



**NOTTAWASEPPI HURON BAND OF THE POTAWATOMI
RESOLUTION NO. 02-16-23-06**

Adopting Divorce Code

WHEREAS: On December 21, 1995, the Department of the Interior recognized the Nottawaseppi Huron Band of the Potawatomi, as a federally recognized Indian Tribe pursuant to the Federal Acknowledgement Process (60 Fed. Reg. 66315);

WHEREAS: Article IV, Section 1 of the Band's Constitution establishes the Tribal Council as the governing body of the Band;

WHEREAS: Article VI, Section 1(a) of the Constitution vests the Tribal Council with the power to adopt statutes, which are consistent with this Constitution, which shall be necessary and proper to carry out the sovereign powers of the Band and to promote and protect the health, safety, education, and general welfare of the Band and its members;

WHEREAS: Article VI, Section 1(k) of the Constitution empowers the Tribal Council to regulate the conduct of all persons who enter, reside on, and/or conduct business on the Band's lands through statutes;

WHEREAS: Article VI, Section 1(l) of the Constitution enables the Tribal Council to promulgate and enforce statutes intended to safeguard and promote the peace, safety, and general welfare of the Band, by regulating the use and disposition of property upon tribal lands;

WHEREAS: Article VI, Section 1(n) of the Constitution vests the Tribal Council with the power to regulate the domestic relations of members of the Band and other persons residing within Indian Country;

WHEREAS: The Tribe desires to adopt this Divorce Code to promote the health, safety and general welfare of the Tribe by codifying a uniform, efficient and equitable process and procedure governing dissolution of marriage; and


WHEREAS: In adopting this Divorce Code, the Tribal Council affirms its commitment to maintain and advance the Tribe's sovereignty by enacting a statute which recognizes Tribal Court jurisdiction over certain marriage dissolutions.

NOW THEREFORE IT IS RESOLVED THAT the Nottawaseppi Huron Band of the Potawatomi Tribal Council hereby adopts the Divorce Code as provided and attached hereto as Exhibit 1.

**###
CERTIFICATION**

On February 16, 2023, this resolution was approved at a duly called regular meeting of the Tribal Council held at the Pine Creek Indian Reservation, a quorum being present, by an affirmative vote 5 members, 0 opposing, 0 absent, and 0 abstaining, this 16th day of February 2023.


Nancy Smit, Secretary


Jamie Stuck, Chairperson

Distribution: Tribal Council Records
Legal Department
Tribal Court

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True Certified Copy Shall Be Embossed
Signed by [Signature]
Date 02/16/23*

ARTICLE 1

Title; Authority; Purpose; Construction; No Waiver of Sovereign Immunity; Severability; Effective Date; References; and Definitions.

Section 1.01 Title

The title of this Code shall be the "Nottawaseppi Huron Band of the Potawatomi's (NHBP, Tribe, or Band) Divorce Code." It may be referred to as the "Divorce Code" or simply the "Code".

Section 1.02 Authority

The Tribal Council enacts this Code pursuant to the duties of the Tribal Council stated in Article VI, Subsection 1(a) of the Constitution.

Section 1.03 Purpose

The Tribe finds that it is essential to the political integrity of the Tribe to have the ability to dissolve marriages within the Tribal Court's jurisdiction. While the Tribe recognizes the importance of preserving family ties whenever possible, studies have shown a link between the availability of no-fault divorce laws and reduced rates of female suicide and domestic violence. Even when domestic violence is not at issue, the Tribe recognizes that *Pkéw'edwen*, the dissolution of marriage, is sometimes necessary to promote the peace and welfare within a household, and by extension, the NHBP community. This Code is intended to promote the health, safety, and general welfare of the Tribe by providing a peaceful, efficient and equitable process and procedure for *Pkéw'edwen*.

Section 1.04 Construction

This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution; provided that in the event of any inconsistency, the Constitution shall control.

Section 1.05 No Waiver of Sovereign Immunity

Nothing in this Code shall be construed to waive the sovereign immunity of NHBP or any of its governmental officers, representatives, employees, or agents.

Section 1.06 Severability

If any provision of this Code, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

Section 1.07 Effective Date

This Code shall become effective on the date of enactment of this Code by the Tribal Council.

Section 1.08 References

The reference or citation to any Section or Subsection in this Code shall refer to a Section or Subsection of this Code, except as otherwise expressly stated.

Section 1.09 Definitions

For the purpose of this Code, the following terms are defined:

BUSINESS DAY – Consecutive days of the year, excluding weekends and NHBP government-recognized holidays.

CODE – means this Divorce Code.

COMPLAINT – means a complaint for divorce.

CONSTITUTION – means the Tribe’s Constitution.

CHILD or CHILDREN – means any biological or adopted Child or Children who are under eighteen (18) years of age, subject to Section 7.01, for purposes of providing support, Child includes a Child and Children who have reached eighteen (18) years of age. A Child may be adopted pursuant to the laws and customs of NHBP.

CUSTODY – means Legal Custody or Physical Custody, or both, as the context requires.

DEFENDANT – means the party against whom a Complaint has been filed.

GRANDPARENTING TIME - means the schedule and amount of time a grandparent is ordered by the Court to spend with their grandchildren.

LEGAL CUSTODY – means a determination regarding the decision-making authority as to the important decisions affecting the welfare of a Child, including decisions involving education, religion and medical treatment, and includes “joint Legal Custody” under which Legal Custody is shared by the Parents, a Third Person or a combination thereof, or “sole Legal Custody” under which Legal Custody is held by one Parent or a Third Person.

