Proposal for Legal Custody, and Physical Placement

(A) The Court may order a party to individually or jointly file a parenting plan or other proposal for Legal Custody and Physical Placement that includes the information identified §6.3 (B).

(B) The parenting plan or plans shall be filed at least five (5) business days before the date set for a hearing.

6.7. Judgment on Physical Placement

(A) If the Tribal Court awards Sole or Joint Legal Custody of a minor Child to the parents, the judgment shall include a plan for the Physical Placement of the minor Child with one or between the parents, in accordance with the factors identified in §6.3 (B) and the following:

(1) A minor Child should have periods of regularly occurring, meaningful Physical Placement with each parent unless such placement would threaten the minor Child's physical, mental, or emotional health.

(2) Periods of Physical Placement shall be regular and maximize the time the minor Child spends with each parent.

(3) The Tribal Court shall not provide Physical Placement for a parent who has been convicted of the homicide of the other parent.

(4) The Tribal Court may not deny periods of Physical Placement for failure to meet, or grant periods of Physical Placement for meeting, any financial obligation to the Child or to the former spouse.

(5) If the Tribal Court grants Physical Placement to more than one parent, the Tribal Court may grant to either or both parents a reasonable amount of Electronic Communications at reasonable

hours during the other parent's periods of Physical Placement with the Child. Electronic communication may not be used as a replacement or a substitute for a parent's periods of Physical Placement with the Child. The Tribal Court shall determine if such Electronic Communication is in the best interest of the Child and whether equipment for providing Electronic Communication is reasonably available to both parents. If a parent's Physical Placement with a Child is supervised, the Tribal Court shall also require that the parent's Electronic Communication with the Child be supervised.

(B) Custody to Agency or Relative: If the best interest of any Child demands it and if the Tribal Court finds, by clear and convincing evidence, that neither parent is able to care for the Child adequately, or that neither parent is fit and proper to have the care and custody of the Child, the Tribal Court may declare the Child to be in need of protection or services and transfer Legal Custody of the Child to the Tribe's Indian Child Welfare Department or to a relative in accordance with the Tribe's Children's Code.

6.8. Enforcement of Child Custody or Change in Child's Residence

(A) The Tribal Court shall have the authority to enforce or modify any order on Child Custody and placement, and a party may bring an action in Tribal Court to enforce such judgments, orders, or other Tribal Court actions.

(B) Presumption in Favor of Stability for Child(ren)

(1) The Tribal Court shall presume that all existing custody orders are in the best interest of the minor Child.

(2) A party seeking to modify an existing order, move an unreasonable distance from the existing school district (as determined by the Court), or otherwise change the Child's home, school, religion, or community shall have the burden to prove by clear and convincing evidence that the move or change is reasonable and in the best interests of the minor Child.

6.9. Modification of Child Custody Order

(A) Substantial Modifications

(l) In the absence of an agreement by the parties, during the two (2) years after the entry of a Child Custody order, the Tribal Court shall not change Legal Custody or alter the Physical Placement of a minor Child if the change would significantly impact the amount

of time a minor Child spends with his/her parent or parents, unless the party seeking modification upon petition, order, or motion to show cause, shows by substantial evidence that modification is necessary because the current Physical Placement is physically, emotionally, or mentally harmful to the best interest of the minor Child.

(2) The Tribal Court may modify a Child Custody order after the two (2) year period expires if the modification is in the best interest of the physical, emotional, or mental health of the minor Child. In modifying any Child Custody order, the Tribal Court shall consider the following factors:

(i) Continuing the current allocation or decision making under a Legal Custody order is in the best interest of the Child.

(ii) There has been a substantial change in circumstances since the entry of the last order affecting Legal Custody or the last order substantially affecting Physical Placement.

(iii) There shall be a rebuttable presumption that continuing the current allocation of decision making under a Legal Custody order is in the best interest of the Child, and that continuing the Child's Physical Placement with the parent with whom the Child resides for the greater period of time is in the best interest of the Child.

(iv) A change in the economic circumstances or marital status of either party is not in and of itself sufficient to meet the standards for modification.

(B) Modifications of Substantially Equal Physical Placements

(1) If the parties have substantially equal periods of Physical Placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal Physical Placement, the Tribal Court, upon petition, motion, or order to show cause by a party, may modify the order if it is in the best interest of the Child.

(2) There will remain a rebuttable presumption that substantially equal periods of placement is in the best interest of the Child, subject to §6.9 (A) (l).

(C) Modification of Physical Placement for Failure to Exercise Physical Placement

Upon petition, motion or order to show cause by a party, the Tribal Court may modify an order of Physical Placement at any time with respect to periods of Physical Placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of Physical Placement awarded under an order of Physical Placement that allocates specific times for the exercise of periods of Physical Placement.

(D) Reinstatement of Former Physical Placement

If a party is a Service Member and the Tribal Court modifies an order of Physical Placement on the basis that the Service Member has been or will be called to active duty in the U.S. Armed Forces, the Tribal Court shall require in the order that the allocation of periods of Physical Placement that were in effect before the modification are reinstated immediately upon the Service Member's discharge or release from active duty.

(E) Denial of Physical Placement

Upon petition, motion or order to show cause or on its own motion, the Tribal Court may deny a parent's Physical Placement rights at any time if it finds that the Physical Placement rights would endanger the Child's physical, mental or emotional health.

(F) Notice Required

The Tribal Court may not enter an order for modification under this section until notice of the petition, motion, or order to show cause requesting modification has been given to the Child's parents, if they can be found, and to any relative or agency having custody of the Child.

(G) Agreement to Revisions by Stipulation

If the parties agree to a modification in an order of Physical Placement or Legal Custody and file a stipulation with the Tribal Court that specifies the agreed upon modification, the Tribal Court shall incorporate the term of the stipulation into a revised order of Physical Placement or Legal Custody unless the Court finds that the modification is not in the best interest of the Child.

(H) Enforcement of Physical Placement Orders

A parent who has been awarded periods of Physical Placement may file a motion to enforce the award if any of the following applies:

(I) The parent has had one or more periods of Physical Placement unreasonably denied by the other parent.

(2) The parent has had one or more periods of Physical Placement substantially interfered with by the other parent.

(3) The parent has incurred a financial loss or expenses as a result of the other person's intentional failure to exercise one or more periods of Physical Placement under an order allocating specific times for the exercise of periods of Physical Placement.

(I) Remedies

(1) If the Tribal Court finds that the responding party has intentionally and unreasonably denied the moving party one or more periods of Physical Placement or that the responding party has intentionally or unreasonably interfered with one or more of the moving party's periods of Physical Placement, the Tribal Court shall: (i) issue an order granting additional periods of Physical Placement to replace those denied or interfered with, and (ii) award the moving party reasonable costs and attorney fees for maintaining the action.

