

**WHITE EARTH BAND OF OJIBWE  
FAMILY RELATIONS CODE**

**CHAPTER 3  
VOID AND VOIDABLE MARRIAGES**

**Section 1. Void Marriages**

- (a) All marriages which are prohibited by law on account of consanguinity, meaning of close relation, or on account of either or both parties being under the age established for marriage, or on account of either party having a husband or wife still living, if solemnized, shall be absolutely void, without any decree of divorce or other legal proceeding; provided that, if any person whose husband or wife has been absent for five (5) successive years, without being known to such person to be living during that time, marriages during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged.

**Section 2. Voidable Marriages**

A marriage shall be declared voidable under the following circumstances:

- (a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized due to:
1. a mental incapacity and the other party did not know of the incapacity;  
or
  2. being under the influence of alcohol, drugs, or other incapacitating substances; or
  3. because consent of either party was obtained by duress, force or fraud.
- (a) A party lacks the physical capacity to consummate the marriage and the other party at the time of the marriage did not know of the incapacity.
- (b) A party was under the age of marriage.

**CHAPTER 4  
LEGAL SEPARATION**

**Section 1. Effect of a Separation Agreement**

- (a) To promote the friendly settlement of disputes between parties to a marriage, the parties may enter into a written separation agreement containing provisions for the disposition of any property owned by either

of them, maintenance of either of them, and support, custody and visitation of their children.

- (b) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request by the court, that the separation agreement is unfair.
- (c) If the court finds the separation agreement unfair as to disposition of property or maintenance, it may request the parties submit a revised separation agreement or make the order for the disposition of property or maintenance.
- (d) If the court finds that the separation agreement is fair as to disposition of property or maintenance, and that it is reasonable as to support, custody and visitation of the children, the separation agreement shall be set forth or incorporated by reference in the decree of dissolution or legal separation and the parties shall be ordered to perform them. If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement as incorporated by reference and state that the court has found the terms as to property disposition and maintenance not unfair and the terms as to support, custody and visitation of children are reasonable.
- (e) Terms of the agreement set forth or incorporated by reference in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt.

## CHAPTER 5 ANNULMENT

### Section 1. Action to Annul

When the validity of a marriage is disputed for any of the causes mentioned in Section 1 or 2 of Chapter 3 of the Family Relations code, either party, may begin an action in the White Earth Tribal Court to annul the same. In such action the complaint shall be filed and proceedings had thereon as in actions for divorce and upon proof of the nullity of the marriage, it shall be adjudged null and void.

### Section 2. Insufficient Grounds for Annulment

- (a) No marriage shall be adjudged a nullity on the ground that one of the parties was under the age of legal consent if it appears that the parties had voluntarily lived together as husband and wife after having attained such age;
- (b) The marriage of any insane person shall not be adjudged void after restoration to reason, if it appears that the parties freely cohabited together as husband and wife after such restoration.

## CHAPTER 6 DIVORCE

### Section 1. Grounds for Divorce

An irretrievable breakdown is a finding that there is no reasonable prospect of reconciliation that must be supported by sworn testimony of one of the parties.

- (a) A judge may, at the discretion of the court, require marriage counseling before a declaration of irretrievable breakdown is made, however, if there is a domestic abuse in the marriage, this may not be appropriate.
- (b) A judge may require the parties to go through mediation, which is a process where a neutral third person assists and encourages parties in conflict to reach a settlement of the dispute that is satisfactory to both parties, unless domestic abuse is prevalent in the marital relationship.

## CHAPTER 7 PROCEDURE FOR ANNULMENT AND DIVORCE

### Section 1. Commencement of Action

- (a) Any person applying for annulment or divorce shall deposit with the clerk of the White Earth Tribal Court, twenty-five dollars (\$25.00) at the time of the action; and in case the defendant files a cross-complaint or answer, the clerk will require the defendant to pay into the court a fee of twenty-five dollars (\$25.00) also. The court has the discretion to waive all or a portion of the filing fee if indigence is proven, keeping in mind that no person shall be barred from the court because of lack of funds.
- (b) The complaining party shall file with the clerk a verified complaint concisely stating his or her cause of action and thereupon, the clerk shall issue a summons in the name of the White Earth Tribal Court to the defendant informing him or her of the pendency of the action and the

summons shall concisely state the grounds upon which annulment or divorce has been requested.