MARITAL PROPERTY – means real and personal property and retirement property acquired after the parties were married, without regard to which spouse holds title to the property. Marital property also includes the appreciated value of property that was acquired before the marriage by one spouse but has risen in value due to the efforts and/or labor of the other or both spouses during the marriage. Marital property does not include property that was inherited or given as a gift to one spouse from a third party after the marriage, nor does it include items of religious, cultural, or ceremonial value.

MARRIAGE CODE – means the Tribe’s Marriage Code.

NHBP, TRIBE, or BAND – means the Nottawaseppi Huron Band of the Potawatomi.

PARENT – means the biological or adoptive Parent of any Child.

PARENTING TIME – means the schedule and amount of time each Parent spends with their Children.

PLAINTIFF – means the party who has filed a Complaint.

PHYSICAL CUSTODY – means a determination where a Child will reside, and includes “joint Physical Custody” under which a Child will reside alternately for specified periods with each Parent, a Third Person, or a combination thereof, and “sole Physical Custody” under which a Child will reside with one Parent or a Third Person.

SIMPLE DISSOLUTION – means a simplified procedure for divorce in which the parties have no issues for the Court to decide other than the dissolution of the marriage.

SUPREME COURT – means the NHBP Supreme Court.

THIRD PERSON – means an individual other than a Parent who is an interested party to a divorce proceeding.

TRIBAL COUNCIL – means the governing body of the Tribe established pursuant to Article VI of the Constitution.

TRIBAL COURT – means the trial level court of NHBP.

WA NĚ MNOPMADZET (BEST INTERESTS of the CHILD) – means the standard used by the NHBP Tribal Court to determine the well-being of a Child in a particular case, through the evaluation of the following factors:

- A. Physical, mental, emotional, spiritual, and familial needs of the Child;
- B. Stable, nurturing environment for the Child;
- C. Unique individual needs of the Child;
- D. The Child’s reasonable preference;
- E. Either Parent’s willingness and ability to facilitate the Child’s participation in cultural or religious events; and
- F. Any other factor considered by the NHBP Tribal Court to be relevant to a particular Child under this Code.

ARTICLE 2

Tribal Court Jurisdiction and Tribal Court Authority

Section 2.01 Tribal Court Jurisdiction

- (a) The Tribal Court shall have jurisdiction to dissolve a marriage and grant a judgment of divorce if at least one party to the divorce is a member of the Nottawaseppi Huron Band of the Potawatomi and:
 - (1) The Defendant has resided on NHBP's reservation trust land for at least one-hundred eighty (180) days immediately preceding the filing of the Complaint; or
 - (2) The marriage which is the subject of the Complaint occurred under the Marriage Code.
- (b) In accordance with the Constitution, the Supreme Court shall have jurisdiction to hear all appeals arising from Tribal Court decisions or proceedings under this Code.

Section 2.02 Tribal Court Authority

Without limiting the authority of the Tribal Court under any Tribal law or the Constitution, the Tribal Court may:

- (a) Require any party to provide additional information under oath as required by the Tribal Court, including without limitation, on matters pertinent to the jurisdiction and disposition of the case;
- (b) Appoint a lawyer-guardian ad litem to represent a Child if, at any time in a divorce proceeding, the Tribal Court determines that the Wa Nē Mnopmadzet are inadequately represented and may order the parties to bear the cost of the lawyer-guardian ad litem. The lawyer-guardian ad litem may file a written report and recommendation with the Tribal Court which:
 - (1) May be reviewed by the Tribal Court, but may not be admitted into evidence unless all parties stipulate to the admission; and
 - (2) May be used by the parties for purposes of any settlement conference.
- (c) At the request of a person who changed their name upon marriage, restore their birth name, or the surname they legally bore prior to their marriage to the spouse in the divorce action, or allow them to adopt another surname if the change is not sought with any fraudulent or malicious intent;
- (d) Enter orders, judgments, award costs and reasonable fees and enforce orders and judgments in matters under this Code; and
- (e) Exercise any other power granted under the Constitution or Tribal law, including without limitation, this Code.

ARTICLE 3 Court Rules and Procedures

Section 3.01 Rules of Procedure

- (a) The NHBP Tribal Court Rules not in conflict with this Code will govern the procedures of this Code. In the absence of codified rules or Tribal Court promulgated rules of procedure, the Michigan Court Rules will be utilized as a guide.

Section 3.02 Promulgation of Rules

The Chief Judge of the Tribal Court will promulgate or cause to be promulgated, and maintain the rules of procedure to facilitate the efficient and fair execution of this Code.

ARTICLE 4 Annulment

Section 4.01 Grounds for Annulment

A marriage may be voided or annulled by the Tribal Court for any one of the following reasons upon the application of one of the parties:

- (a) Either party was underage at the time of the marriage and did not have Parental consent rendering consent void;
- (b) The consent of either party was obtained by force or fraud;
- (c) Either party lacked mental capacity at the time of the marriage and was therefore incapable of consenting;
- (d) Either party was at the time of the marriage incapable of consummating the marriage and the incapacity is continuing;
- (e) Either party is the Parent, sibling, half-sibling, grand, Child, grandchild, sibling's Child, Parent's sibling, or cousin of the first degree of the other party to the marriage, except as permitted by established tribal customs and culture; or
- (f) Either party was, at the time of the marriage, legally married to another living spouse.