(2) The Tribal Court may also find the responding party in contempt of court if it finds that the responding party engaged in the behavior described above.

6.10. Relocating a Child's Residence

(A) Notice; Petition Required. In the absence of a signed stipulation by the parents agreeing otherwise, or if the Tribal Court had granted any periods of Physical Placement with a Child to both parents and one parent intends to relocate to establish a legal residence with the minor Child outside Tribal Lands or the State of Wisconsin, a distance of one hundred (100) miles or more from the other parent, or who intends to remove the minor Child from Tribal Lands or the State of Wisconsin for more than ninety
(90) days, must notify the other parent of such intent and provide a copy of the notice to the Clerk of the Tribal Court at least sixty (60) days prior to the date on which the move or Removal is planned, and petition the Tribal Court for permission for the Relocation.

(1) The petition must include a comprehensive Relocation plan, including the date(s), location, and reasons for the Relocation, and a proposed new placement schedule with the other parent (if applicable).

(2) The other parent may object to the Relocation, prior to or at the initial hearing on the petition. The Tribal Court may refer such disputes for mediation.

(3) The requirement to file a motion or seek Tribal Court approval for a Relocation under this section does not apply if the Child's parents already live more than one hundred (l 00) miles apart when the parent proposes to relocate and reside with the Child. If the parents already live more than one hundred (100) miles apart, the parent who intends to relocate with the Child shall serve written notice of intent to relocate on the other parent at least sixty (60) days prior to the Relocation. Such notice must include date of Relocation and parent's new address.

(B) Presumption and burden of proof. The Tribal Court must presume that continuing the Legal Custody and placement provided under the existing custody order is in the best interest of the minor Child. The parent seeking to move has the burden of proof by clear and convincing evidence that the move or Removal is in the Child's best interest.

6.11. Factors Considered by the Tribal Court for Relocations or Removals

(A) The Tribal Court shall determine whether modification of the Child Custody order to allow the move or Removal is in the best interest of the minor Child. In making this determination, the Tribal Court shall consider the following:

(1) The wishes of the Child's parent or parents, as stipulated, any parenting plan or any Legal Custody or Physical Placement proposal submitted to the Tribal Court.

(2) The wishes of the Child, which may be communicated by the Child or through the Child's guardian ad litem.

(3) The interaction and interrelationship of the Child with his or her parent or parents, siblings, and any other person who may significantly affect the Child's best interests.

(4) The amount and quality of time that each parent has spent with the Child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the Child in the future.

(5) The Child's adjustment to the home, school, religion, and community.

(6) The age of the Child and the Child's development and educational needs at different ages.

(7) Whether the mental or physical health of a party, minor Child, or other person living in a proposed custodial household negatively affects the Child's intellectual, physical, or emotional well-being.

(8) The need for regularly occurring and meaningful periods of Physical Placement to provide predictability and stability for the Child.

(9) The availability of public or private Child care services.

(10) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

(11) Whether each party can support the other party's relationship with the Child, including encouraging and facilitating frequent and continuing contact with the Child, or whether one party is likely to unreasonably interfere with the Child's continuing relationship with the other party.

(12) Whether there is evidence that a party engaged in abuse of the Child.

(13) Whether any of the following has a criminal record and whether there is evidence that any of the following has engaged in abuse of the Child or any other Child or neglected the Child or any other Child:

(i) A person with whom a parent of the Child has a dating relationship

(ii) A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household.

(14) Whether there is evidence of Intimate Partner Violence.

(15) Whether either party has or had a significant problem with alcohol or drug abuse.

(16) Such other factors as the Tribal Court may determine to be relevant.

(B) If the Tribal Court finds that a parent has engaged in a pattern or serious incident of Intimate Partner Violence, the safety and well-being of the Child and the safety of the parent who was the victim of the violence shall

be paramount concerns m determining Legal Custody and periods of Physical Placement.

6.12. Medical and Medical History Information

(A) In making an Order of Legal Custody, the Tribal Court shall order a parent who is not granted Legal Custody of a Child to provide to the Court medical and medical history information that is known to the parent. The Tribal Court shall share such information with the Child's health care provider, including:

(1) The known medical history of the parent providing the information.

(2) A report of any medical exam that the parent providing the information had within one year before the date of the order.

(B) Such infom1ation shall be kept confidential, unless in the opinion of the Child's health care provider the information may be relevant to the Child's medical condition.

6.13. Visitation Rights of Certain Persons

(A) Upon petition of a grandparent, great-grandparents, stepparents or any person who has maintained a relationship similar to a parent-Child relationship with the Child, including cultural or traditional relatives, the Tribal Court may grant reasonable visitation rights to the person, including at the pretrial hearing, if any, if the parents have notice of the hearing and the Tribal Court determines such visitation is in the best interest of the Child.

(1) The Tribal Court shall consider the wishes of each Child in making the dete1mination whether to grant the request.

(2) The Court may grant reasonable visitation rights to a grandparent if the grandparent has maintained a relationship with the Child or attempted to maintain a relationship with the Child but has been prevented from doing so by a parent who has Legal Custody of the Child.

(3) The Court may grant such visitation if the grandparent is not likely to act in a manner that is contrary to decisions that are made by a parent who has Legal Custody of the Child and that are related to the Child's physical, emotional, educational, or spiritual welfare.

(4) The Tribal Court must determine that such visitation is in the best interest of the Child.

(B) Any person who intentionally interferes with visitation rights granted under this section may be subject to prosecution for contempt of court.

§ 7. Child Support and Maintenance

7.1. Jurisdiction

(A) The Tribal Court is vested with the authority to hear all cases pertaining to the establishment, modification and enforcement of Child support obligations. When the Tribal Court approves a stipulation for Child support, or enters a judgment of Annulment, Divorce, or Legal Separation, or enters an order or a judgment in a paternity or Child support action, the Court may do any of the following:

(1) Order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a Child. The support amount must be expressed as a fixed sum.

(2) Assign which party, if either is eligible, will claim each Child as an exemption or is entitled to a Child tax credit and deduction for Federal and State income tax purposes.

(3) Assign as a support obligation responsibility for, and direct the manner of payment of, a Child's health care expenses.

(B) The Tribe maintains continuing jurisdiction pursuant to the provisions of Title 28, Part V, Chapter 115, Section l 738B of the U.S. Code, Full Faith and Credit for Child Support Orders Act.

(C) In a proceeding under this section, the Court may exercise personal jurisdiction over a non-resident individual, or the individual's guardian or conservator, if any of the following applies:

(1) The individual is personally served with a summons or other notice within the Reservation or on Tribal Lands.