Section 2. Requisites of the Complaint or Petition for Divorce or Annulment

- (a) The name and address of the petitioner, and whether the child support or spousal maintenance is involved, the petitioner's social security number, and any other prior names.
- (b) The name and, if known, the address of the respondent, and where child support or spousal maintenance is involved, the respondent's social security number, and any other prior names;
- (c) The place, including county, and date of the party's marriage.
- (d) The name, social security number, age and date of birth of each living minor or dependent child of the parties born before the marriage or born or adopted after the marriage, and a reference to the expected date of the birth of a child of the parties conceived during the marriage but not yet born.
- (e) Whether or not a separate proceeding for dissolution is pending in a court other than the White Earth Tribal Court.
- (f) There was an irretrievable breakdown of the marriage relationship.
- (g) Any temporary or permanent maintenance, child support, child custody, disposition of property, attorney fees, costs, and disbursements applied for, without setting forth amounts.
- (h) Whether an order for protection is in effect and, if so, the jurisdiction in which it was entered.
- (i) If either party has a retirement or pension account, the name and address of the agent along with the amount of each account.

Section 3. Service of Process

- (a) Service by mail can be commenced by mailing a copy of the summons and petition to the person to be served by certified mail.
- (b) Personal service is made by delivering a copy of the summons and petition personally, or by leaving a copy at the person's residence with someone of suitable age who is residing there.

- (c) If a personal service cannot be made then the service can be accomplished through publication through the tribal, local, or other comparable newspaper that would be seen by the party being served after the other means of service were found to be unsuccessful by the White Earth Tribal Court.
- (c) An affidavit of service needs to be filed with the court by the person who accomplished the service. If the service was done by publication, then the service is done by the publisher.
- (d) The defendant shall have thirty (30) days in which to answer the complaint from the time of the completed service either personally, posting or by mail.

#### Section 4. Response

The non-petitioning spouse may file a response to the petition within thirty (30) days of the receipt of the petition. Such response may state the background facts, seek a division of property or custody of children that is different from any proposed by petition or may counterclaim if there are other relevant issues.

## CHAPTER 8 COURT PROCEDURES

#### Section 1. Hearing

- (a) In all divorce cases, the court shall order and hold a hearing, unless the parties have agreed to all matters and issues pending in which case the court shall have discretion to enter a decree without a hearing if the court is convinced the stipulation is fair.
- (b) The hearing shall be held within a reasonable time after the date of the petition is filed.
  - (1) Where the custody of the children is an issue, the court has the discretion to order a home study by an appropriate social worker or other professional, to be completed prior to the hearing.
- (c) At the hearing, both spouses shall have the opportunity to testify, cross-examine the other spouse and any witnesses, and present documentary evidence.
- (d) Each spouse may retain certified legal counsel or an advocate to be otherwise represented in the proceeding.

- (e) If the defendant fails to appear and answer within the time required, the case may be heard by the Judge at anytime thereafter, but if the defendant answers the case, then a trial shall be scheduled on the court calendar by the clerk.
- (f) The court shall make and enter findings of fact, conclusions of law, and a decree; and the same shall be filed and recorded by the clerk and two certified originals; shall be forwarded to both parties and/or their attorneys or advocates.

## Section 2. Default Judgment; Failure to Answer

- (a) If the respondent does not appear after the service is duly made and proved, the court may hear and determine the proceeding as a default matter.
  - (1) default proceedings will be closely scrutinized by the court to insure that the respondent's intentions are not disregarded.
  - (2) the excuse of mistake or neglect, when service has been properly accomplished, shall not be grounds to vacate judgment.

## Section 3. Judgment and Divorce of Annulment

Whenever the marriage shall be declared void or dissolved, the White Earth Tribal Court shall have the power to impose further judgment as follows:

- (a) For the future care and custody of the minor children of the marriage as it may deem just and proper. No preference in custody will be given to either parent based on gender;
- (b) For the recovery from the party not granted the care and custody of the child (ren), such amount of money, to contribute to future care, medical expenses, and education;
- (c) For future spousal maintenance for a reasonable amount of time deemed just and proper;
- (d) For the approval of any property settlement between the parties or recovery and delivery to each of the parties any of their personal property in the possession or control of the other at the time of the judgment;
- (e) For the division or other disposition between the parties of the real and personal property that is deemed fair and just;

- (f) The tribal court shall have authority to change the name of any persons upon the petition of such persons or upon the petition of the parents of the minor. The order granting such name change shall be kept as a permanent record, and a copy of such order shall be filed with the Clerk of Court.

#### Section 4. Setting Aside of Modifying Judgment

At any time before a divorce judgment becomes final, the court or Judge, upon complaint of either party, shall have the power to set aside, alter or modify so much of the judgment as may provide for the appointment of a trustee or trustees for the care and custody of minor child(ren), or the support or education and for the maintenance of either party to the action; provided, however, that said judgment shall be a final judgment as to any installment or payments of money or payments of property provided for therein which have accrued up to the time either party shall file an action with the court to set the Judgment aside or alter or modify the same.

