



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Posting of Ordinance No. 308, Amending the Domestic Relations Code of the White Mountain Apache Tribe)

WHEREAS, Pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council (“Council”) may enact ordinances that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and

WHEREAS, The Office of the Attorney General has this day proposed revisions to the Domestic Relations Code, as set forth in Ordinance No. 308, attached hereto; and

WHEREAS, Pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, the proposed amendments shall be posted in each district for at least ten (10) days before final action by the Council; and

WHEREAS, The Council has reviewed Ordinance No. 308 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 308 to be in the best interest of the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance 308, which amends the Domestic Relations Code, attached hereto, is hereby recommended for posting by the Tribal Council.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe, as follows:

1. The Tribal Council Secretary is hereby authorized and directed to post this resolution and Ordinance No. 308, in each district for at least ten (10) days before final action by the Council. In addition, notices of the proposed ordinance shall be sent in the form of a press release to KNNB-FM and the Apache Scout.
2. Any and all comments concerning Ordinance No. 308 proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council and the Attorney General’s Office and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action. Proof of posting should include start and end date of posting period, and locations of posting.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairwoman, or in her absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **OCTOBER 6, 2021** duly adopted by a vote of **ELEVEN** for, **ZERO** against, and **ZERO** abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).



10/7/2021

Gwendena Lee-Gatewood, Chairwoman

Date



10-7-2021

Doreen T. Numkena, Tribal Secretary

Date

**ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 308, amending the White Mountain Apache Domestic Relations Code, in its entirety:

DOMESTIC RELATIONS CODE

Green Section = Cut and moved from another part of the Code (renumbering and/or alphabetical order)

Red Section = New language inserted

~~Red-Strikethrough~~ = Deleted from Code

Yellow/Purple/Red/Blue Highlights = Notes or clarification from various reviewers

WHITE MOUNTAIN APACHE DOMESTIC RELATIONS CODE

[NOTE: Except as otherwise noted, the Domestic Relations Code was derived from Ordinance No. 96, enacted May 1, 1974; amended in 1987 by Resolution Nos. 01-1987-31 and 02-1987-61 but no Ordinance Number was assigned; and amended by Ordinance No. 261, enacted September 9, 2015.]

CHAPTER ONE MARRIAGE ~~AND DIVORCE~~

SECTION 1.13 MARRIAGE

Marriage is a personal relation arising out of civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage but must be followed by a solemnization.

SECTION 1.24 MARRIAGE LICENSE; REQUIREMENTS

~~—Licenses. The White Mountain Apache Tribal Court may issue marriage licenses to proper persons, one of whom must be is a member of the Tribe, or a person domiciled on the Fort Apache Indian Reservation^[MOU1] or ~~MM2] a member of a federally recognized Tribe. Any Tribal traditional marriage not so licensed~~^[MM3] shall not be recognized as valid. The Trial Court is hereby authorized and instructed to issue marriage certificates to all these persons known to be living together as husband and wife previous to August 26, 1938.^[MM4] Marriage certificates issued shall become a matter of record in the Trial Court, copies of which shall be furnished to the Agency and Tribal Council Secretary.~~

A marriage may not be performed by agreement without a marriage ceremony, and No marriage performed within this jurisdiction is valid unless a license be issued as herein provided and the marriage solemnized according to the laws of the White Mountain Apache Tribe and a record of same filed with the White Mountain Apache Tribal Court.

SECTION 1.3 MARRIAGE LICENSE; ELIGIBILITY

- A. Any person domiciled on the Fort Apache Indian Reservation, eligible by age and otherwise, as hereinafter provided, may obtain a marriage license in conformity with the laws of the Tribe or the State, and such marriages consummated by authority of such license shall be legal in every respect in the United States. A fee set by the Tribal Court shall be paid upon the issuance of a marriage license.
- B. Persons under eighteen (18) years of age are to be considered minors; and whenever parents or guardians give consent to the marriage between^[MOU5] minors, the parents or guardians shall appear before, and execute and file with the Court a form titled, "Consent to Marriage of Minor", and he or she thereby assumes the responsibility, in part, to provide for the minors and children born until the

minor parents come of age. The assumption of this responsibility is included in the written consent.

C. A marriage license must not in any case be granted where either party is under age necessary to render the marriage absolutely valid, without previous consent of the parent or guardian of such minor, nor shall a marriage license be issued to divorcees until six (6) months after the issuance of the divorce decree.

D. The marriage must be solemnized before the expiration of the marriage license.

SECTION 1.4 SOLEMNIZATION OF A MARRIAGE

A marriage may be solemnized by an official authorized to perform the ceremony by the laws of the State of Arizona or the laws of the Tribe pursuant to Section 1.17 [MOU6] of this Code, after issuance of a license.

