

## **CHAPTER 7 - DOMESTIC RELATIONS**

### **Section 7-1 General Provisions**

### **Section 7-2 Marriage**

### **Section 7-3 Dissolution of Marriage, Legal Separation, and Declaration of Invalidity of Marriage**

### **Section 7-4 Parentage**

### **7-5 Adoption**

### **Section 7-1 General Provisions**

#### **7-1.01 Purposes and Rules of Construction.**

- (a) This Code shall be applied to promote its underlying purposes which include:
- (1) To provide adequate procedures for the ceremony and registration of marriage;
  - (2) To strengthen and preserve the institution of marriage and safeguard family relationships;
  - (3) To promote the peaceful and fair settlement of disputes that have arisen between parties to a marriage;
  - (4) To minimize the potential harm to spouses and their children caused by the process of legal dissolution of marriage;
  - (5) To make reasonable provisions for spouses and minor children during and after Court intervention;
  - (6) To provide adequate procedures for establishing the legal relationship existing between a child and his/her natural or adoptive parents.
- (b) This Chapter shall be exempt from the rules of strict construction and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### **7-1.02 Severability and Repealer.**

- (a) If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected.
- (b) This Chapter repeals and supersedes any and all prior domestic relations Codes.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### **7-1.03 Non-waiver of Sovereign Immunity.** Nothing in this Chapter shall be deemed to constitute a waiver by the Spokane Tribe of Indians of its sovereign immunity, rights, powers or privileges.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### **7-1.04 Custom/Other Law.** As to any matters which are not covered by the codes, Codes and Resolutions of the Tribe, or by the traditional customs and usages of the Tribe, the Tribal Court may be guided by common law as developed by other Tribal, state or federal courts.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### **7-1.05 Terms.**

- (a) The terms and provisions of this Chapter shall be construed according to the fair import of their terms, but when the language is susceptible of differing construction, it shall be interpreted to further the general purposes stated in this Chapter.
- (b) Where a term is not defined herein, it shall be given its ordinary meaning.
- (c) Any reference to "he", "him", or other masculine terms shall include male and female persons.
- (d) Any reference to a singular term includes the plural.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

## **Section 7-2 Marriage**

### **7-2.01 Persons Who May Marry.**

- (a) Marriage is a personal relationship between 2 persons of the opposite sex arising out of a civil contract to which the consent of the parties is essential.
- (b) No marriage license shall be issued or marriage performed unless the persons to be married are of the opposite sex, and meet the following qualifications:
  - (1) Both persons to be married are at least 16 years old; provided that if either is less than 18 years of age, written consent to marry shall be signed by his/her parent or guardian, properly notarized; and
  - (2) At least 1 of the persons to be married is an enrolled member of the Spokane Tribe of Indians.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **7-2.02 Prohibited Marriages.**

- (a) Marriages in the following cases are prohibited:
  - (1) When either party thereto has a wife or husband living at the time of marriage;
  - (2) When the parties thereto are nearer of kin to each other than second cousins;
- (b) It shall be unlawful for any man to marry his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son or sister's son.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **7-2.03 Who May Perform Marriages.**

- (a) A marriage may be solemnized and performed on the Spokane Indian Reservation by the following:
  - (1) A Judge of the Tribal Court, or
  - (2) Any person recognized by the Spokane Tribal Business Counsel as having authority to perform marriages.
- (b) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for lack of such authority, if consummated in the belief of the parties or either of them that they have been lawfully joined in marriage.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**7-2.04 Marriage Ceremony.** No particular form of marriage ceremony is required, provided that the persons to be married shall declare in the presence of the person performing the marriage ceremony that they take each other to be husband and wife and that such declaration is made in the presence of at least 2 attending witnesses.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **7-2.05 Marriage Licenses, Affidavits and Certificates.**

- (a) No marriage shall be performed unless the parties have first obtained a marriage license from the Clerk of the Tribal Court.
- (b) In addition to payment of a reasonable fee to be set by the Tribal Council, the Clerk shall require each party to make and file an affidavit upon forms provided by the Tribal Court showing that if an applicant is afflicted with any contagious sexually transmitted disease, the condition is known to both applicants, without requiring the parties to state whether either or both of them are afflicted by such disease, and that the applicants are of the age of eighteen or over, or those exempted under Tribal law, the license shall be granted.

- (1) Such affidavit shall also show that 1 of the parties is an enrolled member of the Spokane Tribe of Indians.
- (2) Anyone knowingly swearing falsely to any of the statements contained in the affidavits shall be deemed guilty of perjury and punished as provided by the laws of the Spokane Tribe of Indians.
- (c) The Clerk shall keep a public record of all marriage licenses and certificates issued.
- (d) The marriage license, properly endorsed by the authorized person performing the marriage and 2 attending witnesses, shall be returned to the Clerk within 30 days of the ceremony, who shall issue a marriage certificate to the parties.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**7-2.06 Voidable Marriages.** When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only by the party laboring under the disability or upon whom the force or fraud is imposed.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**7-2.07 Existing Marriages.** All marriages performed other than as provided under this Chapter, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **Section 7-3 Dissolution of Marriage, Legal Separation, and Declaration of Invalidity of Marriage**

