

**PRAIRIE ISLAND MDEWAKANTON
 DAKOTA COMMUNITY
 JUDICIAL CODE
 TITLE 3: DOMESTIC RELATIONS**

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**PRAIRIE ISLAND MDEWAKANTON
DAKOTA COMMUNITY**

JUDICIAL CODE

TITLE 3: DOMESTIC RELATIONS

INTRODUCTION

Section 1. *Purpose.*

The Prairie Island Mdewakanton Dakota Tribe has the inherent sovereign power to regulate the domestic relations of its members concurrently with the State of Minnesota. No more important power is exercised by Indian Tribes than the power to protect and govern the domestic relations of their members. The purpose of this Code is to inform Prairie Island Mdewakanton Dakota Community members of that inherent sovereign authority and enable them to use their own Tribal forum for resolution of domestic relations issues.

Section 2. *Use of language from other laws.*

Inclusion of language, definitions, procedure, or other statutory or administrative provisions of other Tribal jurisdictions, the State of Minnesota or other state or federal entities in the Prairie Island Mdewakanton Dakota Community Judicial Code shall not be deemed an adoption of that law by the Prairie Island Mdewakanton Dakota Community and shall not be deemed an action deferring to state or federal jurisdiction by the Prairie Island Mdewakanton Dakota Community where such state or federal jurisdiction is concurrent or does not otherwise exist.

Section 3. *Interim appointment of judges.*

The Tribal Court of the Prairie Island Mdewakanton Dakota Community shall have jurisdiction over all matters designated in this Domestic Relations title. If at the time of adoption of this Domestic Relations title by the Prairie Island Mdewakanton Dakota Tribal Council, the judges of the Tribal Court have not been appointed to the bench by the Tribal Council, the Tribal Council shall appoint the following individuals to sit as judges of this jurisdiction until a full compliment of judges has been appointed pursuant to Prairie Island Mdewakanton Community Judicial Code, Title I:

- a. One enrolled elder of the Prairie Island Mdewakanton Dakota Community;
- b. One attorney licensed by the highest court of a state who is knowledgeable and experienced in tribal law and federal Indian law;
- c. One member of the Tribal Council of the Prairie Island Mdewakanton Dakota Community.

Alternates shall be designated for each of the three appointments and shall hear those matters in which a conflict of interest requires a judge to voluntarily recuse her/himself or in those matters wherein a motion to disqualify because of a judge's personal interest in the outcome of the pending matter results in a recusal.

CHAPTER I. MARRIAGE

Section 1. *Jurisdiction.*

The Prairie Island Mdewakanton Dakota Community shall have jurisdiction over all marriages licensed and performed on its Reservation or on any allotted or tribally purchased lands or any public domain lands designated for Tribal use. The Prairie Island Mdewakanton Dakota Community shall have original jurisdiction over the domestic relations of its members.

Section 2. *Definition.*

Marriage is a personal relation arising out of a civil contract requiring the consent of the parties entering it or their guardians, as provided in Section Three (3)(a) and (d) of this Chapter.

Section 3. *Who may marry.*

a. Age limits.

No person under the age of 18 years may marry without the written consent of both parents if the person is living with both parents, or the parent with whom the person lives if only one parent. If the person is not living with either parent, the written consent of the nearest adult relative with whom the minor is living or of a guardian appointed by the Courts of the Prairie Island Mdewakanton Dakota Community. If any person authorized to give consent to the marriage of a minor is incapable of giving such consent because of mental incapacity or otherwise, a guardian appointed by the Courts of the Prairie Island Mdewakanton Dakota Community may give consent instead of such persons.

b. Blood relationships.

Persons related by blood in the form of parent, or by whole or half blood in the form of sibling, aunt, uncle, niece, nephew, or first cousin may not marry one another.

c. Same gender marriages prohibited.

Only persons of the opposite gender may marry.

d. Competency of the persons marrying.

No person declared incompetent by a Court of the Prairie Island Mdewakanton Dakota Community may marry in the jurisdiction of the Prairie Island Mdewakanton Dakota Courts without the consent of the person's parent or legal guardian.

e. Persons already married.

No person who is already married in this or any other jurisdiction may be licensed to be married in the Courts of the Prairie Island Mdewakanton Dakota Community except as provided in Section Three (3) (f) of this Chapter.

f. Absent spouse provision.

- (1) A person who is already married, but whose spouse has been absent for five consecutive years and whom the person wishing to marry reasonably believes to be dead, may marry if she or he obtains a judicial determination that the absent spouse is presumed dead, pursuant to subsection two (2) as follows:
- (2) A judge of the Prairie Island Mdewakanton Dakota Community Court makes a finding and order after hearing that the absent spouse is presumed dead. A judge may make such a finding and order only after notice of hearing to the absent spouse. Publication of the notice of hearing in three consecutive issues of a newspaper having general circulation on the Reservation and publication in three consecutive issues of a newspaper of general circulation in the county of the absent spouse's last known residence, if known, shall be sufficient notice. No hearing on an application for presumption of death of spouse shall be heard before thirty (30) days from the last publication of notice of hearing.
- (3) The fact that an absentee spouse was exposed to specific peril of death may be sufficient grounds for finding that she or he died less than five years from the last date on which she or he was heard from.

Section 4. *Marriage requirements--generally.*

a. License requirement.

Anyone wishing to marry under the jurisdiction of the Prairie Island Mdewakanton Dakota Community as defined in Section One of this Chapter must first obtain a marriage license from the Tribal Clerk of Courts.

- (1) Before issuing any marriage license, the Clerk of Courts shall ascertain by questioning the applicants, by requiring them to fill out a form, or by any other means at her or his disposal, that they are sober, are mentally

competent, and meet all the requirements of Chapter 1, Section 3 of this code.

- (2) The Clerk of Court may issue Tribal marriage licenses to qualified applicants regardless of their places of residence.
- (3) The Clerk of Court may charge a fee of not greater than \$35.00 for the issuance of a marriage license.
- (4) The Tribal marriage license shall be in conformance with the license in the Appendix of Forms to this Code. Such form shall be available upon request from the Clerk of Court.

b. Methods of contracting marriage.

- (1) Persons within the jurisdiction of the Prairie Island Mdewakanton Dakota Tribal Court may contract marriage by declaring in the presence of two witnesses that they take each other to be married. They shall thereafter be declared as married if, in the presence of two witnesses, they shall sign the marriage certificate printed on the face of their marriage license. Such witnesses shall also sign such certificate. See Appendix of Forms. In such cases the marriage shall be valid regardless of whether a ceremony is held.
- (2) The contracting parties may marry according to the rites of any church, in which case they, the officiating member of the clergy, and two witnesses shall sign in the places provided on the face of the marriage license. See Appendix of Forms. A marriage may be solemnized by a judge of the Prairie Island Mdewakanton Dakota Tribal Court, by the Chairperson of the Prairie Island Mdewakanton Dakota Community, by an individual of any religious denomination designated as having authority to perform marriages according to the form and usage of his or her religion or by a person recognized by Minnesota law as having authority to perform marriages.

Section 5. *Validity of marriages.*

a. Valid marriages.

Valid marriages performed or licensed by the Prairie Island Mdewakanton Dakota Tribal Courts are those which comply with Sections 3 and 4 of this Chapter of the Prairie Island Mdewakanton Dakota Judicial Code. A valid divorce decree is necessary to terminate a valid marriage, absent death or annulment.

All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Prairie Island Mdewakanton Dakota Community.

b. Voidable marriages.

Voidable marriages are those in which one or more of the elements of Section 6 of this Chapter are met: Either of the parties to a voidable marriage may have the marriage annulled upon a motion to the Prairie Island Mdewakanton Dakota Community Court and granting of the motion by the Court. Annulment of a marriage means that for legal purposes, the marriage never existed.

c. Void marriages.

Marriages which violate one or more of the following requirements of this Code are void without any decree of divorce or other legal proceedings: Chapter One, Sections 3 (b), (c), (d), (e).

Section 6. *Annulment.*

a. Grounds for Annulment.

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

- (1) That the party in whose behalf annulment is sought was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other as husband and wife;
- (2) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud; freely cohabited with the other as husband or wife;
- (3) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife; or
- (4) Impotence which continues and appears to be incurable.

b. Action to Annul - Parties and Limitations.

An action to obtain a decree of annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

- (1) For causes mentioned in Subsection a(1), by the party to marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian or other person having charge of such minor, at any time before such married minor has attained the age of legal consent;
- (2) For causes mentioned in Subsection 2 by the party injured, within two years after the discovery of the facts constituting a fraud;
- (3) For causes mentioned in Subsection 3 by the injured party within four years after the marriage.
- (4) For causes mentioned in Subsection 4 by the injured party within two years after the marriage.

c. Application of Laws of Succession.

When a marriage is annulled for any reason, other than if for fraud in that the wife is pregnant with a child from a man other than the husband, children born before judgment may succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances or the parents may require.

CHAPTER II. MARITAL PROPERTY

Section 1. *Definition.*

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

Section 2. *Separate property.*

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

Section 3. *Termination of marital property.*

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

CHAPTER III. DIVORCE

Section 1. *Residency requirement.*

The Prairie Island Mdewakanton Dakota Community shall have jurisdiction over all persons who have resided on its Reservation or on any allotted or tribally purchased lands, or any public domain land designated for Tribal use, for at least 90 days prior to commencing any action for the dissolution of a marriage before the Courts of the Prairie Island Mdewakanton Dakota Community.