(2) The individual submits to the jurisdiction of the Tribal Court, by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.

(3) The individual resided with the Child on the Reservation.

(4) The individual resided on the Reservation and provided prenatal expenses or support for the Child.

(5) The Child resides on the Reservation because of the acts or directive of the individual.

(6) The individual engaged in sexual intercourse on the Reservation and the Child may have been conceived by that act of intercourse.

(7) There is any other basis consistent with applicable Federal and Tribal law for the exercise of personal jurisdiction.

(8) The individual transacted business or performed an act within the Reservation leading to a civil action.

(9) The individual is alleged to be a Parent of or have a parental obligation to a Child that is enrolled or is eligible to be enrolled as a Member of the Community.

(10) The Non-Custodial Person is an employee of the Forest County Potawatomi Community.

7.2. Child Support General Procedures

(A) This section provides for all of the following proceedings:

(I) Establishment of an order for Child support.

(2) Modification of an order for Child support.

(3) Enforcement of a Child Support Order or an income-withholding order whether foreign or domestic.

(4) Enforcement of Child Support Order through contempt proceedings.

(5) Registration of an order for Child support of another jurisdiction for enforcement or modification as allowed by Title 28, Part V, Chapter 115, Section 1738B of the U.S. Code, Full Faith and Credit for Child Support Orders Act.

(B) Liability for past Child support shall be limited to the period back to the date of the filing of the action. In a proceeding for arrearages, a party must bring an action for establishment of arrearages on or before the Child reaches the age of eighteen (18).

7.3. Actions to Compel Child Support or Maintenance Payments

(A) If a person does not provide for the support and maintenance of his or her spouse or minor Child, any of the following may commence a Tribal Court action to compel a person to provide support and maintenance:

(1) The person's spouse;

(2) The person with Legal Custody of the Child;

(3) A non-legally responsible relative, for the purposes of this section defined as a relative who assumes responsibility for the care of a Child without Legal Custody, but is not in violation of a Tribal Court order;

(4) The Tribal Child Support Agency.

(B) The Tribal Court shall determine the amount, if any, that the person should reasonably contribute to the support and maintenance of the spouse or Child. The amount shall be paid as a fixed sum, unless the parties have stipulated to expressing the amount as a percentage of the payor's income

7.4. Child Support and Maintenance Payments

(A) All orders or judgments providing for Child support or temporary or permanent maintenance shall direct that the payments be made to the Family Services Division for the use of the person for whom the payments have been awarded.

(B) A party obtaining an order for Child support or maintenance payments shall promptly file the order, together with all pleadings in the action, with the Clerk of Court.

(C) Upon request, after the filing of an order or judgment or the receipt of an interim disbursement order, the Clerk of Court shall advise the Tribal Child Support Agency of the terms of the order or judgment within two
(2) Tribal business days after the filing of receipt. The Tribal Child Support Agency shall, within the time required by federal law, enter the terms of the order or judgment into the system of record.

(D) Except for overpayments, the Tribal Child Support Agency shall disburse, and take receipts for, the money received under the judgment or order in the manner required by federal regulations, unless the Tribal Child Support Agency is unable to disburse the monies because the monies were paid by check or other draft drawn upon an account containing insufficient funds. All moneys received or disbursed under this section shall be

entered in a record kept by the Tribal Child Support Agency. The record shall be open to inspection by the parties to the action, their attorneys, and the Tribal Court.

7.5. Age of Child Eligible for Support

The Tribal Court shall order either party or both to pay for the support of any Child of the parties who is less than eighteen (18) years old or **up** to nineteen (19) years old provided he or she is pursuing a fulltime course of instruction leading to the acquisition of a high school degree or its equivalent.

7.6. Initiating and Responding

All cases pertaining to the establishment, modification, or enforcement of support obligations and the determination of paternity, issued by a foreign jurisdiction, shall be initiated and/or referred by the Tribal Child Support Agency.

7.7. Procedure for Child Support Actions

(A) All Child support actions shall follow the Tribal Court Rules of Civil Procedure.

(B) An original action for Child support shall be commenced through a Summons and Petition.

7.8. Special Rules of Evidence

(A) The physical presence of a Parent in Court is not required for the establishment, enforcement or modification of a Child Support Order.

(B) Records maintained by the Tribal Child Support Agency in the ordinary course of the administration of the program are presumed to be true and accurate.

(C) A privilege against disclosure of communication between spouses does not apply in a proceeding under this ordinance.

7.9. Review by the Tribe

The Tribal Child Support Agency shall review the support obligation at least every thirty- three (33) months and, if appropriate, petition the Court for revision of the judgment or order with respect to the support obligation, or upon the request of any party.

7.10. Support Payments

The Court shall order all payment to be made through the Tribal Child Support Agency. The Tribal Child Support Agency shall disburse collections in accordance with the Forest County Potawatomi Community Title IV-D Plan.

§ 8. Enforcement and Modification of Child Support Orders After Registration

8.1. Registration of Order for Enforcement

A support order or an income-withholding order issued by a tribunal of jurisdiction may be registered in the Tribal Court.

8.2. Procedure to Register Order for Enforcement

(A) A support order or income-withholding order of another jurisdiction may be registered in the Tribal Court by sending all of the following documents and information to the Tribal Court:

(I) A letter of transmittal requesting registration and enforcement.

(2) Two (2) copies, including one certified copy of all orders to be registered and 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 any of the following that are known:

(i) The obligor's address and social security number.

(ii) The name and address of the obligor's employer and any other source of income of the obligor.

(iii) A description and the location of property of the obligor in this state not exempt from execution.

(5) Except for exceptional circumstances under which the obligee's name should not be disclosed, the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(B) On receipt of a request for registration, the Tribal Court shall cause the order to be filed, together with one copy of the documents and information, regardless of their form.

(C) A petition or comparable pleading seeking a remedy that must be affirmatively sought may be filed at the same time as the request for registration, or later. The pleadings must specify the grounds for the remedy sought.

8.3. Effect of Registration for Enforcement

(A) A support order or income-withholding order issued in another jurisdiction is registered when the order is filed in the Tribal Court.

(B) A registered order issued in another jurisdiction is enforceable in the same manner and is subject to the same procedures as an order issued by the Tribal Court.

(C) Except as otherwise provided in this Ordinance, the Tribal Court shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

8.4. Choice of Law

(A) The law of the issuing jurisdiction governs the nature, extent, amount and duration of current payments and other obligations of support.

(B) In a proceeding for arrearages, the statute of limitations under the laws of the State of Wisconsin is incorporated herein and applies.

