

**TITLE IX
DOMESTIC RELATIONS CODE**

CHAPTER 1 FAMILY PROTECTION

Section 9-1-1 Petition for Order of Protection

(1) A victim of domestic abuse may petition the court under this act for an order of protection. (Form IX-1)

(2) The petition shall be made under oath or be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic abuse.

(3) No petitioner is required to file for annulment, separation or divorce as a prerequisite to obtaining an order of protection.

(4) The filing fee is \$25.00.

(5) If the petition is accompanied by an affidavit to the effect that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person without payment of court costs. In determining the financial status of the petitioner under this subsection, the income of the alleged perpetrator of the domestic abuse shall not be considered. (Form IX-2)

(5) The court shall make available standard petition forms with instructions for completion to be used by petitioners not represented by counsel.

Section 9-1-2 Temporary Order of Protection; Setting Hearing

(1) Upon the filing of a petition for order of protection (Form IX-3) the court shall:

 a) Immediately grant an ex parte temporary order of protection if it clearly appears from the specific facts shown by the affidavit or by the petition that there exists a real danger of further domestic abuse;

 b) Cause the temporary order of protection, together with notice of hearing, to be served on the alleged perpetrator of the domestic abuse immediately;

 c) Within seventy-two (72) hours after the granting of the temporary order of protection hold a hearing on the question of continuing the order; or

d) If an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two (72) hours after the filing of the petition.

Section 9-1-3 Order of Protection; Contents; Remedies; Order Not to Affect Title to Property

(1) Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection ordering the respondent household member to refrain from abusing the petitioner or any other household member. The order shall specifically describe the behavior the court has ordered the respondent to do or refrain from doing. As a part of any order of protection (Form IX-4) the court may:

a) Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective, or order the respondent to provide temporary suitable alternative housing for petitioner and any children to whom the respondent owes a legal obligation of support;

b) Award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the petitioner;

c) Order that the respondent shall not initiate contact with the petitioner;

d) Prohibit the respondent from abducting, removing or concealing any child in the custody of the petitioner;

e) Restrain the respondent from transferring, concealing, encumbering or otherwise disposing of the petitioner's property or the joint property of the parties;

f) Order other injunctive relief as the court deems necessary for the protection of the petitioner; or

g) If after hearing it finds by a preponderance of evidence that an act of domestic abuse has occurred or that there exists a real danger of further domestic abuse, require the respondent to undergo appropriate professional counseling for a specified period of time not to exceed ninety (90) days.

(2) The order shall contain notice that willful violation of any provision of the order constitutes contempt of court and may result in fine or punishment.

(3) No order issued under this act shall affect title to any property nor allow the petitioner to transfer, conceal, encumber or otherwise dispose of respondent's property or the joint property of the parties.

Section 9-1-4 Service of Court; Duration and Extension of Order, Violation Constitutes Contempt; Remedies not Exclusive

(1) An order of protection granted under this act shall be filed with the clerk of court and a copy shall be sent by the clerk to the Police Department. The order shall be personally served upon the respondent unless he or his attorney was present at the time the order was issued.

(2) An order of protection granted by the court shall be effective for a fixed period of time not to exceed three (3) months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed three (3) months. (Form IX-5)

(3) Willful violation of an order of protection granted under this act is punishable as contempt of court.

(4) The remedies provided by this act are in addition to any other civil or criminal remedy available to the petitioner.

Section 9-1-5 Emergency Assistance by Law Enforcement Officers; Limited Liability

(1) A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.

(2) A local law enforcement officer responding to the request for assistance may take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:

- a) Advising the victim of the remedies available under this act and the availability of shelter, medical care, counseling and other services;
- b) Providing or arranging for transportation of the victim to a medical facility or place of shelter;
- c) Accompanying the victim to the residence to remove the victim's personal clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;
- d) Arresting the abusing household member when appropriate; and
- e) Advising the victim when appropriate of the procedure for initiating proceedings under this act or criminal proceedings and the importance of preserving evidence.

(3) Any law enforcement officer responding to a request for assistance under this act is immune from civil liability when complying with the request providing the officer acts in good faith and in a reasonable manner.

