

SPIRIT LAKE TRIBE RESOLUTION NO. A05-04-159

WHEREAS, the Spirit Lake Tribe, formerly known as the Devils Lake Sioux Tribe Of Indians is a federally recognized American Indian tribe governed By a revised *Constitution* dated May 5, 1950, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and subsequently amended July 17, 1969; May 3, 1974; April 16, 1976; May 4, 1981 and August 19, 1996; and

WHEREAS, the *Constitution* of the Spirit Lake Tribe generally authorizes and empowers the Spirit Lake Tribal Council (hereinafter the Tribal Council) to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

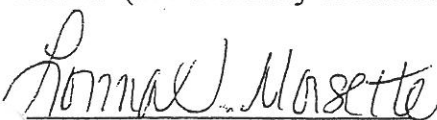
WHEREAS, the Spirit Lake Tribal Council passed Resolution A05-03-160 on April 30, 2003 approving modifications to specific Titles of the Spirit Lake Law and Order Code, including, but not limited to modifications to Title 9: Domestic Relations; and

~~**WHEREAS**, the Spirit Lake Tribal Council has identified a typographical error in 9-1-101 of the~~
modified version of the Spirit Lake Law and Order Code which will require clarification from the Tribal Council, namely, 9-1-101 states "...Marriages hereinafter consummated by Tribal Custom shall not be considered valid or legal...". This statement is clearly contrary to the history of recognition of marriages with the Spirit Lake Jurisdiction and therefore the terms "shall not" must be deemed to be a typographical error, which needs to be corrected immediately.

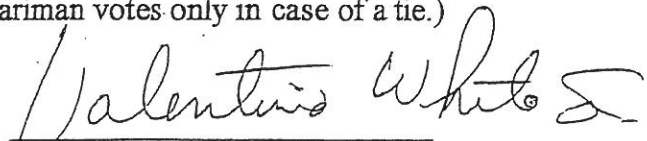
NOW THEREFORE BE IT RESOLVED, that the Spirit Lake Tribal Council hereby states that in order to clarify the typographical error in accordance with legislative intent of the governing body of the Spirit Lake Tribe, the terms "shall not" are not be removed from 9-1-101 and replaced with the term "shall". 9-1-101- shall therefore be clarified to read, "...**Marriages hereinafter consummated by Tribal custom shall be considered valid and legal.**"

CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Spirit Lake Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members, of whom (4) were present constituting a quorum for a Special Meeting which was duly called and convened this 28th day of July, 2004, and approved this resolution by affirmative vote of four (2) in favor, none (0) opposed, none (0) abstaining and none (0) absent. (The Secretary-Treasurer does not vote and the Chariman votes only in case of a tie.)



Donna J. Morsette
Secretary-Treasurer



Valentino White Sr.
Tribal Chairman

TITLE 9: DOMESTIC RELATIONS

CHAPTER 1: MARRIAGE

§9-1-101 Marriage.

Marriages hereinafter consummated by Tribal custom shall ~~not~~ be considered valid or legal. Future marriages and divorces shall be consummated in accordance with Tribal Law. (Correction made by SLT Resolution No. A05-04-159) Dated July 28, 2004

§9-1-102 Marriage License.

- (1) No marriage shall be performed under authority of this Chapter unless the parties have first obtained a marriage license from the clerk of the Tribal Court or from the State of North Dakota.
- (2) If obtained from the clerk of the Tribal Court, upon payment of a fee to be set by the Tribal Court, the clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Chapter.
- (3) The clerk shall keep a public record of all marriage licenses and certificates issued by the Tribal Court and of all marriages performed by the Tribal Judges.

§9-1-103 Persons Who May Marry.

No marriage license shall be issued by the Tribal Court Clerk to marry or marriage performed unless the persons to be married meet the following qualifications:

- (1) She or he is at least 18 years of age.

89-1-104 Who May Perform Marriages.

- (1) A marriage may be solemnized and performed on the Spirit Lake Indian Reservation by any of the following:

- (a) recognized clergyman or person recognized by his religion as having authority to marry;
- (b) a judge of the Tribal Court.

- (2) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that he had such authority and that they have been lawfully married.

89-1-105 Marriage Ceremony.

No particular form of marriage ceremony is required, provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and he must thereafter declare them to be husband and wife.

89-1-106 Void and Voidable Marriages.

- (1) Marriages between an ancestor and his descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.
- (2) Marriages between a person who is at the time of the marriage married to another person still

living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:

- (a) actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce or annulment; or
 - (b) actually believed, in good faith, that his or her prior spouse was dead.
- (3) When a marriage is contracted in good faith by either party and in the belief by either party that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.

CHAPTER 2: ANNULMENT

89-2-101 Grounds for Annulment.

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

- (1) That the party on whose behalf it is sought to have the marriage annulled was under the age of 18 years;
- (2) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;
- (3) That either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband and wife;
- (4) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.
- (5) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband and wife.

89-2-102 Action to Annul - Parties and Limitations.

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

- (1) That the party on whose behalf it is sought to have the marriage annulled, was under the age of 18 years, unless after attaining the age of 18

years, such party freely cohabits with the other party to the marriage as husband or wife.

- (2) For causes mentioned in Subsection 2 by either party during the life of the other, or by such former husband or wife;
- (3) For causes mentioned in Subsection 3 by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;
- (4) For causes mentioned in Subsection 4 by the party injured, within two years after the discovery of the facts constituting a fraud.

§9-2-103 Legitimacy of Children.

When a marriage is annulled for any reason, children begotten before judgment are legitimate and succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents may require.

§9-2-104 Conclusiveness of Judgment of Annulment.

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

CHAPTER 3: DIVORCE AND CHILD CUSTODY

§9-3-101 Divorce and Annulment Procedure.

Proceedings in divorce and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final Decree of Divorce shall restore the parties to the status of unmarried persons.

§9-3-102 Divorce and Annulment Residency Requirement.