If, after termination of any of the foregoing defects, the parties shall continue to live together as a married couple, the marriage shall not subsequently be subject to annulment because of such defect. The party laboring under the disability or upon whom the force or fraud is imposed must initiate the annulment.

Section 4.02 Petition for Annulment

- (a) A petition for annulment shall contain the following, where applicable:
 - (1) The reason for the requested annulment;
 - (2) The basis for jurisdiction under Subsection 2.01(a);
 - (3) The complete current names and names before the marriage of all parties;
 - (4) The date and location of the marriage;
 - (5) Whether a party is pregnant;
 - (6) Whether the parties have Children together;

- (7) The complete names and dates of birth of any such Children the parties have together;
- (8) Whether there is another pending or resolved action in another jurisdiction involving the parties who are the subject of the petition, and, if so, the name of the court and file number.
- (9) Whether there is Marital Property to be divided;
- (10) If the Plaintiff requests an order for personal protection or for the protection of property, facts sufficient to support the relief requested.

Section 4.03 Procedure for Annulment

- (a) A petition requesting that a marriage be annulled shall be filed with the Tribal Court clerk.
- (b) A summons shall be issued and served on any party to the marriage not joining in the petition.
- (c) The Tribal Court shall hold a hearing to determine whether the marriage qualifies for annulment under Section 4.01
- (d) If the Tribal Court grants the annulment, a decree shall be entered specifying any orders as to Child Custody, Parenting Time, child support, division of Marital Property, and damages as required pursuant to Articles 8, 10, and 11).
- (e) The Tribal Court may order a spouse's former name to be restored upon request.
- (f) The annulment decree shall be filed with the Tribal Court clerk.

Section 4.04 Effect of Annulment

- (a) After an annulment order, the parties are restored to the status of single and unmarried as if the marriage never existed and the couple was never married.
- (b) Children of an annulled marriage are considered legitimate children of the marriage.
- (c) Neither party to an annulled marriage shall be required to pay permanent spousal support.
- (d) Upon motion by a party, the Tribal Court may award damages to a party damaged from the marriage and subsequent annulment.

ARTICLE 5 Simple Dissolution

Section 5.01 Simple Dissolution

- (a) An action for Simple Dissolution shall be commenced by the filing of a joint petition by the parties that contains the following information:
 - (1) The full legal name, address, and driver's license number of each party to the marriage;
 - (2) A statement that at least one party is a member of the Nottawaseppi Huron Band of the Potawatomi residing on the reservation, or that the marriage which is the subject of the petition occurred under the Marriage Code;

- (3) A statement that the parties have no Children under the age of eighteen (18), unless emancipated, or no dependent Children together, and neither spouse is pregnant;
- (4) The maiden name of a spouse and/or the spouse's name prior to the marriage if different;
- (5) The date and the location of the marriage;
- (6) The date and location of the separation of the parties;
- (7) A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved;
- (8) A proposed division of Marital Property and debt that contains provisions about how personal belongings, assets, property, and their debts are going to be divided once the parties are no longer married. Or a statement that there are no personal belongings, assets, debts, or property such as home(s), car(s), etc;
- (9) A statement that neither party is requesting alimony.

Both parties shall appear in person before the Court and, if the Court so directs, testify. The Court, after examination of the petition and the parties and finding the agreement of the parties is fair and equitable, shall enter a judgement granting the dissolution if the requirements of this section have been met.

ARTICLE 6

Complaint; Summons; Service; Answer; Counterclaim; Default; and Attorney Fees

Section 6.01 Complaint

- (a) A Complaint may be filed in the Tribal Court upon the allegation that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.
- (b) A Complaint shall be filed with the Tribal Court and must be dated, signed and verified by the Plaintiff.
- (c) The Complaint shall include the following:
 - (1) The factual grounds for the action in the form of a statement that there has either been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved without further particulars;
 - (2) The basis for jurisdiction under Subsection 2.01(a);
 - (3) The complete current names and names before the marriage of all parties;
 - (4) The date and location of the marriage;
 - (5) Whether a party is pregnant;

- (6) Whether the parties have Children together;
- (7) The complete names and dates of birth of any such Children the parties have together;
- (8) Whether there is another pending or resolved action in another jurisdiction involving the parties who are the subject of the Complaint, and, if so, the name of the court and file number.
- (9) Whether there is Marital Property to be divided;
- (10) If the Plaintiff requests spousal support, facts sufficient to show a need for such support and that the other party is able to pay;
- (11) If the Plaintiff requests an order for personal protection or for the protection of property, facts sufficient to support the relief requested.

(d) If Custody of any Child is to be determined, then except as otherwise provided in Subsection 6.01(c), each party, in its first pleading or in an attached verified statement, shall state:

- (1) Whether the party has participated, as a party or witness or in another capacity, in another child custody proceeding with any Child and, if so, the name of the court, case number of the child custody proceeding, and date of the child custody determination, if any;
- (2) Whether the party knows of a proceeding that could affect the current child custody proceeding, including a proceeding for enforcement or a proceeding relating to domestic violence, a protective order, termination of parental rights, or adoption, and, if so, the name of the court, the case number, and the nature of the proceeding;
- (3) The name and address of each person that the party knows who is not a party to the child custody proceeding and who has custody of any Child or claims rights of Custody or Parenting Time with any Child.