Section 2. *Definition.*

A decree of divorce is the termination of the marital relationship and shall restore the parties to the state of unmarried persons.

Section 3. *Grounds for divorce.*

A divorce shall be granted if a Tribal Court of the Prairie Island Mdewakanton Dakota Community finds that there has been an irretrievable breakdown of the marriage relationship. The Tribal Court will find that there has been an irretrievable breakdown of a marriage if one of the spouses alleges an irretrievable breakdown and that there is no reasonable prospect of reconciliation.

Section 4. *Filing fee.*

A filing fee of not greater than \$100.00 will be charged by the Clerk of Tribal Courts for the filing of divorce petitions. If a person is unable to afford the filing fee, upon petition to the Tribal Court, it may be waived.

Section 5. *Division of property upon divorce.*

a. **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 divorce. The Tribal Court shall consider 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 factor the Court finds appropriate. The Tribal Court shall not consider the misconduct of either spouse when making its determination.

b. Separate property.

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

c. Untraceable property.

If no valid antenuptial contract to the contrary exists between the 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 the spouses.

d. Professional degrees.

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

e. Per capita payments to tribal members.

Per capita payments from the Prairie Island Mdewakanton Dakota Community to its eligible members are the separate property of the person to whom they are issued. Per capita payments shall not be awarded pursuant to the hardship exception of subsection (b) of this Section (5).

f. Pensions.

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

- (1) Are payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;
- (2) Are not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;
- (3) Are not payable in a lump sum amount from pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

- (4) If the former spouse to whom the payments are to be 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
- (5) 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 benefit becomes payable.

g. Modification of Property Award.

All divisions of real and personal property provided by this Section (5) shall be final, and may be revoked or modified only where the Court finds the existence of one of the following:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Prairie Island Mdewakanton Dakota Community Rules of Civil Procedure.
- (3) Fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;
- (4) The judgment and decree or order is void; or
- (5) 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 and decree or order should have prospective application.

A motion for modification must be made within a reasonable time, and for a reason under clause (1), (2), or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken. A motion under this subsection does not affect the finality of a judgment and decree or order or suspend its operation. This subsection does not limit the power of the 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 Prairie Island Mdewakanton Dakota Community Rules of Civil Procedure, or to set aside a judgment for fraud upon the Court.

Section 6. *Maintenance.*

a. *When awarded.*

If no valid antenuptial contract or settlement stipulation to the contrary exists between the spouses, maintenance may be awarded in cases the Tribal Court deems appropriate. The Tribal Court shall consider the length of the marriage; contributions, financial and non-financial, of both spouses; the standard of living to which each spouse has become accustomed; the financial needs of both spouses; and any other factor the Court finds appropriate. The Tribal Court shall not consider misconduct of either spouse when making its determination.

b. *Modification of Maintenance Award.*

- (1) 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 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 proceeding, except as herein otherwise provided.
- (2) 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,

any of which makes the terms unreasonable and unfair. On a motion for modification of maintenance, the Tribal Court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under Section (6)(a) of this Chapter that exist at the time of the motion. A modification of maintenance may be made retroactive only with respect to any period during which the moving party has pending a motion for modification but only from the date of service of notice of the motion on the responding party.

c. Termination of maintenance.

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

Section 7. Child support.

a. When awarded.

Child support shall be paid by the non-custodial parent as follows:*

Net income per month of non-custodial parent	Number of Children						
	1	2	3	4	5	6	7 or more
\$401 - 500	14%	17%	20%	22%	24%	26%	28%
\$501 - 550	15%	18%	21%	24%	26%	28%	30%
\$551 - 600	16%	19%	22%	25%	28%	30%	32%
\$601 - 650	17%	21%	24%	27%	29%	32%	34%
\$651 - 700	18%	22%	25%	28%	31%	34%	36%
\$701 - 750	19%	23%	27%	30%	33%	36%	38%
\$751 - 800	20%	24%	28%	31%	35%	38%	40%
\$801 - 850	21%	25%	29%	33%	36%	40%	42%
\$851 - 900	22%	27%	31%	34%	38%	41%	44%
\$901 - 950	23%	28%	32%	36%	40%	43%	46%
\$951 - 1000	24%	29%	34%	38%	41%	45%	48%
\$1001-4000	25%	30%	35%	39%	43%	47%	50%

* *Note of Amendment:* The child support guidelines were amended by Tribal Council Resolution 96-12-19-124 on December 19, 1996.

Guidelines for support to be paid by a non-custodial parent with a monthly income of \$4,001 or more shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income of \$4,000.

Net Income defined as: Total monthly income less

- (1) Federal income tax *Standard deductions
- (2) State income tax apply--use of tax
- (3) Social Security Deductions tables recommended
- (4) Reasonable pension deductions
- (5) Union Dues use of tax tables
- (6) Cost of dependent insurance coverage
- (7) Cost of individual or group health/hospitalization coverage or an amount for actual medical expenses
- (8) A child support or maintenance order that is currently being paid

Net Income does not include:

- (1) The income of the non-custodial parent's spouse, but does include in-kind payments received by the non-custodial parent in the course of employment, self-employment, or operation of a business if the payments reduce the obligor's living expenses; or
- (2) Compensation received by a party for employment in excess of a 40-hour work week, provided that:
 - (i) support is nonetheless ordered in an amount at least equal to the guidelines amount based on income not excluded under this clause; and
 - (ii) the party demonstrates, and the Court finds, that:
 - (a) the excess employment began after the filing of the petition for dissolution;
 - (b) 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;
 - (c) the excess employment is voluntary and not a condition of employment;
 - (d) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and

- (e) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

b. Other factors to be considered.

In addition to the child support guidelines, the Court shall take into consideration the following factors in setting or modifying child support:

- (1) All earnings, income, and resources of the parents, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of Subsection (a)(2)(ii);
- (2) The financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported;
- (3) The standards of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;
- (4) The amount of the aid to families with dependent children grant for the child or children;
- (5) Which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it; and
- (6) The parents' debts as provided in subsection (c).

c. Debts owed to private creditors.

In establishing or modifying a support obligation, the Court may consider debts owed to private creditors, but only if:

- (1) 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
- (2) The party requesting a departure produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the amount of the original debt, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.

Any further departure below the guidelines that is based on a consideration of debts owed to private creditors shall not exceed 18 months in duration, after which the support shall increase automatically to the level ordered by the Court. Nothing in this section shall be construed to prohibit one or more step increases in support to reflect debt retirement during the 18-month period.

Where payment of debt is ordered pursuant to this section, the payment shall be ordered to be in the nature of child support.

d. When guidelines shall be exceeded or modified.

Nothing shall preclude the Court from receiving evidence on the above factors to determine if the guidelines should be exceeded or modified in a particular case.

e. Nature of guidelines.

The above guidelines are binding in each case unless the Court makes express findings of fact as to the reason for departure below or above the guidelines.

f. Modification of Child Support Award.

(1) After an order for child support, the Tribal Court may from time to time, on motion of either of the parties or on motion of the public authority 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 proceeding, except as herein otherwise provided.

(2) The terms of a decree respecting child support 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;

any of which makes the terms unreasonable and unfair.

On a motion for modification of child support, the Tribal Court shall:

- (v) take into consideration the needs of the children and shall not consider the financial circumstances of each party's spouse, if any;
- (vi) not consider compensation received by a party for employment in excess of a 40-hour work week, provided that the party demonstrates, and the Court finds, that:
 - (a) the excess employment began after entry of the existing support order;
 - (b) the excess employment is voluntary and not a condition of employment;
 - (c) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;
 - (d) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation;
 - (e) in the case of an obligor, current child support payments are at least equal to the guidelines amount based on income not excluded under this clause; and
 - (f) in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearage until the arrearage are paid in full.

- (3) A modification of child support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on 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 a motion.

g. Termination.

Unless otherwise agreed 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 the death of a parent obligated to support the child. When a

parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstance.

h. Forms.

The Clerk of Court shall make available to courts, obligors and persons to whom child support is owed, a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for modification of an order pursuant to this section.

Section 8. *Enforcement of child support.*

The Tribal Council shall attempt to reach understandings with state and county governments regarding the enforcement of Tribal Court support orders. For enforcement matters arising exclusively within the jurisdiction of the Tribal Court, the procedure set forth in Minnesota Statutes Section 518.600 et seq. may be used by any party seeking to enforce a valid Tribal Court order. Use of such enforcement procedures shall not be deemed an adoption of Minnesota law by the Tribe or Tribal Court.

The Tribal Court may order a delinquent obligor to authorize the Tribal Council to withhold his or her child support obligation from each per capita payment until the child support obligation expires or is terminated.

Section 9. *Medical Support.*

a. Obligor to Name Beneficiary.

- (1) Unless the parent who has not been ordered to pay support (obligee) has comparable or better group dependent health insurance coverage available at a more reasonable cost, the Court shall order the person paying support (obligor) to name the minor child as beneficiary on any health and dental insurance plan that is available to the obligor on a group basis or through an employer or union.
- (2) If the Tribal Court finds that dependent health or dental insurance is not available to the obligor on a group basis or through an employer or union, or that the group insurer is not accessible to the obligee, the Court may require the obligor to obtain dependent health or dental insurance, or to be liable for reasonable and necessary medical or dental expenses of the child.