In order to maintain an action for divorce or annulment in the Tribal Court, at least one party to the marriage must reside on the Spirit Lake Reservation, except that an annulment may be granted where the marriage was performed on the Spirit Lake Indian Reservation.

§9-3-103 Grounds for Divorce.

The sole grounds for divorce shall be that the marriage is irretrievably broken.

§9-3-104 Right to Divorce.

The husband may obtain a divorce from his wife or a wife may obtain a divorce from her husband for the same causes and in the same manner.

§9-3-105 Maintenance and Suit Money; Restraint.

- (1) The Court may order either party to pay to the clerk, for the benefit of the other party, a sum of money for the temporary or permanent separate support and maintenance of the adverse party and

the children, and to enable such party to prosecute and defend the action.

- (2) The Court may temporarily or permanently restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the divorce proceedings. Violation of a current and valid restraining order under this Section shall be punishable by contempt of Court. In addition, the Court may choose to utilize the criminal penalties set forth in Title 3 of the Spirit Lake Law and Order Code addressing the violation of Domestic Abuse Restraining Orders.

§9-3-106 Pleadings; Findings; Decree.

The petition for divorce shall be in writing and signed by the petitioner or the petitioner's counsel or attorney. No Decree of Divorce shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the Court who shall make and file its findings and decree upon the evidence. The decree shall become absolute upon service unless the judge orders otherwise in which case the period of time until which it becomes absolute may be up to three months.

§9-3-107 Disposition of Property and Children.

When a Decree of Divorce is made, the Court may make such orders in relation to the children, property, parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes, modifications or new orders may be made by the Court with

respect to the custody of the children as the Court deems reasonable and proper.

§9-3-108 Child Custody Proceedings - Commencement - Notice - Intervention.

- (1) A child custody proceeding is commenced in the Tribal Court:
 - (a) By a parent:
 - (i) By filing a petition for divorce, annulment or declaration of invalidity of a marriage; or
 - (ii) By filing a petition seeking custody of the child or children or;
 - (b) By a person other than a parent, filing a petition seeking custody of the child or children; but only if the child or children are not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.
- (2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The Court may, upon a showing of good cause, permit the intervention of other interested parties.

§9-3-109 Child Custody - Relevant Factors in Awarding Custody.

The Court shall determine custody in accordance with the best interests of the child and the traditions and customs of the Spirit Lake Dakota people. The Court shall

consider all relevant factors and may consider the following factors but shall consider factor (7):

- (1) The wishes of the child's parent or parents;
- (2) The wishes of the child, if age appropriate, as to a custodian and as to visitation privileges;
- (3) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
- (4) The child's adjustment to his home, school, and community; and
- (5) The mental and physical health of all individuals involved.
- (6) The Indian heritage of the child.
- (7) Domestic Violence committed by one parent upon the other or upon the children. This factor shall be given great weight by the Court in determining custody. The definition of domestic violence is the same as that definition set forth in the Domestic Abuse statute in this Code.

It shall be presumed that domestic violence affects the well being of the child. However, it is for the Court to determine to what degree the child has been affected. The Court shall not consider conduct of a proposed guardian that does not affect the welfare of the child. The aforementioned list is not set forth in any certain order of preference or weight except as to subsection 7.

**§9-3-110 Child Custody - Temporary Custody Order -
Vacation of Order.**

- (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by affidavit. The Court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.
- (2) If a proceeding for divorce or annulment is dismissed, any temporary custody order is vacated unless the court, a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

**§9-3-111 Child Custody - Temporary Custody Order or
Modification of Custody Decree - Affidavits Required.**

A party seeking a temporary custody order or modification of a custody decree shall submit together with the motion, an affidavit setting forth facts supporting the requested order or modification and the clerk shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. The Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing. At the hearing, the movant must establish that there has been a substantial changes in circumstances, since the date of the last order of the Court, which would

warrant a change of custody, and that the best interests of the child requires a change of custody. The Court, among other considerations, shall take into consideration, the length of time that the child has been residing in their current environment, any bonding issues concerning the child with respect to the parties to the action, and whether the child is thriving in their current environment.

§9-3-112 Child Custody - Interview with Child by Court - Advice of Professional Personnel.

- (1) The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation privileges. The Court may permit counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be made part of the record in the case.
- (2) The Court may seek the advice of professional personnel or persons knowledgeable in the welfare of children whether or not they are employed on a regular basis by the Court. The advice given shall be in writing and shall be made available by the Court to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Court.
- (3) If the Court finds that it would be detrimental to the child's best interests, the Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the Court.

- (4) If the Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the Court may make an appropriate order sealing the record.

89-3-113 Child Custody - Visitation Rights.

- (1) A parent, grandparent, or any other person able to show to the Court a traditional right to custody, may be granted custody of the child and/or may be granted reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The Court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances. Any person may petition the Court for visitation rights at any time including, but not limited to, during custody proceedings.
- (2) The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the Court shall not restrict a parent's or grandparent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health.

§9-3-114 Child Custody - Powers and Duties of Custodian - Supervision by Appropriate Agency When Necessary.

- (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the Court after hearing, finds, upon motion by the noncustodial parent, that the child's physical, mental, or emotional health would be endangered if the noncustodial parent were not allowed to have input and some control in these decisions.
- (2) If both parents or all contestants agree to the order, or if the Court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the Court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the Court at any time or upon petition by any party.

§9-3-115 Maintenance Payments -To Whom Paid.

- (1) The Court may, upon its own motion or upon motion of either party, order maintenance or support payments to be made to:
 - (a) The person entitled to receive the payments,
or
 - (b) The appropriate tribal department; or

(c) The clerk of Court as trustee for remittance to the person entitled to receive the payments.

(2) If payments are made to the clerk of Court:

(a) The clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order; and

(b) The parties affected by the order shall inform the clerk of the Court of any change of address or of other conditions that may affect the administration of the order.

CHAPTER 4: PATERNITY AND CHILD SUPPORT

§9-4-101 Parent and child relationship defined.

