

TITLE 6. FAMILY RELATIONS

Chapter 1. Purpose, Use of Language From Other Laws and Jurisdiction

Section A. Purpose.

The Leech Lake Band of Ojibwe possesses the inherent sovereign authority to regulate the family relations of its members and persons who reside within its exterior boundaries. Since time immemorial the Leech Lake Band of Ojibwe has made decisions to benefit and protect the well-being of its members. The Leech Lake Band of Ojibwe recognizes the importance of addressing family relations in a way that respects the traditions, values, culture and beliefs of the Leech Lake Ojibwe people.

This Code will remind the people who come before the Leech Lake Band of Ojibwe Tribal Court that the people of Leech Lake Band of Ojibwe value respect, honor and place the highest importance upon protecting its children and families.

Section B. Use of Language from Other Laws.

The use of language, definitions, procedures or other provisions from other tribes, states, federal or local jurisdictions shall not be construed to be an adoption of the other laws of that jurisdiction. The Leech Lake Band of Ojibwe does not defer to the laws or customs of any tribe, state, federal or other jurisdiction.

The Leech Lake Band of Ojibwe Tribal Court shall have original jurisdiction over the family relations of its members and their families.

Section C. Jurisdiction

(1) The Leech Lake Band of Ojibwe Tribal Court shall have jurisdiction over the family relations matters of all Leech Lake Band of Ojibwe members wherever they may reside.

(2) The Leech Lake Band of Ojibwe Tribal Court shall have jurisdiction over all persons who reside within the exterior boundaries of the Leech Lake Reservation for at least ninety 90 days prior to filing a petition. Only one party must meet the filing requirement.

Chapter 2. Marriage

Section A. Jurisdiction

The Leech Lake Band of Ojibwe through its tribal court shall have jurisdiction over all marriages licensed and performed within its exterior reservation boundaries. The Leech Lake Tribal Court shall have jurisdiction over all tribal members regardless of residence or domicile.

Section B. Definition

Marriage is a personal relationship arising out of a civil contract requiring the consent of the parties or their guardians as provided in Section C(1) of this Chapter. The parties shall be capable of contracting, shall obtain a license and shall have the marriage solemnized by one authorized to perform such ceremonies.

Section C. Who May Marry

(1) Age Limit.

No person under the age of 18 years of age on the date of the proposed marriage may marry without the written consent of both parents or one parent who possesses sole legal custody. If no such person is living the consent of a guardian or other legal custodian may be substituted. If no such person exists a guardian or legal custodian may be appointed by the court to consider the request.

(2) Blood Relationship.

Marriages are prohibited by persons related by blood as mother, father, sister, brother, aunt, uncle, niece, nephew or first cousin whether the relationship is by the half or the whole blood.

(3) Competency of Persons Marrying.

No person declared incompetent by any court may marry without the consent of the person's parent or legal guardian.

(4) Persons Already Married.

No person who is already married in this or in any other jurisdiction may be licensed to marry in the jurisdiction of the Leech Lake Band of Ojibwe except as provided in subsection (5) below.

(5) Absent Spouse Provision.

A person who is already married but whose spouse has been absent for five consecutive years may marry if she or he obtains a judicial determination that there has been an irretrievable breakdown of the marriage pursuant to Section 4C below and obtains a dissolution by default. A judge of the Leech Lake Tribal Court shall conduct a hearing, make a finding and issue an order after considering such a request. Notice of the scheduled hearing shall be published in two consecutive issues of an appropriate newspaper prior to conducting the hearing. The hearing shall be held no sooner than 30 days after the final date of publication.

Section D. Marriage Requirements

(1) License Requirement

Prior to solemnizing a marriage, any persons wishing to marry pursuant to the jurisdiction of the Leech Lake Band of Ojibwe shall:

- (a) Obtain a marriage license from the Clerk of the Leech Lake Tribal Court by paying a reasonable fee set by the Chief Judge; and
 - (b) Affirm that they meet the requirements set out in Section C above.
- (2) Methods of Contracting Marriage.

Persons within the jurisdiction of the Leech Lake Band of Ojibwe may contract marriage by declaring in the presence of at least two witnesses who shall sign a declaration that they take each other to be married. The recognition and signed declaration of witnesses shall constitute validation of the marriage if all other license requirements have been satisfied by the couple. The wedding may be conducted according to the rites of any religion, by any Leech Lake tribal court judge or Leech Lake Tribal Council member.

Section E. Validity of Marriages

(1) Valid Marriages.

Valid marriages are those that comply with this Chapter. A valid dissolution decree is necessary to terminate a valid marriage absent death or annulment.

(2) Voidable Marriages.

Voidable marriages are those in which the elements of Section C (1) are met. Either party to a voidable marriage may have the marriage annulled by filing a motion with the Leech Lake Tribal Court and having said motion granted. Annulment of a marriage means that for all legal purposes the marriage never existed.

(3) Void Marriages.

Any person may request a declaration from the Leech Lake Tribal Court that a marriage is void on the grounds that the provisions of Section C (2), (3) or (4) are met. Marriages which violate one or more of these requirements are void without any decree of divorce or other legal proceedings.

Section F. Annulment

(1) Grounds for Annulment

A marriage may be annulled for any of the following causes existing at the time of marriage:

- (a) That the party on whose behalf an annulment is sought was under the age of 18 years at the time such marriage was contracted or the marriage was contracted without the consent of the person's parents or guardian if under said age;
- (b) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabitated with the other as husband or wife; or
- (c) That the consent of either party was obtained by force.

(2) Action to Annul or Declare Marriage Void

An action to obtain a decree of annulment of a marriage or a declaration that a marriage is void shall be commenced and the complaint shall be filed and proceedings had as in proceedings for dissolution. Upon due proof of the nullity of the marriage, it shall be adjudged null and void. The provisions of this chapter and Chapter 4 below relating to the property rights of spouses, maintenance, support and custody of children upon dissolution of the marriage are applicable to proceedings for annulment.

(3) Annulment or Declaration- When to Bring

An annulment may be sought by any of the following persons and must be commenced within the times specified, but in no event may an annulment or declaration be sought after the death of either party to the marriage.

- (a) For the reason set forth in Section C (1) by either the party or the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the marriage;
- (b) For the reason set forth in Section C (2) by either party or the legal representative of either party no later than one year after the petitioner became aware of the alleged fraud or mistake;
- (c) For the reason set forth in Section C (3) or (4) by either the injured party or the legal representative of the injured party no later than two years after the marriage.

(4) Hearing

The court shall hold a hearing and issue a declaration that a marriage is void and provide the basis for such a declaration.

Chapter 3. Marital Property

Section A. Definition

Marital property is that which is acquired during the marriage except separate gifts and inheritances unless otherwise specified by this Code. The marital property is liable for the debts contracted during the marriage by either spouse.

Section B. Non-Marital Property

The non-marital property of each spouse is anything that she or he owned prior to the marriage and separate gifts or inheritances acquired during the marriage. The separate property of either spouse is not liable for the debts of the other spouse.

Section C. Termination of Marital property.

Marital property shall cease to be acquired upon the filing of a petition for dissolution by either party, provided the petition leads to the dissolution of the marriage.

Chapter 4. Dissolution

Section A. Definition

A decree of dissolution is the termination of the marital relationship between a husband and wife and shall restore the parties to the state of unmarried person.

Section B. Grounds for Dissolution

A dissolution of marriage shall be granted if the Leech Lake Tribal Court determines that there has been an irretrievable breakdown of the marriage relationship.

Section C. Filing Fee

A filing fee shall be paid to the court administrator of the Leech Lake Tribal Court. If the party is unable to pay the filing fee the fee may be waived by a judge of the Leech Lake Tribal Court after the party requests a waiver.

Section D. Division of Property Upon Dissolution

(1) Marital Property

If no valid antenuptial contract to the contrary exists between the spouses, the marital property of the spouses is to be divided equitably upon dissolution. The Tribal Court shall take into consideration the length of the marriage; the contributions, financial and non-financial of both spouses; the standard of living to which each spouse has become accustomed; the financial needs of each spouse; and any other factors the Court deems appropriate. The Tribal Court shall not consider the misconduct of either spouse when making its determination.