8.5. Notice of Registration of Order

(A) Whenever a support order or income-withholding order issued in another jurisdiction is registered, the Tribal Court shall notify the non-registering party by personal service or certified mail. 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 non-registering party of all of the following:

(1) That a registered order is enforceable as of the date of the registration in the same manner as an order issued by the Tribal Court.

(2) That a hearing to contest to the validity or enforcement of the registered order must be requested within twenty (20) days after the date of mailing or personal service of the notice.

(3) That failure to contest the validity of 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.

(4) The amount of any arrearages.

8.6. Procedures to Contest Validity or Enforcement of Registered Order

(A) A non-registering party seeking to contest the validity or enforcement of a registered order in the Tribal Court shall request a hearing within twenty (20) days after the date of mailing or personal service of notice of the registration. The non-registering 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.

(B) If the non-registering 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 non-registering party requests a hearing to contest the validity or enforcement of a registered order, the Tribal Court shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

8.7. 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:

(I) That the issuing tribunal lacked personal jurisdiction over the contesting party.

(2) That the order was obtained by fraud.

(3) That the order has been vacated, suspended, or modified by a later order.

(4) That the issuing tribunal has stayed the order pending appeal.

(5) That there is a defense under Tribal law to the remedy sought.

(6) That full or partial payment has been made.

(B) If a party presents evidence establishing a full or partial defense under subsection (A) above, the Tribal Court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, or issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under Tribal law.

(C) If the contesting party does not establish a defense under subsection (A) above, to the validity or enforcement of the order, the Tribal Court shall issue an order confirming the order.

8.8. 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.

8.9. Effect of Registration for Modification

The Tribal Court has jurisdiction to enforce and to modify a Child support order of another jurisdiction registered in Tribal Court, in the same manner as if the order had been issued by the Tribal Court, but the registered order may be modified only if the following requirements have been met.

(A) All the individual parties reside on the Reservation or Tribal Lands; or

(B) The Child, the individual obligee, and the obligor does not reside in the issuing jurisdiction; a petitioner who is a nonresident of the Reservation or Tribal Lands seeks modification; and the respondent is subject to the personal jurisdiction of the Tribal Court.

§ 9. Child Support Guidelines

9.1. Duty to Comply

The Tribal Court shall comply with the State of Wisconsin Child support percentage guidelines subject to §9.2, unless it makes a written finding that deviation is appropriate or equitable, and subject to the following restrictions:

(A) At no point may the Tribal Court order Child support in excess of fifty percent (50%) of an enrolled Tribal Member's future payments under the Revenue Allocation Ordinance.

(B) The obligee household shall be given credit for all biological Child(ren) in the home, and any Child support ordered will be contingent upon existing Child support orders for the same obligee.

9.2. Equal Distribution of Child Support

All Child support shall be equally distributed amongst the number of a Payor's biological Child(ren).

(A) Shared Placement Cases. The shared-placement formula may be applied when both of the following conditions are met:

(1) Both Parents have court-ordered periods of placement of at least twenty-five (25%) or ninety-two (92) days a year. The period of placement for each Parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the Parent and dividing that number by 365. The combined periods of placement for both Parents shall equal 100%.

(2) Each Parent is ordered by the Court to assume the Child's basic support costs in proportion to the time that the Parent has placement of the Child.

(B) Split Placement Cases. A split placement case is one in which the parties have two or more Children and each Parent has placement of one or more of the Child(ren). The Child support obligation is determined by calculating what each Parent's Child support would be and subtracting them from one another.

(C) Seasonal or Non-Recurring Income. Court ordered Child support obligations shall be based on the Parent's Gross Income of the previous year and paid equally over a twelve (12) month period. Minors' Trust payments or distributions shall be excluded from the requirements of this section.

9.3. Interest on Arrearage

(A) The Court shall order that a party ordered to pay Child support under this section shall pay simple interest at a rate of 0.005 percent per month on any amount in arrears that is equal to or greater than the amount of Child support due in one month. If a party no longer has a current obligation to pay Child support, interest at a rate of 0.005 percent per month shall accrue on the total amount of Child support in arrears, if any. The Tribal Child Support Agency shall apply all payments received for Child support as follows:

(1) First, to payment of Child support due within the calendar month during which the payment is received.

(2) Second, to payment of unpaid Child support due before the payment is received.

(3) Third, to payment of interest accruing on unpaid Child support.

(B) The Executive Council shall be authorized to adjust this interest rate upon recommendation by the Tribal Child Support Agency.

9.4. Deviation From Standard

Upon request by a party, the Court may modify the amount of Child support payments if, after considering the following factors, the Court finds by the greater weight of the credible evidence that use of the percentage standards is unfair to the Child or any of the parties:

(A) The financial resources of the Child.

(B) The financial resources of both Parents.

(C) Maintenance received by either party.

(D) The needs of each party in order to support himself of herself at a level equal to or greater than that established under 42 U.S.C. 9902 (2) or a successor.

(E) The needs of any person, other than the Child, whom either party is legally obligated to support.

(F) If the parties were married, the standard of living the Child would have enjoyed had the Marriage not ended in Annulment, Divorce, or Legal Separation.

(G) The desirability that the custodian remain m the home as a full-time Parent.

(H) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(I) The award of substantial periods of Physical Placement to both Parents.

(J) Extraordinary travel expenses incurred in exercising the right to periods of Physical Placement.

(K) The physical, mental, and emotional health needs of the Child, including any costs for related health insurance.

(L) The Child's educational and cultural needs.

(M) The tax consequences to each party.

(N) The best interests of the Child.

(0) The earning capacity of each Parent, based on Parent's education, training, and work experience, and the availability of work in or near the Parent's community.

(P) Any other factors which the Court in each case determines are relevant.

9.5. Health Care/Extraordinary Expenses

(A) The Tribal Court may require one or both Parents to obtain and maintain health care coverage that is available to them as a benefit of employment and for the benefit of the Child until he or she has attained the age of eighteen (18) years or up to nineteen (19) years old provided he or she is pursuing a fulltime course of instruction leading to the acquisition of a high school degree or its equivalent. In cases where extraordinary health care expenses are not covered by private health insurance, the Tribal Court may require the Parents to divide the cost of uninsured and unreimbursed medical expenses.

(B) In assigning responsibility for a Child's health care expenses, the Tribal Court shall consider whether a Child is covered under a parent's health insurance policy or plan at the time the Court approves a stipulation for Child support, enters a judgment of Annulment, Divorce, or Legal Separation, or enters an order or a judgment in a paternity action, the availability of health insurance to each parent through an employer or other organization, the extent of coverage available to a Child, and the costs to the parent for the coverage of the Child.