As used in this chapter, parent and child relationship means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

§9-4-102 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.

§9-4-103 How parent and child relationship established.

The parent and child relationship between a child and: The natural mother may be established by proof of having given birth to the child, or under this chapter. The natural father may be established under this chapter. An adoptive parent may be established by proof of adoption.

§9-4-104 Presumption of paternity.

1. A man is presumed to be the natural father of a child if:
 - a. The man and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment or divorce,

is entered by a court; or

- b. Before the child's birth, that man 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:

- If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, or divorce; or
- If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;

- c. After the child's birth, that man 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 the man has acknowledged the man's paternity of the child in writing filed with the division of vital statistics of the state department of health or with the man's consent, that man is named as the child's father on the

- child's birth certificate; or the man is obligated to support the child under a written voluntary promise or by court order; or
- d. While the child is under the age of majority, the man receives the child into the man's home and openly holds out the child as the man's natural child; or
 - e. The man acknowledges the man's paternity of the child in a writing filed with the division of vital statistics of the state department of health, which shall promptly inform the mother of the filing of the acknowledgment, and the mother does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the division of vital statistics of the state department of health. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted; or
 - f. If genetic tests show that the man is not excluded and the statistical probability of the man's parentage is ninety-eight percent or higher.
2. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the

presumption, which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

**§9-4-105 Determination of father and child relationship -
Who may bring action - When action may be brought.**

1. A child, the child's natural mother, or a man presumed to be the child's father under subdivision a, b, or c of subsection 1 of section 9-4-104 may bring an action:

- a. At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision a, b, or c of subsection 1 of section 9-4-104;
or
- b. For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision a, b, or c of subsection I of section 9-4-104 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if that man has been made a party.

2. Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision d, e, or f of subsection 1 of section 9-4-104.
3. An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 9-4-104 may be brought by the child, the mother or personal representative of the child, the authorities charged with the support of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.
4. Regardless of its terms, an agreement between an alleged or presumed father and the mother or child, does not bar an action under this section.
5. If an action under this section is brought before the birth of the child, all proceedings must be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

§9-4-106 Statute of limitations.

An action to determine the existence of the father and child relationship as to a child who has no presumed father under section 9-4-104 may not be brought later than three years after the birth of the child, or later than three years after the date of enactment of this section,

whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three years after the child reaches the age of majority. Sections 9-4-105 and 9-4-106 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

§9-4-107 Jurisdiction - Venue.

1. The tribal court has jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, annulment, custody or support.
2. A person who has sexual intercourse in within the exterior boundaries of the Spirit Lake Indian Reservation thereby submits to the jurisdiction of this court as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by rule, ordinance, resolution or statute, personal jurisdiction may be acquired by personal service of summons or by registered mail with proof of actual receipt.

§9-4-108 Parties.

The child must be made a party to the action. A child who is a minor must be represented by the child's parent whose parentage has been established under section 9-4-103 or a guardian ad litem appointed by the court. The court

may appoint the director of the tribal social services as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 9-4-104, and each man alleged to be the natural father, must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

§9-4-109 Genetic test.

1. The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to genetic tests, including tests of blood or other tissues. The tests must be:
 - a. Of a type generally acknowledged as reliable by accreditation bodies designated by the secretary of the United States department of Health and Human Services;
 - b. Performed by a laboratory approved by such an accreditation body; and
 - c. Performed by an expert qualified as an examiner of genetic data or specimens, appointed by the court.
2. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic data or specimens.
3. In all cases the court shall determine the number and qualifications of the experts.

89-4-110 Evidence relating to paternity.

Evidence relating to paternity may include:

1. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.
2. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.
3. Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. Documentation of the chain of custody of the genetic specimens, provided by an examiner appointed under section 9-4-109, is competent evidence to establish the chain of custody. A report obtained from an examiner appointed under section 9-4-109 must be admitted at trial unless a written objection to the testing procedures or the results of genetic analysis has been made at least ten days before trial or at an earlier time determined by the court.
4. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. 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.
5. A voluntary acknowledgment of paternity executed under section 9-4-119.

6. All other evidence relevant to the issue of paternity of the child.

§9-4-112 Civil action -Trial.

1. 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.
2. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.
3. In an action against an alleged father, evidence offered by the alleged father with respect to another man who is not subject to the jurisdiction of the court concerning that other man's sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the other man has undergone and made available to the court blood tests the results of which do not exclude the possibility of that other man's paternity of the child. A man who is identified and is subject to the jurisdiction of the court must be made a defendant in the action.
4. The trial must be by the court without a jury.

89-4-112 Evidence relating to costs of pregnancy, childbirth, and genetic testing.

1. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required of billings by service providers for services relating to pregnancy, childbirth, and genetic testing.
2. Billings by service providers for services relating to pregnancy, childbirth, and genetic testing constitute prima facie evidence of the costs of those services.

89-4-113 Judgment or order.

1. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.
2. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amended birth registration be made.
3. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and

confinement.

4. Support judgments or orders for future support must be for monthly payments, which must be in amounts consistent with guidelines established under section 9-4-128.
5. The judgment or order must include the social security numbers of the child and of individuals determined to be the child's parents.

§9-4-114 Default.

1. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has failed after service of process to plead or otherwise appear within the time permitted under the rules of civil procedure, and the fact is made to appear by affidavit or otherwise, the court shall direct the clerk to enter an appropriate judgment by default establishing the existence of the father and child relationship.
2. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has pled or appeared in the action, but has failed to appear at a scheduled hearing, conference, or trial, or failed to appear for or refused to submit to genetic testing, and those facts are made to appear by affidavit or otherwise, the person, or if appearing by representative, the person's representative, must

be served with written notice of the application for judgment at least eight days before the hearing on the application. If the person fails to appear at the hearing on the application or appears but fails either to cure a previous failure or refusal, or to provide satisfactory assurance of the person's willingness to cure a previous failure or refusal, the court shall direct the clerk to enter an appropriate judgment by default establishing the existence of the father and child relationship.