(2) Non-Marital Property

If no valid antenuptial contract to the contrary exists between the spouses, the non-marital property of each spouse remains the property of the respective spouse. Separate property of a spouse may be given to the other spouse only to prevent undue hardship.

(3) Untraceable Property

If no valid antenuptial contract to the contrary exists between spouses, property which cannot be traced as separate property of one of the spouses is considered marital property for the purpose of division of property between spouses.

(4) Professional Degrees

If no valid antenuptial contract to the contrary exists between the spouses, professional degrees earned by one spouse while the other supported him or her are not marital property but the Tribal Court shall consider such contributions in its equitable distribution of the marital property.

(5) Per Capita Payments

Any per capita payment is the separate property of the person to whom they are issued. Per capita payments shall not be awarded to a spouse but they shall be considered income for the purposes of child support calculations.

(6) Pensions

If no valid antenuptial contract to the contrary exists between the spouses, pension plan benefits or rights in the form of future pension plan payments;

- (a) Are payable only to the extent of the amount of the pension plan benefit payable under the plan;
- (b) Are not payable for a period of time that exceeds the time the pension plan benefits are payable to the pension plan benefit recipient;
- (c) Are not payable in a lump sum amount from pension plan assets attributable in any fashion to a spouse with the status of active member, deferred retiree or benefit recipient of a pension plan;
- (d) If the former spouse to whom the payments are being made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and
- (e) In the case of public pension plan benefits or rights, property division may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefits become payable.

(7) Modification of Property Award

All divisions of property of real and personal property provided by this Section shall be final and may be revoked or modified only where the court finds the existence of one of the following:

- (a) Mistake, inadvertence, surprise or excusable neglect;
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Leech Lake Band of Ojibwe Rules of Civil Procedure;
- (c) Fraud, whether denominated intrinsic or extrinsic, misrepresentation or misconduct of an adverse party;
 - i. The judgment and decree or order is void; or
 - ii. The judgment has been satisfied, released or discharged or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have a prospective application.

A motion for modification must be made within a reasonable time and for one of the reasons stated above in subsections (a), (b) or (c) above, no more than one year after the judgment and decree is issued, or the order or proceeding was entered or taken. A motion under this subsection does not effect the finality of a judgment and decree or order or suspend its operation. This subsection does not limit the power of the Leech Lake Tribal Court to entertain an independent action to relieve a party from a judgment and decree, order or proceeding or to grant relief to a party not actually personally notified as provided in the Leech Lake Band of Ojibwe Rules of Civil procedure, or to set aside a judgment for fraud upon the Court.

Section E. Maintenance

(1) When Awarded

If no valid antenuptial contract or settlement stipulation to the contrary exists between the spouses, maintenance may be awarded when the Leech lake Tribal Court deems appropriate. There shall be no requirements under the law of the Leech Lake Band of Ojibwe that the Court award maintenance. The Tribal Court shall take into consideration the length of the marriage; the contributions, financial and non-financial of both spouses; the standard of living to which each spouse has become accustomed; the financial needs of each spouse; and any other factors the Court deems appropriate. The Tribal Court shall not consider the misconduct of either spouse when making its determination unless such misconduct involves the abuse of one spouse by the other.

(2) Modification of Maintenance Award.

- (a) After an order for maintenance, the Tribal Court may from time to time, upon motion of either of the parties or upon motion of the public authority responsible for support, modify the order respecting the appropriation and payment of the principal and income of property held in trust and make an order respecting these matters which it might have made in the original proceeding, except as herein otherwise provided.

- (b) The terms of a decree respecting maintenance may be modified upon a showing of one or more of the following:
- i. Substantially increased or decreased earnings of a party;
 - ii. Substantially increased or decreased need of a party;
 - iii. Receipt of public assistance;
 - iv. A change in the cost of living for either party measured by the federal bureau of statistics;
 - v. Abuse by one of the parties to the dissolution committed against the other party, any of which makes the terms unreasonable and unfair.
 - vi. On a motion for modification of maintenance, the tribal court shall apply all relevant factors that exist at the time of the motion. A modification of maintenance may be made retroactively only with respect to any period during which the moving party has a pending motion for modification but only from the date of filing of service of the motion on the responding party.
- (3) Termination of Maintenance. Unless otherwise agreed upon in writing or expressly provided in the decree, the obligation to pay maintenance is terminated upon the death of either party, the remarriage of the party receiving maintenance or upon a termination date ordered by the court.

Section F. Child Support.

(1) Calculation of Gross Income.

(a) Subject to the exclusions and deductions in this section, gross income includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child under section F(2) below, per capita payments and potential income. The court shall consider any monies received as income if the Internal Revenue Service considers the amount income. Salaries, wages, commissions, or other compensation paid by third parties shall be based upon gross income before participation in an employer-sponsored benefit plan that allows an employee to pay for a benefit or expense using pretax dollars, such as flexible spending plans and health savings accounts. No deductions shall be allowed for contributions to pensions, 401K, IRA, or other retirement benefits. Gross income does not include compensation received by a party for employment in excess of a 40-hour work week, provided that: child support is ordered in an amount at least equal to the guideline amount based on gross income not excluded under this clause; and the party demonstrates, and the court finds, that:

- (i) the excess employment began after the filing of the petition for dissolution or legal separation or a petition related to custody, parenting time, or support;
- (ii) the excess employment reflects an increase in the work schedule or

hours worked over that of the two years immediately preceding the filing of the petition;

- (iii) the excess employment is voluntary and not a condition of employment;
- (iv) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and
- (v) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

(b) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they reduce personal living expenses.

(c) Gross income may be calculated on either an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying the weekly income by 4.33.

(d) Gross income does not include a child support payment received by a party. It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are not gross income.

(e) Gross income does not include the income of the obligor's spouse and the obligee's spouse.

(f) Child support or spousal maintenance payments ordered by a court for a nonjoint child or former spouse or ordered payable to the other party as part of the current proceeding are deducted from other periodic payments received by a party for purposes of determining gross income. Gross income does not include public assistance benefits or other forms of public assistance based on need.

(2) Deduction from Income for Nonjoint Children.

(a) When either or both parents are legally responsible for a nonjoint child, a deduction from the child support obligation shall be calculated under this section if:

- (i) the nonjoint child primarily resides in the parent's household; and
- (ii) the parent is not obligated to pay basic child support for the nonjoint child to the other parent or a legal custodian of the child under an existing child support order.

(b) The court shall use the guidelines under section (4) below to determine the basic child support obligation for the nonjoint child or children by using the gross income of the parent for whom the deduction is being calculated and the number of nonjoint children primarily residing in the parent's household. If the number of nonjoint children to be used for the determination is greater than two, the determination must be made using the number two instead of the greater number.

(c) The deduction for nonjoint children is 50 percent of the guideline

amount determined under paragraph (4) below.

(3) Determination of Support Obligation.

- (a) The guideline in this section is a rebuttable presumption and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under this Chapter.
- (b) The basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents.
- (c) If a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children, and the parent's individual parental income for determining child support, not the combined parental incomes for determining child support of the parents.
- (d) For combined parental incomes for determining child support exceeding \$15,000 per month, the presumed basic child support obligations shall be as for parents with combined parental income for determining child support of \$15,000 per month. A basic child support obligation in excess of this level may be demonstrated for those reasons set forth in Section 5(b) below.

(4) Basic Support Guideline.