(C) The Tribal Court may require a parent to initiate or continue health care insurance for a Child. If a parent is required to do so, he or she shall provide copies of necessary program or policy identification to the custodial parent and is liable for any health care costs for which he or she receives direct payment from the insurer. If the Child is eligible for enrollment in the Forest County Potawatomi Community, but the parent refuses to seek enrollment for the Child in an attempt to frustrate the purposes of this section, the Tribal Court may order the parent to pay for adequate non-Tribal health insurance for the Child.

(D) This section shall not be construed to limit the authority of the Tribal Court to enter or modify support orders containing provisions for payments of medical expenses, medical costs, or insurance premiums that are in addition to, and not inconsistent with, this section.

9.6. Health Insurance Identification Card

The Tribal Court shall order a parent who is required to provide health insurance coverage for a Child to provide to the other parent a health insurance identification card evidencing the Child's health insurance coverage.

(A) If the parent ordered to provide a health insurance identification card for the Child fails to do so, the other parent may attempt to obtain a card for the Child by presenting to the health insurance provider or to the employer through which the insurance is provided a copy of the order requiring the provision of a card.

(B) If the other parent is unable to obtain a health insurance identification card for the Child, the intentional failure to comply with the order to provide the card by the parent so ordered constitutes a contempt of court.

9.7. Income Withholding and Assignment for Health Care Expenses

(A) In directing the manner of payment of a Child's health care expenses, the Tribal Court may order that payment, including payment for health insurance, premiums, be withheld from income and sent to the appropriate health care insurer, provider, or plan, or sent to the Tribal Child Support Agency for disbursement to the person for whom the payment has been awarded if that person is not a health care insurer, provider, or plan. If the Tribal Court orders income withholding and assignment for the payment of health care expenses, the Tribal Court or Tribal Child Support Agency shall send a notice of assignment. The Tribal Child Support Agency and Accounting Department shall keep a record of all monies received and disbursed for health care expenses that are directed to be paid to the Tribal Child Support Agency.

(B) If the Tribal Court orders a parent to initiate or continue health insurance coverage for a Child under a health insurance policy that is available to the parent through an employer or other organization but the Tribal Court does not specify the manner in which payment of the health insurance premiums shall be made, the Tribal Court or the Tribal Child Support Agency may provide notice of assignment for the withholding from income of the amount necessary to pay the health insurance premiums. The notice of assignment may be sent with or included as part of any other notice of assignment. A person who receives a notice of assignment under this paragraph shall send the withheld health insurance premiums to the appropriate health care insurer, provider, or plan.

9.8 In-Kind Support

(A) When the Court finds that it is in the best interest of the Child, the Court may order a Parent to provide in-kind services or goods in lieu of all or

part of the current Child support obligation. In-Kind support may not be used to offset assigned governmental obligations, such as assigned TANF IV-E Kinship Care, etc. In-Kind services include, but are not limited to the following:

(1) Providing items of a subsistence value such as fish, game, and rice.

(2) Firewood, clothing, home repair, and vehicle repair that benefit the household.

(3) Services and/or participation of the Child and Parent in cultural and traditional events.

(4) Participation in services and resources that meet the emotional, spiritual, or financial needs of the Child which are culturally beneficial.

(B) Both parties must agree on the terms and conditions of In-Kind Support. The Court shall indicate in its order the terms and requirements for the delivery of in-kind services and place a dollar value on the services or resources. The Court may not apply the services and resources as a set-off against future Child support obligations.

9.9. Effect of Physical Placement Violation

Violation of Physical Placement rights by the custodial parent does not constitute reason for failure to meet Child support obligations.

§ 10. Child Support Financial Requirements

10.1. Consideration of Financial Information

In determining Child support payments, the Court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported to the Tribal Child Support Agency.

10.2. Additional Costs and Fees

(A) The Court may order the Parent to pay for:

(1) Court costs.

(2) Cost for service of process.

(3) Tribal Child Support Agency application fees.

(4) Fees associated with the costs for Court ordered services or counseling.

(5) Costs for expert witnesses.

(6) Attorney fees: All attorney's fees shall be reduced to judgment in the attorney's name.

(7) Guardian ad Litem fees.

(8) Any other cost allowed for under this ordinance, the Contempt of Court Ordinance, or the Court's Rules of Civil Procedure as deemed appropriate and necessary by the Court.

10.3. Liability for Past Support

Liability for past support of the Child shall be limited to the period back to the date of the filing of the action, motion, or order to show cause requesting suppo1t is filed in the action for support, unless a party shows, to the satisfaction of the Tribal Court by clear and convincing evidence, all of the following:

(A) That he or she was induced to delay commencing the action by any of the following:

(1) Duress or threats;

(2) Actions, promises or representations by the other party upon which the party relied.

(3) That after the inducement ceased to operate, he or she did not unreasonably delay in commencing the action.

(4) In no event may liability for past support of the Child be imposed for any period before the birth of the Child.

(B) The Tribal Court may not order past due support if the obligor presents clear and convincing evidence that the oblige has forgiven such prior past due support.

§ 11. Maintenance

11.1. Factors to Consider for Granting Spousal Maintenance

(A) Upon a judgment of Annulment, Divorce, or Legal Separation, the Court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time, after considering all of the following:

(1) The length of the Marriage is at least ten (10) years or under Extraordinary Circumstances as determined by the Tribal Court.

(2) The age and physical and emotional health of the parties.

(3) Any division of property made under this ordinance.

(4) The educational level of each party at the time of Marriage and at the time the action is commenced, including any contribution by one party to the education, training, or increased earning power of the other.

(5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for Child(ren) and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

(6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the Marriage, and, if so, the length of time necessary to achieve this goal.

(7) The tax consequences to each party.

(8) Any mutual agreement made by the parties before or during the Marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, if the repayment has not been made, or any mutual agreement made by the parties before or during the Marriage concerning any arrangement for the financial support of the parties.

(9) The contribution by one party to the education, training or increased earning power of the other.

(10) Such other factors as the Court may, m each individual case, determine to be relevant.

(B) Unless already terminated for another reason, maintenance granted under this section terminates upon the death of the payee or payor, whichever occurs first, or upon the remarriage of the payee.

(C) Any Tribal Court order providing for spousal maintenance shall include a requirement that the payor of the spousal maintenance notify the payee,

within ten (10) days, of any change in employer or any substantial change in the amount of his/her income, including receipt of any bonuses, which would affect the payor's ability to pay spousal maintenance. A change in the payor's employment, income, or payor's receipt of a bonus will not change the amount of the spousal maintenance due unless the payor or payee files a complaint requesting a change in the spousal maintenance order and the Tribal Court determines a change is required considering the factors under Section (A).

(D) A spousal maintenance order may be time limited and/or provide for an automatic annual adjustment for inflation.