SECTION 1.5 THOSE AUTHORIZED TO OFFICIATE AT A WEDDING

A. The following are authorized to solemnize marriages between persons who are authorized to marry:

1. Duly licensed or ordained clergymen.

2. Judges of courts of record.

B. For the purposes of this Section, "licensed or ordained clergymen" includes ministers, elders or other persons who by custom or tradition, or rules and regulations of a religious society or sect are authorized or permitted to solemnize marriages or to officiate at marriage ceremonies.

SECTION 1.6 WITNESSES

A marriage ceremony shall be performed in the presence of at least two (2) witnesses of lawful age, and a certificate of such marriage shall be signed by at least two (2) witnesses and returned by either party the marriage [MOU7] [MOU8] to the White Mountain Apache Tribal Court (for recording) within a period of ten (10) days.

SECTION 1.72 RECORDING OF MARRIAGES AND DIVORCES

All Indian marriages and divorces decreed, whether consummated in accordance with State laws, or any legal agency having authority to issue marriage and divorce certificates, or in accordance with Tribal law, shall be recorded within thirty (30) days with by the White Mountain Apache Tribal Court and copies shall be furnished to the Agency office by the Court.

A.

SECTION 1.3 MARRIAGE

~~Marriage is a personal relation arising out of civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage but must be followed by a solemnization.~~

SECTION 1.4 — SOLEMNIZATION OF A MARRIAGE

~~A marriage may be solemnized by an any recognized clergyman or other official authorized to perform the ceremony by the laws of the State of Arizona, or the laws of the White Mountain Apache Tribe pursuant to Section 1.176 of this Code, but only after issuance of a license.~~

- B. The clerk of the Tribal Court shall maintain a record of all marriage licenses issued.
- C. The person solemnizing the rites of matrimony shall endorse the act of solemnization on the license and shall return the license to the clerk within thirty (30) days after the solemnization. The returned marriage license shall be recorded by the clerk.
- D. If the marriage license is lost before the endorsement of solemnization, the persons who wish to marry shall reapply to the Court for a marriage license and pay a fee pursuant to Section 1.5^[MOU9].
- E. If the license that bears the endorsement of solemnization is lost, the clerk shall issue a replacement license that must be signed by the person who solemnized the marriage, the persons married and two of the witnesses to the marriage ceremony. The signed replacement license shall be returned to the clerk who shall record the license. If the persons married are unable to obtain all of the required signatures, either of them or their representative may apply to the Court for an Order to authorize the issuance of a duplicate endorsed marriage license. The application shall be by a sworn statement that describes the circumstances of the marriage ceremony and that contains the notarized signatures of the applicant and, if possible, both persons married, the person who solemnized the marriage and at least two (2) witnesses to the marriage ceremony. If the application is submitted by a representative, the Court shall determine if the representative is an appropriate requesting party. Pursuant to a Court order, the clerk shall issue and record a duplicate endorsed marriage license.

SECTION 1.5 — MARRIAGE LICENSE

~~A. Any resident of the Fort Apache Indian Reservation, eligible by age and otherwise, as hereinafter provided may obtain a marriage license in conformity with State Law or the laws of the White Mountain Apache Tribe from the Court, and such marriages consummated by authority of such license shall be legal in every respect in the United States. A fee set by the Tribal Court shall be paid upon the issuance of a marriage license.~~

~~B. Persons under eighteen (18) years of age are to be considered minors; and whenever parents or guardians give consent to the marriage between minors, the parents or guardians shall appear before, and execute and file with the Court a form titled, "Consent to Marriage of Minor", and he or she thereby assumes the responsibility, in part, to provide for the minors and children born until the minor parents come of age. The assumption of this responsibility is included in the written consent.~~

~~C. A marriage license must not in any case be granted where either party is under age~~

~~necessary to render the marriage absolutely valid, without previous consent of the parent or guardian of such minor, nor shall a marriage license be issued to divorcees until six (6) months after the issuance of the divorce decree.~~

~~D. The marriage must be solemnized before the expiration of the marriage license.~~

SECTION 1.86 CONSENT REQUIRED FOR MARRIAGE OF MINORS

A. A person who is at least sixteen (16) years of age and who is under eighteen (18) years of age may marry only if the parent or guardian who has custody of the person consents to the marriage and the person's prospective spouse is not more than three (3) years older than the person.

B. Persons who are under sixteen (16) years of age shall not marry.

SECTION 1.976 VOID AND PROHIBITED VOID MARRIAGES

Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters, of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews, and between first cousins or within the maternal clan [MM10] are incestuous and void.

SECTION 1.87 WITNESSES

~~A marriage ceremony shall be performed in the presence of at least two (2) witnesses of lawful age, and a certificate of such marriage shall be signed by at least two (2) witnesses which shall be returned by the person performing the marriage [MOM1] to the White Mountain Apache Tribal Court (for recording) within a period of ten (10) days.~~

SECTION 1.10 COMMON-LAW MARRIAGE; VALIDATION

A. Common-law Marriage. Common-law marriage is not be recognized by the Tribe. To be valid, all marriages or purported marriages must conform with the requirements of Section 1.2 through 1.9, herein.