3. Judgment of default may not be entered:
 - a. When service of process has been made by published notice until it is shown, by affidavit or otherwise, that the person is a presumed father or, if not a presumed father, that the person engaged in sexual intercourse with the child's mother at any possible time of conception;
 - b. Against a minor unless represented in the action by a parent, general guardian, or guardian ad litem;
 - c. Against an incompetent person unless represented in the action by a guardian with sufficient authority; or
 - d. If more than one person was alleged to be the father, and the evidence establishes the existence of the father and child relationship between the child and a person who has appeared and participated in the action.
4. If the operation of this section requires the

entry of judgments of default establishing the existence of the father and child relationship between a child and two or more persons, the court may grant relief from any of those judgments, on such terms as may be just, notwithstanding the passage of any period of time.

§9-4-115 Costs.

The court may order reasonable fees of experts and the child's guardian ad litem and other costs of the action, including genetic tests, to be paid by the parties in proportions and at times determined by the court. In addition, the court may award reasonable attorney's fees.

§9-4-116 Enforcement of judgment or order.

1. 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 prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the tribal or public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent the person has furnished or is furnishing these expenses.
2. The court shall order support payments to be made.
3. Willful failure to obey the judgment or order of

the court constitutes contempt of court. All remedies for the enforcement of child support orders apply.

§9-4-117 Modification of judgment or order.

The court has continuing jurisdiction to modify a judgment or order for future support, custody and rights of visitation for the child.

§9-4-118 Paternity Acknowledgement - location of voluntary Acknowledgement.

The place of acknowledgement or birth need not be within the exterior boundaries of the Spirit Lake Indian Reservation.

This provision is to be broadly construed to provide a simple civil process for establishing the relationship of father and child through voluntary acknowledgment of paternity. This provision may be applied to establish the relationship of father and child with respect to children not born within the exterior boundaries of the Spirit Lake Indian Reservation or in the State of North Dakota. A voluntary acknowledgment executed or acknowledged outside the Spirit Lake Indian Reservation or the State of North Dakota is effective under this provision if the acknowledgment substantially complies with the requirements of section 9-4-119 and any amendments or revisions of that section thereafter occurring.

§9-4-119 Establishment of relationship of father and child.

The relationship of father and child may be

established by an acknowledgment of paternity, signed by both parents, given before a witness if:

1. The acknowledgment is made on a form which provides:
 - a. Instructions for filing the acknowledgment with the department of health; and
 - b. Places for entry of the parents' names, addresses, and social security numbers; parents' signatures; and witnesses' signatures; and
2. The witness, or any agent of a child support agency, verifies that the parents have been provided, before the acknowledgement of paternity is signed:
 - a. Written materials about paternity establishment, including the manner in which the relationship of father and child may be vacated; and
 - b. A written and oral description of the rights, responsibilities, and legal consequences of acknowledging paternity.

§9-4-120 Effect of Voluntary acknowledgement of paternity-who may dispute.

The relationship of father and child established by acknowledgement has the force and effect of a relationship of father and child established through a judgment of a court of competent jurisdiction. This is a presumption establishing paternity, and must be recognized as a basis for a support order, in any proceeding to establish, enforce or modify a child support order, with no further

proceedings to establish paternity. The establishment of the relationship may be contradicted only as provided in this chapter.

§9-4-121 Filing of acknowledgment.

An acknowledgment of paternity made under this chapter must be filed with the state department of health. Upon request of the court or the mother or the father listed on the acknowledgement form, the state department of health shall furnish a copy of an acknowledgement of paternity to the court.

§9-4-122 When acknowledgment is voidable.

An acknowledgment of paternity for a child born to a married woman is voidable unless:

1. The man acknowledging paternity was the woman's husband at the time of the child's birth; or
2. The acknowledgment is agreed to in writing by each man, the father listed on the acknowledgment form and the man who was the woman's husband three hundred days before the child's birth.

§9-4-123 Vacation or rescission of acknowledgments.

1. An acknowledgment of paternity made under this chapter may be vacated by the tribal court or state department of health or rescinded by the mother or father:

- a. By a notarized writing signed by either the father or the mother and filed with the state department of health within the earlier of sixty days after the execution of

the acknowledgment of paternity or the date of any proceeding relating to the child in which the signatory on the acknowledgment is a party; or

- b. By or of the tribal court upon a showing, by either party, that an acknowledgment of paternity was the result of material mistake of fact, fraud, or duress;
- c. By order of the tribal court upon a showing that a voidable acknowledgment of paternity made concerning the birth of a child to a married woman should be made void; or
- d. By the state department of health upon receipt of two or more acknowledgments of paternity concerning the same child.

- 2. A party shall commence a claim for relief under subdivision b of subsection 1 within one year after execution of the acknowledgement of paternity, unless the court, for good cause shown, extends that one-year period.
- 3. The vacation or rescission of an acknowledgment of paternity under this section does not affect any presumption of paternity provided under section 9-4-104.

§9-4-124 Child Support- Purpose.

- (1) To provide for the reasonable and necessary physical, mental and emotional health needs of the child.
- (2) Establish an adequate standard of support for children.

- (3) Make support payments more equitable by ensuring more consistent treatment of persons in similar circumstances; and
- (4) Improve the efficiency of the court process by promoting settlements.

89-4-125 **Child Support - Policy.**

- (1) The Spirit Lake Tribal Court may order either or both parents owing a duty of support to a child of the marriage or upon the establishment of a parent-child relationship under the Spirit Lake Law and Order Code to support the child according to these provisions.
- (2) In any action to establish or modify child support, the child support guidelines as set forth in this section shall be applied to determine the child support due and shall be a rebuttable presumption of the correct amount of such child support.
- (3) The Child Support Guidelines shall be used for temporary and permanent orders, custody orders incident to a divorce and support orders arising despite the non-marriage of the parties.
- (4) It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of maintaining a parent-child relationship. Parents remain financially responsible for the support of a child in foster care. If the parents of the child reside

together, the income of the parents must be combined and treated as the income of the obligor. However, if the parents do not reside together, each parent is treated as an obligor and the Court must issue two separate support orders pursuant to the guidelines in this Chapter.