#### Section 5. Temporary Hearings

If temporary relief is desired, but no agreement between the parties can be reached, either party may request by motion, and the court may grant, pending the final disposition, a temporary order:

- (1) for the temporary custody and visitation rights of the minor children of the parties;
- (2) for the temporary maintenance of either spouse;
- (3) for temporary child support of the children of the parties;
- (4) to award the temporary use and possession, exclusive or otherwise, of the family home, furniture, household goods, automobiles, and other property of the parties;
- (5) to restrain one or both parties from transferring, encumbering, concealing, or disposing of property, except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the temporary order has been served or communicated in an open court.
- (6) to exclude a party from the family home of the parties or from the home of the other party;
- (7) to require one party or both parties to perform or not to perform such additional acts as will facilitate the just and speedy disposition of the proceedings or protect the parties or their children from physical or emotional harm.

## CHAPTER 9 CHILD CUSTODY

### Section 1. Custody Action

In any action for annulment or divorce, the White Earth Tribal Court shall have authority to determine the custody of any child of the marriage, any child born out of wedlock, or any other child in the custody of either party who are under the age of eighteen (18) years of age.

### Section 2. Factors in Determining Custody

- (a) When joint legal or joint physical custody is sought, the court shall consider the following relevant factors:
  - (1) the ability of the parents to cooperate in the rearing of the child(ren);
  - (2) the reasonable preference of the child if the child is of a sufficient age;
  - (3) the interaction and relationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
  - (4) the ability of the child to have a stable, satisfactory living environment;
  - (5) the permanence of the proposed custodial home;
  - (6) the capacity and disposition of the parties to give the child love, affection, guidance, and to continue educating and raising the child in the child's culture and religion, if any.

### Section 3 Visitation Rights

- (a) In all divorce or annulment proceedings, subsequent to the commencement of the action and continuing during the minority of the child, the court may, upon the request of the non-custodial parent, grant such rights as will enable the child and the non-custodial parent to maintain such child to parent relationship as will be beneficial to the child.



- (b) A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of visitation, unless such inability is willful.
- (c) The custodial parent shall present the child for visitation by the non-custodial parent, as such time as the court directs or was agreed upon.
- (d) Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of court and may be cause for reversal of custody.
- (e) Supervised visits may be ordered if warranted by the court.

#### Section 4. Guardian Ad Litem

At any stage of the proceedings conducted under this code, the court may appoint separate counsel or a spokesperson for the child, without affecting the right to counsel of the parents, guardians or other legal custodians, to act as guardian ad litem representing the child's best interests.

#### Section 5. Stand-by Custodian

- (a) A Stand-by Custodian may be appointed by a designator. A designator is defined as the person who has physical and/or legal custody of named children.
- (b) The designator shall list his/her name, the children's name, date of birth and social security number.
- (c) The designator shall list the other parent with that parent's name, address, date of death, if applicable or date of termination of parental rights.
- (d) The other parent shall be notified of the designation or petition of a stand-by custodian. If unable to locate the other parent, the petitioner may publish notice in a local newspaper.
- (e) The stand-by custodian is granted authority to act for 60 days following the occurrence of the triggering event as co-custodian with the designator or in the event of his/her death, as custodian of his/her children.
- (f) The designator may name an alternate stand-by custodian to assume temporary custody if the named custodian is unable to fulfill their duties as temporary custodian.

- (g) The custodial parent or designator shall list the “triggering event” such as “my death” or such other triggering event. The custodial parent shall be of sound mind.
- (h) The designation shall be signed by two (2) witnesses with their addresses listed.
- (i) The stand-by custodian must accept the nomination as stand-by or temporary custodian and must sign and date the designation document.
- (j) The stand-by custodian must file a petition with the court for continued custody within 60 days of the triggering event
- (k) The designation must be filed with tribal court within 14 days of signing. Tribal court may conduct a hearing on the designation of a stand-by custodian within 14 days. If unable to have a hearing within 14 days, the court may enter an ex-parte order if exigent circumstances warrant it, ie imminent death of the designator (within 48 hours).

## CHAPTER 10 CHILD SUPPORT

### Section 1 Child Support Factors

- (a) In a proceeding for dissolution of marriage, legal separation, 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 his 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 the custodial 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 the educational needs;
  - (5) the financial resources and needs of the non-custodial parent;
  - (6) excessive or abnormal expenditures, destruction, concealment or fraudulent disposition or community, joint tenancy, and other property held in common.