B. Validation. The Tribal Court shall not validate purported marriages unless it can be shown by clear and convincing evidence that the requirements of Section 1.1 through 1.9, herein, were met during the lives of the parties to the marriage.

SECTION 1.98 CEREMONIAL MARRIAGE ONLY RECOGNIZED

~~A marriage may not be performed by agreement without a marriage ceremony, and no marriage performed within this jurisdiction is valid unless a license be issued as herein provided and the marriage solemnized according to the laws of the White Mountain Apache Tribe and a record of same filed with the White Mountain Apache Tribal Court.~~

CHAPTER TWO. MARITAL PROPERTY AND CONTRACT RIGHTS

SECTION 2.1 SEPARATE PROPERTY

- A. All property, real and personal, of both spouses, owned or claimed by them before the marriage, and afterward acquired by gift, devise or descent, and also the increase, rents, issues and profits thereof, is that spouse's separate property.
- B. Property that is acquired by a spouse after service of a petition for dissolution of marriage, legal separation or annulment is also the separate property of that spouse if the petition results in a decree of dissolution of marriage, legal separation or annulment.
- C. A contribution to an irrevocable trust that has or will have as its principal asset life insurance on the person making the contribution is a contribution of the insured's separate property if the spouse of the insured is the primary beneficiary of the trust.

SECTION 2.2 COMMUNITY PROPERTY

- A. All property acquired by either spouse during the marriage is the community property of the spouses, except for property that is:
 - 1. Acquired by gift, devise or descent; or
 - 2. Acquired after service of a petition for divorce or annulment, if the petition results in an order of divorce or annulment.
- B. Notwithstanding subsection A(2), above, service of a petition for divorce or annulment does not:
 - 1. Alter the status or preexisting community property;
 - 2. Change the status of community property used to acquire new property or the status of that new property as community property; or
 - 3. Alter the duties and rights of either spouse with respect to the management of community property except as may be provided by any preliminary injunctions issued by the Court incident to a petition for divorce or annulment.

SECTION 3.3 MANAGEMENT AND CONTROL

- A. Each spouse has the sole management, control, and disposition rights to their own separate property.
- B. Both spouses have equal management, control, and disposition rights over the community property and have equal power to bind the community.
- C. Either spouse may separately acquire, manage, control or dispose of community property or bind the community, except that joinder of both spouses is required in any of the following:
 - 1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year;
 - 2. Any transaction of guaranty, indemnity, or suretyship; or
 - 3. To bind the community after service of a petition for divorce or annulment, if the petition results in an order of divorce or annulment.

SECTION 3.4 LIABILITY OF PROPERTY FOR DEBTS

- A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent written agreement of the property owner to the contrary.
- B. The community property is liable for the premarital separate debts or liabilities of a spouse, but only to the extent of the value of that spouse's contribution to the community property which would have been that spouse's separate property, if single.
- C. The community property is liable for a spouse's debts incurred outside this jurisdiction which would have been community debts, if incurred on the Reservation.
- D. Except as prohibited by Section 3.3, either spouse may contract debts and otherwise act for the benefit of the community. In an action on such debt or obligation, the spouses shall be sued jointly and the debt or obligation shall be satisfied:
 - 1. From the community property, and if the debt remains unsatisfied, then;
 - 2. From the separate property of the spouse who contracted the debt or obligation.

CHAPTER THREE.
ANNULMENT

SECTION 3.1 ANNULMENT; GENERALLY

The Tribal Court may annul a marriage for which it issued a license, or if both parties are domiciled on the Reservation, if it can be shown that, at the beginning of the marriage, there was a condition that rendered the marriage null and void.

SECTION 3.21.109 ANNULMENT ; GROUNDS OF MARRIAGE

The Court may dissolve a marriage and may decree the marriage to be null and void for any of the following causes, existing at the ~~time~~ beginning of the marriage:^[MM12]^[MOU13]

~~A. Where the case shall be an impediment rendering such contract void~~ That one or both parties were ineligible to lawfully obtain a marriage license at the time of the marriage;

~~A.B.~~ That the parties are relatives, as defined by Section 1.7 ^[MOU14] herein; ^[MM15]

~~B.C.~~ That the party on whose behalf it is sought to have the marriage annulled was under the age of consent, and such marriage was contracted without the consent of ~~his or her~~ their parents or guardian ~~or person having charge of him or her~~, unless after attaining the age of consent such party for any time freely cohabited with the other as husband and wife^[MOU16];

~~D.~~ That the ~~previous husband and wife~~ spouse of either party is living and the marriage with such former husband or wife was ~~then~~ in force at the time of the parties' marriage;

~~E.~~ That one or both parties lacked mental capacity at the time the marriage was entered into due to a mental disorder, disability, or intoxication;

~~E.F.~~ That one spouse misrepresented or concealed important facts about themselves that, were it known, would have prevented the other person from entering into marriage with them; or

~~G.~~ That the consent of either party was obtained by fraud ~~or duress, unless such party afterwards freely cohabited with the other as husband and wife having knowledge of such fraud.~~ ^[MM17] ^[MOU18]

SECTION 3.3 PROCEDURE FOR ANNULMENT

A. Any person applying for annulment shall deposit with the Tribal Court a fee set by the Court at the time of the action. In case the respondent files a cross complaint, the Court may require the respondent to pay into the Court a fee of like amount. Fees may be waived upon proof of indigency satisfactory to the Court.