Unless otherwise agreed to by the parents and approved by the court, when establishing basic support, the court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support (PICS). Basic support must be computed using the following guideline:

Combined Parental Income for Determining Child Support	Number of Children					
	One	Two	Three	Four	Five	Six
\$0- \$799	\$50	\$50	\$75	\$75	\$100	\$100
800- 899	80	129	149	173	201	233
900- 999	90	145	167	194	226	262
1,000- 1,099	116	161	186	216	251	291
1,100- 1,199	145	205	237	275	320	370
1,200- 1,299	177	254	294	341	396	459
1,300- 1,399	212	309	356	414	480	557
1,400- 1,499	251	368	425	493	573	664
1,500- 1,599	292	433	500	580	673	780
1,600- 1,699	337	502	580	673	781	905

1,700- 1,799	385	577	666	773	897	1,040
1,800- 1,899	436	657	758	880	1,021	1,183
1,900- 1,999	490	742	856	994	1,152	1,336
2,000- 2,099	516	832	960	1,114	1,292	1,498
2,100- 2,199	528	851	981	1,139	1,320	1,531
2,200- 2,299	538	867	1,000	1,160	1,346	1,561
2,300- 2,399	546	881	1,016	1,179	1,367	1,586
2,400- 2,499	554	893	1,029	1,195	1,385	1,608
2,500- 2,599	560	903	1,040	1,208	1,400	1,625
2,600- 2,699	570	920	1,060	1,230	1,426	1,655
2,700- 2,799	580	936	1,078	1,251	1,450	1,683
2,800- 2,899	589	950	1,094	1,270	1,472	1,707
2,900- 2,999	596	963	1,109	1,287	1,492	1,730
3,000- 3,099	603	975	1,122	1,302	1,509	1,749
3,100- 3,199	613	991	1,141	1,324	1,535	1,779
3,200- 3,299	623	1,007	1,158	1,344	1,558	1,807
3,300- 3,399	636	1,021	1,175	1,363	1,581	1,833
3,400- 3,499	650	1,034	1,190	1,380	1,601	1,857
3,500- 3,599	664	1,047	1,204	1,397	1,621	1,880
3,600- 3,699	677	1,062	1,223	1,418	1,646	1,909
3,700- 3,799	691	1,077	1,240	1,439	1,670	1,937
3,800- 3,899	705	1,081	1,257	1,459	1,693	1,963
3,900- 3,999	719	1,104	1,273	1,478	1,715	1,988
4,000- 4,099	732	1,116	1,288	1,496	1,736	2,012
4,100- 4,199	746	1,132	1,305	1,516	1,759	2,039
4,200- 4,299	760	1,147	1,322	1,536	1,781	2,064
4,300- 4,399	774	1,161	1,338	1,554	1,802	2,088
4,400- 4,499	787	1,175	1,353	1,572	1,822	2,111
4,500- 4,599	801	1,184	1,368	1,589	1,841	2,133
4,600- 4,699	808	1,200	1,386	1,608	1,864	2,160
4,700- 4,799	814	1,215	1,402	1,627	1,887	2,186
4,800- 4,899	820	1,231	1,419	1,645	1,908	2,212

4,900- 4,999	825	1,246	1,435	1,663	1,930	2,236
5,000- 5,099	831	1,260	1,450	1,680	1,950	2,260
5,100- 5,199	837	1,275	1,468	1,701	1,975	2,289
5,200- 5,299	843	1,290	1,485	1,722	1,999	2,317
5,300- 5,399	849	1,304	1,502	1,743	2,022	2,345
5,400- 5,499	854	1,318	1,518	1,763	2,046	2,372
5,500- 5,599	860	1,331	1,535	1,782	2,068	2,398
5,600- 5,699	866	1,346	1,551	1,801	2,090	2,424
5,700- 5,799	873	1,357	1,568	1,819	2,111	2,449
5,800- 5,899	881	1,376	1,583	1,837	2,132	2,473
5,900- 5,999	888	1,390	1,599	1,855	2,152	2,497
6,000- 6,099	895	1,404	1,604	1,872	2,172	2,520
6,100- 6,199	902	1,419	1,631	1,892	2,195	2,546
6,200- 6,299	909	1,433	1,645	1,912	2,217	2,572
6,300- 6,399	916	1,448	1,664	1,932	2,239	2,597
6,400- 6,499	923	1,462	1,682	1,951	2,260	2,621
6,500- 6,599	930	1,476	1,697	1,970	2,282	2,646
6,600- 6,699	936	1,490	1,713	1,989	2,305	2,673
6,700- 6,799	943	1,505	1,730	2,009	2,328	2,700
6,800- 6,899	950	1,519	1,746	2,028	2,350	2,727
6,900- 6,999	957	1,533	1,762	2,047	2,379	2,747
7,000- 7,099	963	1,547	1,778	2,065	2,394	2,753
7,100- 7,199	970	1,561	1,795	2,085	2,417	2,758
7,200- 7,299	974	1,574	1,812	2,104	2,439	2,764
7,300- 7,399	980	1,587	1,828	2,123	2,462	2,769
7,400- 7,499	989	1,600	1,844	2,142	2,483	2,775
7,500- 7,599	998	1,613	1,860	2,160	2,505	2,781
7,600- 7,699	1,006	1,628	1,877	2,180	2,528	2,803
7,700- 7,799	1,015	1,643	1,894	2,199	2,550	2,833
7,800- 7,899	1,023	1,658	1,911	2,218	2,572	2,864
7,900- 7,999	1,032	1,673	1,928	2,237	2,594	2,894
8,000- 8,099	1,040	1,688	1,944	2,256	2,616	2,925

8,100- 8,199	1,048	1,703	1,960	2,274	2,637	2,955
8,200- 8,299	1,056	1,717	1,976	2,293	2,658	2,985
8,300 -8,399	1,064	1,731	1,992	2,311	2,679	3,016
8,400- 8,499	1,072	1,746	2,008	2,328	2,700	3,046
8,500- 8,599	1,080	1,760	2,023	2,346	2,720	3,077
8,600- 8,699	1,092	1,780	2,047	2,374	2,752	3,107
8,700- 8,799	1,105	1,801	2,071	2,401	2,784	3,138
8,800- 8,899	1,118	1,822	2,094	2,429	2,816	3,168
8,900- 8,999	1,130	1,842	2,118	2,456	2,848	3,199
9,000- 9,099	1,143	1,863	2,142	2,484	2,880	3,223
9,100- 9,199	1,156	1,884	2,166	2,512	2,912	3,243
9,200- 9,299	1,168	1,904	2,190	2,539	2,944	3,263
9,300- 9,399	1,181	1,925	2,213	2,567	2,976	3,284
9,400- 9,499	1,194	1,946	2,237	2,594	3,008	3,304
9,500- 9,599	1,207	1,967	2,261	2,622	3,031	3,324
9,600- 9,699	1,219	1,987	2,285	2,650	3,050	3,345
9,700- 9,799	1,232	2,008	2,309	2,677	3,069	3,365
9,800- 9,899	1,245	2,029	2,332	2,705	3,087	3,385
9,900- 9,999	1,257	2,049	2,356	2,732	3,106	3,406
10,000-10,099	1,270	2,070	2,380	2,760	3,125	3,426
10,100-10,199	1,283	2,091	2,404	2,788	3,144	3,446
10,200-10,299	1,295	2,111	2,428	2,815	3,162	3,467
10,300-10,399	1,308	2,132	2,451	2,843	3,181	3,487
10,400-10,499	1,321	2,153	2,475	2,870	3,200	3,507
10,500-10,599	1,334	2,174	2,499	2,898	3,218	3,528
10,600-10,699	1,346	2,194	2,523	2,921	3,237	3,548
10,700-10,799	1,359	2,215	2,547	2,938	3,256	3,568
10,800-10,899	1,372	2,236	2,570	2,955	3,274	3,589
10,900-10,999	1,384	2,256	2,594	2,972	3,293	3,609
11,000-11,099	1,397	2,277	2,618	2,989	3,312	3,629
11,100-11,199	1,410	2,294	2,642	3,006	3,331	3,649
11,200-11,299	1,422	2,306	2,666	3,023	3,349	3,667

