

## **Title 7 – Domestic Relations**

### **Chapter 4 – Parenting Plans and Visitation**

**Sec.**

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#### **Legislative History**

**Enacted:**

Domestic Relations, Ord. 188 (11/10/03), BIA (11/25/03).

**Repealed or Superseded:**

Domestic Relations, Ord. 101 (4/6/93), BIA (5/3/93) (repealing any and all prior domestic relations ordinances).

Law and Order Code, Ord. 7 (3/23/38), BIA (3/24/38) (Chapter III).

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**7-04.010 Policy – Best Interests of the Child.**

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 interest of the child shall be the standard by which the Tribal Court determines and allocates parental responsibilities. 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 interest of the child. 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. Furthermore, 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 relationship of the parents or as required to protect the child from physical, mental or emotional harm.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-04.020 Civil Procedure to Govern - Designation of Proceedings.**

- (A) Except as otherwise specified herein, the Rules of Civil Procedure, Chapter 3-02, shall govern all proceedings under this Title, except the trial shall be held before a judge rather than in front of a jury.
- (B) In cases where the parents are not married, a separate parenting and support proceeding between the parents shall be entitled “In re the parenting and support of \_\_\_\_\_”.
- (C) The initial pleading in all proceedings under this Title shall be designated a petition. A responsive pleading shall be designated a response.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-04.030 Petition for Parenting Plan.**

Either parent may petition the Tribal Court for resolution of a child custody dispute. The Tribal Court shall issue a parenting plan on the basis of the best interests of the child. In determining the best interests of the child, the Tribal Court shall consider all relevant factors including those factors enumerated in Sections 7-04.010 and 7-04.040.

[History] Ord. 188 (11/10/03).

**7-04.040 Parenting Plan.**

- (A) The Tribal Court shall enter a parenting plan if it finds each of the following:
  - (1) That one (1) of the parties is an enrolled member of the Swinomish Indian Tribal Community and, at the time the action was commenced, was domiciled within the reservation region for at least ninety (90) days; and
  - (2) That this is the home reservation region of the child on the date of the commencement of the proceedings, or was the home reservation region of the child within six (6) months before the commencement of the proceeding and the child is absent from this reservation region but a parent or other person acting as a parent continues to live in this reservation region.
- (B) Neither parent is entitled to preference in the awarding of custody.
- (C) If the Tribal Court finds that a parent or child is a victim of domestic violence, the Tribal Court may order that the address and telephone number of the parent or child be kept confidential in the proceedings.
- (D) 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 Section 7-04.040 (F);
  - (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 Tribal Court intervention; and
  - (7) To otherwise protect the best interests of the child consistent with the policy expressed in Section 7-04.010.
- (E) The contents of any proposed or ordered parenting plan shall include:
- (1) **Dispute Resolution.** A process for resolving disputes, other than Tribal Court action, shall be provided unless it is beyond the financial means of the parties, or precluded or limited by the Tribal Court as provided herein. The dispute resolution process may include counseling, mediation, arbitration or any other traditional tribal dispute resolution process. In the dispute resolution process:
    - (a) Preference shall be given to carrying out the parenting plan;
    - (b) 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;
    - (c) If the Tribal Court finds that a parent has used or frustrated the dispute resolution process without good reason, the Tribal Court may impose financial sanctions against that parent; and
    - (d) Both parents have the right of court review of the dispute resolution process.
  - (2) **Decision Making Authority.** The parenting plan shall allocate decision-making authority to one 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; and
  - (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.
- (F) 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.
- (G) The Tribal Court may authorize and approve the utilization of a uniform parenting plan form for all proceedings under this Chapter.
- (H) **Restrictions in Parenting Plans.** The Tribal 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;
  - (4) An assault or sexual assault that 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 that 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 that 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 Tribal Court expressly finds adverse to the best interests of the child.
- (I) If the parents are unable to reach agreement on the terms of the parenting plan and the Tribal Court determines that it needs additional information before ordering a parenting plan, the Tribal Court may:
- (1) Interview the child in chambers to ascertain the child's needs and desires. The Tribal Court may permit counsel to be present at the interview. The Tribal Court shall cause a record of the interview to be made and to be made part of the record in the case; and/or
  - (2) Seek the advice of professional personnel or persons knowledgeable in the welfare of Indian children whether or not they are employed on a regular basis by the Tribal Court. The advice given shall be in writing and shall be made available by the Tribal Court to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Tribal Court.
- (J) In ordering a permanent parenting plan, the Tribal Court shall not draw any presumptions from the provisions of a temporary parenting plan or separation agreement.
- (K) If the issue of child custody is before the Tribal Court at the time it issues a judgment under Sections 7-03.060, 7-03.070, or 7-03.080, the Tribal Court shall concurrently issue a parenting plan under this Section.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-04.050 Temporary or Interim Parenting Plan.**

Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the Tribal Court considers a parenting plan under Section 7-04.040.

[History] Ord. 188 (11/10/03).

**7-04.060 Visitation Rights - Person Other Than Parent.**

- (A) The Tribal Court may order visitation rights for a person other than a parent when consistent with tribal tradition and in the best interests of the child.
- (B) A person other than a parent may petition the Tribal Court for visitation rights at

any time.

- (C) The Tribal Court may modify an order granting or denying visitation rights in accordance with Section 7-04.070.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-04.070 Modification of Parenting Plan or Visitation.**

- (A) A parenting plan or visitation with the child may be modified if the Tribal Court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the parenting plan or visitation with the child and the modification is granted, the Tribal Court shall enter on the record its reason for the modification.
- (B) In a proceeding involving the modification of a parenting plan or visitation with a child, a finding that a crime involving domestic violence has occurred since the last parenting plan or visitation determination is a finding of change of circumstances under (A) of this Section.

[History] Ord. 188 (11/10/03).

**7-04.080 Representation of Child by Counsel - Fees.**

The Tribal Court may appoint an attorney or any other person to represent the interests of a minor or dependent child with respect to his or her parenting plan. The Tribal Court may enter an order for costs, fees and disbursements in favor of the child's representative. The order may be made against either or both parents.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).