- B. The complaining party shall file with the Court a verified complaint stating concisely their cause(s) for annulment. Thereupon, the Court shall issue a summons in the name of the Tribal Court, to the respondent apprising them of the pendency of action. The summons shall concisely state the grounds upon which annulment is petitioned.
- C. The summons when issued, together with the copy of the complaint shall be delivered to any authorized officer of the Court for service. Service of process shall be effectuated in accordance with the Rules of Civil Procedure.
- D. The Court shall thereupon make and enter findings of facts and conclusions of law, and issue the decree signed by the Chief Judge or Associate Judge [MOU19] which shall be effective from date of signature.

D.

SECTION 3.4 ORDER OF ANNULMENT

- A. Effect. An order for annulment shall have the legal effect of rendering the marriage as having not occurred, except to the extent needed to affect the orders pertaining to Subsection B, below.
- B. Division of Property; Rights and Obligations. If grounds for annulment exist, the Tribal Court shall make a division of separate and community property, to the extent that it has the jurisdiction to do so, and shall establish rights and obligations respecting any common property and minor children.

CHAPTER FOUR.
DIVORCE

SECTION 41.110 DIVORCE

The Court may grant or issue a divorce from the bonds of matrimony when either party alleges that irreconcilable differences between the parties have caused a permanent breakdown in the marriage warranting divorce in any of the following cases, provided that after a divorce has been granted the parties thereto may not marry until six (6) months after the issuance of the divorce decree.

- ~~A. When adultery has been committed by either party.~~
- ~~B. When one of the parties was declared physically or mentally incompetent by a physician prior to the marriage and the same has continued to the time of the commencement of the divorce action.~~
- ~~C. When either party has willfully deserted the other.~~
- ~~D. For the habitual intemperance of either party.~~
- ~~E. Where the husband or wife is guilty of cruel treatment or outrages toward the other, whether by the use of personal violence or other means.~~
- ~~F. When either has neglected to provide the other party or family with the common necessities of life, having the ability to provide the same, or failing to do so by reason of his or her idleness, or dissipation.~~
- ~~G. Prior to the marriage either party shall have been convicted of a felony or infamous crime in any state or country without the knowledge of the other party of such fact at the time of such marriage.~~
- ~~H. In favor of the husband when the wife at the time of the marriage was pregnant by a man other than the husband, and without the husband's knowledge at the time of such marriage.~~
- ~~I. Irreconcilable incompatibility or differences. [MM20] [MOU21]~~

SECTION 4.2 RESIDENCE REQUIREMENT

The Party filing the petition must have resided on the Fort Apache Indian Reservation for not less than ninety (90) days prior to the commencing of any action for divorce. The Tribal Court will not entertain any prematurely filed petition, until the residency requirement has been met.

SECTION 41.3121 PROCEDURE FOR ANNULMENT OR DIVORCE [MM22]

~~_____ A. — Any person applying for annulment or divorce shall deposit with the Tribal Court a fee set by the Court at the time of the action. If ~~a case~~ the ~~defendant-respondent~~ files a cross complaint, the Court may require the ~~defendant-respondent~~ to pay into the Court a fee of like amount. Fees may be waived upon proof of indigency satisfactory to the Court.~~

A.

B. Petition; Contents. — B. — The complaining party shall file with the Court a verified complaint concisely stating ~~concisely his or her~~ the following:

1. ~~is~~ Cause for action;

2. Names and birthdates of the parties and of all shared minor children;

3. List of community property, location of all real property, and proposed division of property;

4. If there are minor children with custody and support rights to be adjudicated, their proposed custody and visitation schedule and support;

5. If spousal support is sought, the justification for it, and the proposed amount, payment schedule, and duration;

6. If the parties have entered into written stipulations respecting the division of property or child custody, either before or during the course of the marriage; and

7. If either party wishes to have their legal name before the marriage restored.

A. ~~and~~ Thereupon, the Court shall issue a summons in the name of the Tribal Court, to the ~~defendant-respondent~~ apprising ~~him or her~~ them of the pendency of action and the summons shall concisely state the grounds upon which annulment or divorce is asked.

C.

B. — C. — The summons when issued, together with the copy of the complaint shall be delivered to any authorized officer of the Court for service. Service of process shall be effectuated in accordance with the Rules of Civil Procedure, ~~Chapter Three, Part II, Rule 4.~~

D.