(e) Notwithstanding Subsection 6.01(d), a party is not required to disclose identifying information:

- (1) To the extent such information is treated as confidential under applicable law; or
- (2) If a party alleges in a sworn statement or the Complaint under oath that the health, safety, or liberty of any party or any Child would be put at risk by the disclosure of any identifying information. In such event, the Tribal Court shall seal and not disclose that information to the other party or the public unless the Tribal Court orders the disclosure after a hearing in which the Tribal Court considers the health, safety, and liberty of the party and the Child and determines that the disclosure is in the interest of justice.

(f) In an action involving any Children, or if Child support or spousal support is requested, then except as otherwise provided in Subsection 6.01(e), the party seeking relief must attach a verified statement to the Complaint, stating:

- (1) The last known telephone number, post office address, residence address, and business address of each party;
- (2) The social security number and occupation of each party;

- (3) The name and address of each party's employer;
- (4) The estimated weekly gross income of each party;
- (5) The driver's license number and physical description of each party, including eye color, hair color, height, weight, race, gender, and identifying marks;
- (6) Any other names by which the parties are or have been known;
- (7) The name, age, birth date, social security number and residence address of each Child involved in the action, as well as of any other Child of either party;
- (8) The name and address of any person, other than the parties, who may have Custody of any Child during the pendency of the action;
- (9) The kind of public assistance that has been applied for or is being received by either party or on behalf of any Child, and any corresponding assistance identification numbers, provided that if public assistance has not been requested or received, that fact must be stated; and
- (10) The health care coverage, if any, that is available for any Child; the name of the policy holder; the name of the insurance company, health care organization, or health maintenance organization; and the policy, certificate, or contract number.

(g) The information in the verified statement under Subsection 6.01(f) is confidential and shall not be released other than to the Tribal Court, the parties, or the attorneys for the parties, except by Tribal Court order and shall not be made a part of the public Tribal Court file. For good cause, the addresses of a party and any Child may be omitted from the copy of the statement that is served on the other party. If any of the information required to be included in the verified statement is omitted, the party seeking relief shall explain the omission in a sworn affidavit, to be filed with the Tribal Court.

(j) The Complaint shall be accompanied by a filing fee for a civil action as may be specified by rules of the Tribal Court.

Section 6.02 Summons and Service

When a Complaint is filed in the Tribal Court, the Tribal Court shall issue a summons. The Plaintiff shall cause the summons and a copy of the Complaint, along with all other documents filed with the Tribal Court, to be served upon the Defendant in accordance with the NHBP Court Rules of Civil Procedure, Chapter 5, Section 4: Summons.

Section 6.03 Subsequent Service, Service of Process

- (a) Except under subsection 6.02, service of a copy of a document on an attorney must be made by delivery or by mailing to the attorney at their last known business address or, if the attorney does not have a business address, then to their last known residence address. Except under 6.02, service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

- (b) All service required under this Code shall be in accordance with the NHBP Court Rules of Civil Procedure, Chapter 5, Section 5: Service of Process, including whom can accept service, filing proof of service, and alternate service.

Section 6.04 Answer

(a) The Defendant shall file an answer with the Tribal Court, or take other action permitted by Tribal law or Tribal Court rules, within twenty-one (21) Business Days after being served with the summons and a copy of the Complaint.

(1) If a Defendant resides outside of tribal jurisdiction, or if the manner of service used requires the summons and a copy of the Complaint to be sent by registered mail addressed to the Defendant, the Defendant shall be required to respond within twenty-eight (28) Business Days of service.

(b) The Defendant, by answer, shall either admit the grounds for divorce alleged or deny them without further explanation.

(c) Failure to respond shall constitute an admission of the allegations contained within the Complaint provided, however, that before such admission shall be presumed the entry of the Defendant's default shall first be required.

Section 6.05 Counterclaim

(a) The Defendant may file a counterclaim under this Code, which shall be combined with the answer and clearly designated as such.

(b) The counterclaim shall comply with the pleading requirements of Section 6.01.

Section 6.06 Default

(a) If the Defendant fails to answer within the time stated in Subsection 6.04(a), or to otherwise defend under Tribal law or Tribal Court rules, the Plaintiff may file a motion for a default and a proposed default judgment with the Tribal Court.

(b) The Plaintiff must cause the Defendant to be served with the motion for default and the proposed default judgment in the manner provided under Section 6.03, and shall cause proof of service to be filed with the Tribal Court in accordance with Subsection 6.03(b), if:

(1) The Defendant has appeared in the action;

(2) The motion for a default judgment seeks relief different in kind from, or greater in amount than, that stated in the Complaint, or

(3) The Complaint does not state a specific amount demanded.

(c) The Tribal Court may grant Plaintiff's motion for default and enter a default judgment if the time under Section 6.04(a) has run, provided that the Tribal Court shall not enter a judgment of divorce as a matter of course on the default of the Defendant because of failure to appear at the hearing or by consent, but rather the Tribal Court shall hear each such case in open court on proofs taken, except as otherwise provided by Tribal law or Tribal Court rule.

(d) The Tribal Court clerk shall promptly mail notice of entry of a default to all parties. The notice to the Defendant shall be mailed to the Defendant's last known address or the address of the place of service. The clerk shall keep a record that notice was given.

(e) Upon entry of a Defendant's default the Defendant shall have no further standing to participate in the proceeding. Upon written motion, and good cause shown, the default of the Defendant may be set aside and the Court may provide the Defendant with a specified period, not to exceed twenty-one (21) Business Days in which to answer the Complaint.