Section 2. Child Support Guidelines

The court shall enter an award for child support payments in accordance with the provisions of this Section. The court may order either or both parents owing a duty of support to a child to pay an amount of money, which is reasonable or necessary for the child's support. This Section shall be limited to prospective child support payments calculated from the filing date of the petition. The court shall derive a specific dollar amount for child support by multiplying the obligor's net income by the percentage indicated in the following guidelines:

WHITE EARTH TRIBAL COURT  
CHILD SUPPORT PAYMENT GUIDELINES  
MONTHLY PAYMENTS

Pay Net Monthly	Number of Children						
	1	2	3	4	5	6	7 or more
\$550 and Below	Order based on the ability of the obligor to provide support at these income levels, or at higher levels, if the obligor has the earning ability.						
\$551-600	16%	19%	22%	25%	28%	30%	32%
\$601-650	17%	21%	24%	27%	29%	32%	34%
\$651-700	18%	22%	25%	28%	31%	34%	36%
\$701-750	19%	23%	27%	30%	33%	36%	38%
\$751-800	20%	24%	28%	31%	35%	38%	40%
\$801-850	21%	25%	29%	33%	36%	40%	42%
\$851-900	22%	27%	31%	34%	38%	41%	44%
\$901-950	23%	28%	32%	36%	40%	43%	46%
\$951-1000	24%	29%	34%	38%	41%	45%	48%
\$1001-5000	25%	30%	35%	39%	43%	47%	50%

### Section 3. Deviation from Guidelines

In addition to the Child Support Guidelines, the court may take into consideration the following facts in setting or modifying child support or in determining whether to deviate from the guidelines:

- (a) All earnings, income, and resource of the parents, including real and personal property;
- (b) The financial needs and resources, physical and emotional condition, and educational needs of the child(ren) to be supported;
- (c) Whether or not the parents have separate households;
- (d) Which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it;
- (e) The parents' debts owed to private creditors;
- (f) The non-custodial parent's earning capacity based on past earnings or lack of earnings.

### Section 4. Court Findings on Child Support

- (a) The court shall make written findings concerning the amount of the obligor's income used as the basis for the guidelines calculation any evidentiary factors affecting the determination of child support.
- (b) If the court deviates from the guidelines, the court shall make written findings regarding the amount of support calculated under the guidelines, the reason for the deviation, and how the deviation serves the best interests of the child.
- (c) If the court finds that a parent is voluntarily unemployed or underemployed, child support can be calculated based on a determination of imputed income by showing:
  - (1) it is temporary and will ultimately lead to an increase in income;
  - (2) a bona fide career change outweighs the adverse effect of the parent's diminished income;

- (3) if the court is unable to determine or estimate the earning ability of a parent, the court may calculate child support based on full-time employment of forty (40) hours per week at the federal minimum wage;
- (4) if a parent is a recipient of public assistance or is physically or mentally incapacitated, child support may be reserved.

#### Section 5. Child Support Modifications

- (a) An order for child support can be modified based on a cost of living increase and the adjustment shall specify the cost-of living index to be applied.
- (b) The court may order an employer or payor of funds to withhold from the obligor's income an additional amount equal to 20 percent of the monthly child support or maintenance obligation until any arrearage is paid.
- (c) The terms of a child support order can be modified by the party seeking modification upon showing to the court substantial change in circumstances of the party (s) since the date of the support order.

### CHAPTER 11 DIVISION OF PROPERTY

#### Section 1. Disposition of Property

Upon a divorce or annulment, the court may make such disposition of the property of the parties acquired during the marriage as shall appear just and equitable, having regard to the nature and determination of the issues in the case, the amount of alimony or support money, if any, awarded in the judgment, the manner by which said property was acquired and the persons paying or supplying the consideration therefore, the charges or liens imposed to secure payment of alimony or support money, and all the facts and circumstances of the case.

#### Section 2. Household Good, Furniture and Other Property

Upon a divorce or annulment, the court may award to either spouse the household goods and furniture of the parties acquired during the marriage, and may also order and decree to either spouse such part of the real and personal estate of the other not acquired during the marriage, not exceeding in present value, one-half thereof, as it deems just and reasonable, having regard to the amount of property

decreed under Section 1 of this Chapter, the amount of alimony and support money awarded, if any, the character and situation of the parties, the nature and determination of the issues, and all other circumstances of the case.

### Section 3. Homestead

The court, having due regard to all the circumstances and the custody of any child(ren) of the parties, exclusive or otherwise, upon a final decree of divorce or annulment, may award the homestead to either party for such a period of time that may be determined by the court.

### Section 4. Pension Plans

- (a) The division of marital property that represents pension plan benefits or rights in the form of future pension plan payments:
  - (1) is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;
  - (2) is not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;
  - (3) is not payable in a lump sum amount from pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or recipient of a pension plan;
  - (4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and
  - (5) in the case of public pension plan, benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.
- (b) The individual retirement account plans may provide in its plan document, if published and made generally available, for an alternative marital property division or distribution of individual retirement account plan assets. If an alternative division or distribution procedure is provided, it applies in place of paragraph (a), clause (5).