(E) The Tribal Court may include in any order awarding spousal maintenance or may on its own motion or upon motion by either party, modify a spousal maintenance order to include a requirement that the payments be made to the person entitled to receive the payments or to the Clerk of the Tribal Court for remittance to the person entitled to receive the payments. The Clerk of the Tribal Court and the Accounting Department shall maintain records listing the amount of a spousal maintenance payment made, the date when payments are required to be made, and the names and addresses of the parties affected by the order. The parties affected by the order shall inform the Tribal Court of any change of address or of other conditions that may affect the administration of the order.

§ 12. Substantial Change in Circumstances for Child Support or Maintenance

12.1. Revisions for Judgments or Orders

(A) A revision under this section of a judgment or order as to the amount of Child support or maintenance may be made only upon a finding of substantial change in circumstances.

(B) In an action under this section to revise a judgment or order with respect to Child support or maintenance, the Tribal Court is not required to make a finding of substantial change in circumstances in order to change payments originally expressed as a percentage.

(C) In an action under this section to revise a judgment or order with respect to an amount of Child support, any of the following may constitute a substantial change of circumstances sufficient to justify revision of the judgment or order:

(l) A change in the obligated Parent's Gross Income, evidenced by information received by the Tribal Child Support Agency from a change in Child support, spousal support, the establishment of paternity or by other information, from the obligated Parent's

Gross Income determined by the Court in its most recent judgment or order for Child support, including a revision of a Child Support Order under this section.

(2) A change in the Physical Placement of the Child.

(3) A change in the needs of the Child.

(4) A change in a Parent's earning capacity.

(5) Any other factor that the Court determines is relevant.

(6) Failure of the Parent to timely furnish financial disclosure upon request.

12.2. Change in Cost of Living

(A) In an action under this section to revise maintenance payments, a substantial change in the cost of living for either party or as measured by the Federal Bureau of Labor Statistics may support a revision in the amount of maintenance, except that a change in an obligor's individual cost of living is not by itself sufficient if payments are expressed as a percentage of income.

(B) Revisions in Child support or maintenance payments may only be prospective, except to correct previous errors in calculations.

(C) The Tribal Court may grant credit to the payor of Child support or maintenance payments who can show that he or she has made the following payments:

(1) By documentary evidence, payments made directly to payee by check or money order for Child support that were not intended to be a gift to the Child(ren);

(2) By documentary evidence, for periods during which unpaid support accrued, that the Child received benefits based on the payor's entitlement to federal disability insurance benefits. Any credit granted shall be limited to the amount of unpaid support that accrued during the period for which benefits were paid; and

(3) By a preponderance of the evidence, the payor proves that the Child(ren) lived with the payor, with the agreement of the payee, for more than 60 days beyond a court-ordered period of Physical Placement.

12.3. Remarriage: Vacating Maintenance Order

After a final judgment requiring maintenance payments has been rendered and the payee has remarried, the Tribal Court shall, on application of the payor with notice to the payee and upon proof of the payee's remarriage, or upon receiving notice from the payee of the payee's remarriage, vacate the order requiring the maintenance payments.

12.4. Waiver of Maintenance Payments

A court may not revise or modify a judgment or order that waives maintenance payments for either party or a judgment or order with respect to final division of property.

§ 13. Paternity

13.1. Purpose

The purpose of this section is to ensure a Child's legal interest in Child support and other Tribal benefits.

13.2. Jurisdiction

(A) Once the Court has entered a paternity finding, it maintains continuing, exclusive jurisdiction over the parties.

(B) In a proceeding under this ordinance, the Court may exercise personal jurisdiction over a non-resident individual, or the individual's guardian or conservator, if any of the following applies:

(1) The individual is personally served with a summons or other notice within the Reservation.

(2) The individual submits to the jurisdiction of the Tribal Court, by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.

(3) The individual resided with the Child on the Reservation.

(4) The individual resided on the Reservation and provided prenatal expenses or support for the Child.

(5) The Child resides on the Reservation as a result of the acts or directives of the individual.

(6) The individual engaged in sexual intercourse on the Reservation and the Child may have been conceived by that act of intercourse.

(7) The individual transacted business or performed an act within the Reservation leading to a civil action.

(8) The individual is alleged to be a parent of or to have a parental obligation to a Child that is enrolled or is eligible to be enrolled as a Member of the Community.

(9) The Payor is an employee of the Forest County Potawatomi Community.

(10) There is any other legal basis for the exercise of personal jurisdiction.

(C) The Tribe maintains continuing jurisdiction pursuant to the provisions of Title 28, Part V, Chapter 115, Section 1738B of the U.S. Code, Full Faith and Credit for Child Support Orders Act.

13.3. Procedure for Paternity

(A) Every petition to establish paternity, and every Voluntary Paternity Acknowledgement Form shall be subject to independent Genetic Testing to prove paternity by order of Tribal Court.

(B) A paternity petition may be joined with an action for Child support.

(C) All Tribal Court proceedings involving paternity and access to paternity records shall be closed to any person other than those necessary to the proceeding.

(D) Upon a finding 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 an existing order so provides, or if the Tribal Child Support Agency makes a recommendation, the Tribal Court shall order that the address of the Child or party or any other identifying information not be disclosed in a pleading or other document filed in a proceeding under this ordinance.

(E) All requests for assistance with the determination of paternity, by a foreign jurisdiction, shall be referred to the Tribal Child Support Agency.

13.4. Who May File a Paternity Action

Any of the following persons may file a paternity action, including an action or motion for declaratory judgment, for the purpose of determining the paternity of a Child or for the purpose of rebutting the presumption of paternity:

(A) The Child's biological mother.

(B) A male presumed to be, or alleging himself to be, the father of the Child.

(C) A personal representative of a person specified under (A) and (B) if that person has died or is incapacitated.

(D) The legal custodian or physical custodian of the Child.

(E) The Tribal Child Support Agency.

(F) A Guardian ad Litem appointed for the Child.

(G) The Tribal Prosecutor.

13.5. Contents of the Petition

(A) The petition shall state:

(1) Name and date of birth of the Child (if born);

(2) That the mother is pregnant if the Child is unborn;

(3) The name of any alleged father;

(4) Whether or not an action by any of the parties to determine the paternity of the Child or rebut the presumption of paternity of the child has at any time been commenced or is pending before Tribal Court or elsewhere.

(B) If a paternity judgment has been rendered or dismissed in any court, the petition shall state the name of the Court that rendered the judgment or dismissed the action, and the date and place the judgment was granted, if known.

(C) The petition shall also give notice of a party's right to request a Genetic Test.