Section 6.07 Attorney Fees

Any party may, at any time, request that the Tribal Court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding under this Code, including a post-judgment proceeding. A party who requests attorney fees and expenses must allege facts sufficient to show that:

- (a) The party is unable to bear the expense of the action, and that the other party is able to pay; or
- (b) The attorney fees and expenses were incurred because the other party refuses to comply with a previous Tribal Court order, despite having the ability to comply.

ARTICLE 7

Grounds for Divorce; Hearing on Complaint; Temporary Orders; and Settlement Agreements

Section 7.01 Grounds for Divorce

(a) The Tribal Court shall enter a judgment of divorce dissolving the bonds of matrimony if evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(b) The Tribal Court shall decide all issues of fact and law and there shall be no right to trial by jury.

Section 7.02 Hearing on Complaint

(a) No proofs or testimony shall be taken in any case for divorce until the expiration of sixty (60) Business Days from the time of filing the Complaint, except when the testimony is taken conditionally for the purpose of perpetuating such testimony.

(b) In every case where there is a dependent Child, no proofs or testimony shall be taken in any case for divorce until the expiration of one-hundred eighty (180) Business Days from the day the Complaint is filed, provided that in cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the Tribal Court, upon motion and proper showing, the Tribal Court may take testimony at any time after the expiration of sixty (60) Business Days from the time of filing the Complaint.

(c) Testimony shall be taken in person, except that upon appropriate motion, the Tribal Court may allow testimony to be taken by telephone or other electronically reliable means.

Section 7.03 Temporary Orders

(a) After the Complaint has been filed, but before a final judgment of divorce has entered, the Tribal Court may, upon the motion of either party or on the Tribal Court's own motion:

(1) Enter orders requiring either party to pay, during the pendency of the action, spousal support for the suitable maintenance of the adverse party, to pay such sums as shall be deemed proper and necessary to conserve any real or personal property owned by the parties or either of them, and to pay any sums necessary to enable the adverse party to carry on or defend the action.

(2) Enter orders concerning the care, Parenting time, Custody, and support of any Child of the parties during the pendency of the action, as the Tribal Court shall deem just, proper, and necessary for the benefit of such Child. Such orders are not intended to be a final determination of such matters.

(b) A hearing shall be held prior to the issuance of such orders, unless the Court determines that an emergency exists or a party cannot be found, in which case such orders may be issued ex-parte.

(c) Emergency may include, but not be limited to:

(1) a danger of physical or severe emotional abuse to the spouse or the parties' Child(ren);

(2) a lack of means for interim subsistence; or

(3) the danger that the Child(ren) will be removed from jurisdiction.

(d) If the initial order is issued ex-parte, a full hearing on the temporary order shall be held within fourteen (14) Business Days.

Section 7.04 Settlement Agreements

(a) A settlement agreement between the parties or their attorneys respecting the proceedings in a divorce action, subsequently repudiated by either party, is not binding unless it was made in open court or evidence of the agreement is in writing, signed by the party against whom the agreement is offered or by that party's attorney.

(b) All settlement agreements respecting any proceedings in a divorce action are subject to the approval of the Tribal Court and shall be approved unless the Tribal Court determines that the terms are not fair and equitable.

(c) Custody agreements shall be approved by the Tribal Court unless the Tribal Court finds on the record by clear and convincing evidence that the terms are not in the Wa Nē Mnopmadzet.

(d) The parties may specify whether a settlement agreement is to be merged with the judgment of divorce or to be a separate settlement agreement.

ARTICLE 8

Sëwénmagéwen; Invasion of Separate Property; Valuation of Marital Estate; Retirement Benefits; and Disclosure of Property

Section 8.01 Sëwénmagéwen (Equitable Distribution)

The Tribal Court may include in any judgment of divorce appropriate provisions awarding to a party all or a portion of the Marital Property as appears to the Tribal Court to be equitable under all the circumstances of the case. The Tribal Court shall also allocate the marital financial obligations of the parties, in whole to either party, or partially to each party. The judgment, upon becoming final, shall have the same force and effect as a quitclaim deed of the real estate, if any, or a bill of sale of the personal property, if any, given by the party's spouse to the party.

Section 8.02 Invasion of Separate Property

Upon entry of a judgment of divorce, if the Marital Property awarded to either party is insufficient for the suitable support and maintenance of either party or any Children of the marriage who are committed to the care and Custody of either party, the Tribal Court may also award to either party the part of the separate real and personal estate or retirement benefits of either party. The Tribal Court may order such separate property to be paid to either party in gross or otherwise as the Tribal Court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case. Religious, cultural, or ceremonial property shall not be subject to invasion or division.

Section 8.03 Valuation of Marital Estate

The Tribal Court shall value the marital estate based upon either the date of separation, filing, trial, judgment, or any other appropriate date to facilitate equitable distribution under all the circumstances of the case.

Section 8.04 Retirement Benefits

(a) Any rights in and to vested pension, annuity, or retirement benefits, or accumulated contributions in any pension, annuity, or retirement system, payable to or on behalf of a party on account of service credit accrued by the party during marriage shall be considered part of the marital estate and shall be valued, and may be divided, by the Tribal Court under this Code where just and equitable.

(b) Any rights or contingent rights in and to unvested pension, annuity, or retirement benefits payable to or on behalf of a party on account of service credit accrued by the party during marriage may be considered part of the marital estate and shall be valued, and may be divided, by the Tribal Court under this Code where just and equitable.

Section 8.05 Disclosure of Property

(a) The Tribal Court may require either party to disclose on oath, what real and personal estate has come to either party by reason of the marriage, and how it has been disposed of, and what portion thereof still remains in the hands of either party.