If the Tribal Court finds that the dependent health or dental insurance required to be obtained by the obligor does not pay all the reasonable and necessary medical or dental expenses, the Court shall require the obligor

to be liable for all or a portion of the medical or dental expenses of the child not covered by the required health or dental plan.

- (3) The Court shall require the obligor to provide dependent health and dental insurance for the benefit of the obligee if it is available at no additional cost to the obligor and in this case the provisions of this subsection apply.
- (4) A copy of the Court order for insurance coverage shall be forwarded to the obligor's employer or union by the obligee or the public authority responsible for support enforcement only when ordered by the Court or when the following conditions are met:
 - (a) The obligor fails to provide written proof to the obligee or the public authority, within 30 days of receiving effective notice of the Court order, that the insurance has been obtained or that application for insurability has been made;
 - (b) The obligee or the public authority serves written notice of its intent to enforce medical support on the obligor by mail at the at the obligor's last known post office address; and
 - (c) The obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee or the public authority that the insurance coverage existed as of the date of mailing.

The employer or union, if based on the Reservation or whose business is substantially carried out on the Reservation, shall forward a copy of the order to the health and dental insurance plan offered by the employer.

- (5) If the employer is the Prairie Island Mdewakanton Dakota Community, a Tribally owned business, a Tribally chartered corporation or a business located on the Reservation or a business whose activities are substantially carried out on the Reservation, the order is binding on the employer or union when service under subsection (c) has been made. For all other business or unions, the Tribal Court will attempt to obtain voluntary compliance with its orders. Upon receipt of the order, or upon application of the obligor pursuant to the order, the employer or union shall enroll the minor child as a beneficiary in the group insurance plan and withhold any required premium from the obligor's income or wages. If more than one plan is offered by the employer or union, the child shall be enrolled in the insurance plan in which the obligor is enrolled or the least costly plan otherwise available to the obligor. Failure of the obligor to execute any documents necessary to enroll the dependent in the group health and dental insurance plan will not affect the obligation of the qualified

employer or union and group health insurance plan to enroll the dependent in a plan for which other eligibility requirements are met. Information and authorization provided by the public authority responsible for the child support enforcement, or by the custodial parent or guardian, is valid for the purposes of meeting enrollment requirements of the health plan. The insurance coverage for a child eligible under subsection (e) shall not be terminated except as authorized in subsection (e).

- (6) 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 of the obligor until the child is emancipated or until further order of the Tribal Court.
- (7) The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services. When an order for dependent insurance coverage is in effect and the obligor's employment with the Tribe, Tribally owned or chartered business, or a business located or whose activities are substantially carried out on the Reservation is terminated, or the insurance coverage is terminated, the insurer shall notify the obligee within 10 days of the termination date with notice of conversion privileges. All other employers shall be provided notice by this title and requested to voluntarily comply with such notice.
- (8) When an order for dependent insurance coverage is in effect, the obligor's employer or union shall release to the obligee or the public authority, upon request, information on the dependent coverage, including the name of the insurer. The employer or union shall release a quarterly report of the wages paid to the employee, including the employee's name, social security number, the total wages paid to the employee, and the number of weeks in which work was performed to the public agency responsible for support enforcement that is enforcing an order for medical or dental insurance coverage under this subsection. For the purposes of this subsection, "wages paid" includes wages actually or constructively paid and wages overdue and delayed beyond the usual time of payment.
- (9) The obligor that fails to maintain the medical or dental insurance for the benefit of the children as ordered shall be liable to the obligee for any medical or dental expenses incurred from the date of the Tribal Court Order. Proof of failure to maintain insurance constitutes a showing of increased need by the obligee and provides a basis for a modification of the obligor's child support order.
- (10) Any Tribal agency responsible for support enforcement shall take necessary steps to implement and enforce an order for dependent health or dental

insurance whenever the children receive public assistance, or upon application of the obligee to the Tribal agency and payment by the obligee of any fees required by this Code.

(11) Remedies available for the collection and enforcement of child support, whether provided by the Community or through cooperative agreement with other public agencies, may also apply to medical support. For the purpose of enforcement, the costs of individual or group health or hospitalization coverage or liabilities pursuant to subsection (h) are additional child support.

(12) The provisions regarding medical support may be modified or waived by the Court at its discretion if the parties demonstrate to the Court's satisfaction that the minor children are currently eligible for comparable medical services through the Indian Health Service of the federal government.

CHAPTER IV. CHILD CUSTODY AND VISITATION UPON DIVORCE

Section 1. *Custody.*

- a. Determinations regarding custody of the children of the parties will be made based on the best interests of the children. When making a custody determination, the Tribal Court shall consider Tribal membership/affiliation of the parents or petitioning parties if not a parent and may give preference to Tribal members only if to do so is in the best interests of the child.
- b. "Best interests of the child" means all relevant factors to be considered by the Tribal Court including, but not limited to:
 - (1) The wishes of the child's parent or parents as to custody;
 - (2) The reasonable preference of the child, if the Court deems the child to be of sufficient age to express 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;
- (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 and religion or creed, if any;
- (11) The Tribal membership/affiliation of the parent or petitioning party if other than a parent;
- (12) The child's Tribal or cultural background; and
- (13) The effect of domestic abuse on the child if such abuse has occurred within the household of the child. Domestic abuse means:
 - (i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or
 - (ii) criminal sexual conduct, as defined by the State of Minnesota, Sections §§609.342, 609.343, 609.344, or 609.345 M.S.A., committed against a minor family or household member by an adult family or household member.

Section 2. *Visitation.*

- a. In any proceeding for divorce, the Tribal Court shall, upon the request of either parent, grant such rights to visitation on behalf of the child and noncustodial 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 visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development, the Court shall restrict visitation by the noncustodial parent as to time, place, duration, or supervision and may deny visitation entirely, as the circumstances warrant. A parent's failure to pay support because of the parent's inability to do so will not be sufficient cause for denial of visitation.
- b. 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 the noncustodial parent under the order or decree or any

substantial amendment thereof. The custodial parent shall present the child for visitation by the noncustodial parent, at such times as the Court directs.

- c. The custodial parent shall not move the residence of the child to a residence within another state or to another Reservation except upon order of the Tribal Court or with the consent of the noncustodial parent, when the noncustodial parent has been given visitation rights by the decree. If the Court determines after hearing that the purpose of the move is to interfere with visitation rights given to the noncustodial parent by the decree, the Court shall not permit a change of residence described herein.
- d. Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of Court and may be sufficient cause for reversal of custody.
- e. ***Modification.***

The Tribal Court shall modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Except as provided below, the Tribal Court may not restrict visitation rights unless it finds that:

- (1) The visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development; or
- (2) The noncustodial parent has chronically and unreasonably failed to comply with Court-ordered visitation.

Section 3. *Effect of certain convictions on custody and visitation rights.*

a. *Suspension of visitation rights; transfer of custody.*

- (1) If a person with Court-ordered custody or visitation rights is convicted of a crime listed in subdivision (b) of this Section and if no action is pending regarding custody or visitation, the sentencing Court, if the Prairie Island Mdwakanton Dakota Tribal Court shall:
 - (i) grant temporary custody to the non-custodial parent, unless it finds that another custody arrangement is in the best interests of the child; or
 - (ii) suspend visitation rights, unless it finds that visitation with the convicted person is in the best interests of the child.

When the sentencing Court is a federal or state court, the Tribal Court, upon official notification of such conviction, shall:

- (iii) grant temporary custody to the non-custodial parent, unless it finds that another custody arrangement is in the best interests of the child; or
- (iv) suspend visitation rights, unless it finds that visitation with the convicted person is in the best interests of the child.

The Tribal Court shall expedite proceedings under this section. The defendant has the burden of proving that continued custody or visitation with the defendant 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. "Family or household members" means spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or lived together at any time.

- (2) If a person who has child custody or visitation rights was convicted of a crime listed in Section (3), subsection (b) before the enactment of this Code, then any interested party may petition this Court for relief under paragraph (1) if:
 - (i) the defendant is currently incarcerated, on probation, or under supervised release for the offense; or
 - (ii) the victim of the crime was a family or household member as defined above.

b. Application.

Subdivision (a) of this Section applies to the following crimes or similar crimes under the laws of any other jurisdiction:

- (1) murder in the first, second, or third degree, as defined in Minnesota Statutes §§609.185, 609.19, or 609.195, for example;
- (2) manslaughter in the first degree, as defined in Minnesota Statutes §609.20, for example;
- (3) assault in the first, second, or third degree, as defined in Minnesota Statutes §§609.221, 609.222, or 609.223, for example;
- (4) kidnapping, as defined in Minnesota Statutes §609.25, for example;

- (5) depriving another of custodial or parental rights, as defined in Minnesota Statutes §609.26, for example;
- (6) soliciting, inducing, or promoting prostitution involving a minor, as defined in Minnesota Statutes §609.322, for example;
- (7) receiving profit from prostitution involving a minor, as defined in Minnesota Statutes §609.323, for example;
- (8) criminal sexual conduct in the first degree, as defined in Minnesota Statutes §609.342, for example;
- (9) criminal sexual conduct in the second degree, as defined in Minnesota Statutes §609.343, for example;
- (10) criminal sexual conduct in the third degree, as defined in Minnesota Statutes §609.344, Subdivision 1, paragraph (c), (f), or (g), for example;
- (11) solicitation of a child to engage in sexual conduct, as defined in Minnesota Statutes §609.352, for example;
- (12) incest, as defined in Minnesota Statutes §609.365, for example;
- (13) malicious punishment of a child, as defined in Minnesota Statutes §609.377, for example; or
- (14) neglect of a child, as defined in Minnesota Statutes §609.378, for example.