13.6. Procedure for Establishing Paternity; Exceptions

No order or temporary order may be entered for Child support, Legal Custody, or Physical Placement against any alleged father until the father is adjudicated to be the Child's father by final order or judgement of a court of competent jurisdiction or is proven to be the Child's father to the satisfaction of Tribal Court as a result of Genetic Testing.

13.7. Voluntary Paternity Acknowledgement

(A) A statement acknowledging paternity that is on file with the Tribe, another tribe or state registrar, after the last day on which a person may timely rescind the statement, shall not be conclusive determination in Tribal Court, but shall be subject to Genetic Testing which shall be of the same effect as a judgment of paternity.

(B) For any voluntary acknowledgment of paternity made in another jurisdiction, the Court shall order Genetic Testing, unless the matter was fully adjudicated and is part of a final order issued by the jurisdiction in question.

13.8. Rescission of Voluntary Paternity Acknowledgment Form

Notwithstanding the rescission requirements for the State, or any other jurisdiction, within sixty (60) days from the filing of a Voluntary Paternity Acknowledgment Form made in another jurisdiction, if a written statement requesting a rescission of the Voluntary Paternity Acknowledgment Form is filed with the Tribal Clerk of Court, the Tribal Court shall order a Genetic Test. All orders previously imposed shall remain in effect pending the results of the Genetic Test.

13.9. Voiding Voluntary Determination

If the Tribal Court determines that the male is not the father of the Child, the Court shall vacate any order with respect to the male in question. The Tribal Court shall notify the state registrar to remove the male's name as the father of the Child from the Child's birth record. No paternity action may thereafter be brought against the male with respect to the Child.

13.10. Orders When Paternity Acknowledged

In an action to establish paternity, if the persons or adjudication of the parents by a court of competent jurisdiction who signed and filed the statement acknowledging paternity as parents of the Child had notice of the hearing, the Tribal Court may make an order that contains all of the following provisions:

(A) Orders for the Legal Custody of and periods of Physical Placement with the Child.

(B) An order requiring either or both of the parents to contribute to the support of any Child of the parties who is less than eighteen (18) years old.

(C) A determination as to which parent, if eligible, shall have the right to claim the Child as an exemption for Federal and State tax purposes.

(D) If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the Court may modify

the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

(E) At the Tribal Court's discretion, an order requiring either or both parties to pay or contribute to the costs of the guardian ad Iitem fees and other costs.

(F) An order requiring either party to pay or contribute to the attorney fees of the other party.

§ 14. Genetic Verification

If the father and mother of a non-marital Child enter into a lawful Marriage or a Marriage which appears and they believe is lawful, except where the parental rights of the mother were terminated before either of these circumstances, the Child becomes a marital Child, is entitled to a change in birth record, and shall enjoy all of the rights and privileges of a marital Child as if he or she had been born during the Marriage of the parents.

14. l. Genetic Testing

For all determinations of Paternity, the Court shall require the Child, mother, any male for whom there is probable cause to believe that he had sexual intercourse with the mother during a possible time of the Child's conception, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to Genetic Tests. Probable cause of sexual intercourse during a possible time of conception may be established by a sufficient petition or affidavit of the Child's mother or an alleged father, filed with the Court, or after an examination under oath of a party or witness, when the Court determines that an examination is necessary.

14.2 Testing By Qualified Expert

The Genetic Tests shall be performed by an expert qualified as an examiner of genetic markers present on the cells of the specific body material to be used for the tests, when the Tribe contracts for such purposes. A report completed and certified by the expe11 stating Genetic Test results and the statistical probability of the alleged father's paternity based upon the Genetic Tests is admissible as evidence without expert testimony and may be entered into the record at the trial or any pretrial hearing if all of the following apply:

(A) At least five (5) days before the trial or pretrial hearing, the party offering the report files it with the Court and notifies all other parties of that filing.

(B) At least five (5) days before the trial or pretrial hearing, the Tribal Child Support Agency notifies the alleged father of the results of the Genetic Tests and that he may object to the test results by submitting an objection in writing to the Court no later than the day of the hearing.

(C) The alleged father, after receiving the notice, does not object to the test results in the manner provided in the notice.

14.3. Rebuttable Presumption

If Genetic Tests ordered show that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0% or higher, the alleged father shall be rebuttably presumed to be the Child's parent.

14.4. Independent Tests

The Court shall inform all parties that they have a right to request an independent Genetic Test. The Court, upon request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers present on the cells of the specific body material to be used for the tests. Additional tests performed by other experts of the same qualifications may be ordered by the Court at the request of any party. In all cases, the Court shall determine the number and qualifications of the experts.

14.5. Tests Excluding Paternity, Refusal to Submit

Genetic test results excluding an alleged father as the father of the Child are conclusive evidence of non-paternity and the Court shall dismiss any paternity action with respect to that alleged father. Testimony relating to sexual intercourse or possible sexual intercourse of the mother with any person excluded as a possible father, as a result of a Genetic Test, is inadmissible as evidence. Refusal of a party to submit to a Genetic Test shall be disclosed to the Tribal Court. Refusal to submit to a Genetic Test ordered by the Tribal Court is a contempt of the Tribal Court for failure to produce evidence. If the action was brought by the Child's mother but she refuses to submit herself or the Child to Genetic Tests, the action shall be dismissed.

14.6. Calling Certain Witnesses, Notice

Any party calling a male witness for the purpose of testifying that he had sexual intercourse with the mother at any possible time of conception shall provide all other parties with the name and address of the witness before or at any pretrial hearing. If a male witness is produced at the hearing for the purpose stated in this subsection but the party calling the witness failed to provide the 20-day notice, the Tribal Court may adjourn the proceeding for the purpose of taking a Genetic Test of the witness prior to hearing the testimony of the witness if the Tribal Court finds that the party calling the witness acted in good faith.

§ 15. Presumptions

15.1. Marital or Non-marital

(A) Whenever it is established that a Child was born to a woman while she was the lawful wife of a specified man, any party asserting that the

husband was not the father of the Child shall have the burden of proving that assertion by clear and convincing evidence. In all such actions or proceedings, the husband and the wife are competent to testify as witnesses to the facts. The Tribal Court in such cases shall appoint a Guardian ad Litem to appear for and represent the Child whose paternity is questioned. A court ordered Genetic Test showing that a man other than the husband is not excluded as the father of the Child, and that the statistical probability of the man's parentage is 99.0% or higher, constitutes clear and convincing evidence of the assertion even if the husband is unavailable to submit to Genetic Tests.

(B) The mother of the Child shall not be excused or privileged from testifying fully in any hearing to determine whether the Child is a marital or non- marital Child when ordered to testify by the Tribal Court.