89-4-126 Child Support - Procedures.

- (1) Income is defined as actual gross income of a parent, if employed to full capacity, or potential income if unemployed or under employed. The gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage.
- (2) Gross Income includes income from any source and includes, but is not limited to, income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers compensation benefits, disability benefits, unemployment insurance benefits, significant in kind benefits that reduce personal living expenses, prizes and alimony or maintenance received but:
 - (a) Gross Income shall not include benefits receive from public assistance programs or child support received by a parent for the support of other children.

- (b) For income from self-employment, gross income shall not include monies used for ordinary and necessary expenses required to produce such income. Determination of ordinary and necessary expenses shall be conducted and determined by the Court.
 - (c) Gross Income shall not include the amount of alimony payments actually paid by a parent in compliance with a court order.
- (3) Definitions.
 - (a) Children of the parties means the natural or adopted child or children of the parties. But the term shall not include the natural or adopted child or children of only one of the parties. The Court may utilize tribal traditions and customs in reaching this determination.
 - (b) Basic visitation means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than 35% of the time.
 - (c) Joint custody means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children spend at least 35% of the year in each home and parents significantly share the duties, responsibilities and expenses of parenting.

§9-4-127 Child Support - Determining Support.

(A) The Court shall determine the minimum amount of support by using the standard guidelines provided in section 9-4-128.

The guidelines shall be applied in each case unless the court makes a finding that the application of the guidelines would be inappropriate, considering the best interests of the child in light of evidence including but not limited to one or more of the following relevant factors:

- (1) the financial resources and needs of the child;
- (2) the financial resources and needs of the custodial parent;
- (3) the standard of living the child would have enjoyed had the parents combined their incomes;
- (4) the physical and emotional condition of the child, and his/her educational needs or any other special needs of the child;
- (5) the financial resources, obligations and needs of the noncustodial parent.

If the Court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The Court shall include the reason or reasons for the variance from the guidelines.

(B) Net Income Determination for Support Calculation.

Net Income is defined as the total of all income from all sources, minus the following deductions:

- (1) Taxes

- (2) Social Security
- (3) Mandatory retirement contributions
- (4) Union dues
- (5) Dependent and individual health/hospitalization insurance premiums
- (6) Prior obligations of support or maintenance actually paid pursuant to a court order
- (7) If self-employed, expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income to be determined by the Court.

The Court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification upon termination of such payment period.

In a proceeding for child support following dissolution of the marriage by a court, and in which the court is requiring payment of support for the period before the date a order for current support is entered, there is a rebuttable presumption that the supporting parties net income for the prior period was the same as his or her net income at the time the order for current support is entered.

If the net income cannot be determined because of default or for any other reason, the court shall order support in an amount considered reasonable in the particular case.

The final order in all cases shall state the support level in a dollar amount.

- (C) Failure to Pay Support.

- (1) Failure of either parent to comply with an order to pay support shall be punishable as in other cases of contempt.
- (2) In addition to the other penalties provided by law the court may, after finding the parent guilty of contempt, order that the parent be:
 - (a) placed on probation with such conditions of probation as the court deems advisable;
 - (b) sentenced to periodic imprisonment for a period not to exceed 6 months (as a form of civil contempt); provided, however, that the court may allow for release upon payment of a sum certain as designated by the court; further, the court may permit the parent to be released for periods of the time during the day or night to: work or conduct business or other self-employed occupation;
 - (c) The court may further order any part or all of the earnings of a parent during a sentence of periodic imprisonment paid to the Clerk of the Tribal Court for the support of the minor children;
 - (d) The sentence may include but need not be limited to a requirement that the person perform community service.
- (3) The court, may also order in cases where the parent is 90 days or more delinquent in payment of support or has been adjudicated

in arrears in an amount equal to 90 days obligation or more, that the parent's driving privileges or hunting privileges be suspended until the court determines that the parent is in compliance with the order of support.

(D) Support Orders.

(1) Any new or existing support order entered by the court under this section shall be deemed to be a series of judgments against the person obligated to pay support:

- (a) each judgment to be in the amount of each payment or installment of support;
- (b) each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order;
- (c) each such judgment shall have the full force, effect and attributes of any other judgment within the Spirit Lake Reservation and the State of North Dakota;
- (d) when child support is to be paid through the clerk of court, the order shall direct the obligor to pay to the clerk, in addition to the child support payments, all fees imposed by the Tribal Court. Unless paid pursuant to an order for withholding, the payment of the fee shall be by a separate instrument from the support payment and

shall be made to the order of the
Spirit Lake Tribal Court.

(e) all orders for support, when entered or modified, shall include a provision requiring the obligor to notify the court and public aid within 14 days of the following:

- the name and address of any new employer of the obligor;
- whether the obligor has access to health insurance coverage, if so, the policy name and number and the names of persons covered;
- any new residential or mailing address and telephone number of the non-custodial parent;
- service of process may be made at the last known address of the non-custodial parent according to the Spirit Lake Law and Order Code of civil procedure which service shall be sufficient for purposes of due process;

(f) an order for support shall include a date on which the current support obligation terminates. The date shall be no earlier than the date on which the child covered by the order will attain the age of majority or is otherwise emancipated;

(g) the order for support shall state that the termination date does not apply to

any arrearage that may remain unpaid on that date;

(b) an order entered under this section shall include a provision requiring the obligor to report to the obligee and to the clerk of the court within 14 days each time the obligor obtains new employment, and each time the obligor's employment is terminated for any reason;

(i) failure to report new employment or the termination of current employment, if coupled with nonpayment of support for a period in excess of 60 days, is punishable by the contempt statutes as well as any other applicable sanctions allowed by the Spirit Lake Law and Order Code;

(j) for any obligor arrested for failure to report new employment, bond shall be set in the amount of the child support that should have been paid during the period of unreported employment;

(k) and order entered under this section shall also include a provision requiring the obligor and obligee parents to advise each other of a change in residence within 5 days of the change unless the court finds that the physical, mental, or emotional health of the minor child, or custodial

party, would be seriously endangered by disclosure of the party's address.