#### **7-3.01 Policy.**

- (a) Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this Chapter, the best interests of the child shall be the standard by which the Court determines and allocates parental responsibilities.
- (b) The Tribe recognizes the fundamental importance of the parent-child relationship and that the relationship between the child and each parent should be fostered unless inconsistent with the best interests of the child.
- (c) The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, Tribal and cultural ties, health and stability, and physical care.
- (d) The best interests of the child are ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed marital relationship of the parents or as required to protect the child from physical, mental or emotional harm.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### **7-3.02 Definitions.**

- (a) "Child Support Schedule" means the Tribal Council's approved formula for calculating in a fair and consistent manner the amount of child support payments equitable in any given situation. The Child Support Schedule shall be used by the Court as a guideline for its child support orders.
- (b) "Community Property" means property acquired during marriage, except by gift, inheritance or devise to either spouse individually. All property acquired during marriage is presumed to be community property.
- (c) "Conciliation Conference" means a conference conducted by an impartial third party

to assist the married parties in determining the prospects of preserving the marital relationship as opposed to instituting or continuing with dissolution proceedings.

(d) "Dissolution" means the act of terminating a marriage (i.e., divorce).

(e) "Irretrievably Broken" means that there is no reasonable prospect for reconciliation between the parties.

(f) "Parenting Plan" is the document which sets forth the kind and degree of involvement each parent will have with their children after the dissolution.

(g) "Separate Property" means property acquired before marriage or acquired during marriage as a result of a gift, inheritance or devise.

(1) Property acquired after a permanent separation is also separate property provided community property did not generate the funds for the acquisition

(i.e., money from a community business).

(2) For purposes of this Chapter, a permanent separation shall be established by either a temporary or permanent order of a Court.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.03 Civil Procedure to Govern; Designation of Proceedings.

(a) Except as otherwise specified herein, or another section of the civil code, the Federal Rules of Civil Procedure shall be looked to for guidance until local rules are created and they shall govern all proceedings under this Chapter, except that trial by jury is dispensed with.

(b) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled "In re the marriage of and ."

(c) In cases where there has been no prior proceeding in this Court involving the marital status of the parties or support obligations for a minor child, a separate parenting and support proceeding between the parents shall be entitled "In re the parenting and support of."

(d) The initial pleading in all proceedings under this Chapter shall be designated a "Petition." A responsive pleading shall be designated a "Response."

(e) A decree of dissolution or legal separation or a declaration concerning the validity of a marriage shall not be awarded to 1 of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.04 Informal Dispute Resolution.

(a) In any proceeding under this Chapter, an informal Resolution of the contested issues may be arranged with the Court's permission, at or before the time the matter is set for a hearing.

(b) The informal Resolution process may include counseling, mediation or any Tribally accepted process that is consistent with the customs and traditions of the Spokane Tribe of Indians.

(c) The purpose of the informal dispute Resolution process shall be to encourage cooperation, reduce hard feelings and develop an agreement that to the extent possible meets the needs and best interests of all the parties involved, consistent with the provisions of this Code and the customs and traditions of the Spokane Tribe of Indians.

(d) Informal dispute Resolution proceedings shall be held in private and shall be confidential. No one shall testify in Court as to any aspect of the proceedings; provided, that if an agreement is reached by the parties it shall be reduced to

writing, signed by the parties and presented to the Court.  
Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.05 Dissolution of Marriage; Findings Necessary. The Court shall enter a decree of dissolution if it finds the following:

- (a) That 1 of the parties is an enrolled member of the Spokane Tribe of Indians and at the time the action was commenced was domiciled within the exterior boundaries of the Spokane Reservation for 90 days. There is a presumption that all enrolled Tribal members are domiciled on the Spokane Indian Reservation.
- (b) The marriage is irretrievably broken.
- (c) The Court has considered, approved, and made provision for the parenting and support of any natural or adopted child common to the parties of the marriage entitled to such and to the disposition of liabilities and property of the parties.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.06 Decree of Legal Separation; Findings Necessary. The Court shall enter a decree of legal separation if it finds each of the following:

- (a) That 1 of the parties is an enrolled member of the Spokane Tribe of Indians and at the time the action was commenced that party was domiciled within the exterior boundaries of the Spokane Reservation for a period of 90 days. There is a presumption that all enrolled Tribal members are domiciled on the Spokane Indian Reservation.
- (b) The marriage is irretrievably broken.
- (c) The other party does not object to a decree of legal separation.
  - (1) If the other party objects to decree of legal separation, the Court shall direct that the pleadings be amended to seek dissolution of the marriage.
- (d) The Court has considered, approved, and made provision for the parenting and support of any natural or adopted child common to the parties of the marriage entitled to such and for the disposition of property and assumption of debt by the parties.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.07 Declaration of Invalidity of Marriage (Annulment); Findings Necessary.