11,300-11,399	1,435	2,319	2,689	3,040	3,366	3,686
11,400-11,499	1,448	2,331	2,713	3,055	3,383	3,705
11,500-11,599	1,461	2,344	2,735	3,071	3,400	3,723
11,600-11,699	1,473	2,356	2,748	3,087	3,417	3,742
11,700-11,799	1,486	2,367	2,762	3,102	3,435	3,761
11,800-11,899	1,499	2,378	2,775	3,116	3,452	3,780
11,900-11,999	1,511	2,389	2,788	3,131	3,469	3,798
12,000-12,099	1,524	2,401	2,801	3,146	3,485	3,817
12,100-12,199	1,537	2,412	2,814	3,160	3,501	3,836
12,200-12,299	1,549	2,423	2,828	3,175	3,517	3,854
12,300-12,399	1,562	2,434	2,841	3,190	3,534	3,871
12,400-12,499	1,575	2,445	2,854	3,205	3,550	3,889
12,500-12,599	1,588	2,456	2,867	3,219	3,566	3,907
12,600-12,699	1,600	2,467	2,880	3,234	3,582	3,924
12,700-12,799	1,613	2,478	2,894	3,249	3,598	3,942
12,800-12,899	1,626	2,489	2,907	3,264	3,615	3,960
12,900-12,999	1,638	2,500	2,920	3,278	3,631	3,977
13,000-13,099	1,651	2,512	2,933	3,293	3,647	3,995
13,100-13,199	1,664	2,523	2,946	3,308	3,663	4,012
13,200-13,299	1,676	2,534	2,960	3,322	3,679	4,030
13,300-13,399	1,689	2,545	2,973	3,337	3,696	4,048
13,400-13,499	1,702	2,556	2,986	3,352	3,712	4,065
13,500-13,599	1,715	2,567	2,999	3,367	3,728	4,083
13,600-13,699	1,727	2,578	3,012	3,381	3,744	4,100
13,700-13,799	1,740	2,589	3,026	3,396	3,760	4,118
13,800-13,899	1,753	2,600	3,039	3,411	3,777	4,136
13,900-13,999	1,765	2,611	3,052	3,425	3,793	4,153
14,000-14,099	1,778	2,623	3,065	3,440	3,809	4,171
14,100-14,199	1,791	2,634	3,078	3,455	3,825	4,189
14,200-14,299	1,803	2,645	3,092	3,470	3,841	4,206
14,300-14,399	1,816	2,656	3,105	3,484	3,858	4,224
14,400-14,499	1,829	2,667	3,118	3,499	3,874	4,239

14,500-14,599	1,842	2,678	3,131	3,514	3,889	4,253
14,600-14,699	1,854	2,689	3,144	3,529	3,902	4,268
14,700-14,799	1,864	2,700	3,158	3,541	3,916	4,282
14,800-14,899	1,872	2,711	3,170	3,553	3,929	4,297
14,900-14,999	1,879	2,722	3,181	3,565	3,942	4,311
15,000	1,883	2,727	3,186	3,571	3,949	4,319

(5) **Income Cap on Determining Basic Support.**

(a) The basic support obligation for parents with a combined parental income for determining child support in excess of the income limit under subsection (4) must be the same dollar amount as provided for the parties with a combined parental income for determining child support equal to the income limit under subsection (4).

(b) A court may order a basic child support obligation in a child support order in an amount that exceeds the income limit in subsection (4) if it finds that a child has a disability or other substantial, demonstrated need for the additional support and that the additional support will directly benefit the child.

(c) If a child support proceeding involves more than six children, the court may derive a support order without specifically following the guidelines. However, the court must consider the basic principles encompassed by the guidelines and must consider each parents' needs, resources, and circumstances.

(6) **Computation of Child Support Obligations.**

To determine the presumptive child support obligation of a parent, the court shall follow the procedure set forth in this section. To determine the obligor's basic support obligation, the court shall:

(a) Determine the gross income of each parent under section F (1) above:

(b) Calculate the parental income for determining child support (PICS) of each parent, by subtracting from the gross income the credit, if any, for each parent's nonjoint children under section F (2) above;

(c) Determine the percentage contribution of each parent to the combined PICS by dividing the combined PICS into each parent's PICS in Section F (3) above;

(d) Determine the combined basic support obligation by application of the guidelines in section F (4) above;

(e) Determine the obligor's share of the basic support obligation by multiplying the percentage figure from clause (d) by the combined basic support obligation in clause (4); and

(f) Determine the parenting expense adjustment, if any, as provided in section (8) below and adjust the obligor's basic support obligation accordingly. If the parenting time of the parties is presumed equal, section (8) subdivision (c) below, applies to the calculation of the basic support obligation and a determination of which parent is the obligor.

(g) The court shall determine the medical support obligation for each parent as provided in section G below. Unreimbursed and uninsured medical expenses are not included in the presumptive amount of support owed by a parent and are calculated and collected as described in section G below.

(h) The court shall determine each parent's total child support obligation by adding together each parent's basic support, child care support, and health care coverage obligations as provided in this section.

(i) If Social Security benefits or veterans' benefits are received by one parent as a representative payee for a joint child based on the other parent's eligibility, the court shall subtract the amount of benefits from the other parent's net child support obligation, if any.

(j) The final child support order shall separately designate the amount owed for basic support, child care support, and medical support.

(k) Child's Per Capita Payment. A child's per capita payment shall not be used in calculations involving child support.

(7) Other Factors To be Considered. In addition to the child support guidelines, the Court shall take into consideration the following factors in modifying child support:

(a) All earnings, income and resources of the parents, including real and personal property, but excluding income from excess employment of the obligor;

(b) The financial needs and resources, physical and emotional condition and educational needs of the child(ren) to be supported;

(c) The standards of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;

(d) The amount of public benefits awarded on the basis of the presence of the child(ren) in the household;

(e) The receipt of income tax dependency deductions; and

(f) The parents' debt as provided below.

(8) Parenting Expense Adjustment.

(a) The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses. Every child support order shall specify the percentage of parenting time granted to or presumed for each parent. For purposes of this

section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

(b) If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment. If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.

(c) Calculation of parenting expense adjustment. The obligor is entitled to a parenting expense adjustment calculated as provided in this subdivision. The court shall:

(i) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor below:

Percentage Range of Parenting Time	Adjustment Percentage
less than 10 percent	no adjustment
10 percent to 45 percent	12 percent
45.1 percent to 50 percent	presume parenting time is equal

(ii) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment; and

(iii) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after parenting expense adjustment.

(d) Calculation of basic support when parenting time presumed equal. If the parenting time is equal and the parental incomes for determining child support of the parents also are equal, no basic support shall be paid unless the court determines that the expenses for the child are not equally shared.

(e) If the parenting time is equal but the parents' parental incomes for determining child support are not equal, the parent having the greater

parental income for determining child support shall be obligated for basic child support, calculated as follows:

- (i) multiply the combined basic support calculated under Section F by 0.75;
- (ii) prorate the amount under clause (1) between the parents based on each parent's proportionate share of the combined PICS; and
- (iii) subtract the lower amount from the higher amount.

The resulting figure is the obligation after parenting expense adjustment for the parent with the greater parental income for determining child support.

(9) Debt Owed to Private Creditors. In establishing or modifying a child support obligation, the Court may consider debts owed to private creditors, but only if:

(a) The Tribal Court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income, the Court shall consider only the amount of debt that is essential to continuing generation of income; and

(b) The party requesting a departure produces a sworn schedule of the debts with supporting documentation showing goods or services purchased, the recipient of the goods or services, the amount of the original debt, the outstanding balance, the monthly payment and the number of months until the debt will be paid in full.

(c) Any further departure below the guidelines that is based on a consideration of debts owed to private creditors shall not exceed 18 months of duration, after which the support shall increase automatically to the amount ordered by the Court.

(10) Government Debt Obligation. The Court may consider debts and obligations owed to a government.

(11) Deviation from the Guidelines. The Court may receive evidence on the above factors to determine if there should be an upward or downward departure from the guidelines.

(12) Nature of Guidelines. The above guidelines are binding in each case unless the Court makes specific findings of fact for the basis of an upward or downward departure.

(13) Modification of Child Support Award. After an order for child support, the Tribal Court may from time to time, but no sooner than 180 days after the issuance of the original order, on motion of either party or of the public agency responsible for support enforcement, modify the order respecting the appropriation and payment of the principal and income of property held in trust and may make an order respecting these matters which it might have made in the original

proceedings, except as herein otherwise provided. A party or public agency may also bring a motion for contempt of court if the obligor is in arrears in support or maintenance payments. The terms of a decree respecting child support may be modified upon a showing of one or more of the following:

- (a) Substantially increased or decreased earnings of a party;
- (b) Substantially increased or decreased need of a party;
- (c) Receipt of public assistance;
- (d) A change in the cost of living for either party measured by the federal bureau of statistics; any of which makes the terms unreasonable and unfair. On a motion for a modification of child support, the Tribal court shall:
 - i. take into consideration the needs of the children and shall not consider the financial circumstances of each party's spouse, if any;
 - ii. not consider compensation received by a party for employment in excess of a 40 hour work week if the excess employment is voluntary and began after the entry of the existing support order;

(14) Retroactive Effect of Modification. A modification of a child support order may be made retroactive only with respect to any period during which the petitioning party has a pending motion for modification but only from the date of service of the motion upon the responding party. However, modification may be applied to an earlier period if the Court makes express findings that the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability or a material misrepresentation of another party and that the party seeking modification, when no longer precluded, promptly served the motion.