E. — D. — The Court shall thereupon make and enter findings of facts and conclusions of law, and issue the decree signed by the Chief Judge or Associate Judge [MOU23] which shall be effective from date of signature.

G. — Every divorce decree shall provide for a fair and just division of property rights between the parties, irrespective of any fault of one or both parties, and shall also provide for the proper legal custody

and physical custody of the minor children.

F.

~~SECTION 1.132 — LEGITIMACY OF CHILDREN NOT AFFECTED~~

~~A divorce shall not affect the legitimacy of the children. [MM24]~~

SECTION 41.143 PERMANENT ALIMONY, CUSTODY OF CHILDREN: COSTS; NAME AND COST

- A. In the final decree of divorce, the Court may, in addition to the division of ~~the separate property and community~~ property of the parties, direct either party to pay the other such amounts as may be necessary for the support and maintenance of the other party, and the minor children of the parties. ~~The custody~~ Physical and Legal Custody of the children may be awarded to ~~the wife or husband~~ either spouse, or both, as may be necessary or proper, and the Court may decree that alimony may be paid in one sum or installments, and in such decree or decree of annulment of the marriage the Court may make such disposition of and provision for their minor children, as shall be most expedient under all circumstances for their present comfort and future well being.
- B. The Court may assess the cost to either or both parties of the suit, and may in the decree change the name of ~~the wife~~ spouse, if especially asked for in ~~their~~ her pleadings.

SECTION 41.154 MODIFICATION OF JUDGMENT AFFECTING ALIMONY AND SUPPORT OF MINOR CHILDREN

The Court may, from time to time, after the entry of the final decree or on petition of either party, amend, revise and alter such portions of the decree as relate to the payment of money for the support and maintenance of either party or the support of their children, as may be just, and amend, change, or alter any provision therein respecting the care, legal and physical custody ~~and~~, ~~or~~ maintenance of the children of the parties as the circumstances of the parents and the welfare of the children may require.

SECTION 41.165 DETERMINATION OF PATERNITY AND SUPPORT

- A. Presumption of Paternity. A man is presumed to be the father of a child if:—
1. He and the mother of the child were married at any time in the ten months immediately preceding the birth of the child;
 2. Genetic testing affirms at least ninety-five percent probability of paternity;
 3. The child's birth certificate lists the man as the child's father, and is signed by the man; or
 4. A notarized or witnessed statement is signed by both parents acknowledging paternity.

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

~~SECTION 1.176 — THOSE AUTHORIZED TO OFFICIATE AT A WEDDING~~

~~A. — The following are authorized to solemnize marriages between persons who are authorized to marry:~~

~~1. — Duly licensed or ordained clergymen.~~

~~2. — Judges of courts of record.~~

~~B. — For the purposes of this Section, “licensed or ordained clergymen” includes ministers, elders or other persons who by custom or tradition, or rules and regulations of a religious society or sect are authorized or permitted to solemnize marriages or to officiate at marriage ceremonies.~~

~~SECTION 1.187 — RECORDING LICENSES~~

~~A. — The clerk of the Tribal Court shall maintain a record of all marriage licenses issued.~~

~~B. — The person solemnizing the rites of matrimony shall endorse the act of solemnization on the license and shall return the license to the clerk within thirty (30) days after the solemnization. The returned marriage license shall be recorded by the clerk.~~

~~C. — If the marriage license is lost before the endorsement of solemnization, the persons who wish to marry shall reapply to the Court for a marriage license and pay a fee pursuant to Section 1.5.~~

~~D. — If the license that bears the endorsement of solemnization is lost, the clerk shall issue a replacement license that must be signed by the person who solemnized the marriage, the persons married and two of the witnesses to the marriage ceremony. The signed replacement license shall be returned to the clerk who shall record the license. If the persons married are unable to obtain all of the required signatures, either of them or their representative may apply to the Court for an Order to authorize the issuance of a duplicate endorsed marriage license. The application shall be by a sworn statement that describes the circumstances of the marriage ceremony and that contains the notarized signatures of the applicant and, if possible, both persons married, the person who solemnized the marriage and at least two (2) witnesses to the marriage ceremony. If the application is submitted by a representative, the Court shall determine if the representative is an appropriate requesting party. Pursuant to a Court order, the clerk shall issue and record a duplicate endorsed marriage license.~~

CHAPTER FIVE CUSTODY

SECTION 5.1 — PHYSICAL CUSTODY

Physical Custody over a minor child consists of the time that one parent has access to and the obligation to care for a child at specified times. During their assigned physical custody time, each parent has the obligation to provide for the child’s food, clothing and shelter, and may make routine and

emergency decisions regarding the child's care.

SECTION 5.2 LEGAL CUSTODY; LEGAL DECISION-MAKING AUTHORITY

Legal Custody or Legal Decision-Making Authority means the legal right and responsibility to make all non-emergency legal decisions for a child, including but not limited to those regarding education, healthcare, religious training and personal care.