Section 4. *Per capita payments to children.*

Unless the per capita distribution ordinance of the Prairie Island Mdewakanton Dakota Community directs otherwise, any per capita payments that the children of a marriage may receive will be under the control of the custodial parent, to be used in the children's best interests. In the event of a conflict between this Domestic Relations title and the Prairie Island Mdewakanton Dakota Community per capita ordinance, the latter shall control.

Section 5. *Modification of custody orders.*

- a. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than one year after the date of the entry of a decree of dissolution containing a provision dealing with custody, except in accordance with clause (c).

- b. 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 clause (c).
- c. The time limitations prescribed in clauses (a) and (b) shall not prohibit a motion to modify a custody order if the Court has reason to believe that there may be persistent and willful denial or interference with visitation, 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. The Court shall make such determination(s) based upon the affidavits of the parties.
- d. The Court shall not modify a prior custody order after hearing on the motion unless it finds, upon the basis of facts 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 custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the Court shall retain the custodian established by the prior order unless the Court finds:
 - (i) the custodian agrees to the modification;
 - (ii) The child has been integrated into the family of the petitioner with the consent of the custodian; or
 - (iii) 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.

CHAPTER V. RULES OF PROCEDURE FOR DIVORCE, ANNULMENT, PROPERTY DIVISION, VISITATION AND CHILD CUSTODY ACTIONS

Section 1. *Applicability of rules.*

This chapter applies to all proceedings dealing with divorce and child custody. If any conflict exists between these rules and the Rules of Civil Procedure, these rules shall be applicable.

Section 2. *Commencement; continuance; time; parties.*

a. Commencement of proceedings.

- (1) Marriage dissolution proceedings 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.

Service of process in other domestic relations matters shall be governed by the Rules of Civil Procedure unless otherwise noted.

- (2) No summons shall be required if a joint petition is filed. Proceedings shall be commenced when both parties have signed the verified petition and filed it with the Court.
- (3) Service of the summons and petition may be made by publication only upon an order of the Tribal Court. If the respondent subsequently is located, personal service shall be made before the final hearing.

b. Continuances.

If a trial date has been established by the Court pursuant to a scheduling order after consultation with the parties, the Court shall decline to consider requests for continuance except those made by motion or when a judge determines that an emergency exists. A single request for a reasonable continuance of a trial date, by notice without hearing, may be granted by the Court upon agreement of all parties, provided that the request is made within 20 days after notice of the trial date to the parties. All other requests for continuance shall be made by motion with notice to all parties. No continuance of a motion hearing shall be granted unless requested within 3 days of receiving notice under Section (3)(a)(1) of this Chapter, unless good cause is shown.

c. Time.

Time is governed by the Prairie Island Mdewakanton Dakota Community Rules of Procedure, except where a different time is specified in this Domestic Relations title. Procedural time limits may be shortened for good cause shown.

d. Designation of parties.

- (1) Parties to dissolution and custody proceedings shall be designated as petitioner (joint petitioners) and respondent. After so designating the parties, it is permissible to refer to them as wife and husband by inserting the following in any petition, order, decree, etc.:

Petitioner is hereinafter referred to as (wife/husband), and respondent as (husband/wife).

- (2) A guardian ad litem for minor children may be designated a party to the proceedings in the order of appointment.

Section 3. *Motions; Ex parte relief; Orders to show cause; Orders and decrees.*

a. Scheduling of motions.

(1) *Notice.*

- (i) All motions shall be accompanied by either an order to show cause or by a notice of motion which shall state, with particularity, the time and place of the hearing and the name of the judge, referee, or judicial officer, as assigned by the Clerk of the Prairie Island Mdewakanton Dakota Tribal Court.
- (ii) Except in cases in which the parties reside in the same residence and there is a possibility of abuse, a party who obtains a date and time for hearing a motion shall promptly give notice of the hearing date and time and the name of the judge or referee, if known, to all other parties in the action. If the parties reside in the same residence and there is a possibility of abuse, notice shall be given in accordance with the Prairie Island Mdewakanton Dakota Community Rules of Civil Procedure.

- (2) *Notice of time to respond.* All motions and orders to show cause shall contain the following statement:

"All responsive pleadings shall be served and mailed to or filed with the Prairie Island Mdewakanton Clerk of Tribal Court no later than five days prior to the scheduled hearing. The Court may, in its discretion, disregard any responsive pleadings served or filed with the Clerk of Courts less than five days prior to such hearing in ruling on the motion or matter in question."

b. Form of motion.

- (1) *Specificity and supporting documents.* Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by appropriate affidavits, relevant and material to the issues before the Court. The paragraphs of the affidavits should be specific and factual; where possible, they should be numbered to correspond to the paragraphs of the motion.
- (2) *Application for temporary relief.* When temporary financial relief is initially requested, such as child support, maintenance and attorney's fees,

the application for temporary relief form set forth at the Appendix of Forms to this Code shall be served and filed by the moving and responding parties. Additional facts, limited to relevant and material matters, shall be added at paragraph 10 of the application form or by supplemental affidavit. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearings.

c. Motion practice.

(1) ***Requirements for motions.***

(i) **Moving party, supporting documents, time limits.** No motion shall be heard unless the initial moving party serves a copy of the following documents on opposing counsel, or responding party if not represented by counsel, and files the original with the Clerk of Tribal Courts at least 14 days prior to the hearing:

- (a) Notice of motion in form required by Section (3)(a)(1) of this Chapter;
- (b) Motion;
- (c) Any relevant affidavits and exhibits; and
- (d) Any memorandum of law the party intends to submit.

(ii) **Motion raising new issues.** A responding party raising new issues other than those raised in the initial motion shall serve a copy of the following documents on opposing counsel, or responding party if not represented by counsel, and shall file the original with the Clerk of Tribal Courts at least 10 days prior to the hearing:

- (a) Notice of the motion in form required by Section (3)(a)(1) of this Chapter;
- (b) Motion;
- (c) Any relevant affidavits and exhibits; and
- (d) Any memorandum of law the party intends to submit.

- (iii) **Responding party, supporting documents, time limits.** The party responding to issues raised in the initial motion, or the party responding to a motion which raises new issues, shall serve a copy of the following documents on opposing counsel, or responding party if not represented by counsel, and shall file the original with the Clerk of Tribal Courts at least five days prior to the hearing, inclusive of Saturdays, Sundays, and holidays:
 - (a) Any memorandum of law the party intends to submit;
 - (b) Any relevant affidavits and exhibits.

- (iv) **Computation of time for service and filing by mail.** 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:
 - (a) 3 days shall be added to the prescribed period; and
 - (b) 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 postmark of the U.S. Mail, Federal Express, or U.P.S. shall be considered by the Court.
 - (c) Service by mail is complete upon mailing.

- (2) ***Failure to comply.*** In the event an initial moving party fails to timely serve and file documents required in this rule, the hearing may be canceled by the Court. If responsive papers are not properly served and filed, the Tribal Court may deem the initial motion or motion raising new issues unopposed and may issue an order without hearing. The Court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may take other appropriate action.

- (3) ***Settlement efforts.*** No motion, except motion for temporary relief, will be heard unless the parties or their representatives have conferred either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate such conference. The moving party shall certify to the Tribal Court, before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing party or counsel. Whenever any pending motion is settled, the moving party shall promptly advise the Tribal Court.

- (4) ***Motion with request for oral testimony.*** Motions, except for contempt proceedings, shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the Tribal Court for good cause shown. If demand is made for the taking of oral testimony, and if the matter cannot be heard adequately in the scheduled time, the hearing shall be utilized as a prehearing conference. Requests for hearing time in excess of one-half hour shall be submitted by written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The motion shall include names of witnesses, nature and length of testimony, including cross-examination, and types of exhibits, if any. The Tribal Court may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Such an order shall be made only after each party or her/his representative has had an opportunity to suggest appropriate limits. Any motion relating to custody or visitation shall additionally state whether either party desires the Tribal Court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and Tribal Court approval.

d. Ex parte relief.

- (1) ***Motion.*** 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:
- (i) A need to require the party to appear in person at the hearing; or
 - (ii) The need for interim support is warranted; or
 - (iii) The production of limited financial information deemed necessary by the Tribal Court; or
 - (iv) Such other limited relief and appropriate restraining orders, as addressed individually in the separate supportive affidavit for ex parte relief.
- (3) ***Filing.*** All such orders and supporting documents must be filed with the order appropriately signed out for personal service. A conformed file copy of such order shall be retained by the Clerk of Tribal Courts in the file.

- (4) ***Interim support order.*** To insure support for an unemployed party or a party with children pending a full temporary hearing, an initial order to show cause may, if the situation warrants, contain the following:

IT IS FURTHER ORDERED that pending the aforesaid scheduled hearing, you, shall pay to the (petitioner) (respondent) commencing forthwith _ percent of your net earnings after the usual deductions for FICA, withholding taxes and group insurance, such payments to be made within 24 hours of your receipt of such earnings for each pay period. These payments are to insure that provision is made by you for the support of your (wife) (husband) (and) (children) pending the aforesaid hearing.

The percentage to be used will be in accordance with the child support guidelines of this Code and such other factors related to maintenance as the Tribal Court deems appropriate. There must be a showing in the Application for Temporary Relief of separate affidavit of the necessity for the interim order for support.