ARTICLE 9

Spousal Support; Termination; and Modification

Section 9.01 Spousal Support

In any divorce action, the Tribal Court may require either party to pay spousal support for the suitable maintenance of the adverse party where just and equitable based upon consideration of the following factors:

- (a) The past relations and conduct of the parties;
 - (b) The length of the marriage;
 - (c) The ability of the parties to work;
 - (d) The source of and amount of property awarded to the parties;
 - (e) The age of the parties;
 - (f) The ability of the parties to pay spousal support;
 - (g) The present situation of the parties;
 - (h) The needs of the parties;
 - (i) The health of the parties;
 - (j) The prior standard of living of the parties and whether either is responsible for support of others; and
 - (k) General principles of equity.
- (l) Tribal per capita distributions shall not be considered in calculating income for purposes of determining spousal support.

Section 9.02 Termination

- (a) The Tribal Court may terminate an award for spousal support as agreed to by the parties or upon the occurrence of certain events, including, but not limited to, marriage or cohabitation.
- (b) A party who is in receipt of spousal support pursuant to a Tribal Court order shall notify the other party in writing within fifteen (15) Business Days of the occurrence of events which terminate the right to spousal support.
- (c) Termination of an award under Subsection 6.02(a) shall not affect spousal support payments which have accrued prior to that termination, provided that if a party failed to provide written notice pursuant to Subsection 6.02(b), then upon motion of the other party, Tribal Court may waive any spousal support payments which have accrued after the date of the event terminating the right to spousal support.

Section 9.03 Modification

On motion of either party, after a judgment for spousal support, the Tribal Court may revise and alter the judgment, respecting the amount or payment of the spousal support, and may make any judgment respecting any of the matters that the Tribal Court might have made in the original action upon the moving party's showing of an unexpected and substantial change in circumstances.

ARTICLE 10

Child Support and Modification

Section 10.01 Child Support

(a) Parents have a mutual duty to provide their Children with support and education suitable to the Child's needs and circumstances. The Court may compel either or both Parents to provide for the support of their Children.

(b) Upon entering a judgment of divorce, the Tribal Court may enter the orders and judgments it considers just and proper concerning the support of any Child, and may order post-majority support for the benefit of a Child between the ages of 18 and 19 ½ if the Child:

- (1) Is regularly attending high school full-time;
- (2) Has a reasonable expectation of graduating from high school; and
- (3) Is living full-time with the payee of support or at an institution.

(c) An agreement between the parties stated on the record and made an order of the Tribal Court, or included in a judgment of divorce under which one party agrees to pay post-majority child support, is enforceable.

(d) The Tribal Court, in its discretion, may utilize the Michigan Child Support Formula in effect at the time of the determination of child support to the extent it does not conflict with this Code. If the Tribal Court does not utilize the Michigan Child Support Formula, the Tribal Court shall make findings of fact supporting the determination of child support and the means for calculating same.

(e) Tribal per capita distributions shall not be considered in calculating income for purposes of determining child support.

Section 10.02 Modification

After entry of a judgment of divorce and on the motion of either Parent, the Tribal Court may modify the order for child support of some or all of the Children, as the circumstances of the Parents and the benefit of the Children require.

ARTICLE 11

Child Custody; Joint Custody; Sole Custody; Parenting Time; Change in Residence; and Modification

Section 11.01 Child Custody

(a) In all actions involving dispute over Custody, the Tribal Court shall have the authority to determine the Custody of any Child less than eighteen (18) years of age. The Court shall make its determination based upon the Wa Nē Mnoptomadzet.

(b) The Tribal Court shall enter the orders and judgments it considers just and proper concerning care and Custody of the Children of the parties, including orders and judgments awarding joint Legal Custody or sole Legal Custody, and joint Physical Custody or sole Physical Custody, until each Child has attained the age of eighteen (18) years.

(c) When Custody of any Child is contested, the Tribal Court may interview the Child privately to determine if the Child is of sufficient maturity to express a preference regarding Custody. If so, the judge shall consider the reasonable preference of the Child and the information received from the interview as a factor in determining the Child's Best Interests. A record shall be made of such interview and sealed pending any review by the Court of Appeals.

(d) Each party has a continuing duty to inform the Tribal Court of any other proceeding that could affect any award of Custody of any Child under this Code.

Section 11.02 Joint Custody

In Custody disputes between Parents, the Tribal Court shall advise the Parents of joint Legal Custody and joint Physical Custody. The Tribal Court shall order joint Legal Custody and joint Physical Custody of a Child to both Parents unless the Court determines that joint Custody is not in the Wa Nē Mnoptomadzet. The Court shall state on the record the reasons for granting or denying a request for joint Custody.

Section 11.03 Sole Custody

The Tribal Court shall order sole Legal Custody and sole Physical Custody of a Child to a Parent only if the Court determines that joint Custody is not in the Wa Nē Mnoptomadzet. The Court shall state on the record the reasons for granting a request for sole Custody.

Section 11.04 Parenting Time

(a) In all actions involving any dispute over Custody, the Tribal Court shall declare the Child's inherent rights and establish the rights and duties as to the Parenting Time in accordance with this Code.

(b) Parenting time shall be granted in accordance with the Wa Nē Mnoptomadzet. It is presumed to be in the Wa Nē Mnoptomadzet for the Child to have a strong relationship with both Parents. Except as otherwise provided in this Section, Parenting Time shall be granted to a Parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the Child and the Parent granted Parenting time.