SECTION 5.3 BEST INTERESTS STANDARD

In all proceedings related to the division of custody of a minor child incident to divorce or annulment, the Court shall seek to serve the best interests of the child in rendering a decision.

SECTION 5.4 PRESUMPTION AGAINST SOLE CUSTODY AWARDS

- A. Presumption. There shall be a rebuttable presumption that physical and legal custody of a child shared between the child's parents is in the best interests of the child.
- B. Factors. The above-presumption may be rebutted, in whole or in part, by proof beyond a reasonable doubt, the following factors:
1. A history of physical, sexual, mental or emotional abuse or neglect by one or both parents;
 2. Substance abuse or other substantial impediment by one or both parents;
 3. Current or imminent incarceration of one or both parents;
 4. The preference of the child, if the child is older than twelve(12) years old; and
 5. Any other factor that the court finds implicates the safety and wellbeing of the child.

SECTION 5.5 INFORMATION TO BE SUBMITTED TO THE COURT

- A. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years and the names and present addresses of the persons with whom the child lived during that period. The pleading or affidavit must state whether the party:

1. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody or visitation of the child and, if so, shall identify the court, case number and the date of the child custody determination, if any;
 2. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings related to domestic violence, protective orders, termination of parental rights and adoptions, and if so, the court, case number, and nature of the proceeding;
 3. Knows the names and addresses of any person who is not a party to the proceeding and who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.
- B. If the information required by (A) is not furnished, the Court, on motion of a party or its own motion, may stay the proceeding until such can be furnished.
- C. Each party has a continuing duty to inform the Court of any proceeding in this or any other court that could affect the current proceeding.
- D. Protective Orders. If a party alleges that the health, safety, or liberty of a party or child could be jeopardized by the disclosure of the information required by this subsection, the information must be sealed and may not be disclosed to other parties or the public until the court orders that disclosure of such be made, after a hearing at which the court takes into consideration the health safety, and liberty of the parties, and if disclosure is in the best interests of justice.

SECTION 5.6 CUSTODY ORDERS

Every order of the Tribal Court resulting from a petition for annulment or divorce and pertaining to either custody award or custody modification shall address both physical and legal custody over all minor children. Such awards may, at the request of either party, be accompanied with an order to execute judgment through wage garnishment.

SECTION 5.7 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

The Tribe hereby adopts the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), in the following regards, unless applying the UCCJEA would conflict with an applicable portion of the Indian Child Welfare Act or violate the public policies of the Tribe or principles of fundamental human rights:

- A. Effect of Tribal Child Custody Determination by the Tribal Court. A child custody determination by the Tribal Court shall be binding to all persons who have been served in accordance with the laws of the Tribe and this Code or who have subjected themselves to the jurisdiction of the Tribe.
- B. Appearance and Limited Immunity. A party to a proceeding hereunder may appear specially to contest the Tribal Court's jurisdiction over this matter, and shall not be found to have consented to personal jurisdiction by means of appearance.
- C. Communication Between Court. The Tribal Court shall communicate with court in other jurisdictions concerning proceedings arising under this Chapter;
- D. Initial Child Custody Jurisdiction. Except as otherwise provided for herein, the Tribal Court shall have jurisdiction to make an initial child custody determination only if any of the following is true:
1. The Fort Apache Indian Reservation is the domicile of the child on the date of commencement of the proceeding, or was the domicile of the child within six (6) months before the commencement of the proceeding and the child is absent from the Reservation but a parent or person acting as a parent continues to live on the Reservation;
 2. The Court of another state [MOU25] does not have jurisdiction under sub-section 1 or a court of the home state of the child has declined to exercise jurisdiction on the ground that the Tribe is the more appropriate forum, and both of the following are true:
 - a. The child and the child's parents, or the child and at least one parent or person acting as parent, have a significant connection with the Reservation other than mere physical presence;
 - b. Substantial evidence is available in this state [MOU26] concerning the child's care, protection, training and personal relationships.
 3. All courts having jurisdiction under (D)(1) or (D)(2) have declined to exercise jurisdiction on the ground that the Tribal Court is a more appropriate forum;:
 4. A court of another jurisdiction would not have jurisdiction under (D)(1), (D)(2), or (D)(3).
- E. Mere presence of a party on the Reservation, or personal jurisdiction alone, is not necessary nor sufficient for the Tribal Court to make a child custody determination.
- F. Exclusive Continuing Jurisdiction. Except as otherwise provided, the court that has made a child custody determination consistent with this Section shall have exclusive, continuing jurisdiction over the determination until either of the following is true:

1. The Tribal Court determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with the Reservation and that substantial evidence is no longer available on the Reservation concerning the child's care, protection, training and personal relationships.
2. A court that has made a child custody determination and does not have exclusive, continuing jurisdiction hereunder may modify that determination only if it has jurisdiction to make an initial determination under this Section.
3. Jurisdiction to Modify Determination. Except as otherwise provided for herein, the Tribal Court shall not modify a child custody determination made by a court of another jurisdiction unless the Tribal Court has jurisdiction to make an initial determination under (D)(1) or (D)(2), or (D)(3), and either of the following is true:
 - a. The court of the other jurisdiction determines that it no longer has exclusive jurisdiction or that the Tribal Court would be a more convenient forum; or
 - b. The court of the other jurisdiction determines that the child, the child's parent and any person acting as the child's parent do not presently reside in the other jurisdiction.