- (a) The Court shall enter a declaration of invalidity of marriage if it finds each of the following:
  - (1) That 1 of the parties is an enrolled member of the Spokane Tribe of Indians and at the time the action was commenced was domiciled within the exterior boundaries of the Spokane Reservation for a period of 90 days. There is a presumption that all enrolled Tribal members are domiciled on the Spokane Indian Reservation.
  - (2) The marriage should not have been contracted because of the age of 1 or both of the parties, lack of required parental or Court approval, a prior undissolved marriage of 1 or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage and that the parties have not ratified their marriage by voluntarily cohabiting after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud.

(3) The Court has considered approved and made provision for the parenting and support of any natural or adopted child common to the parties of the marriage entitled to such and the disposition of the property and assignment of debt of the parties.

(b) If the Court finds that a marriage contracted in a jurisdiction other than this Tribe was void or voidable under the law of the place where the marriage was contracted and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract, or of a subsequent domicile of the parties, it shall declare the marriage invalid as of the date of the marriage.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.08 Pleadings; Contents; Defense; Joinder of Parties.

(a) The petition in a proceeding for dissolution of marriage, legal separation or a declaration of invalidity shall allege that the marriage is irretrievably broken or was never legally valid and shall set forth under oath:

(1) The name, last known address and Tribal enrollment, if any, of each party and the length of domicile on the Spokane Indian Reservation.

(2) The date of the marriage and the place at which it was performed.

(3) If the parties are separated, the date on which the separation occurred.

(4) The names, ages and address of all living children, natural or adopted, common to the parties and whether the wife is pregnant.

(5) The details of any agreements between the parties as to the parenting and support of any children of the parties.

(6) The details of the parties respective incomes and earning potentials.

(7) A list of all property of the parties.

(8) A statement specifying the debt of the parties.

(9) The relief sought.

(b) Either or both parties to the marriage may initiate the proceeding.

(c) The only defense to a petition for declaration of invalidity of marriage shall be that the marriage is legally valid.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.09 Temporary Order or Preliminary Injunction; Effect.

(a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity or parenting and support, either party may move for temporary support of a child, natural or adopted, common to the parties entitled to support.

(1) The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for support or by an independent motion accompanied by affidavit, either party may request the Court to issue a preliminary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued.

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child.

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

(4) Enjoining a party from removing a child from the jurisdiction of the Court.

(5) Provide other injunctive relief proper in the circumstances.

(c) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No security shall be required unless the Court deems it appropriate.

(d) On the basis of the showing made, and in conformity with the computation factors for child support under this Chapter, the Court may issue a preliminary injunction and an order for child support in amounts and on just and proper terms under the circumstances.

(e) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from entering a party's home shall clearly state:

"Violation of this order with actual notice of its terms is a criminal offense under Spokane Law and will subject a violator to arrest, and upon conviction, jail time not to exceed 1 year, and a fine of \$300, or both."

(f) Restraining orders issued under the Domestic Violence Protection Orders filed in conjunction with a petition for Dissolution, Separation, or Annulment shall clearly state: "Violation of a Protection Order for domestic abuse, with actual notice of its terms is a violation of Chapter 29, and is punishable by jail time not to exceed 1 year and/or a fine of up to \$5,000, or both.

(g) A temporary order or preliminary injunction:

(1) Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceedings.

(2) May be revoked or modified before final decree upon a showing by motion and affidavit of facts necessary for revocation or modification of a final

decree.

(3) Terminates when the final decree is entered or when the petition for dissolution of marriage, legal separation, or declaration of invalidity is

dismissed.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**7-3.10 Irretrievable Breakdown; Finding.** If 1 of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, the Court shall make a finding that the marriage is irretrievably broken and enter a decree of dissolution.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**7-3.11 Separation Agreement; Effect.**

(a) To promote amicable settlement of disputes between parties to a marriage or parental relationship attendant upon their separation or upon the filing of a petition for dissolution of marriage, legal separation or declaration of invalidity, the parties may enter into a written separation agreement containing provisions for payment of any debt, disposition of any property owned by either of them, payment of any debt, and the parenting plan and support for their children.

(b) In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity, the terms of the separation agreement, except for those terms providing for a parenting plan and amounts of support for the children, shall be binding upon the Court unless it finds, after considering the economic circumstances of the parties and other relevant evidence produced by the parties, on their own motion or on request of the Court, that the separation agreement is unfair.

(1) Child support may be included in the separation agreement and shall be reviewed in any subsequent proceeding as to its reasonableness consistent with Section 7-3.14.

- (c) If the Court finds the separation agreement unfair as to disposition of property and payment of debt, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property or debt.
- (d) If the Court finds that the separation agreement is fair as to the payment of debt and disposition of property, and that it is reasonable as to the parenting plan and child support, the separation agreement shall be set forth or incorporated by reference into the decree of dissolution, legal separation, or declaration of invalidity, and the parties shall be ordered to comply with the terms.
- (e) If the separation agreement provides that its terms shall not be set forth in the decree or declaration, the decree or declaration shall identify the separation agreement as incorporated by reference and state that the Court has found the terms as to property disposition and maintenance are fair and the parenting plan and child support reasonable.
- (f) Terms of the agreement set forth or incorporated by reference in the decree or declaration shall be enforceable by all remedies available for enforcement of a judgment, including contempt proceedings, garnishment proceedings subject to limitations of Tribal law, and are enforceable as contract terms.
- (g) Except for terms concerning the parenting plan and support for their children, entry of the decree or declaration shall thereafter preclude the modification of the terms of the decree or declaration, and the property settlement, if any, set forth or incorporated by reference therein.