(c) If the Parents agree on Parenting time terms, the Tribal Court shall order the Parenting time terms unless it determines on the record by clear and convincing evidence that the Parenting time terms are not in the Wa Nē Mnoptomadzet.

(d) A Child has a right to Parenting Time with a Parent unless it is shown on the record by clear and convincing evidence that it would endanger the Child's physical, mental, or emotional health.

(e) The Tribal Court may consider the following factors when determining the frequency, duration and type of Parenting Time to be granted:

- (1) The existence of any special circumstances or needs of the Child;
- (2) Whether the Child receives substantial nutrition through nursing;
- (3) The reasonable likelihood of abuse or neglect of the Child during Parenting Time;

- (4) The reasonable likelihood of abuse of a Parent resulting from the exercise of Parenting Time;
- (5) The inconvenience to, and burdensome impact or effect on, the Child of traveling for purposes of Parenting Time;
- (6) Whether a Parent can reasonably be expected to exercise Parenting Time in accordance with the Tribal Court order;
- (7) Whether a Parent has frequently failed to exercise reasonable Parenting Time;
- (8) The threatened or actual detention of the Child with the intent to retain or conceal the Child from the other Parent or from a Third Person who has Custody, provided that a custodial Parent's temporary residence with the Child in a domestic violence shelter shall not be construed as evidence of the custodial Parent's intent to retain or conceal the Child from the other Parent;
- (9) The Child's participation in religious or cultural activities with either Parent; and
- (10) Any other relevant factors.

(f) Parenting time shall be granted in specific terms if requested by either party at any time.

(g) A Parenting Time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of Parenting Time by a Parent, including without limitation, one (1) or more of the following:

- (1) Division of the responsibility to transport the Child;
- (2) Division of the cost of transporting the Child;
- (3) Restrictions on the presence of any Third Person during Parenting Time;
- (4) Requirements that the Child be ready for Parenting Time at a specific time;
- (5) Requirements that the Parent arrive for Parenting Time, and return the Child from Parenting Time, at specific times;
- (6) Requirements that Parenting Time occur in the presence of a Third Person or agency;
- (7) Requirements that a party posts a bond to assure compliance with a Parenting Time order;
- (8) Requirements of reasonable notice when Parenting Time will not occur; and
- (9) Any other reasonable condition determined to be appropriate in the particular case.

(h) Except as provided in this Subsection, a Parenting Time order shall contain a prohibition on exercising Parenting Time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction, provided that this Subsection does not apply if both Parents provide the Tribal Court with written consent to allow a Parent to exercise Parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.

(i) During the time a Child is with a Parent to whom Parenting Time has been awarded, that Parent shall decide all routine matters concerning the Child.

(j) Upon motion, the Tribal Court shall consider, and may award reasonable grandparenting time to maternal or paternal grandparents and, if denied, shall make a record of the denial.

(k) In determining holiday schedules for Parenting Time, the Tribal Court shall reasonably include all holidays and cultural ceremonies or events that each Parent observes, including but not limited to tribally-recognized holidays and ceremonies. The Tribal Court will coordinate with the Parents to accommodate for holidays and cultural ceremonies or events that do not occur on a set date each year, such as requiring a Parent to notify the other Parent within a certain period of time once a date is known.

Section 11.05 Change in Residence

(a) Any Child whose Custody is governed by Tribal Court order has, for the purposes of this Section, a legal residence with each Parent. Except as otherwise provided in this Section, a Parent of any Child whose Custody is governed by Tribal Court order shall not change a legal residence of the Child to a location that is more than one-hundred (100) miles from the Child's legal residence at the time of filing of the Complaint or subsequent motions resulting in an order modifying Custody, Parenting time, or domicile.

(b) Subsection 11.05(a) does not apply if:

(1) The other Parent consents to the residence change and the Tribal Court enters an order in permitting the residence change;

(2) The Tribal Court, after complying with Subsection 11.05(c) permits the residence change;

(3) The Tribal Court order governing the Custody grants sole Legal Custody and sole Physical Custody to one (1) of the Parents, provided that Parent still provides notice of the residence change to the other Parent and Tribal Court;

(4) At the time of the commencement of the action in which the Custody order is issued, the Child's two (2) residences were more than one-hundred (100) miles apart; or

(5) The legal residence change results in the Child's two (2) legal residences being closer to each other than before the change.

(c) Before permitting a legal residence change otherwise restricted by Subsection 11.05(a), the Tribal Court shall consider each of the following factors, with the Child as the primary focus in the deliberations:

(1) Whether the legal residence change has the capacity to improve the quality of life for both the Child and the relocating Parent;

(2) The degree to which the legal residence change will affect the Child's connection to their tribal culture or participation in cultural events;

(3) The degree to which each Parent has complied with, and utilized their time under, a court order governing Parenting Time with the Child, and whether the Parent's plan to

change the Child's legal residence is inspired by that Parent's desire to defeat or frustrate the Parenting Time schedule;

(4) The degree to which the Tribal Court is satisfied that, if it permits the legal residence change, it is possible to order a modification of the Parenting Time schedule and other arrangements governing the Child's schedule in a manner that can provide an adequate basis for preserving and fostering the Parental relationship between the Child and each Parent; and whether each Parent is likely to comply with the modification;

(5) The extent to which the Parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation;

(6) Domestic violence, regardless of whether the violence was directed against or witnessed by the Child.