G. Temporary Emergency Jurisdiction

1. The Tribal Court has emergency temporary jurisdiction if the child is present on the Reservation and the child has been abandoned^[MOU27] or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
2. If there is no previous child custody determination that is entitled to be enforced under this Section and a child custody proceeding has not been commenced in a court of a jurisdiction having jurisdiction hereunder, a child custody determination made under this sub-section remains in effect until an order is obtained from a court of a jurisdiction having authority hereunder. If a child custody proceeding has not been or is not commenced in a court of a jurisdiction having jurisdiction under this Section, a child custody determination made under this sub-section becomes a final determination, if it so provides and the Reservation becomes the domicile of the child.
3. If there is a previous child custody determination that is entitled to enforcement under this Section or a child custody proceeding has been commenced in a court of a state or reservation having jurisdiction under this Section, any order issued by the Tribal Court under this Subsection must specify in the order a period that the court considers adequate to allow the person seeking the Court's order to obtain an order from the Court having jurisdiction under this Section. The Tribal Court's emergency order shall remain in effect until an order can be obtained from the other state^[MOU28] within the time period provided.

4. The Tribal Court that has been asked to make an emergency child custody determination under this subsection, on being informed that a child custody proceeding has been commenced in a court having jurisdiction under this Section, shall immediately communicate with the other court to resolve the emergency, protect the safety of the parties and determine a suitable period for the duration of the temporary emergency order.

H. Notice; Opportunity to be Heard; Joinder

1. Before a child custody determination is made under this Section, notice and an opportunity to be heard must be given to all persons entitled to notice under the laws of the Tribe, including any parent whose parental rights have not been terminated, any guardians or other person having physical custody of the child.
2. This subsection does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.
3. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this Section are governed by the Tribe's Rules of Civil Procedure.

I. Simultaneous Proceedings

1. Except as otherwise provided in this Section, the Tribal Court shall not exercise its jurisdiction under this Section if, at the time of commencement of the proceeding, a proceeding concerning the custody of the subject child has been commenced in the court of a state or other reservation having jurisdiction substantially in conformity with this Section, unless the proceeding has been terminated or is stayed by the other court, because the Tribal Court is a more convenient forum.
2. Except as otherwise provided in subsection G, the Tribal Court shall examine the court documents and other information supplied by the parties and the other court. If the Tribal Court determines that a child custody proceeding has been commenced in a court of another reservation or state that has jurisdiction in conformity with this Section, the Tribal Court shall stay its proceeding and communicate with the other court. If the other court does not determine that the Tribal Court is a more appropriate forum, the Tribal Court shall dismiss the proceeding.
3. In a proceeding to modify a child custody determination, the Tribal Court shall determine whether a proceeding to enforce the determination has been commenced in another state^[MOU29]. If a proceeding to enforce a child custody determination has been commenced in another state^[MOU30], the Tribal Court may do any of the following:
 - a. Stay the proceeding for modification pending the entry of an order of a court of the other jurisdiction, staying, denying, or dismissing the proceeding for enforcement;

- b. Enjoin the parties from continuing with the proceeding for enforcement; or
- c. Proceed with the modification under conditions it considers appropriate.

J. Inconvenient Forum.

1. The Tribal Court may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another jurisdiction is a more appropriate forum. The issue of inconvenient forum may be raised on a motion by a third party, the court's own motion or request of another court.
2. Before determining whether it is an inconvenient forum, the Tribal Court shall consider whether it is appropriate for the court of another reservation or state to exercise jurisdiction. For this purpose, the Court shall order all the parties to submit information and shall consider all relevant factors, including:
 - a. Whether domestic violence has occurred and is likely to continue in the future and which jurisdiction could best protect the parties;
 - b. The length of time that the child has resided off-Reservation;
 - c. The distance between the Tribal Court and the court of the other reservation or state that would assume jurisdiction;
 - d. The relative financial circumstances of the parties;
 - e. Any agreement of the parties as to which state should assume jurisdiction;
 - f. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
 - g. The ability of the court of each jurisdiction to decide the issues quickly and the procedures necessary to present the evidence;
 - h. The familiarity of each court with the facts and issues in the pending litigation.
3. If the Tribal Court determines that it is an inconvenient forum and that another court of another reservation or state is a more appropriate forum, it shall stay the proceedings on condition that a child custody proceeding be promptly commenced in another designated jurisdiction, and may impose any other conditions that the Court finds necessary and just.
4. The Tribal Court may decline to exercise its jurisdiction under this Section if a child custody determination is incidental to a divorce or other proceeding, while still retaining jurisdiction over the divorce or other proceeding.