Legislative History--Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.12 Parenting Plan.

- (a) The objectives of any proposed or ordered parenting plan shall be:
- (1) To provide for the child's physical care and to maintain the child's emotional stability;
  - (2) To provide for the child's changing needs as the child grows;
  - (3) To promote and preserve the child's Indian heritage and to provide for the maintenance of the child's Tribal affiliation;
  - (4) To set forth the authority and responsibilities of each parent consistent with the restrictions noted in subsection (e) below;
  - (5) To minimize the child's exposure to harmful parental conflict;
  - (6) To encourage parents to meet their responsibilities through the parenting plan rather than by relying on Court intervention; and
  - (7) To otherwise protect the best interests of the child consistent with the policy expressed in Section 7-3.01.
- (b) The contents of any proposed or ordered parenting plan shall include:
- (1) Dispute Resolution - A process for resolving disputes, other than Court action shall be provided unless not financially within the means of the parties, or precluded or limited by the Court as provided herein.
    - (A) The dispute Resolution process may include counseling, mediation, arbitration or any other traditional Tribal dispute Resolution process.
    - (B) In the dispute Resolution process:
      - i. Preference shall be given to carrying out the parenting plan;
      - ii. The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to child support, unless there is an emergency.
      - iii. If the Court finds that a parent has used or frustrated the dispute Resolution process without good reason, the Court may impose financial sanctions against that parent, as well as civil contempt.



- iv. Both parents have the right of Court review for the dispute Resolution process.
- (2) Decision Making Authority - The plan shall allocate decision making authority to 1 or both parents regarding the children's education, health care and religious or spiritual upbringing. The plan shall state that:
  - (A) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, including emergency decisions affecting the health and safety of the child.
  - (B) When mutual decision-making is designated but cannot be achieved, the parents shall make a good faith effort to resolve the issue through the dispute Resolution process.
- (3) Residential Provisions - The residential schedule shall designate in which parent's home each child shall reside on given days of the year, including provisions for holidays, birthdays, vacations and other special occasions.
- (c) Compliance - If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.
- (d) Uniform Parenting Plan Forms - The Court may authorize and approve the utilization of a uniform parenting plan form for all proceedings under this Chapter.
- (e) Restrictions in Parenting Plans - The Court may restrict or limit any provision of a parenting plan based on factors or conduct it finds adverse to the best interests of the child including:
  - (1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;
  - (2) Physical, sexual, or a pattern of emotional abuse of a child;
  - (3) A history of acts of domestic violence if it interferes with the performance of parenting functions;
  - (4) An assault or sexual assault which causes grievous bodily harm or the fear of such harm;
  - (5) Neglect or substantial non-performance of parenting functions;
  - (6) Long term emotional or physical impairment which interferes with the parent's performance of parenting functions;
  - (7) Long term impairment resulting from drug, alcohol or other substance abuse that interferes with the performance of parenting functions;
  - (8) Abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
  - (9) Withholding from the other parent access to the child for a protracted period without good cause; or
  - (10) Such other factors as the Court expressly finds adverse to the best interest of the child.
- (f) Failure to Agree - If the parents are unable to reach agreement on the terms of the parenting plan and the Court determines that it needs additional information before ordering a parenting plan, the Court may appoint a guardian ad litem whose investigation shall be provided to the parties and the Court and be subject to cross-examination.
- (g) Presumptions - In ordering a permanent parenting plan, the Court shall not draw any presumptions from the provisions of a temporary parenting plan or separation agreement.

Legislative History--Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### 7-3.13 Visitation Rights; Person Other Than Parent.

- (a) A person other than a parent may petition the Court for visitation rights at any time after a petition has been filed by a parent under this Chapter.
- (b) The Court may order visitation rights for a person other than a parent only upon a finding that it:
  - (1) does not infringe upon fundamental parental rights to make decisions concerning the care, custody, and control of the child(ren);
  - (2) is consistent with Tribal custom and tradition, and
  - (3) is in the best interest of the child(ren).
- (c) The Court may modify an order granting or denying visitation rights only if such modification would satisfy this Section.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.14 Child Support; Computation Factors.