(d) Each Tribal Court order determining or amending Custody or Parenting Time of any Child shall include a provision stating the Parent's agreement as to how a change in either of the Child's legal residences will be handled. If such a provision is included in the order and the Child's legal residence change is done in compliance with that provision, this Section shall not apply. If the Parents do not agree on such a provision, the Tribal Court shall include in the order the following provision: "A Parent whose Custody or Parenting Time of a Child is governed by this order shall not change the legal residence of the Child except in compliance with this Code."

(e) If this Section applies to a change of Child's legal residence, and the Parent seeking to change that legal residence needs to seek a safe location from the threat of domestic violence, the Parent may move to such a location with the Child until the Tribal Court makes a determination under this Section.

Section 11.06 Modification

(a) After entry of a judgment of divorce and on the motion of either Parent, the Tribal Court may modify the Custody of some or all of the Children, as the circumstances of the Parents and the benefit of the Children require, subject to the requirements of this Section.

(b) The Tribal Court may modify Custody provisions of an existing judgment of divorce or orders upon a showing of proper cause or changed circumstances. The Tribal Court shall not modify the Custody provisions of a judgment of divorce or order so as to change the established custodial environment of a Child unless there is presented clear and convincing evidence that it is in the Wa Nē Mnoptomadzet. The established custodial environment of a Child is determined if over an appreciable time the Child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the Child, the physical environment, and the inclination of the Child and the Parent seeking the change as to permanency of the relationship shall also be considered.

(c) If a motion to amend a judgment of divorce with respect to Custody is filed during the time a Parent is in active military duty, the Tribal Court shall not enter an order amending the judgment, or issue a new order, that changes the Child's placement that existed on the date the Parent was called to active military duty, except the Tribal Court may enter a temporary Custody order if there is clear and convincing evidence that it is in the Wa Nē Mnoptomadzet. Upon a Parent's return from active military duty, the Tribal Court shall reinstate the Custody order in effect

immediately before that period of active military duty. If a motion for change of Custody is filed after a Parent returns from active military duty, the Tribal Court shall not consider a Parent's absence due to that active military duty in a Wa Nē Mnoptomadzet determination.

ARTICLE 12

Form of Judgment; Uniform Support Orders; Timing of Judgment; and Enforcement

Section 12.01 Form of Judgment

(a) Each separate subject in a judgment or order entered under this Code shall be set forth in a separate paragraph that is prefaced by an appropriate heading.

(b) A judgment of divorce shall include:

(1) A determination of all rights of the parties in and to all property rights of the parties, which, as applicable, shall be in lieu of the dower of any spouse in the property of the other spouse and shall be full satisfaction of all claims that any spouse may have in any property whatsoever;

(2) A determination of all rights of the parties in and to any policy or contract of life insurance, endowment, or annuity;

(3) A determination of all rights of the parties in and to any vested pension, annuity, or retirement benefits; and

(4) A determination of all rights of the parties concerning spousal support provided that if spousal support is not granted, a provision reserving or denying spousal support (a judgment silent with regard to spousal support reserves it).

(c) A judgment or order awarding Custody must provide that:

(1) The domicile or residence of the Child may not be removed from the state of domicile or residence without the approval of the judge who awarded Custody or the judge's successor;

(2) The person awarded Custody must promptly notify the Tribal Court in writing when any Child is moved to another address; and

(3) A Parent whose Custody or Parenting Time of any Child is governed by the order shall not change the legal residence of the Child except in compliance with Section 8.04.

Section 12.02 Uniform Support Orders

(a) Any provisions regarding Child support or spousal support shall be prepared on the most current version of the Uniform Support Order utilized within the State of Michigan. The order must accompany any judgment or order affecting Child support or spousal support, and both documents must be signed by the judge. The Uniform Support Order shall govern if the terms of the judgment or order conflict with the Uniform Support Order.

(b) No judgment or order concerning a Child or a spouse shall be entered unless either:

(1) The final judgment of divorce incorporates by reference the Uniform Support Order;
or

(2) The final judgment of divorce states that no Uniform Support Order is required because support is reserved or spousal support is not ordered.

Section 12.03 Timing of Judgment

Within twenty-one (21) Business Days after the Tribal Court renders an opinion or a settlement agreement is placed on the record, the moving party shall submit a proposed judgment of divorce approved by the opposing party or a motion to settle the judgment or order. The Tribal Court may extend the time for filing of the final judgment of divorce.

Section 12.04 Enforcement

(a) When either party to a divorce proceeding fails to comply with the terms of the judgment of divorce, the other party may file a motion with the Tribal Court alleging such failure. The moving party shall cause the motion, along with a notice of hearing, to be served on the other party in accordance with Section 3.03 and shall cause proof of service to be filed with the Tribal Court in accordance with Subsection 3.03(b).

(b) At the hearing, the Tribal Court shall take testimony as to the alleged failure to comply with the order or judgment and may issue any order which it deems just and proper under the circumstances.

(c) Without limitation, if the Tribal Court orders periodic support payments under this Code, and a party does not pay as ordered, the Tribal Court may utilize all enforcement methods that are available to enforce any money judgment in a civil action, including without limitation, the power of contempt.

ARTICLE 13

Closed Session; Code Conflict

Section 13.01 Legitimacy

The legitimacy of all Children begotten before the commencement of any action under this Code shall be presumed until the contrary is shown.

Section 13.02 Closed Session

If legitimacy is an issue in any action under this Code, any testimony shall be taken in a closed session of the Tribal Court.

Section 13.03 Code Conflict

In the event of any conflict between this Code and the Enrollment Code, or any determination thereunder, the Enrollment Code or such determination shall control and be valid.