- (5) ***Orders to show cause shall be obtained in the same manner specified for ex parte relief.*** Such orders may require production of limited financial information deemed necessary by the Tribal Court. An order to show cause shall be issued only where the motion seeks a finding of contempt or the supporting affidavits makes an affirmative showing of:

- (i) A need to require the party to appear in person at the hearing; or
- (ii) The need for interim support is warranted; or
- (iii) The production of limited financial information deemed necessary by the Tribal Court; or
- (iv) Such other limited relief and appropriate restraining orders, as addressed individually in the separate supportive affidavit for ex parte relief.

- (6) ***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:

- (i) 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.

- (ii) 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.
- (iii) The payment of support or maintenance, or both, takes priority over payment of debts and other obligations.
- (iv) 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.
- (v) 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 4. *Scheduling of Cases.*

a. Scope.

The purpose of this rule is to provide a uniform system for scheduling matters for disposition and trial in proceedings in Tribal Court for all domestic relations decisions.

b. The party's informational statement.

Within 30 days after filing an action or within 30 days after a temporary hearing, whichever is later, each party shall submit, on a form to be available from the Tribal Court (Appendix of Forms to this Code), the information needed by the Tribal Court to manage and schedule the case. The information provided shall include:

- (1) Whether minor children are involved, and if so:
 - (i) Whether custody is in dispute; and
 - (ii) Whether the case involves any issues seriously affecting the welfare of the children;
- (2) Whether the case involves complex evaluation issues, and/or marital and non-marital property issues;
- (3) Whether the case needs to be expedited, and if, so, the specific supporting facts;

- (4) Whether the case is complex, and if so, the specific supporting facts;
- (5) Specific facts about the case which will affect readiness for trial; and
- (6) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to this rule.

c. Scheduling order.

- (1) ***When issued.*** Within 45 days after filing an action or 45 days after a temporary hearing, whichever is later, the Tribal Court shall enter its scheduling order. The Tribal Court may issue the order after either a telephone or in-court conference, or without a conference or hearing if none is needed.
- (2) ***Contents of order.*** The scheduling order may establish any of the following:
 - (i) Deadlines of specific dates for the completion of discovery and other pretrial preparation;
 - (ii) Deadlines or specific dates for serving, filing, or hearing motions;
 - (iii) Deadlines or specific dates for completion and review of custody/visitation mediation and evaluation or property mediation and evaluation;
 - (iv) A deadline or specific date for the prehearing conference;
 - (v) A deadline or specific date for the trial or final hearing.

d. Amendment.

A scheduling order pursuant to this rule may be amended at a prehearing conference or upon motion for good cause shown, or upon approval by authorized Tribal Court personnel if there is agreement of all parties.

Section 5. *Prehearing conferences.*

a. Prehearing statement.

Each party shall complete a prehearing conference statement substantially in the form set forth at the Appendix of Forms to this Code which shall be served upon

all parties and mailed to or filed with the Tribal Court at least 10 days prior to the date of the prehearing conference.

b. Prehearing conference attendance.

- (1) ***Parties and counsel.*** Unless excused by the Tribal Court for good cause, the parties and lawyers who will try the proceedings shall attend the prehearing conference, prepared to negotiate a final settlement. If a stipulation is reduced to writing prior to the prehearing conference, the case may be heard as a default at the time scheduled for the conference. In that event, only the party obtaining the decree need appear.
- (2) ***Failure to appear--sanctions.*** If a party fails to appear at a prehearing conference, the Tribal Court may dispose of the proceedings without further notice to that party.
- (3) ***Failure to comply--sanctions.*** Failure to comply with the rules relating to prehearing conferences 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, award of attorney fees and costs, and such other relief as the Tribal Court finds appropriate, without further notice to the defaulting party.

c. Prehearing conference order.

If the parties are unable to resolve the case, in whole or in part, at the prehearing conference, the Tribal Court shall issue an order which schedules any remaining discovery and any contemplated motions, identifies the contested issues for trial, and provides for the exchange of witness lists and exhibits to be offered at trial.

Section 6. Default.

a. Scheduling of final hearing.

To place a matter on the default calendar for final hearing, the moving party shall comply with the following, as applicable:

- (1) ***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 under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be filed with the Tribal Court.

- (2) ***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 to be held not sooner than three (3) days from the date of this notice. You are further notified that the Tribal Court will be requested to grant the relief requested 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.*** Whenever a stipulation settling all issues has been executed by the parties subsequent to the pre-hearing conference, the stipulation shall be filed with an affidavit of non-military status of the defaulting party or a waiver of that party's rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

In a stipulation where a party appears pro se, the following waiver shall be executed by that party:

I know I have the right to be represented by a lawyer of my choice.
I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

b. Preparation of decree.

In a scheduled default matter, proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be submitted to the Tribal Court in advance of, or at, the final hearing.

Section 7. Final hearings.

a. Failure to appear--sanctions.

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.

b. Stipulations entered in open Tribal Court--preparation of findings.

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

Unless a written, fully executed stipulation is filed or unless the decree contains the written approval of the lawyer for each party, a transcript of the oral stipulation shall be filed by the lawyer directed to prepare the decree.

Responsibility for the cost of the transcript shall be determined by the Tribal Court. Entry of the decree shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the lawyer for each party.

Section 8. Final decree.

a. Notices; service.

(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:

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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 local 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.

b. Required notices.

Where this Domestic Relations title or the Prairie Island Mdewakanton Dakota Community Rules of Civil Procedure require that certain subjects be addressed by notices in an order or decree, the notices shall not be included verbatim but shall be set forth in an attachment and incorporated by reference.

c. Sensitive matters.

Whenever the findings of fact include private or sensitive matters, a party may submit a judgment and decree supported by separate documents comprising findings of fact, conclusions of law, and order for judgment.

Section 9. Contempt.

a. Initiation.

- (1) **Moving papers--service; notice.** Contempt proceedings shall be initiated by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.

The order to show cause shall direct the alleged contemnor 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.

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

- (i) A reference to the specific order of the Tribal Court alleged to have been violated and date of entry of the order;
 - (ii) A quotation of the specific applicable provisions ordered; and
 - (iii) The alleged failures to comply.
- (2) ***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.

b. 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.

c. Disposition.

The Tribal Court may impose such civil fine or other penalty, as it deems appropriate.

Section 10. Mediation.

a. Order for mediation.

- (1) ***When issued.*** The Tribal Court may issue an order for mediation upon a motion by a party, by stipulation of the parties, or upon the Tribal Court's own initiative. The Tribal Court shall not require mediation when it finds probable cause that domestic or child abuse has occurred. Where the parties have made an unsuccessful attempt to mediate with a qualified mediator, additional mediation need not be required.
- (2) ***Prerequisite of final hearing.*** When ordered by the Tribal Court, participation in mediation shall be prerequisite to scheduling of a final hearing in a dissolution proceeding.

b. Mediators.

- (1) ***Appointment.*** If mediation is ordered, the Tribal Court shall appoint a mediator from its approved list, unless the parties stipulate to a mediator not on the list.

Each party shall be entitled to file a request for substitution within seven (7) days after receipt of notice of the appointed mediator. The Tribal Court shall then appoint a different mediator with notice given to the parties.

- (2) ***Qualification and training.*** The Tribal Court shall establish an approved list of mediators who also qualify for appointment by statute within the State of Minnesota or designation by federal district court.

c. Mediation attendance.

- (1) ***Mandatory orientation.*** Parties ordered by the Tribal Court to participate in mediation shall attend the orientation session.
- (2) ***Mediation sessions.*** Mediation sessions shall be informal and conducted at a suitable location designated by the mediator. Both parties shall appear at the time scheduled by the mediator, and attendance is limited to the parties, unless all parties and the mediator agree to the presence of other persons.

To assist in resolving contested issues, the parties may involve resource persons including lawyers, appraisers, accountants, and mental health professionals.

d. Scope of mediation.

Mediation may address all issues of controversy between the parties, unless limited by Tribal Court order.

e. Confidentiality.

Mediation proceedings under these rules are privileged, not subject to discovery, and inadmissible as evidence in domestic relations proceedings without the written consent of both parties.

Mediators and lawyers for the parties, to the extent of their participation in the mediation process, cannot be called as witnesses in the family Tribal Court proceedings.

No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

f. Termination of mediation.

Mediation shall be terminated upon the earliest of the following circumstances to occur:

- (1) A complete agreement of the parties;
- (2) The partial agreement of the parties and a determination by the mediator that further mediation will not resolve the remaining issues.
- (3) The determination by the mediator that the parties are unable to reach agreement through mediation or that the proceedings are inappropriate for mediation.

g. Mediator's memorandum.

- (1) **Submissions.** Upon termination of mediation, the mediator shall submit a memorandum to the parties and the Tribal Court setting out:
 - (i) the complete or partial agreement of the parties and enumerating the issues upon which the parties cannot agree; or
 - (ii) that no agreement has been reached, without any explanation.
- (2) **Copy to lawyer.** Where a party is represented by a lawyer, the mediator shall send a copy of the memorandum to that party's lawyer as well as the party.
- (3) **Agreement.** The parties' agreement shall be reduced to writing by counsel for the petitioner, or the counsel for the respondent with the consent of the petitioner, in the form of a marital termination agreement, stipulation, or similar instrument. The written agreement shall be signed by both parties and their counsel and submitted to the Tribal Court for approval.

h. Child custody investigation.