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

(16) Forms. The Court shall make forms available for both obligors and persons to whom support is owed. The form shall provide detailed instructions regarding how to obtain a modification of child support for both obligors and obliges.

Section G. Medical Support

Obligor to Take Necessary Steps.

(1) The parent possessing the more comprehensive medical and dental insurance available through an employer at the most reasonable cost shall name the minor child as a beneficiary on any health and dental plan that is available through an employer or other available plan.

(2) If the tribal court determines that no dependent health or dental insurance is available or affordable through an employer, the Court may require the obligor to obtain dependent health or dental insurance or to be financially responsible for the costs of necessary medical or dental expenses of the dependent child(ren).

(3) A copy of the Court order for insurance coverage shall be forwarded to the obligor's employer by the Court or the agency responsible for child support enforcement when ordered by the Court.

(4) A minor child that an obligor is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent child of the obligor until the child is emancipated or until further order of the Court.

(5) When an order for dependent insurance coverage is in effect and the obligor's employment is terminated, the insurer shall notify the obligee within 10 days of the termination date with notice of conversion rights.

(6) When an order for dependent insurance coverage is in effect the obligor's employer shall release to the obligee and the agency, upon request, information on the dependent coverage available including the name of the insurer and the policy benefits.

(7) If the obligor fails to provide medical or dental insurance for the benefit of the dependent child(ren) as ordered, the obligor shall be liable for the costs of all medical or dental expenses incurred after the date of the tribal court order. Failure to provide or maintain medical and dental insurance constitutes a showing of increased need by the obligee and provides a basis for a modification of the obligor's child support order.

(8) Any tribal agency responsible for support enforcement shall take steps necessary to implement and enforce an order for dependent health and dental insurance whenever the child(ren) receive public assistance or upon application for assistance by the obligee.

(9) Remedies available for collection and enforcement of child support shall also apply to medical support. For the purpose of enforcement, the costs of individual or group health insurance are additional child support obligations.

(10) The provisions regarding medical support may be modified or waived by the court in its discretion if the parties demonstrate that the minor children are currently eligible for services through the Indian Health Service.

Chapter 5. Child Custody and Parenting Time

Section A. Child Custody Factors.

Determinations regarding custody of minor children will be based upon the best interests of the child. When making decisions regarding the custody of minor children and parenting time, the tribal court shall consider the following factors in determining the best interests of the child:

(1) The wishes of the child's parent or parents as to custody;

- (2) The reasonable preferences of the child, if the court deems the child to be of sufficient age and maturity to express a preference;
- (3) The child's primary caretaker;
- (4) The intimacy of the relationship between each parent and the child;
- (5) The interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
- (6) The child's adjustment to home, school, and community;
- (7) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) The permanence, as a family unit, of the existing or proposed custodial home;
- (9) The mental and physical health of all individuals involved; except that a disability, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;
- (10) The capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture;
- (11) The child's tribal affiliation and the ability of the person best suited to maintain those ties;
- (12) The effect on the child of the actions of an abuser, if related to domestic abuse that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the parent; and
- (13) except in cases in which a finding of domestic abuse has been made the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

The court may not use one factor to the exclusion of all others. The primary caretaker factor may not be used as a presumption in determining the best interests of the child. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

(b) The court shall not consider conduct of a proposed custodian that does not affect the custodian's relationship to the child.

Section B. Evidence of false allegations of child abuse.

The court shall consider evidence of a false allegation of child abuse in determining the best interests of the child.

Section C. Joint Custody Factors.

In addition to the factors listed in Section A above, where either joint legal or joint physical custody is contemplated or sought, the court shall consider the following relevant factors:

- (1) The ability of parents to cooperate in the rearing of their children;

- (2) The methods proposed for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;
- (3) Whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing; and
- (4) Whether domestic abuse has occurred between the parents.

The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child. However, the court shall use a rebuttable presumption that joint legal or physical custody is not in the best interests of the child if domestic abuse has occurred between the parents. If the court awards joint legal or physical custody over the objection of a party, the court shall make detailed findings on each of the factors in this subdivision and explain how the factors led to its determination that joint custody would be in the best interests of the child.

Section D. Custody Order.

Upon declaring the nullity of a marriage, or in a dissolution or child custody proceeding, the court shall make such further order as it deems just and proper concerning:

- (1) The legal custody of the minor child(ren) of the parties which shall be sole or joint;
- (2) The physical custody and residence; and
- (3) their support. In determining custody, the court shall consider the best interests of each child and shall not prefer one parent over the other solely on the basis of the sex of the parent.

Section E. Rights of Parties

The court shall grant the following rights to each of the parties, unless specific findings are made regarding limitations to these rights. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Each party shall keep the other party informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent-teacher conferences. The school is not required to hold a separate conference for each party. In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment. Each party has the right to reasonable access and telephone contact with the minor children. The court may waive any of the rights under this section if it finds it is necessary to protect the welfare of a party or child.

Section F. Custody Consent Decree

In a proceeding under this section, a parent may transfer legal and physical custody of a child by a consent decree. The court may approve a proposed consent decree if the

custody arrangement is in the best interests of the child and all parties to the decree agree to it after being fully informed of its contents. A consent decree under this section must:

- (1) transfer legal and physical custody of the child to a third party and state that this includes the ability to determine the child's residence; make decisions regarding the child's education, religious training, and health care; and obtain information and public services on behalf of the child in the same manner as a parent;
- (2) indicate whether the transfer of custody is temporary or permanent; and
- (3) include an order for child support in the guidelines amount subject to income withholding and including an order for medical support. A party to a consent decree under this section may file a motion to modify or terminate the consent decree at any time. A party who has custody of a child under this section must seek modification of the consent decree before transferring physical or legal custody of the child to anyone.

Section G. Parenting Time.

(1) In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child. If the court finds, after a hearing, that parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the parent prior to the commencement of the proceeding. A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of parenting time.

(2) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with parenting time.

(3) Upon request of either party, to the extent practicable an order for parenting time must include a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, unless parenting time is restricted, denied, or reserved.

(4) The court administrator shall provide a form for a pro se motion regarding parenting time disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the parenting time dispute. The form may not include a request for a change of custody. The court shall provide instructions on serving and filing the motion.

(5) In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child. For purposes of this paragraph, the percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent or by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight.

The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Section H. Domestic Abuse; Supervised Parenting Time.

(1) If a parent requests supervised parenting time under Section G above and an order for protection is in effect against the other parent to protect the parent with whom the child resides or the child, the judge or judicial officer must consider the provisions of the order for protection in making a decision regarding parenting time.

(2) The court administrator, in consultation with representatives of parents and other interested persons, shall develop standards to be met by persons who are responsible for supervising parenting time. Either parent may challenge the appropriateness of an individual chosen by the court to supervise parenting time.

Section I. Rights of Children and Parents.

Upon the request of either parent, the court may inform any child of the parties, if eight years of age or older, or otherwise of an age of suitable comprehension, of the rights of the child and each parent under the order or decree or any substantial amendment thereof. The parent with whom the child resides shall present the child for parenting time with the other parent, at such times as the court directs.

Section J. Move to Another State.

(1) The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the other parent by the decree, the court shall not permit the child's residence to be moved to another state.

(2) The court shall apply a best interests standard when considering the request of the parent with whom the child resides to move the child's residence to another state. The factors the court must consider in determining the child's best interests include, but are not limited to:

(a) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;

(b) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;

(c) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties;

(d) the child's preference, taking into consideration the age and maturity of the child;

(e) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;

(f) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;

(g) the reasons of each person for seeking or opposing the relocation; and

(h) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse.