- (a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, the Court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support, without regard to marital misconduct after considering all relevant factors, including:
  - (1) The financial resources and needs of the child.
  - (2) The financial resources and needs of each parent.
  - (3) The standard of living the child would have enjoyed had the marriage not been dissolved.
  - (4) The physical and emotional condition of the child, and his educational needs.
  - (5) Excessive and abnormal expenditures, destruction, concealment, or fraudulent disposition of property held in common.
  - (6) The age and ability of the child to finish high school before age 18.
- (b) In the case of a mentally or physically disabled child, the Court may order support to continue past the age of emancipation and to be paid to the parent or guardian with whom the child resides, or to the child.
- (c) The Court, with prior approval of the Spokane Indian Tribal Council may adopt a Spokane Tribal Court Child Support Schedule.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.15 Disposition of Property. In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Court shall, without regard to marital misconduct, divide the property and liabilities of the parties, either community or separate, and order support for children, as shall appear just and equitable after considering all relevant factors, including:

- (a) The nature and extent of the community property;
- (b) The nature and extent of the separate property;
- (c) The nature and extent of any trust or restricted property which is subject to the jurisdiction of the United States;
- (d) The duration of the marriage; and
- (e) The economic circumstances of each spouse at the time the division of property is to become effective, including: the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time; the desirability of insuring that both spouses' ability to continue working in their chosen field or livelihood is not unreasonably jeopardized.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.16 Assignments.

- (a) In the event a person obligated to pay child support is in arrears for at least 1 month, the Court may order the person obligated to pay child support to make an assignment in an amount not to exceed that set forth in Section 4-15.01 of the Spokane Law and Order Code, of part of the person's periodic earnings, excluding trust income and per capita, to the person entitled to receive the payments.
- (b) The assignment is binding on the employer, trustee, or other payer of the funds 2 weeks after service upon such person of notice that the assignment has been made.
- (c) The payer shall withhold the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the Clerk of the Court.
- (d) The payer may deduct from each payment a sum not exceeding \$1 as reimbursements for costs.
- (e) An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.17 Costs and Expenses.

- (a) The Court, upon motion of a party, after considering the financial resources of both parties, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this Chapter.
- (b) For the purpose of this Section, costs and expenses may include fees of an attorney, litigation costs and such other reasonable expenses as the Court finds necessary for the full and proper presentation of the action, including any appeal.
- (c) The Court may order all such amounts paid directly to the attorney, who may enforce the order in his or her name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.18 Decree; Finality; Restoration of Maiden Name.

- (a) A decree of dissolution of marriage or legal separation, or declaration of invalidity of marriage is final when entered, subject to the right of appeal.
  - (1) An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolved the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.
  - (2) An order directing payment of money for support of minor child(ren) shall not be suspended or the execution thereof stayed pending the appeal.
- (b) The Court shall upon motion of either party after expiration of 6 months from the entry of a legal separation, convert the decree to a decree of dissolution of marriage.
- (c) Upon request by a wife whose marriage is dissolved or declared invalid, the Court shall order her maiden name or a former name be restored.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.19 Independence of Provisions of Decree or Temporary Order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to comply with a parenting plan is not suspended, but he may move the Court to grant an appropriate order.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-3.20 Modification and Termination of Provisions for Child Support and Property Disposition.

(a) Except as otherwise provided in subsection 7-3.11 (F)., the provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the motion for modification and, except as otherwise provided in subsection B. below, only upon a showing of changed circumstance which are substantial and continuing.

(b) The provisions as to property disposition may not be revoked or modified, unless the Court finds the existence of conditions that justify the reopening of a judgment under the laws of the Spokane Tribe of Indians.

(c) An order of child support may be modified 1 year or more after it has been entered without a showing of changed circumstances which are substantial and continuing if:

(1) The order works a severe economic hardship on either party or the child;

(2) A party requests an adjustment in an order which was based on guidelines which determined the amount of support according to the child's age, and

the child is no longer in the age category on which the current support amount is based;

(3) A child is still in high school, upon a finding that there is a need to extend support beyond the 18 birthday to complete high school; or

(4) There has been a change in the Court-adopted Child Support Schedule.

(d) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child, but not by death of a parent obligated to support the child.

(1) 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 circumstances.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

## **Section 7-4 Parentage**

7-4.01 "Parent and Child Relationship" Defined. As used in this Code, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations.

(a) It includes the mother and child relationship and the father and child relationship.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.02 Relationship Not Dependent on Marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.03 How Parent and Child Relationship Established. The parent and child relationship between a child and:

(a) the natural mother may be established by proof of her having given birth to the child, or under this Chapter;

(b) the natural father may be established under this Chapter; or

(c) an adoptive parent may be established by proof of adoption or under the laws of the Spokane Tribe.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.04 Presumption of Paternity.

(a) A man is presumed to be the natural father of a child if:

(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity,

divorce, or dissolution, or after a decree of separation is entered by a Court;  
or

(2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within 300 days after the termination of cohabitation; or

(3) After the child's birth, he and the child's natural mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is, or could be, declared invalid, and:

(A) He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics of the Spokane Tribal Enrollment Office; or

(B) With his consent, he is named as the child's father on the child's birth certificate; or

(C) He is obligated to support the child if he has signed an affidavit of paternity at the hospital, under a written voluntary promise, or by Court order.

(4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child; or

(5) He acknowledges his paternity of the child in writing filed with the Registrar of Vital Statistics, or any Tribal Enrollment Office, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Registrar of Vital Statistics or the appropriate Tribal Enrollment Office.

(A) In order to enforce rights of residential time, custody and visitation, a man presumed to be the father as a result of filing a written acknowledgment must seek appropriate judicial orders under this

Chapter.