When the parties are unable to reach agreement on custody through mediation, the mediator may not conduct a custody investigation except by order of the Court with notice to the parties and opportunity to be heard. The Court shall be authorized to request the services of any qualified investigator from other Tribal, federal, state, or county agencies to conduct custody investigations. The Tribal Court shall be required to advise the Prairie Island Mdewakanton Dakota Community each year as to the necessary funds for such services and shall make the formal requests for such additions to the annual budget.

Section 11. Appeals.

Appeal of custody, visitation, child support, maintenance, property division, adoption, paternity, and child welfare matters shall comport with the Prairie Island Rules of Civil Procedure, Rule 38.

Section 12. Forms.

The forms contained in the Appendix of Forms for this chapter are sufficient under these rules.

CHAPTER VI. ANTENUPTIAL CONTRACTS

Section 1. Scope of antenuptial contracts.

a. Marital and separate property.

Antenuptial contracts may cover both marital and separate property of the spouses, except that the parties may not contract regarding any per capita payments from the Prairie Island Mdewakanton Dakota Community which either party may be receiving.

b. 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.

c. 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. Antenuptial contracts may not include provisions governing the per capita payments by the Prairie Island Mdewakanton Dakota Community to children.

Section 2. Requirements of valid antenuptial contracts.

a. 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.

b. Separate counsel.

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

c. 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 Tribal Courts of the Prairie Island Mdewakanton Dakota will determine the fairness of the contract.

Section 3. *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 VII. PATERNITY

Section 1. *Children born during a marriage.*

- a. The husband of a child's mother is presumed to be the father of any child born during the marriage.
- b. 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 2. *Children born outside of a marriage.*

- a. The paternity of a child born outside of a marriage may be established by blood testing, as ordered by a Tribal Court upon a motion by the mother of the child; or
- b. The paternity of a child born outside of a marriage may be established by acknowledgement of paternity by a man not excluded by blood testing, with the permission of the child's mother. The permission and the acknowledgement must be filed with the Clerk of Courts of the Prairie Island Mdewakanton Dakota Community in order to be valid.
- c. The mother of a child born out of wedlock has legal custody of the child unless the Tribal Court grants legal custody to another person or transfers legal custody to an agency.

Section 3. *Application of the laws of intestate succession to children born outside of a marriage.*

a. 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.

b. 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 a Tribal Court of the Prairie Island Mdewakanton Dakota Community 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 4. *Determinations of paternity by the Tribal Courts of the Prairie Island Mdewakanton Dakota.*

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

Section 5. *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. Use of the procedure contained in Minnesota statutes shall not be deemed an adoption of Minnesota law by the Prairie Island Mdewakanton Dakota Community and shall be subject to modification by the Prairie Island Mdewakanton Dakota Community.

CHAPTER VIII. ADOPTION

Section 1. *Purpose and policy.*

a. Purpose.

The purpose of this Chapter is to insure that the Prairie Island Mdewakanton Dakota Community 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

adoption issues that arise from all states' compliance with the Indian Child Welfare Act (ICWA), 25 U.S.C. §1901, *et seq.*

b. Policy.

The following shall constitute the policy of the Community with regard to the Indian Child Welfare Act, 25 U.S.C. §1901 *et seq.*

- (1) The Tribe shall intervene in all matters addressed by the ICWA involving a tribal child, whether or not she or he is enrolled, unless such intervention would be impracticable under the circumstances of the case.
- (2) In all ICWA cases which mandate transfer to Tribal Court and in which the Tribe is the "Indian Child's Tribe" within the meaning of Minnesota Indian Family Preservation Act or the ICWA, the Tribe shall petition for transfer of proceedings from the state court unless such transfer would be impracticable under the circumstances of the case.
- (3) The full panel of judges from the Prairie Island Mdewakanton Dakota jurisdiction shall be authorized to formally accept the transfer of jurisdiction from any state court. Said panel shall not be authorized to reject transfer without prior consultation with the Tribal Council.

Section 2. Definitions.

The terms listed below, whenever used in this Chapter, shall mean as follows:

a. Adult.

Adult means a person eighteen (18) years or older.

b. Child.

Child means a person who is a minor.

c. 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.

d. Legal custody.

Legal custody means the right given by the Tribal Courts 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.

e. Minor.

A minor means a person less than 18 years of age.

f. 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 Section One (1) (a) of Chapter Six (VI) 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.

g. Parent-child relationship.

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

h. Protective supervision.

Protective supervision means a legal status created by Court order whereby the child is under the protective supervision of the Tribal Courts.

i. Relatives.

Relatives mean relatives of the child within the second degree either by blood or affinity including step-parents, sisters, brothers, grandparents, aunts and uncles. Enrolled Tribal members who are relative of the child shall be given preference in contested adoptions if the best interests of the child is not an issue between or among the parties.

j. Tribal Court.

Tribal Court means a Court of the Prairie Island Mdewakanton Dakota Community.

k. Tribe.

Tribe means the Prairie Island Mdewakanton Dakota Tribe, also known as Prairie Island Mdewakanton Sioux Tribe.

l. Parties.

Parties to adoption proceedings shall be designated as petitioner and respondent, if any. Petitioner(s) will be the person(s) wishing to adopt the children.

m. Indian Child Welfare Act.

Indian Child Welfare Act, or ICWA, means Pub. L. 95-608, 92 Stat. 3069, codified at 25 U.S.C. §1901 *et seq.*

Section 3. Jurisdiction.

The Tribal Court shall have original jurisdiction in adoption matters.

Section 4. Petition for adoption.

The petition for adoption shall be filed with the Tribal Court on a form prescribed by this Code. Appendix of Forms. It shall be verified under oath by the adoptive parent or parents, and shall contain the following:

- a. The full name, the residence, date of birth, enrollment status and sex of the child. Documentary proof of the date and the place of the birth of the child to be adopted shall be provided in the form of a certified birth certificate, and shall be filed with the petition.
- b. The full name, the residence, date and place of birth, Tribal enrollment, and occupation of the adoptive parent or parents. Documentary proof of the adoptive parents marital status shall be provided in the form of a certified marriage license or other recognition of a solemnized marriage, and shall be filed with the petition. If the adoptive parent or parents are unmarried, they shall so designate on the petition.

- c. A full description and statement of value of all property owned or possessed by the child.
- d. An agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child, and that is in the child's best interests.
- e. A fully witnessed and notarized natural parent consent to the adoption (Appendix of Forms to this Code) or a Court order terminating the parent-child relationship with respect to any living parent who does not consent shall be provided, and shall be filed with the petition.

Section 5. *Who may file a petition.*

a. General Requirements.

Any adult may file a petition in the Tribal Court to adopt a child who is enrollable or who is a tribal member whether or not such child is domiciled within the jurisdiction of the Tribal Court. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition. The natural parent spouse in a step-parent adoption shall file a consent pursuant to Section 8(a) herein. The adoptive applicants must be at least ten (10) years older than the child.

b. Special conditions for non-member adoption.

- (1) An order of adoption granted to a petitioner who is not a member of the Tribe shall be expressly conditioned upon the petitioner making a commitment to the Court to make every effort to keep the child apprised of his or her tribal heritage and a commitment to raise the child insofar as possible to foster the child's tribal heritage.
- (2) The Court may order the appropriate agency/office to monitor the adoptive placement to insure that the provisions of this section are being complied with.
- (3) The Court may enter a custody order not to exceed six (6) months in order to determine the mandate herein to non-member adoptive parents is complied with.

- (4) At the expiration of six (6) months from the entry of the interim order, the Court may enter its final adoption order and decree.

Section 6. *When consent to adoption is required.*

- a. No petition for adoption shall be granted unless:
 - (1) each parent of the child, or if there is no living parent, the guardian of the child's person, consents in writing to the adoption of the child by petitioners; or
 - (2) the parent-child relationship has been terminated as to any non-consenting parent.
- b. A minor parent may consent to an adoption provided the parents of the minor parent concur, however, the Tribal Court may waive consent by the minor's parents if it finds that the withholding of such consent is arbitrary and capricious.

Section 7. *Appointment of guardian.*

Except in the case of stepparent adoptions, a petition for adoption by any person who is not a relative within the second degree of kinship either by blood or affinity shall not be heard unless a guardian for the child has first been appointed by the Tribal Court.

Section 8. *Consents to adoption.*

a. Form of consent.

Consents to adoption shall be acknowledged before an officer duly authorized to take acknowledgements and witnessed by a representative of the Tribal Court. The consent shall indicate if the parent or guardian wishes her or his identity to be confidential. Appendix of Forms.

b. Consent by a child aged 12 or older.

The adoption of a child twelve (12) years of age or older shall not be granted without the child's consent given in Court or in writing in such form as the Court may direct. If a child is unable to give consent due to mental incapacity, this consent provision may be waived by the Tribal Court.

c. Filing of consents.

Written consents where required by this chapter, shall be attached to the adoption petition. A consent by a guardian of the child's person shall be accompanied by

evidence satisfactory to the Tribal Court establishing the guardian's authority to consent to adoption of the child. Appendix of Forms.

d. Withdrawal of consent.

A parent's consent to adoption may be withdrawn for any reason within ten working days after the consent is executed and acknowledged. Written notification of withdrawal of consent must be received by the agency, Tribal department or individual to which the child was given no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgement, the consent shall become irrevocable, except upon order of a Court of competent jurisdiction after written findings that consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the natural parents over the adoptive parents.