- (2) Unless otherwise ordered by the court, child support payments are due the first day of the following month if the support order is issued after the 15th of the month. If the order is issued prior to the 15th of the month, the support payment is due on the first of the month in which the order was signed.

(E.) Unemployed Persons Owing Duty of Support.

- (1) Whenever it is determined in a proceeding to establish or enforce a child support obligation that the person owing a duty of support is unemployed the court may:
 - (a) order the person to seek employment and report periodically to the court with a diary, a listing of his/her efforts in accordance with such order.
 - (b) order the obligor to provide assistance to the custodial parent in a non-monetary fashion such as providing childcare.

(F.) Health Insurance Coverage.

- (1) Whenever the court establishes, modifies or enforces an order for child support, the court shall include in the order a provision for the health care coverage of the child which shall require that any child covered by the order be named as a beneficiary of any health insurance plan that is available

to the obligor through an employer or labor union or trade union.

(2) Nothing in this section shall be construed to limit the authority of the court to establish or modify a support order to provide for payment of expenses, including deductibles, co-payments and any other health expenses, which are in addition to expenses covered by an insurance plan of which a child is ordered to be named a beneficiary pursuant to this section.

(3) Whenever the obligor fails to provide or maintain health insurance pursuant to an order for support, the obligor shall be liable to the obligee for the dollar amount of the premiums which were not paid and shall also be liable for all medical expenses incurred by the minor child which would have been paid or reimbursed by the health insurance which the obligor was ordered to provide or maintain.

(G.) Employer Obligations.

If a parent is required by an order for support to provide coverage for a child's health care expenses and if that coverage is available to the parent through an employer who does business on the Spirit Lake Indian Reservation or in the State of North Dakota, the employer must do all of the following upon receipt of a copy of the order of support or order for withholding:

- a. The employer shall allow the parent to enroll the child without regard for the enrollment restrictions.
- b. If the parent has health care coverage through the employer but fails to apply for coverage of the child, the employer shall include the child in the parent's coverage upon application by the child's other parent.
- c. The employer may not eliminate any child from the parent's health care coverage unless the employee is no longer employed by the employer and no longer covered under the employer's group health plan.
- d. The employer may eliminate a child from a parent's health care plan obtained by the parent when he/she is provided with satisfactory written evidence of either of the following:
 - i. written proof the order for support is no longer in effect; or
 - ii. written proof the child is or will be included in a comparable health care plan obtained by the parent under such order that is currently in effect or will take effect no later than the date the prior coverage is terminated.

(H.) Payment of Support to the Court.

In actions brought under this Act, the court shall order that support payments be made to the clerk of court as trustee for remittance to the person entitled to receive the payments.

(1) The clerk of court shall maintain records listing the amount of payments, the date payments are required to be made and the names and addresses of the parties affected by the order.

(2) The parties affected by the order shall inform the clerk of court of any change of address or of other conditions that may affect the administration of the order.

(I.) Court and Attorney's Fees.

Upon discretions of the court, the judge may order that court costs accrued under this chapter may be paid by the obligor. It is also within the discretion of the court to order the obligor to pay the attorney's fees accrued by the obligee in bringing an action under this chapter.

(J.) This Court shall give full faith and credit to support order issued by other courts of competent jurisdictions if:

- the issuing court or any party thereto requests recognition of a foreign judgment pursuant to the terms of the Spirit Lake Law and Order Code; and
- the Tribal Court is satisfied that the issuing court had jurisdiction over the parties and the subject matter.

§9-4-128 Child Support Guidelines

Monthly Net Income	One	Two	Three	Four	Five	Six	(Children)
0-300	39	48	60	75	90	105	
350	50	56	70	88	105	123	
400	52	69	80	100	120	140	
450	59	72	90	113	135	158	
500	65	80	100	125	150	175	
550	72	88	110	138	165	193	
600	78	96	120	150	180	210	
650	85	104	130	163	195	228	
700	91	112	140	175	210	245	
750	98	120	150	188	225	263	
800	104	128	160	200	240	280	
850	111	136	170	213	255	298	
900	117	144	180	225	270	315	
950	124	152	190	238	285	333	
1000	130	160	200	250	300	350	
1050	137	168	210	263	315	367	
1100	143	176	220	275	330	385	
1150	150	189	230	288	345	403	
1200	156	192	240	300	360	420	
1250	163	200	250	313	375	438	
1300	169	208	260	325	390	455	
1350	176	216	270	338	405	473	
1400	182	224	280	350	420	490	
1450	189	232	290	363	435	508	
1500	195	240	300	375	450	525	
1550	202	248	310	388	465	543	
1600	208	256	320	400	480	560	
1650	215	264	330	413	495	578	
1700	221	272	340	425	510	595	
1750	228	280	350	438	525	613	
1800	234	288	360	450	540	630	
1850	241	296	370	463	555	648	
1900	247	304	380	475	570	665	
1950	254	312	390	488	585	683	
2000	260	320	400	500	600	700	
	13%	16%	20%	25%	30%	35%	

CHAPTER 5: TERMINATION OF THE PARENT-CHILD RELATIONSHIP

§9-5-101 Purpose.

The purpose of this chapter is to provide for termination of the parent-child relationship by court order. The court action is intended primarily for those situations where other remedies by the court are inappropriate or have been proven ineffective.

§9-5-102 Who May File a Petition.

- (1) One parent may file a petition for the termination of the parent-child relationship between the other parent and the child.
- (2) A guardian or custodian or any other person having knowledge of the circumstances and interests of the child may file a petition for the termination of the parent-child relationship with respect to either or both parents.

§9-5-103 Contents of the Petition.