(3) The burden of proof is upon the parent requesting to move the residence of the child to another state, except that if the court finds that the person requesting permission to move has been a victim of domestic abuse by the other parent, the burden of proof is upon the parent opposing the move. The court must consider all of the factors in this subdivision in determining the best interests of the child.

Section. K. Modification of Order for Parenting Time.

If modification of an order for parenting time would serve the best interests of the child, the court shall modify the order granting or denying parenting time, if the modification would not change the child's primary residence. The court may not restrict parenting time unless it finds that:

(1) parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development; or

(2) the parent has chronically and unreasonably failed to comply with court-ordered parenting time.

If a parent makes specific allegations that parenting time by the other parent places the parent or child in danger of harm, the court shall hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time.

The court may require a third party to supervise the parenting time or may restrict a parent's parenting time if necessary to protect the other parent or child from harm.

If there is an existing order for protection governing the parties, the court shall consider the use of an independent, neutral exchange location for parenting time.

Section L. Remedies.

(1) The court may provide for one or more of the following remedies for denial of or interference with court-ordered parenting time as provided under this subdivision. All parenting time orders must include notice of the provisions of this subdivision.

(2) If the court finds that a person has been deprived of court-ordered parenting time, the court shall order the parent who has interfered to allow compensatory parenting time to the other parent or the court shall make specific findings as to why a request for compensatory parenting time is denied. If compensatory parenting time is awarded, additional parenting time must be:

(a) at least of the same type and duration as the deprived parenting time and, at the discretion of the court, may be in excess of or of a different type than the deprived parenting time;

(b) taken within one year after the deprived parenting time; and

(c) at a time acceptable to the parent deprived of parenting time.

(3) If the court finds that a party has wrongfully failed to comply with a parenting time order or a binding agreement or decision, the court may:

- (a) impose a civil penalty of up to \$500 on the party;
 - (b) require the party to post a bond with the court for a specified period of time to secure the party's compliance;
 - (c) award reasonable attorney's fees and costs;
 - (d) require the party who violated the parenting time to reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or
 - (e) award any other remedy that the court finds to be in the best interests of the children involved.
- (4) If the court finds that a party has been denied parenting time and has incurred expenses in connection with the denied parenting time, the court may require the party who denied parenting time to post a bond in favor of the other party in the amount of prepaid expenses associated with upcoming planned parenting time.
- (5) Proof of an unwarranted denial of or interference with duly established parenting time may constitute contempt of court and may be sufficient cause for reversal of custody.

Section M. Effect of Certain Criminal Convictions.

(1) Seeking custody or parenting time.

Notwithstanding any contrary provision in Section A above, if a person seeking child custody or parenting time has been convicted of a crime described below, the person seeking custody or parenting time has the burden to prove that custody or parenting time by that person is in the best interests of the child if:

- (a) the conviction occurred within the preceding five years;
- (b) the person is currently incarcerated, on probation, or under supervised release for the offense; or
- (c) the victim of the crime was a family or household member.

If this section applies, the court may not grant custody or parenting time to the person unless it finds that the custody or parenting time is in the best interests of the child. If the victim of the crime was a family or household member, the standard of proof is clear and convincing evidence.

(2) Applicable crimes.

This section applies to the following crimes or similar crimes under the laws of the United States, or any other state or tribe:

- (a) murder in the first, second, or third degree;
- (b) manslaughter in the first degree;
- (c) assault in the first, second, or third degree;
- (d) kidnapping;
- (e) depriving another of custodial or parental rights;
- (f) soliciting, inducing, promoting, or receiving profit derived from prostitution involving a minor;
- (g) criminal sexual conduct in the first degree;
- (h) criminal sexual conduct in the second degree;
- (i) criminal sexual conduct in the third degree;
- (j) solicitation of a child to engage in sexual conduct;
- (k) incest;

- (l) malicious punishment of a child;
- (m) neglect of a child;
- (n) terroristic threats; or
- (o) felony harassment or stalking.

NOTE:
2 SECTION N's
plp

Section N. Modification of Custody Orders.

(1) Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan may be made earlier than one year after the date of the entry of a decree of dissolution or custody or parenting time order containing a provision dealing with custody, except in accordance with paragraph (3).

(2) If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within two years after disposition of the prior motion on its merits, except in accordance with paragraph (3).

(3) The time limitations prescribed in paragraphs (1) and (2) above shall not prohibit a motion to modify a custody order or parenting plan if the court finds that there is persistent and willful denial or interference with parenting time, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

(4) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order or a parenting plan provision which specifies the child's primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custody arrangement or the parenting plan provision specifying the child's primary residence that was established by the prior order unless:

- (a) the court finds that a change in the custody arrangement or primary residence is in the best interests of the child;
- (b) both parties agree to the modification;
- (c) the child has been integrated into the family of the petitioner with the consent of the other party;
- (d) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
- (e) the court has denied a request of the primary custodial parent to move the residence of the child to another state, and the primary custodial parent has relocated to another state despite the court's order.

Section N. Stand By Custodian

(1) A standby or temporary custodian may act as co-custodian or custodian upon the occurrence of the triggering event. The commencement of the standby or temporary custodian's authority to act as co-custodian pursuant to a determination of incapacity, a determination of debilitation and consent, or the receipt of consent alone does not itself

divest the designator of any parental rights but confers on the standby or temporary custodian concurrent or shared custody of the child.

(2) Death of Designator.

The commencement of the standby custodian's authority to act as custodian because of the death of the designator does not confer upon the standby custodian more than legal and physical custody of the child. On the death of the designator, the standby custodian shall be appointed a guardian. No separate petition is required. No bond or accounting is required except as specified in this chapter.

(3) Involvement of Designator.

A co-custodian shall assure frequent and continuing contact with and physical access by the designator with the child and shall assure the involvement of the parents, to the greatest extent possible, in decision making on behalf of the child.

(4) Effect of Filing.

The designator may file a petition for approval of a designation with the court at any time. If the petition is approved by the court before the occurrence of the triggering event, the standby or temporary custodian's authority commences automatically upon the occurrence of the triggering event. No further petition or confirmation is required. If a designation has been made but the petition for approval of the designation has not been filed and a triggering event has occurred, the standby custodian has temporary legal authority to act as a co-custodian or custodian of the child(ren) without the direction of the court for a period of 60 days. The standby custodian must, within that period, file a petition for approval in accordance with this section. If no petition is filed within 60 days, the standby custodian loses all authority to act as co-custodian or custodian. If a petition is filed but the court does not act upon it within the 60-day period, the temporary legal authority to act as co-custodian or custodian continues until the court orders otherwise.

(5) Parental Rights.

The commencement of a co-custodian's or stand-by custodian's authority under this chapter does not, by itself, divest a parent or legal custodian of any parental or custodial rights.

(6) Modification of Appointment.

Once a court has confirmed the designation of a standby custodian, the appointment may be modified only under section (Modification), except that the designator may revoke the designation at will.

(7) Restored Capacity.

If a licensed physician determines that the designator has regained capacity, the co-custodian's authority that commenced on the occurrence of a triggering event becomes inactive. Failure of a co-custodian to immediately return the child(ren) to the designator's care entitles the designator to an emergency hearing within five days of a request for a hearing.

Chapter 6. Rules of Procedure for Family Relations.

Section A. Applicability of Rules. These rules apply only to the foregoing sections under the Leech Lake Band of Ojibwe's Family Relation Code.

Section B. Commencement

(1) Commencement of Proceedings.

Marriage dissolution proceedings and petitions for custody shall be commenced by service of a summons and petition upon the person of the other party or by publication pursuant to Tribal Court order. No summons shall be required if a joint petition is filed. Service of the summons and petition may be by publication only upon an Order of the Tribal Court.

Section C. Computation of Time.

Whenever this rule requires documents to be filed with the Clerk of Tribal Courts within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following:

- (1) Three (3) days shall be added to the prescribed period; and
- (2) Filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. If the matter of timeliness is contested, only the official post-mark of the U.S. Mail, Federal Express, or U.P.S. shall be considered by the Court.
- (3) Service by mail is complete upon mailing.