Section 9. *Investigation report.*

Within five (5) days after the filing of a petition for adoption, the Court shall request the assistance of the Tribal agency, the Bureau of Indian Affairs Branch, an agent of the State, a private court services business, or a probation officer where participating in the supervision of custody of the child to inquire into, investigate and report, in writing, to the Court within thirty (30) days as to the suitability of the child for adoption, the financial ability, moral and physical fitness and general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

Section 10. *Hearing on adoption.*

Within five (5) days after the written report required by Section Nine (9) is filed, the Court shall fix a time for hearing on the petition for adoption which shall not be sooner than 30 days nor later than 45 days. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified, unless notice is waived, and may appear or be represented by a person having power of attorney authorizing such person to represent them for the purpose of the adoption.

The Court shall examine all persons appearing separately and if satisfied as to the suitability of the child for adoption, the validity of the consent to adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption in the case of a child who has been in the custody of the petitioners and provided for by them for more than three (3) months or may place the child in legal custody of the petitioners for a period of not less than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the

adoption petition will not be in the best interests of the child, the petition shall be denied and the guardian so instructed to arrange suitable care for the child and the Court may request agencies authorized to provide such services to assist in the placement and the care of the child.

Section 11. *Report and final decree of adoption.*

Within six (6) months after the child has been in the custody of the petitioner, the Tribal Court shall request a supplementary written report under the same procedures followed in Section Nine (9) of this Chapter as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Tribal Court is satisfied the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered.

No final order may be entered by the Tribal Court until the child to be adopted has lived and resided for a period of at least three (3) months in the home of the adoptive parents. In any case where the Tribal Court finds that the best interests of the child will not be served by the adoption, a guardian of the child shall be appointed and suitable arrangements for the care of the child shall be made and the Tribal Court may request an appropriate Tribal, federal, or state agency authorized to provide such services to assist in the placement and the care of the child.

Section 12. *Privacy interests of person(s) giving child up for adoption.*

In order to protect the privacy interests of the natural parent or guardian consenting to an adoption, the final order for adoption shall clearly indicate if that person's identity shall be confidential pursuant to the designation on the consent form provided by and filed with the Tribal Court. If the person later changes his or her mind, he or she may move to the Court to amend that portion of the order by filing a motion with the Tribal Court.

Section 13. *Adoption records.*

All records, reports, proceedings and orders in adoption cases are confidential and permanent records of the Tribal Court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Tribal Court by the adopted person after reaching legal majority, or upon order of the Tribal Court upon good and sufficient cause shown, unless the person consenting to the adoption has requested otherwise as provided for in Section Twelve (12) of this Chapter.

Section 14. *Contents of adoption order.*

The final order and decree of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Tribal Court upon the evidence adduced at the hearings, and that it is in the child's best interests.

Within five (5) days after the final order and decree of adoption has been entered by the Tribal Court, the Division of Vital Statistics of the State Board of Health shall be notified on a form prepared and submitted by the Clerk of Tribal Court that the adoption has taken place. In providing such notification, the Clerk shall include the full name, sex, birthday, names of natural parents and full names of adoptive parents so that a new record of birth in the new name and with the name or names of the adopting parents may be recorded. The Clerk shall also provide a certified true and correct copy of the final order and decree of adoption.

Section 15. *Name and legal status of adopted child.*

Children adopted by order of the Tribal Court shall assume the surname chosen by the persons by whom they are adopted, unless the court orders otherwise, and shall be entitled to the same rights of person and property as natural children or heirs of the persons adopting them and shall be subject to the same obligations of natural children of the adoptive parent. The entry of an order and decree of adoption divests any parent or alleged parent who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations with respect to the adopted child, except for past-due child support payments accrued pursuant to Court order.

Section 16. *Tribal status of child.*

Adoption of any minor child who is a member of the Prairie Island Mdewakanton Dakota Community shall not affect the child's status as a Tribal member.

CHAPTER IX. CHILD WELFARE

Section 1. *Purpose, construction and policy.*

a. *Purpose*

This Chapter shall be interpreted to effectuate the following purposes:

- (1) To secure for each child coming before the Tribal Children's Court such care, guidance, and control, preferably in her or his own home, as will serve her or his welfare and the best interests of the Prairie Island Mdewakanton Dakota Community;
- (2) To preserve and strengthen family ties whenever possible;
- (3) To preserve and strengthen each child's Tribal, cultural, or ethnic identity whenever possible;
- (4) To secure for any child removed from her or his home that care, guidance, and control as nearly equivalent as that which the child should have been given by its parents to help her or him develop into a responsible, well

adjusted adult; to improve any conditions or home environment which may be contributing to a child's delinquency; and at the same time,

- (5) To divert children from the State child justice system wherever possible in order to provide assistance within the Prairie Island Mdewakanton Dakota Community to children committing delinquent acts and experience other delinquencies.
- (6) To protect the peace and security of the Tribal community and its individual residents from child violence or law-breaking.

b. Construction.

This Chapter shall be liberally construed to insure that each child shall receive such care, guidance, and control, preferably in the child's own home, as will protect and enhance the child's welfare and the best interest of the Tribe and its Community.

c. Policy.

The Tribe hereby establishes the following placement preferences should a child be placed outside the child's home and such placement can secure the best care, guidance, and control for the child:

- (1) A member of the child's extended family.
- (2) Another member of the child's Tribe.
- (3) Another Indian family.
- (4) An institution for children approved by the Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.
- (5) A non-Indian foster home located on the reservation and licensed or approved by the Tribe.
- (6) A non-Indian foster home located off the reservation and licensed or approved by the Tribe.
- (7) Within each placement preference category, preference shall be given to a placement on the Reservation. These placement preferences shall be applied by the Court in all proceedings pursuant to this Code and no deviation therefrom shall be made without a finding of good cause therefor.

The provisions of this Section constitute the establishment of a Tribal order of preference as acknowledged by the ICWA.

d. Transfer of jurisdiction under the ICWA.

The full panel of judges from the Prairie Island Mdewakanton Dakota jurisdiction shall be authorized to formally accept the transfer of jurisdiction from any state court. Said panel shall not be authorized to reject transfer without prior consultation with the Tribal Council.

e. Intervention under the ICWA.

The full panel of judges from the Prairie Island Mdewakanton Dakota jurisdiction shall be authorized to intervene on behalf of the Tribe in all matters addressed by the ICWA involving a Tribal child, whether or not enrolled. It is the intent of this subsection that the Tribe shall intervene in such matters unless such intervention would be impracticable under the circumstances of the case.

Section 2. Definitions.

a. Delinquent child.

Delinquent child means any child under the age of eighteen (18) years who:

- (1) Violates any offenses enumerated in the criminal Code of the State of Minnesota;
- (2) By reason of being ungovernable or habitually disobedient, is uncontrolled by her or his parents, guardian or custodian;
- (3) Is habitually truant from school or home;
- (4) Habitually so deports herself or himself so as to injure or endanger the morals or health of herself or himself or others.

b. Dependent child.

Any child under the age of eighteen (18) years, who is homeless or destitute or without proper support through no fault of her or his parent, guardian, or custodian.

c. Neglected child.

Any child under the age of eighteen (18):

- (1) Who is abandoned by her or his parent, guardian or custodian;
- (2) Who lacks proper parental care by reason of the fault or habits of her or his parents, guardian or custodian;
- (3) Whose parent, guardian or custodian neglects or refuses to provide proper and necessary property and necessary subsistence, education or other care necessary for the health, morals or well-being of such child;
- (4) Whose parent, guardian or custodian neglects or refuses to provide special care made necessary by the mental or physical condition of the child;
- (5) Whose parent engages in an occupation or is in a situation dangerous to life or limb or injurious to the health or morals of such child.

d. Child in need of assistance.

Any delinquent, dependent, or neglected child shall be deemed for these provisions a child in need of assistance and may be the subject of a petition under this Chapter. Such designation shall include: a minor Tribal member; a minor eligible for enrollment; any Indian child domiciled on the Prairie Island Mdewakanton Dakota Reservation.

e. Juvenile.

Any Indian child under the age of eighteen (18) years.

f. Parties.

Parties to child welfare actions shall be designated as petitioner and respondent.

g. Children's Court.

The Prairie Island Mdewakanton Dakota Tribal Court when exercising jurisdiction under this Chapter shall be known as the "Children's Court" and any duly appointed judge of the Court when exercising jurisdiction under this Code shall be known as the "Children's Court Judge."

Section 3. Jurisdiction.

The Children's Court shall have original jurisdiction in all proceedings coming within the terms of this Chapter and all inherent jurisdiction not preempted by federal law. The Court shall have continuing jurisdiction until the child reaches age eighteen (18). Unless the child is discharged by the Court, the Court for cause shown may reopen the case at any time and take such action with respect to a child as it deems appropriate.

Section 4. *Proceedings of a civil nature.*

Proceedings in child cases shall be regarded as civil proceedings, with the Court exercising certain equitable powers. Nevertheless, the fact that the proceedings are of a civil nature shall not be construed to deprive the child of her or his rights to counsel, to confront accusers and cross-examine witnesses against her or him, nor to deny her or his privilege against self-incrimination.

Section 5. *How to start proceedings.*

Proceedings under this Code shall be instituted by a petition filed by any citizen or by a police, probation or child welfare officer on behalf of the Tribe in the interest of the child.