The petition for termination of the parent-child relationship shall include:

- (1) The name and place of residence of the petitioner.
- (2) The name, sex, date and place of birth, and residence of child, if known.
- (3) The certified degree of Indian Blood of the child and enrollment affiliation, if any.
- (4) The relationship of the petitioner to the child, or the fact that no relationship exists.

- (5) The name, addresses, dates of birth of the parents, if known.
- (6) Where the child's parent is a minor, the name and address of the minor's parents or guardian, if known.
- (7) The name and address of the person having legal custody or guardianship of the child, or acting in the place of the parent of the child, if known.
- (8) The grounds on which termination of the parent-child relationship is sought.

§9-5-104 Social Study Prior to Hearing.

When the Tribal Court receives a petition it shall request a social study to be submitted in writing prior to the hearing from Tribal Social Services or from state or other agencies authorized to provide such services.

§9-5-105 Notice.

After a petition has been filed and the social study made, the Tribal Court shall set the time and place for a hearing and shall cause notice to be given to the petitioner and personally served upon the parents of the child, the person or persons standing in the place of the parents, the guardian of the person of a child, and the person having legal custody of the child. In the case of a voluntary petition of a parent, the parent may waive, in writing, notice and appearance in Tribal Court, provided the Tribal Court is assured that the parent understands the meaning and consequences of the termination action. Where the parent is a minor the waiver shall be effective only upon approval of the Tribal Court.

If the residence of the parent or parents is unknown, or cannot with due diligence to the satisfaction of the Tribal Court be ascertained, or cannot be personally served on the Reservation, or has departed to avoid service, or conceals himself, the Tribal Court may order service to be made by publication for at least three consecutive weeks in a news-paper serving the Reservation which the Tribal Court determines is most likely to give notice of the hearing. The Tribal Court shall also direct a copy of the notice to be forthwith sent by first class mail, directed to the person to be served, at his post office address, if known.

§9-5-106 The Hearing.

The hearing may be conducted in an informal manner. In addition to those persons entitled to notice, other persons may be admitted in the discretion of the Tribal Court if their presence is requested by any person entitled to receive notice of the hearing. The Tribal Court, itself, may request the presence of witnesses or other persons whom the Tribal Court finds to have a direct interest in the case. The general public shall be excluded.

§9-5-107 Disposition of the Petition.

A petition for termination of the parent-child relationship may be granted:

- (1) At the voluntary request of a parent for termination of the parent-child relationship between himself and his child, when this is determined to be in the best interest of the child.
- (2) In other petitions, where the Tribal Court finds:

- (a) That the parent or parents have abandoned the child for a period of one year and have made no effort to retain a parental relationship with the child.
- (b) That the parent or parents have deserted the child, in that they have substantially and continuously or repeatedly refused, or being financially able, have neglected to give such child parental care and protection for a period of one year.
- (c) That the parent or parents have substantially, continuously or repeatedly neglected the child in that they have neglected or refused to provide proper or necessary support or education required by law, medical, surgical or other care necessary for his health, morals or well-being for a period of one year.
- (d) That the parent or parents are unable to discharge their responsibilities toward the child because of depravity, habitual drunkenness, mental illness, mental deficiency, gross immorality, extreme and repeated cruelty for a period of one year, or are or have been found guilty of contributing to the delinquency of the child.
- (e) that the parent or parents voluntarily consented to allow another person be the custodian of the child and raise the child, without parental support, for a period of two years where the custodian had continual

custody of the child for two consecutive years.

§9-5-108 Order of Termination.

Following the hearing on the petition, the Tribal Court shall enter such order as the circumstances warrant, and, in the event the Tribal Court determines the parent-child relationship should be terminated, its order shall include proper findings relative to service of notice, appearances, the grounds on which the decision is made and conclusions of law and judgment that the parent-child relationship between such designated persons is forever terminated.

Subsequent to the issuance of such order terminating the parent-child relationship, the Tribal Court shall, by separate order, appoint a guardian of the person to exercise parental responsibilities for the child pending any permanent plans which may be made for the child through adoption or otherwise. All proceedings conducted under the provisions hereof and the permanent record of the Tribal Court shall be confidential, provided the guardian shall be entitled to a certified true and correct copy of all such orders or instruments that may be necessary for the subsequent adoption of the child.

§9-5-109 Effect of Termination Order.

All rights, duties and obligations between the parent and child are terminated by a termination order, except for any obligation to pay previously accrued child support pursuant to court order.

CHAPTER 6: ADOPTION

§9-6-101 Purpose.

The purpose of this Chapter is to protect the rights and promote the welfare of Indian children, natural parents and adoptive parents.

§9-6-102 Definitions.

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

- (1) Adult means a female or male person eighteen (18) years of age or older.
- (2) Child means a person who is a minor under the age of eighteen (18) years.
- (3) Guardianship of the Person means the duty and authority vested in a guardian of a minor. It includes the general power to make decisions such as consent to major medical, psychiatric and surgical treatment; consent to marriage, and consent to enlistment in the armed forces of the United States; authority to represent the minor in legal actions when the parent-child relationship has been terminated by court order with respect to the parents, or only living parent; or when no living parent can be found after diligent search, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.
- (4) Care and control means the right given by the Tribal Court to the physical custody and control of the child and the responsibility to provide

for the daily care of the child, unless otherwise specified by court order.

- (5) Parent means (a) the mother, (b) a father, (c) a person that is a parent according to tribal tradition or custom, or (d) an adoptive parent, but not a parent as to whom the parent-child relationship has been terminated by court order.
- (6) Parent-Child Relationship means all rights, privileges, duties, and obligations existing between parent and child, including inheritance rights.
- (7) Protective Supervision means a legal status created by court order whereby the child is under the protective supervision of the Tribal Court and/or Tribal Social Services.
- (8) Relatives mean relatives of the child within the second degree either by blood or affinity including step parents, sisters, brothers, grandparents, aunts and uncles or as that term would have meaning under the traditions and customs of the Spirit Lake Tribe.
- (9) Ward of the Court means the Spirit Lake Tribal Court retains legal custody of the minor while care and control may be placed with another person or agency.
- (10) Tribal Court means the Spirit Lake Tribal Court.
- (11) Tribe means the Spirit Lake Tribe.