Section D. Continuances

If a trial date has been established by the court after consultation with the parties, the Court shall decline to consider requests for continuance except those made by motion when a judge determines that an emergency exists.

Section E. Contents of Petition for Dissolution.

The petition for dissolution of marriage shall state and allege the following:

- (1) the name, address, and, in circumstances in which child support or spousal maintenance will be addressed and any prior or other name used by the petitioner;
- (2) the name and, if known, the address of the respondent and any prior or other name used by the respondent and known to the petitioner;
- (3) the place and date of the marriage of the parties;
- (4) that either the petitioner or the respondent or both:
 - (a) has resided within the reservation boundaries for not less than 90 days immediately preceding the commencement of the proceeding, or
 - (b) is eligible for membership with the Leech Lake Band of Ojibwe.
- (5) the name at the time of the petition and any prior or other name, age, and date of birth of each living minor or dependent child of the parties born before the marriage or born or adopted during the marriage and a reference to, and the expected date of birth of, a child of the parties conceived during the marriage but not born;
- (6) whether or not a separate proceeding for dissolution, legal separation, or custody is pending elsewhere;
- (7) that there has been an irretrievable breakdown of the marriage relationship;
- (9) any temporary or permanent maintenance, child support, child custody, disposition of property, attorneys' fees, costs and disbursements applied for without setting forth the amounts; and
- (10) whether an order for protection has been granted by this court or the court of any other jurisdiction.

The petition shall be verified by the petitioner or petitioners and its allegations established by competent evidence.

Section F. Motions; Ex Parte Relief, Orders to Show Cause; Orders and Decrees.

(1) Scheduling of Motions.

All motions shall be accompanied by either an order to show cause or by a notice of motion and motion which shall state with particularity the time and place of the hearing and the nature of the request. The notice of motion and motions shall be served upon the opposing party no later than 20 days prior to the scheduled hearing unless an emergency exists and a shorter notice period is appropriate.

(2) Form of Motion.

Motions shall set forth with particularity the relief requested in individually numbered paragraphs. All motions shall be supported by appropriate affidavits, relevant and material to the issues before the Court.

(3) Requirements of Motions.

No motion shall be heard unless the moving party serves a copy of the following documents on the opposing party or their counsel and files the original with the Clerk of the Tribal Court at least 14 days prior to the hearing:

(a) Notice of Motion and Motion;

(b) Any relevant affidavits and exhibits; and

(c) Any memorandum of law the party intends to submit.

(d) Responding motions shall serve a copy of the following documents upon the moving party or their counsel and shall file the original with the Clerk of the Tribal Court at least 7 days prior to the hearing:

(i) Notice of Motion and Responsive Motion

(ii) Any relevant affidavits and exhibits; and

(iii) Any memorandum of law the party intends to submit.

(4) Failure to Comply. Failure to comply with the filing requirements may result in the cancellation of the motion hearing assessment of attorney's fees and any other appropriate relief. Motions, except for contempt proceedings shall be submitted in writing and considered upon the supporting documents unless oral testimony is requested or otherwise ordered by the Tribal Court.

Section G. Ex Parte Relief

(1) Motion for Ex Parte Relief. The Tribal Court may grant ex parte relief only if requested by a motion with supporting affidavit properly executed.

(2) Order to Show Cause. An Order to Show Cause shall not be used to grant ex parte relief except in those cases where a finding of contempt or the supporting affidavit makes an affirmative showing of:

(a) A need to require the party to appear in person at the hearing; or

(b) The need for interim child support is warranted; or

(c) The production of limited financial information deemed necessary by the tribal Court; or

(d) Such other limited relief and appropriate restraining orders as addressed individually in the separate supportive affidavit for ex parte relief.

Section H. Orders and Decrees Requiring Child Support or Maintenance.

All orders and judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the Tribal Court, shall include the following provisions:

(1) Payment of support or maintenance, or both, is to be as ordered herein, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation. Payment of support must be made as it becomes due, denial of rights of visitation is not an excuse for non-payment, but the aggrieved party must seek relief through proper motion filed with the Tribal Court.

(2) The payment of support or maintenance, or both, takes priority over payment of debts and other obligations.

(3) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of his or her prior obligations under this proceeding.

(4) Child support and maintenance are based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made regularly throughout the year as ordered.

Section I. Scheduling of Cases.

(1) Purpose. The purpose of this Rule is to provide for a uniform system for scheduling matters for disposition and trial in proceedings for all family relations matters.

(2) Pre-hearing Settlement. The parties are encouraged to make attempts to settle all matters in an amicable fashion before appearing in court.

Section J. Default.

After proper service has been made and the time has elapsed for an answer to be filed, the matter may be scheduled for a default hearing.

(1) Default without stipulation- no appearance. In all default proceedings where a stipulation has not been filed, an affidavit of default and of non-military status of the defaulting party or a waiver by that party of any rights pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be filed with the Tribal Court.

(2) Default without stipulation- appearance. Where the defaulting party has appeared by a pleading other than a response, answer or personally without a pleading and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least ten (10) days before the final hearing of the intent to proceed to judgment. The notice shall state:

You are hereby notified that an application has been made for a final hearing for a final hearing to be held not sooner than three (3) days from the date of this notice. You are further notified that the Leech lake Tribal Court will be requested to grant the relief granted in the petition at the hearing.

The default hearing will not be held until the notice has been mailed to the defaulting party at the last known address and an affidavit of service by mail has been filed.

(3) Default with stipulation. When a stipulation settling all issues has been executed by the parties subsequent to the final hearing, the stipulation shall be filed with an affidavit of non-military status of the defaulting party or a waiver of the party's rights pursuant to the Soldier's and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

Section K. Preparation of Decree. In a scheduled default matter, findings of fact, conclusions of law, order for judgment and decree shall be submitted to the court prior to the hearing when the parties are represented by counsel.

Section L. Final hearings- Sanction for Failure to Appear

Failure to appear at the scheduled final hearing may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the non-appearing party's pleadings and the hearing of the matter as a default, an award of the attorney's fees and costs, and such other relief as the Tribal Court finds appropriate, without further notice to the defaulting party.

Where a stipulation has been entered orally upon the record, counsel shall be directed to prepare the decree and shall submit it to the Tribal Court with a copy to each party

Section M. Final decree.

(1) Awards of child support and/or maintenance. All judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the Tribal Court, shall include notification to both parties that:

(a) Payment of support or maintenance, or both, is to be as ordered herein, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

(b) Payment of support must be made as it becomes due, and failure to secure, or denial of rights of, visitation is not an excuse for non-payment, but the aggrieved party must seek relief through proper motion filed with the Tribal Court.

(c) The payment of support or maintenance, or both, takes priority over payment of debts and other obligations. An aggrieved obligee of child support or maintenance payments may seek relief through proper motion filed with the Tribal Court.

(d) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of her or his prior obligations under this proceeding.

(e) Child support and maintenance are based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that the payments are made regularly throughout the year as ordered.

(2) Public assistance. When a party is receiving or has applied for public assistance, the party obtaining the judgment and decree shall serve a copy on the agency responsible for child support enforcement, and the decree shall direct that all payments of child support and spousal maintenance shall be made to the agency providing the assistance for as long as the custodial parent is receiving assistance.

(3) Child support enforcement. When a private party has applied for or is using the services of the child support enforcement agency, a copy of the decree shall be served by mail upon the agency involved by the party submitting the decree for the Court's execution.

(4) Supervised custody or visitation. A copy of any judgment and decree directing ongoing supervision of custody or visitation shall be provided to the appropriate agency by the party obtaining the decree.

Section M. Contempt Proceedings

(1) Moving papers--service; notice. Contempt proceedings shall be initiated by an order to show cause served upon the person alleged to be in contempt together with motions accompanied by appropriate supporting affidavits. The order to show cause shall direct the person alleged to be in contempt to appear and show cause why she or he should not be held in contempt of Tribal Court and why the moving party should not be granted the relief requested by the motion.

(2) The order to show cause shall contain at least the following:

(a) A reference to the specific order of the Tribal Court alleged to have been violated and date of entry of the order;

(b) A quotation of the specific applicable provisions ordered; and

(c) The alleged failures to comply.