Section 6. *Grounds for a petition.*

A petition may be filed when a child is known or believed to be neglected, dependent, delinquent, or in violation of law. The petition shall state the facts concerning the condition of the child, including the name, age and residence of the child and the identification of the child and the identification of her or his parents, legal guardian or others who have responsibility for the child.

Section 7. *Notice and service of notice.*

Upon the filing of a Petition, the Judge or Clerk of Courts shall issue a notice which may be in the form of a summons directing the parents or guardians of the child to be present in Court for hearing at the time and place fixed in the notice. If the whereabouts of the parents or guardians is unknown, the Court may proceed to take any action to protect the child, but all action without notice to parents shall be temporary rather than permanent order. Any person served with notice who fails to appear without reasonable cause shall be subject to contempt of Court. The returns of service shall be filed in the record of the case.

Section 8. *Hearing in Children's Court.*

All matters under this Code shall be confidential and heard in closed Court, excluding all persons except parents, guardians, the attorney for the child, the probation officer, law enforcement officer, guardian ad litem and with the permission of the Court others having a direct interest in the matter.

Section 9. *Actions of the Children's Court.*

a. General authority.

The Court shall make such orders for the commitment, custody and care of the child and take such other actions as it may deem advisable and appropriate in the interest of the child and the interests of the Tribe. The Court may request and accept the aid of the Bureau of Indian Affairs, and the Minnesota Department of Human Services, in addition to the Tribal Child Welfare Office and such others as it deems appropriate for a proper determination and disposition of the case, including custody or placement of the child.

b. Orders for protection.

If it appears to the Children's Court upon an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses if required by the judge, that there is probable cause to believe that a child is being endangered, detained without authorization, or ill-treated in any place within the jurisdiction of the Children's Court, the Children's Court may issue an order authorizing a duly authorized Tribal child welfare officer, peace officer or probation officer to search for and obtain physical custody of the child. The officer must thereupon take the child to the Children's Court or to the place or shelter designated by the Children's Court in its order. Interference with execution of the Children's Court's order may subject an individual to a contempt of Court citation, or arrest and detention if such authority shall exist.

c. Custody of child pending hearing.

Pending final disposition of the case, the child shall be subject to the order of the Children's Court and may be permitted to remain in the control of parents, guardians or persons having her or his custody or the child welfare or probation office or she or he may be ordered to remain in an appropriate place provided by the Tribe, or designated by the Children's Court.

d. Medical care and examinations.

The Children's Court may order medical examinations and care as may be required for children under its jurisdiction.

e. Commitments.

The Children's Court shall have broad discretionary power with respect to commitments and its authority shall include, without intending any limitation

hereby, the power to commit the child, subject to such conditions as it may impose:

- (1) To the care of her parents, with or without supervision of the child welfare officer or probation officer.
- (2) To a child welfare officer or probation officer.
- (3) To a responsible and reputable person of good moral character known to the Court.
- (4) To a suitable school or institution.
- (5) To a guardian appointed by the Children's Court.

f. Judgment for support.

The Children's Court may, by order, direct the person or persons required by law to support the child to pay for the support of the child in such amount as the Children's Court may determine to be fair and reasonable, including the cost of the temporary placement of the child pending hearing under Subsection (e) above.

Such orders shall have the force and effect of judgment for money and shall be enforceable as are other judgments for money.

g. Removal from Reservation.

The Children's Court may permit removal of a neglected, dependent, or delinquent child from the Reservation by the person or institution in whose physical custody the child is given on condition that such custodian will return the child on order of the Children's Court.

Section 10. *Records of Children's Court.*

The Court shall maintain a record of all proceedings under this Chapter in record books labeled "Records of the Children's Court." The records of proceedings under this Code shall not be open to public inspection and the names of the children who have committed acts constituting offenses if committed by an adult shall not be released to the media.

Section 11. *Custody of a child apprehended for violation of law.*

An officer of the law, other than the probation or child welfare officer, who apprehends a child for an alleged violation of law forthwith shall notify the Child Welfare or probation office of the apprehension and shall place the child in such custody as the child welfare officer or a probation officer directs, pending hearing by the Children's Court. In no instance shall such custody exceed seventy-two hours without hearing before the Children's Court. No child shall be detained or incarcerated with adult detainees or prisoners.

Section 12. *Report of custodian.*

When a child is committed to the care of any person, the matter may be assigned by the Children's Court to a child welfare or probation officer who shall require a report quarterly, or more often if the Children's Court so orders, from the custodian to whom the child has been committed, reporting on the child's condition and welfare. The report shall be filed with the Children's Court.

Section 13. *No limitation on authority.*

Nothing in this Chapter shall be construed as prohibiting an officer of the law from taking into custody a child who is found violating a law or ordinance, who is reasonably believed to be a fugitive from her or his parents or from justice or whose surroundings are such as to endanger her or his health, morals, or welfare unless taken into custody.

Section 14. *Child welfare and probation officers.*

Child welfare and probation officers shall:

- a. Look after the interests of neglected, dependent, or delinquent children of the Reservation.
- b. Make investigations and file petitions.
- c. Be present in Children's Court when cases are heard concerning children.
- d. Prepare pre-placement reports for the Children's Court with information and assistance as it may require.
- e. Supervise placements.
- f. Furnish such other related services as may be directed by the Children's Court.

Section 15. *Caption headings.*

The captions for all child welfare actions shall be titled "In Re the Matter of (child's initials), a [Dependent] [Neglected] [Delinquent] Child".

Section 16. *Child Welfare Office.*

a. Duties.

The Child Welfare Office shall have the following powers, duties, and responsibilities:

- (1) Pursuant to the instruction of the Children's Court, process all ICWA notices sent to the Tribe, assist the Court in intervening in ICWA proceedings, assist the Court in petitioning for transfer of ICWA proceedings to Children's Court where appropriate, and carry out all other duties and responsibilities regarding all ICWA matters pursuant to the instructions or order of the Children's Court.
- (2) Receive and investigate reports of suspected child abuse and neglect involving Tribal children.
- (3) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings.
- (4) Determine whether a Tribal child should be held pursuant to the emergency provisions of this Chapter, and provide crisis counseling during the intake process when such counseling appears to be necessary.
- (5) Make referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable.
- (6) Make a dispositional report and recommendation to the Court in child welfare proceedings, including a plan of rehabilitation, treatment and care.
- (7) Supervise and assist Tribal children pursuant to child welfare dispositions, offer family counseling, and make an affirmative effort to obtain necessary or desired services for the Tribal child and the child's family.
- (8) Accept legal custody of Tribal children when ordered by the Children's Court.
- (9) Initiate petitions for the termination of parental rights or investigate and report to the Children's Court on petitions to terminate parental rights brought by others.
- (10) If specifically authorized by Tribal Council resolution, retain counsel to assist in carrying out these duties and to represent the Tribe in special matters relating to this Chapter.
- (11) Perform any other functions ordered by the Court in matters related to this Chapter.
- (12) Develop case plans and conduct case plan reviews pursuant to dispositional orders.
- (13) Negotiate agreements for services, record sharing, referral, and funding for child welfare services pursuant to dispositional orders.

- (14) Provide measures and procedures for preserving the confidential nature of child welfare services records within the Child Welfare Office.
- (15) To mail and file such reports as may be required by this code and by agreements with other governmental agencies in furtherance of child and family services.

b. Use of other Tribal resources.

- (1) In carrying out its powers, duties, and responsibilities under this Chapter, the Child Welfare Office may use, and is encouraged to make liberal use of, the psychiatric, psychological, therapeutic, counseling, and other social services available to the Tribe, both from within and without the Tribe. The Child Welfare Office shall be required to identify and use qualified tribal or other resources, if available and appropriate.
- (2) The Children's Court may order the provision of psychiatric, psychological, or therapeutic counseling, or other social services by an appropriate department or employee of the Tribe or other qualified agency in any proceeding under this Chapter.

c. Case plans.

- (1) For all matters in which a dispositional order other than a dismissal is entered, the Child Welfare office shall develop a written plan of service in consultation with the child, if over 12 years of age, the parent(s), guardian, or custodian, and such other child and family service providers as may be appropriate to the case. Each case plan shall be designated to achieve placement in a setting which most closely approximates a family and in which any special needs may be met, and shall include the following features:
 - (i) A description of the type of home or child care institution in which the child is to be placed;
 - (ii) A discussion of the appropriateness of the placement for the particular child;
 - (iii) A plan for assuring that:
 - (a) the child receives proper care while in placement;

- (b) services are provided to the parent(s), child, and foster parents to facilitate the return of the child to her/his home or permanent placement, and
 - (c) the need for services of the child in foster placement are met and that the services are appropriate.
- (2) At no less than six month intervals, the Child Welfare Office shall review each case and plan, and develop written findings which address:
 - (i) Continuing need for service and/or placement.
 - (ii) Appropriateness of services and/or placement to date.
 - (iii) Compliance with the service plan.
 - (iv) Progress made toward alleviating or mitigating the circumstances giving rise to the dispositional order.
 - (v) Projection of a likely date by which the child may be returned home, placed in legal guardianship, or placed for adoption.
- (3) Case reviews shall be conducted by a panel including at least one person who is not responsible for management or delivery of services in the case. Case review meetings shall be open to participation by the child, parent, guardian, or custodian or their representative.
- (4) The case plan and any case review findings shall be filed with the Children's Court and shall be referenced in any petition for the extension or modification under this Chapter.