(b) A presumption under this section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence.

(1) If 2 or more presumptions arise which conflict with each other, the presumption that on the facts is founded on the weightier considerations of policy and logic controls.

(2) The presumption is rebutted by a Court decree establishing paternity of the child by another man.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.05 Artificial Insemination.

(a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived.

(1) The husband's consent must be in writing and signed by him and his wife.

(2) The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father.

(1) The agreement must be in writing and signed by the donor and the woman.

(2) The physician shall certify their signatures and the date of the insemination and file the agreement with the Registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.

(c) The failure of a licensed physician to perform any administrative act required by this section shall not affect the father and child relationship.

(1) All papers and records pertaining to the insemination, whether part of the permanent record of a Court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.06 Determination of Father and Child Relationship-Who May Bring Action-When Action May Be Brought.

(a) A child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the Spokane Tribe, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.

(b) A man presumed to be a child's father under Section 7-4.04 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts.

(c) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party, and had proper notice.

(d) In an action brought by the Tribe pursuant to this Chapter, the Tribe may be represented by either the Tribal prosecutor, or Tribal attorney, presenting officer, or other representative authorized by the Spokane Tribal Council.

(e) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this section.

(f) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.

(g) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.07 Jurisdiction.

(a) The Tribal Court shall have jurisdiction of any action brought under this Chapter.

(b) The action may be joined with an action for divorce, dissolution, declaration of invalidity, separate maintenance, support, or any other civil action in which paternity is an issue including proceedings in Juvenile or Youth Court.

(c) Any person who has sexual intercourse within the exterior boundaries of the Spokane Indian Reservation with a person who is a member or is eligible to become a member of the Spokane Tribe thereby submits to the jurisdiction of the Courts of the Tribe as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse.

(d) In addition to any other method provided by law, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in

accordance with the Tribal Rules of Civil Procedure as now or hereafter amended.  
Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.08 Parties.

- (a) The child shall be made a party to the action.
  - (1) If the child is a minor, the child may be represented by the child's general guardian or a guardian ad litem appointed by the Court.
  - (2) The child's mother or father may not represent the child as guardian or otherwise.
  - (3) The natural mother, each man presumed to be the father and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the Court, shall be given notice of the action in a manner prescribed by the Court and an opportunity to be heard.
- (b) Any party may cause to be joined as additional parties other men alleged to be the father of the child or any other person necessary for a full adjudication of the issues.
- (c) The failure or inability to join as a party an alleged or presumed father does not deprive the Court of jurisdiction to adjudicate some or all of the issues based on the evidence and parties available to it.
- (d) If more than 1 party is alleged to be the father of the child, the default of a party shall not preclude the Court from finding any other party to be the father of the child.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.09 Paternity Tests.

- (a) The Court may, and upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to paternity tests.
  - (1) If an alleged father objects to a proposed order requiring him to submit to paternity tests, the Court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based.
  - (2) The Court shall order paternity tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred.
  - (3) The tests shall be performed by an expert in paternity testing appointed by the Court.
  - (4) The expert's verified report identifying the characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if
    - (A) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and
    - (B) the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results.
      - (i) Verified documentation of the chain of custody of any samples is admissible to establish the chain of custody.
      - (ii) The Court may consider published sources as aids to interpretation of the test results.
- (b) The Court, upon request by a party, shall order that additional tests be performed by the same or other experts qualified in paternity testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time.
  - (1) The Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the Court finds, after hearing, that

- (A) the requesting party is indigent, and
- (B) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial test results.

- (2) The Court may later order the person determined to be the father, to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

- (c) In all cases, the Court shall determine the number and qualifications of the experts.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.10 Evidence Relating to Paternity. Evidence relating to paternity may include:

- (a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (c) Paternity test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;
- (d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts.
  - (1) If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
- (e) All other evidence relevant to the issue of paternity of the child.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.11 Civil Action-Testimony-Evidence-Jury.

- (a) An action under this Chapter is a civil action governed by the Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify.
- (b) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that said witness may be incriminated thereby, and if a party requests the Court to order that person to testify or provide the evidence, the Court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interests, and that person shall comply with the order.
  - (1) If, but for this section, the witness would have been privileged to withhold the answer given or have evidence produced, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to the section.
  - (2) The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Court.
- (c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
- (d) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the Court paternity tests,



the results of which do not exclude the possibility of the nonparty's paternity of the child.

(e) The trial shall be by the Court without a jury.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.12 Judgment or Order Determining Parent and Child Relationship-Support Judgment and Orders—Custody.

(a) The judgment and order of the Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(b) If the judgment and order of the Court is at variance with the child's birth certificate, the Court shall order that an amended birth certificate be issued.

(c) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the Court; the furnishing of bond or other security for the payment of the judgment; or any other matter in the best interest of the child.

(1) The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(d) Support judgment and orders shall be for periodic payments which may vary in amount.

(1) The Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Court deems just.

(2) The Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for support and other services previously furnished to

the child.

(e) After considering all relevant factors, the Court shall order either or both parents to pay an amount of support determined pursuant to Section 7-3.14.