§9-6-103 Jurisdiction.

The Tribal Court shall have original jurisdiction in adoption matters. The Court shall have jurisdiction over all wards of the Tribal Court, all children residing within

the exterior boundaries of the Spirit Lake Indian Reservation and all children who are enrolled members of the Spirit Lake Tribe.

§9-6-104 Petition for Adoption.

The Petition for Adoption shall be filed with the Tribal Court on a form prescribed by the Tribal Court. It shall be verified under oath by the adoptive parent or parents, and shall contain:

- (1) the full name, the residence and the sex of the child and documentary proof of the date and place of the birth of the child to be adopted;
- (2) the full name, the residence, date and place of birth and occupation of the adoptive parent or parents and documentary proof of their marital status;
- (3) proof of parental consent to the adoption or proof of a court order terminating the parent-child relationship with respect to any living parent who does not consent;
- (4) an agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child;
- (5) a full description and statement of value of all property owned or possessed by the child.
- (6) whether the child is an Indian child, and if so, what Tribe the child is enrolled in.

§9-6-105 Who May File a Petition.

Any adult residing within the jurisdiction of the Tribal Court may file a petition to adopt an Indian child residing within the jurisdiction of the Tribal Court. In

the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition. The adoptive applicants must be at least ten (10) years older than the child.

§9-6-106 When Consent to Adoption is Required.

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

§9-6-107 Consents to Adoption.

- (1) Form of consent. Consents to adoption shall be acknowledged before a person duly authorized to take acknowledgments and/or may be witnessed by a representative of the Tribal Court.
- (2) Consent by a Child Aged 12 or Older. The adoption of a child 12 years of age or older shall not be granted without the child's consent given in

court or in writing in such form as the court may direct.

- (3) Filing of Consents. Written consents where required by this ordinance, shall be attached to the adoption petition. A consent by a guardian of the child's person shall be accompanied by evidence satisfactory to the Tribal Court establishing the guardian's authority to consent to adoption of the child.
- (4) Withdrawal of Consent. No consent to adoption shall be withdrawn unless authorized by order of the Tribal Court, after notice and opportunity to be heard is given to the petitioner in the adoption proceedings and to the person who is to withdraw consent. The Tribal Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal. In no cases can the consent be withdrawn after the hearing, issuance and service of a termination order.

§9-6-109 Investigation Report.

As soon as reasonably possible, after the filing of a petition for adoption, the court shall request the assistance of the Tribal Social Services or an agent of the state, or a probation officer where participating in the supervision of custody of the child to inquire into, investigate and report, in writing, to the court within thirty (30) days as to the suitability of the child for adoption, the financial ability, moral and physical fitness and general background of the adoptive home and of the

adoptive parent or parents, and to make recommendations on the proposed adoption.

§9-6-110 Hearing on Adoption.

Within five (5) days after the written report required by §9-6-109 is filed, the court shall fix a time for hearing on the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified and may appear or be represented by a person having power of attorney authorizing such person to represent them for the purpose of the adoption.

The judge shall examine all persons appearing separately and if satisfied as to the suitability of the child for adoption, the validity of the consent to adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and the best interests of the child will be promoted by the adoption, may enter a final decree of adoption in the case of a child who has been in the custody of the petitioners and provided for by them for more than one year or may place the child in legal custody of the petitioners for a period of not less than six (6) months prior to entering a final decree of adoption, or if the court is satisfied that the adoption petition will not be in the best interest of the child, the petition shall be denied and the guardian so instructed to arrange suitable care for the child and the court may request Tribal Social Services or State agencies, or other agencies authorized to provide such services to assist in the placement and the care of the child.

§9-6-111 Report and Final Decree of Adoption.

No final order may be entered by the Tribal Court until the child to be adopted has lived and resided for a period of at least six (6) months in the home of the adoptive parents. In the case of a stepparent adoption this six-month requirement may be waived by the Court. In any case where the Tribal Court finds that the best interests of the child will not be served by the adoption, a guardian of person will be appointed and suitable arrangements for the care of the child shall be made and the Tribal Court may request Tribal Social Services or State agencies or other agencies authorized to provide such services to assist in the placement and the care of the child.

§9-6-112 Adoption Records.

All records, reports, proceedings and orders in adoption cases are confidential and permanent records of the Tribal Court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Tribal Court by the adopted person after reaching legal majority, or upon order of the Tribal Court upon good and sufficient cause shown.

§9-6-113 Contents of Adoption Order.

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the

findings of the Tribal Court upon the evidence adduced at the hearings.

The Order shall also set forth whether the child is an Indian child, and if so, shall indicate the certified degree of Indian Blood and enrollment affiliation of the child.

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

§9-6-114 Name and Legal Status of Adopted Child.

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

for enrollment in the Spirit Lake Tribe based upon the biological parents bloodline.

§9-6-115 Ecagwaya or Traditional Adoption.

Ecagwaya is to raise or to take in as if the child is a biological child according to tribal custom. It is the placement of a child by his/her natural parent(s) with another family without any court involvement. After a period of two (2) years in the care of another family, the Court, upon petition of the adoptive parents, will recognize that the adoptive parents, in custom or tradition have certain rights over a child even though the parental rights of the natural parents have never been legally terminated. Traditional adoption must be attested to by two (2) reliable witnesses.

The court, in its discretion, on a case-by-case basis, shall resolve any questions that arise over the respective rights of the natural parent(s) and the adoptive parent(s) in the traditional adoption. The decision of the Court shall be based on what is in the best interests of the child and on recognition of where the child's sense of family is. The Court shall take "Judicial Notice" after a proper due process proceedings that, indeed, Ecagwaya is a custom and tradition of the Spirit Lake Tribe.