(3) Affidavits. The supporting affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payment which is in default and shall specifically set forth the payment dates and the amounts due, paid, and unpaid for each failure.

(4) Hearing.

The alleged contemnor must appear in person before the Tribal Court to be afforded the opportunity to resist the motion for contempt by sworn testimony. The Tribal Court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

(5) Disposition.

The Tribal Court may impose such civil fine or other penalty, as it deems appropriate, scheduling of a final hearing in a dissolution proceeding.

(6) Experts. To assist in resolving contested issues, the parties may involve resource persons including lawyers, appraisers, accountants, guardian ad litem and mental health professionals.

(7) Appeals.

Appeal of proceedings pursuant to this Title shall comport with the Leech Lake Band of Ojibwe Rules of Appellate procedure.

Chapter 7. Antenuptial Contracts

Section A. Scope of Antenuptial Contracts.

(1) Marital and Separate property.

Antenuptial contracts may cover both marital and separate property of the spouses.

(2) Death and divorce of either spouse.

An antenuptial contract may anticipate the death of a spouse and/or divorce as long as the contract does not encourage divorce.

(3) Children.

Antenuptial contracts may include provisions governing children of the spouses, but such provisions will only be upheld as long as they are determined by a Court to be in the best interests of the children involved at the time of enforcement of the contract.

Section B. Requirements of Valid Antenuptial Contracts.

(1) Disclosure.

Each party must fully disclose his or her assets to the other party and schedules of each party's assets must be attached to the antenuptial contract.

(2) Separate Counsel.

If possible, each party should be represented by his or her own attorney.

(3) Substantive and procedural fairness.

No antenuptial agreement which is substantively or procedurally unfair either at the time of execution or at the time of enforcement will be valid. Time of execution is the moment of the signing of the contract. Time of enforcement is the moment at which the contract will be activated. The Leech Lake Band of Ojibwe Tribal Court will determine the fairness of the contract.

Section C. Burden of proof.

The burden of proof to prove invalidity of an antenuptial contract is on the person challenging the validity of the contract. He or she must demonstrate by clear and convincing evidence that the contract is unfair, or that the circumstances surrounding execution and/or enforcement render the contract unfair.

Chapter 8. Paternity

Section A. Children Born During Marriage.

(1) The husband of a child's mother is presumed to be the father of any child born during the marriage.

(2) A biological father who is not the husband of the child's mother may challenge the presumption of paternity of the husband only with the written consent of the mother.

Section B. Children Born Outside of Marriage.

(1) The paternity of a child born outside of a marriage may be established by genetic testing, as ordered by a Tribal Court upon a motion by the mother of the child; or

(2) The paternity of a child born outside of a marriage may be established by acknowledgement of paternity by a man not excluded by genetic testing, with the permission of the child's mother. The permission and the acknowledgement must be filed with the Clerk of Court of the Leech Lake Band of Ojibwe Tribal Court in order to be valid.

(3) The mother of a child born outside of marriage has sole legal and physical custody of the child unless a Court grants custody to another person or transfers custody to an agency.

Section C. Application of the Laws of Intestate Succession

(1) A child whose paternity has been established.

A child born outside of a marriage whose paternity has been established may inherit by intestate succession from his or her father.

(2) A child whose paternity has not been established.

A child born outside of a marriage whose paternity has not been established may inherit from his or her father by intestate succession only if she or he can establish by clear and convincing evidence before the Leech Lake Tribal Court that the alleged father acknowledged her or him as his child. Proof of acknowledgement shall include, but is not limited to, testimony by other family members that the child was accepted as the son or daughter of the man from whom he or she wishes to inherit.

Section D. Determinations of Paternity.

In actions brought for determination of the paternity of a child, the judgment of the Leech Lake Tribal Court establishing the identity of the father of the child shall be conclusive in all subsequent proceedings relating to the determination of heirs and rights of inheritance.

Section E. Procedure to Determine Father and Child Relationship.

Until amendment of this code, the Tribal Court may apply the procedure set forth in Minnesota Statutes §§ 257.57 - 257.73 to determine father and child relationship.

Chapter 9. Adoption.

Section A. Purpose and policy. The purpose of this Chapter is to insure that the Leech Lake Band of Ojibwe can protect the rights and promote the welfare of its children and other Indian children as well as all natural and adoptive parents. It is the further purpose of this Chapter to insure that a tribal forum exists to address all adoption issues that arise.

Section B. Definitions. The terms listed below, whenever used in this Chapter, shall mean as follows:

- (1) Adult. Adult means a person eighteen (18) years or older.
- (2) Child. Child means a person who is a minor.
- (3) Guardianship of the person.

Guardianship of the person means the duty and authority vested in a guardian of a minor. It includes the general power to make decisions such as consent to a major medical, psychiatric and surgical treatment; consent to marriage, and consent to enlistment in the armed forces of the United States; authority to represent the minor in legal actions when the parent-child relationship has been terminated by Court order with respect to the parents, or only living parent; or when no living parent can be found after diligent search, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

Section C. Legal custody.

Legal custody means the right given by the Tribal Court to the custody and control of the child and the responsibility to provide for the daily care of the child, unless otherwise specified by Court order.

Section E. Parent.

- (1) The mother of a child.
- (2) A father to whom a child's paternity has been established or is presumed, as defined in Chapter 8 of this Code.
- (3) An adoptive parent.
- (4) A person as to whom the parent-child relationship has been terminated by Court order is not a parent.

Section F. Parent-child relationship.

A parent-child relationship means all rights, privileges, duties, and obligations existing between parent and child, including inheritance rights.

Section G. Petition to Adopt.

(1) Contents of petition. The petition shall be signed by the petitioner and, if married, by the spouse. It shall be verified, and filed in duplicate. The petition shall allege:

- (a) the full name, age and place of residence of petitioner, and if married, the date and place of marriage;
- (b) the date petitioner acquired physical custody of the child and from what person or agency;
- (c) the date of birth of the person to be adopted, if known, and the state and county where born;
- (d) the name of the child's parents, if known, and the guardian if ;
- (e) the actual name of the person to be adopted, if known, and any known aliases;
- (f) the name to be given the person to be adopted if a change of name is desired;
- (g) the description and value of any real or personal property owned by the person to be adopted;
- (h) that the petitioner desires that the relationship of parent and child be established between petitioner and the person to be adopted and that adoption is in the best interests of the person to be adopted by the petitioner.

Chapter 10. Guardianship of a Minor

Section A. Transfer of custody.

If the court terminates parental rights of both parents or of the only known living parent, the court shall order the guardianship and the legal custody of the child transferred to:

- (1) the Leech Lake Child Welfare Department;
- (2) a licensed child-placing agency; or
- (3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Section B. The Leech Lake Child Welfare Department. The court shall order transfer of guardianship and legal custody of a child to the Leech Lake Child Welfare Department only when the social services agency had legal responsibility for planning for the permanent placement of the child and the child was in foster care under the legal responsibility of the agency at the time the court orders guardianship and legal custody.

Section. C. Parents Deceased.

(1) If upon petition to the tribal court by a reputable person, including but not limited to an agent of the Leech Lake Child Welfare Department and upon a hearing, the court finds that both parents or the only known legal parent are or is deceased and no appointment has been made or petition for appointment of a guardian or stand by custodian pursuant to Chapter 5, Section N, the court shall order the guardianship and legal custody of the child transferred to:

- (a) the Leech lake Child Welfare Department;
- (b) a licensed child-placing agency; or
- (c) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(2) The court shall order transfer of guardianship and legal custody of a child to the Leech Lake Child Welfare Department only if there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Section D. Guardian's Responsibilities.

(1) A guardian appointed under the provisions of this section has legal custody of a ward unless the court which appoints the guardian gives legal custody to some other person. If the court awards custody to a person other than the guardian, the guardian nonetheless has the right and responsibility of reasonable visitation, except as limited by court order.

(2) The guardian may make major decisions affecting the person of the ward, including but not limited to giving consent (when consent is legally required) to the marriage, enlistment in the armed forces, medical, surgical, or psychiatric treatment, or adoption of the ward.

(3) A guardianship created under the provisions of this section shall not of itself include the guardianship of the estate of the ward.