(f) On the same basis as provided in Chapter 7-3, the Court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party, after paternity has been established.

(g) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a Court order, or placement by the Spokane Tribal Children and Family Services or by a licensed agency, have had actual custody of the child for a period of 1 year or more before Court action is commenced by the natural parent or parents, the Court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.13 Support Orders-Time Limit, Exception.

(a) A Court may not order payment for support provided or expenses incurred more than 5 years prior to the commencement of the action.

(b) Any period of time in which the responsible party has concealed himself, avoided service of process, or been absent from the jurisdiction of the Court under this Chapter shall not be included within the 5-year period.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.14 Temporary Support-Temporary Restraining Order-Preliminary Injunction-Support Debts, Notice.

- (a) If the Court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the Court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order.
- (1) The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (b) Any party may request the Court to issue a temporary restraining order or preliminary injunction providing relief proper in the circumstances, and restraining or enjoining any party from:
- (1) Molesting or disturbing the peace of another party;
- (2) Entering the home of another party; or
- (3) Removing a child from the jurisdiction of the Court.
- (c) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.
- (d) The Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.
- (e) A temporary order, temporary restraining order, or preliminary injunction:
- (1) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearing in the proceedings;
- (2) May be revoked or modified;
- (3) Terminates when the final order is entered or when the petition is dismissed; and
- (4) May be entered in a proceeding for the modification of an existing order.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.15 Costs.

- (a) The Court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including the cost of paternity tests, to be paid by the parties in proportions and at times determined by the Court.
- (b) The Court may order that all or a portion of a party's reasonable attorneys' fees be paid by another party.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.16 Enforcement of Judgments or Orders.

- (a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Chapter or under other or prior law, the obligation of the father may be enforced in the same or to her proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by another person, including a private agency, to the extent it has furnished or is furnishing these expenses.
- (b) The Court may order support payments to be made to a parent, the Clerk of the Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Court.
- (c) All remedies for the enforcement of judgments apply.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.17 Modification of Judgment or Order—Continuing Jurisdiction.

- (a) The Court has continuing jurisdiction to prospectively modify a judgment and order for future support upon showing a substantial change of circumstances.
- (b) A judgment or order entered under this Chapter may be modified without a showing of substantial change of circumstances upon the same grounds as provided pursuant to Section 7-3.20 (b).

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.18 Action to Determine Mother and Child Relationship.

- (a) Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.
- (b) Insofar as practicable, the provisions of this Chapter applicable to the father and child relationship shall apply.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 7-4.19 Hearing or Trials to be in Closed Court - Records Confidential.

- (a) Any hearing or trial held under this Chapter shall be held in closed Court without admittance of any person other than those necessary to the action or proceeding or for the orderly administration of justice.
- (b) All papers and records, other than the final judgment and matters related to the enforcement of the final judgment, pertaining to the action or proceeding are subject to inspection by a nonparty only upon an order of the Court for good cause shown following reasonable notice to all parties of the hearing where such order is sought.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **7-5 Adoption**

7-5.01 Adoptions of Indian Children, Jurisdiction. The Spokane Indian Tribal Youth Court shall be empowered to hear all matters involving the adoption of an Indian child or adoptions by members of the Tribe occurring within the external boundaries of the Spokane Indian Reservation, any extensions of the Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Reservation as well as those lands that fulfill the definition of Indian Country as defined in 18 USC Section 1151.

Readopted 8/01/06, Resolu. 2006-524.

7-5.02 Definitions. Unless the context clearly requires otherwise, the definitions in this subsection shall apply throughout this section.

- (a) "Minor" means a person under the age of 18 years.
- (b) "Parent" means the natural or adoptive mother or father or legal father of a child, regardless of the marital status of the parent.
- (c) "Indian Child Welfare Advocate" means a person, appointed by the Court, to represent the child in the judicial proceeding brought to terminate the child and parent relationship and to aid the Court in its investigation.

Readopted 8/01/06, Resolu. 2006-524.

7-5.03 Who May Adopt. Any person not married, or any husband and wife jointly, or either spouse, when the object of adoption is the child of the other spouse, may petition the Tribal Youth Court for leave to adopt, and to change the name, if desired, of any person.

Readopted 8/01/06, Resolu. 2006-524.

#### 7-5.04 Petition.

- (a) An adoption shall be initiated by the filing of a petition entitled "Petition for Adoption."
- (b) The petition shall be filed in the name of the proposed adoptive parents and shall contain the following information.

- (1) The name, age and residence of each living parent or alleged parent of the child;
  - (2) The name, age, date of birth, place of birth, and residence of the youth, and the Tribal affiliation of the youth;
  - (3) The name, age, and residence of the proposed adoptive parent or parents;
  - (4) The basis for the Court's jurisdiction over the adoption of such child;
  - (5) Whether the adoption is consented to by each living parent of the child, and, if not, any facts excusing such consent or the Court, under Section 6-3 terminated such parents' rights;
  - (6) A full statement of the value of any property of the child; and
  - (7) Any facts related to the physical care or custody of the child, either past or present, which is relevant to the petition.
- (c) The petition shall be signed and verified under oath by the proposed adopter.
- (d) If the petition is by 1 spouse to adopt a child of the other spouse, it shall also be approved under oath by such other spouse.