K. Jurisdiction Declined Because of Conduct

1. If the Tribal Court has jurisdiction under this Section because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the Court shall decline to exercise its jurisdiction unless any of the following is true:
 - a. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
 - b. A court of another tribe or state having jurisdiction under this Section determines that the Tribal Court is a more appropriate forum;
 - c. A Court of another tribe or state would not have jurisdiction under this Section.
2. If the Tribal Court declines to exercise jurisdiction pursuant to (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having proper jurisdiction.

L. Duty to Enforce

1. The Tribal Court shall recognize and enforce the child custody determinations of another tribe or state if that tribe or state exercised jurisdiction in substantial conformity with Section 5.7.
2. The Tribal Court may use any remedy available under the Tribe's laws to enforce a child custody determination made by a court of another tribe or state.

M. Temporary Visitation

1. If the Tribal Court finds that it does not have the jurisdiction to modify an existing child custody determination, it may, nonetheless, issue a temporary order enforcing:
 - a. A visitation schedule made by another court; or
 - b. The visitation provisions of a child custody order of another state [MOU31]that does not provide for a specific visitation schedule.

CHAPTER SIX SUPPORT ENFORCEMENT

SECTION 6.1 ORDERS TO SHOW CAUSE

Persons found to be in non-compliance with orders for support of minor children or spousal support may be held in both civil and criminal contempt by the Tribal Court for intentional and gross failure to comply, and assessed fines and imprisonment. Additionally, interest fees and collections fees may be charged and assigned to the offending person.

SECTION 6.2 WAGE EXECUTION ORDERS

- A. Domestic Orders. The Tribal Court may issue orders to employers, to execute on the wages of persons who are assessed with child or spousal support orders, subject to the laws of the jurisdictions in which the persons are employed. All employers located on the Reservation and Tribal Departments, enterprises or programs, shall promptly comply with any such orders. The order to execute wages shall specify the amount owed and the expiration date of the obligation.
- B. Foreign Orders. Orders to execute wages earned on-Reservation by employees of the Tribal departments, enterprises or programs shall be honored only after being domesticated or recognized by the Tribal Court.
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APPENDICES*

APPENDICES*

Form No. 1

WHITE MOUNTAIN APACHE TRIBAL COURT
APPLICATION FOR MARRIAGE LICENSE

IN THE MATTER OF THE APPLICATION OF)
)
) FOR A LICENSE TO MARRY
)
)
and)
)
)
)
)

Fort Apache Indian Reservation)
County of Navajo) ss:
State of Arizona)

The undersigned, being first duly sworn, upon his/her oath does declare, depose and certify: that _____ (*Name in Full*), is his/her true name; that his/her date of birth is _____, that he/she is a resident of _____ (*Town, County and State*), that he/she is not related to _____ (husband or wife), by blood or clan and that he/she is legally eligible in every regard to apply and receive such.

Signature of Applicant

The undersigned, being first duly sworn, upon his/her oath does declare, depose and certify: that _____ (*Name in Full*), is his/her true name; that his/her date of birth is _____, that he/she is a resident of _____ (*Town, County and State*), that he/she is not related to _____ (husband or wife), by blood or clan and that he/she is legally eligible in every regard to apply and receive such.

Signature of Applicant

SUBSCRIBED and SWORN to before me, this _____ day of _____, 20_____.

Clerk of the Court

WHITE MOUNTAIN APACHE TRIBE



STATE OF ARIZONA

Marriage License

TO ANY REGULARLY LICENSED OR ORDAINED MINISTER OF THE GOSPEL, ANY JUDGE OF A COURT OF RECORD, OR JUSTICE OF THE PEACE WITHIN THE UNITED STATES:

You are hereby authorized to solemnize the rites of matrimony between:

and

and endorse the name on this license and make return thereof to this office according to Tribal Law, which provides that recording shall be made within ten days of matrimony.

Certification of Marriage

This certifies that on the _____ day of _____, 2021, _____ and _____ were united in marriage at _____, according to the laws of the White Mountain Apache Tribe, by a legal official, in the presence of witnesses of lawful age. In witness whereof, the said contracting parties, the said witnesses and the said officiator have hereunto set their signatures as witness to said ceremony.

Bride

Witness

Groom

Witness

Minister, Judge or Justice of the Peace

Certification of Record

In witness whereof, I have hereunto set my hand and affixed my official seal that this license was signed and returned to the Clerk of the Court, Whiteriver, Arizona, within twelve months of issuance, according to the Domestic Relations Code of the White Mountain Apache Tribe. *(License is invalid if not returned within twelve months of issuance).*

Seal

Clerk of the Court

Date of Issuance: _____

Date of Record: _____