(C) If the Tribal Court adjudges a Child to be a non-marital Child, the Tribal Child Support Agency shall report the facts to the State registrar for the issuance of a new birth certificate if there is an active paternity and Child support case.

15.2. Paternity Based On Marriage of the Parties

(A) A man is presumed to be the natural father of a Child if any of the following applies:

(1) He and the Child's natural mother are or have been married to each other and the Child is conceived or born after Marriage and before the granting of a decree of Legal Separation, Annulment, or Divorce between the parties.

(2) He and the Child's natural mother were married to each other after the Child was born but he and the Child's natural mother had a relationship with one another during the period of time within which the Child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the Child.

(8) A presumption under this section is rebutted by results of a Genetic Test that show that a man other than the man presumed to be the father is not excluded as the father of the Child and that the statistical probability of the man's parentage this section is unavailable to submit to Genetic Tests.

15.3. Presumption as to Time of Conception

In any paternity proceeding, conception of the Child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the Court.

15.4. Agreements Not A Bar To Action

Regardless of its terms, an agreement made, other than an agreement approved by the Tribal Court between an alleged or presumed father and the mother or Child, does not bar an action under this section. Whenever the Tribal Court approves an agreement in which one of the parties agrees not to commence an action under this section, the Tribal Court shall first determine whether or not the agreement is in the best interest of the Child. The Tribal Court shall not approve any provision waiving the right to bring an action under this section if this provision is contrary to the best interests of the Child.

15.5. Stay If Action Before Birth

If an action under this section is brought before the birth of the Child, all proceedings shall be stayed until after the birth, except for preservation of evidence upon the order of the Tribal Court.

15.6. Orders When Paternity Established

Upon filing of an order from a foreign jurisdiction in which Paternity has been adjudicated or a determination by Tribal Court has been made, the Tribal Court shall issue an order that contains all of the following provisions:

(A) An order for Legal Custody and periods of Physical Placement m accordance with this ordinance.

(B) If so requested by either party, an order requiring either or both parents to contribute to the support of the Child.

(C) A determination as to which parent, if eligible, has the right to claim the Child as an exemption for tax purposes.

(D) An order establishing the amount of the father's obligation to pay or contribute to reasonable expenses of the mother's pregnancy and the Child's birth. The amount shall not be more than one-half of the actual expense. The Tribal Court order must be based on the father's ability to pay, and the Tribal Court may consider the father's income, insurance coverage and the mother's income.

(E) An order requiring either or both parties to pay or contribute to the costs of the guardian ad litem fees and other costs.

(F) At the Tribal Court's discretion, an order requiring either party to pay or contribute to the attorney fees of the other party.

15.7. Change of Child's Name

(A) Upon request of both parents, the Tribal Court shall include in the judgment or order determining paternity an order changing the name of the Child to a name agreed upon by the parents.

(B) Except as provided in subsection (A), the Tribal Court may include in the judgment or order determining paternity an order changing the surname of the Child to a surname that consists of the surnames of both parents separated by a hyphen or, if one or both parents have more than one surname, of one of the surnames of each parent separated by a hyphen, if all of the following apply:

(I) Only one parent requests that the Child's name be changed, or both parents requests that the Child's name be changed but each parent requests a different name change; and

(2) The Tribal Court finds that such a name change is in the Child's best interest.

(C) All costs associated with this section shall be covered by both parents of the Child.

15.8. When Mother Not Compelled to Testify

(A) Whenever the Tribe brings an action to determine paternity, the natural mother of the Child may not be compelled to testify about the paternity of the Child if it has been determined that the mother has good cause for refusing to cooperate in establishing paternity as provided in applicable federal law and regulations.

(B) Nothing in the statement above shall prevent the Tribe from bringing an action to determine paternity where evidence other than the testimony of the mother may establish paternity of the Child.

15.9. Artificial Insemination

If, under the supervision of a licensed physician and with the consent of the spouse, a spouse is inseminated artificially with semen donated by a man not her husband, the spouse of the mother at the time of the conception of the Child shall be the natural parent of a Child conceived. The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's spouse is not the natural father of a Child conceived, bears no liability for the support of the Child, and has no parental rights with regard to the Child.

15.10. Dismissal; Best Interest of Child

The Tribal Court may dismiss an action to establish the paternity of a Child if the Court has not yet ordered the parties to submit to Genetic Testing, and the Tribal Court determines that a judicial determination of whether a specific male is the father of the Child is not in the best interest of the Child. In making such a determination, the Tribal Court need not be guided simply by biological factors but may be guided by the actual relationship with the Child where the parent assumes responsibility for the Child's physical, emotional, and financial needs over a period of time.

§ 16. Recognition of Foreign Divorces

(A) Except for provisions regarding Child Custody and Child support, the Tribal Court shall recognize and enforce foreign Divorce orders pursuant to and to the extent authorized by the Forest County Potawatomi Community Foreign Judgment Enforcement Ordinance.

(B) All matters regarding the judgment of a foreign court on Child Custody and Child support shall be governed by §7.

§ 17. Default and Stipulated Judgments

17.1. Judgment When Petitioner Fails to Appear or is Unable to Proceed

If a petitioner, other than the Tribe, fails to appear and plead on the date set for the pretrial hearing or trial or if the Tribe is the petitioner and is unable to proceed on such date, the Tribal Court may enter a judgment for the respondent dismissing the action, on the motion of the respondent or upon its own motion.

17.2. Judgment When Mother Fails to Appear

The Tribal Court may enter an order adjudicating the alleged father, or male alleging that he is the father, to be the father of the Child if the mother of the Child fails to appear at the first appearance, to a scheduled Genetic Test, to a pretrial hearing, or trial if genetic evidence exists to establish the male as the father of the Child.

§ 18. Nonpayment

If maintenance or Child support payments are not paid to the appropriate agency at the time provided in the judgment or order, the Tribal Child Support Agency with the assistance of the Tribal Prosecutor (if necessary) shall take proceedings to secure the payment of the sum, including enforcement by contempt proceedings. Copies of any order issued to compel the payment shall be mailed to the attorney, if any, who represented each party when the Child support and/or maintenance payments were awarded. The Tribal Court may also impose reasonable costs of collection.

§ 19. Forms

The Tribal Court may from time-to-time adopt forms for use by parties in proceedings under this Ordinance.

Legislative History for Forest County Potawatomi Family Law Ordinance:

Recommended by the Ordinance Department……..…..0l/24/2019
Approved by Executive Council……..02/06/2019
Approved by General Council. 02/09/2019

This Ordinance amends and supersedes the following Child Support Ordinance:
Enacted by General Council Resolution No. GC 009-2000…….....8/12/2000
Amended by GC Resolution No. GC005-2026, Section 5, "Annulment, Divorce,"….....02/09/2026