Readopted 8/01/06, Resolu. 2006-524.

#### 7-5.05 Consent.

- (a) The written consent of each parent consenting to the adoption shall be filed with the petition.
- (b) Each consent shall be executed before 2 adult witnesses, who shall sign their name and address upon the consent, or a Notary Public.
- (c) If the consenting parent is a minor, such consent must be signed before a Judge of the Tribal Court or under other circumstances which the Tribal Court finds sufficient to assure the Court that the consent was executed voluntarily and with the knowledge of the legal effect of the consent.
- (d) The adopting parent must obtain the consent of the child if the child is fourteen (14) years of age or older.

Readopted 8/01/06, Resolu. 2006-524.

#### 7-5.06 Withdrawal of Consent. A consent may be withdrawn, for any reason, at any time prior to the final order of adoption.

Readopted 8/01/06, Resolu. 2006-524.

#### 7-5.07 Investigation.

- (a) Upon the filing of a petition for adoption, the Court shall appoint a next friend and order such investigation as it deems necessary for full determination upon the petition.
- (b) The Court shall appoint an Indian Child Welfare Advocate for purposes of assisting this Court in its determination whether to grant the petition for adoption.

Readopted 8/01/06, Resolu. 2006-524.

#### 7-5.08 Order of Adoption Without Hearing. The Court may enter an order of adoption without hearing if the Court, upon investigation and inquiry, determines the following:

- (a) That 1 of the proposed adoptive parents is a member of the child's extended family, or otherwise has significant ties to the child;
- (b) That the adoption has been consented to by each living parent of the child;
- (c) That the proposed adoptive home is an adequate environment for the normal development of the child; and

(d) That the adoption is in the best interests of the child.  
Readopted 8/01/06, Resolu. 2006-524.

7-5.09 Notice.

(a) If the adoption has not been consented to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings.

(b) Such notice shall be served personally if the whereabouts of the parent or parents is known, otherwise service shall be made as ordered by the Court.

Readopted 8/01/06, Resolu. 2006-524.

7-5.10 Hearing.

(a) Unless both parties consent and the adoption is granted pursuant to Section 7-5.08, the Court shall hold a hearing upon the petition.

(b) The hearing shall first address the question of the termination of parental rights of any non-consenting parent may be terminated as provided in Chapter 6 of this Code or if it is proven beyond a reasonable doubt that the parent has failed, without good cause, to establish a relationship with the child, and did not provide support or care for the child prior to notice of hearing being served on the parent, the Court may order the termination of those parental rights if it deems appropriate.

(c) If the parent has, before notice of the hearing was served on the parent, established a relationship with the child, the rights of the parent shall not be terminated except as otherwise provided by this Code.

(d) The hearing shall then address the proposed adoption and the Court shall grant the petitioner's request if the adoption is in the best interests of the child.

Readopted 8/01/06, Resolu. 2006-524

7-5.11 Order.

(a) Upon a determination that good cause exists to terminate the parental rights of the living parent or parents of a child, or that all living parents have voluntarily consented to the adoption, the Court shall enter an order of adoption.

(b) The order shall include the following.

(1) The name, age and residence of each parent of the child;

(2) The name, age, date of birth, residence of the youth, and all relevant facts as to Tribal affiliation and membership of the youth;

(3) The jurisdiction of the Court;

(4) Whether the adoption is consented to by each living parent of the child and, if not, facts upon which the Court relies in terminating the parental rights of a non-consenting parent or parents, such termination having taken place by virtue of an order entered for that purpose;

(5) A full statement of the property of the child, and the value thereof, and any provisions the Court may impose for the protection or distribution of such property;

(6) That the adoptive parents are fit to provide a home environment for the healthy development of the child, and that the adoption is in the best interests of the child; and

(7) Facts showing that all parties entitled to notice were given notice consistent with their rights to due process.

Readopted 8/01/06, Resolu. 2006-524.

7-5.12 Effect of Order of Adoption. By the order of adoption, the natural parents shall be divested of all legal rights and obligations with respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them, and shall be, for all legal purposes, the child, legal heir,

and lawful issue of his or her adopter or adopters, entitled to all rights and privileges, including the right of inheritance and the right to take under testamentary disposition, and subject to all the obligations of a child of the adopter or adopters begotten in lawful wedlock.

Readopted 8/01/06, Resolu. 2006-524.

7-5.13 Confidentiality of Records and Proceedings.

(a) Unless the Court shall otherwise order, all hearings held and proceedings under this section shall be held in closed Court without admittance of any persons other than parties having a proper interest in the case or the work of the Court.

(b) All records shall be sealed and kept confidential in conformity with 6-1.08 of this Code.

Readopted 8/01/06, Resolu. 2006-524

7-5.14 Copy of Order to Registrar. If an order of adoption is entered, as soon as possible, the Clerk of the Court shall transmit to the State of Washington Registrar of Vital Statistics a certified copy of such order.

Readopted 8/01/06, Resolu. 2006-524.