CHAPTER 2 TERMINATION OF PARENTAL RIGHTS

Section 9-2-1 Grounds for Termination of Parent-Child Legal Relationship: Clear and Convincing Evidence

(1) The parent-child relationship may be terminated if any one or more of the following facts is established by clear and convincing evidence:

a) The child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one (1) year. In making the above determination, the court may disregard occasional contributions, or incidental contacts and communications;

b) The child has been abandoned with no means of identification for at least three (3) months and efforts to locate the parent have been unsuccessful;

c) The child has been abused or neglected by the parent and efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child's health and safety would be seriously jeopardized by remaining with or returning to the parent; or

d) The parent is incarcerated due to the conviction of felony and a showing that the parent is unfit to have the custody and control of the child.

Section 9-2-2 Who May Petition

The petition for termination of the parent-child relationship shall be filed with the court by:

(1) Either parent, when termination of the parent-child legal relationship is sought with respect to the other parent.

(2) The guardian or the legal custodian of the child.

(3) An authorized agency.

Section 9-2-3 Petition; Contents

The petition shall contain:

- (1) The legal name, sex, date and place of birth of the child, if known, and the jurisdictional facts. (Form IX-6)
- (2) The name and residence of the petitioner and his relationship to the child.
- (3) The name, address and place and date of birth of the parent, if known, and the name of the person having the legal custody or guardianship of the child.
- (4) The grounds for termination of the parent-child legal relationship pursuant to Ch. 2, Sec 1 Domestic Relations Code.
- (5) The name and address of the person or authorized agency requesting appointment as the guardian of the child.

Section 9-2-4 Hearing; Appointment of Guardian Ad Litem; Notice

After the petition has been filed, the court shall appoint a guardian ad litem to represent the child. When a petition is filed and presented to the judge, he shall set the petition for hearing. The Shoshone and Arapaho Rules of Civil Procedure, including the right of a parent, child or interested person to demand a jury trial, shall be applicable in actions brought under this act.

Section 9-2-5 Service

- (1) The petition shall be served on the following persons:
 - a) The parent of the child;
 - b) The guardian ad litem; or
 - c) The guardian or next friend of the parent if the parent is a minor.
- (2) Service of the petition on the person required to be served by subsection (1) of this section shall be made as provided by the Shoshone and Arapaho Rules of Civil Procedure. If the person is a non-resident or his residence is unknown, service may be had by constructive service or by publication as provided in the Shoshone and Arapaho Rules of Civil Procedure.

Section 9-2-6 Social Study Required; Information to be Shown; Not Excluded as Hearsay

Upon the filing of a petition, the court shall direct that a social study be made by the appropriate authorized agency to aid the court in making a final disposition of the petition. The social study shall state the factual information pertaining to the allegations in the petition, the social history and the present situation and environment of the child and parent. The social study shall not be excluded as evidence by reason of hearsay alone. The social study shall be made available to any party to the action upon request. (Form IX-7 and IX-8)

Section 9-2-7 Order Terminating the Parent-Child Legal Relationship; Contents

The order terminating the parent-child legal relationship shall be in writing and shall contain the findings of the court. If the court terminates the parent-child legal relationship of either one or both parents, it shall fix the responsibility for the child's support and appoint a guardian of the child's person or estate or both. (Form IX-9).

Section 9-2-8 Dismissal of Petition; Continuation of Hearing

If the court does not terminate the parent-child legal relationship, it shall dismiss the petition or direct an authorized agency to continue to make efforts to rehabilitate the parent and continue the hearing for no longer than six (6) months. The authorized agency shall provide the court with any additional reports regarding its rehabilitative efforts and results. Pending final hearing, the court may continue the present placement of the child or place the child in the temporary custody of an authorized agency and fix responsibility for temporary child support. (Form IX-10 and IX-11)

Section 9-2-9 Effect of Order of Termination

An order terminating the parent-child legal relationship divests the parent and the child of all legal rights, privileges, duties and support obligations with respect to each other, except the right of the child to inherit from the parent shall not be affected by the order. The parent whose parent-child legal relationship has been terminated is not thereafter entitled to the notice of proceedings for the adoption of the child, nor has he any right to object to the adoption or otherwise participate in the adoption proceedings.

Section 9-2-10 Costs of Proceedings; Appointing of Counsel

(1) The court may appoint counsel for any party who is indigent, which shall be established by written affidavit signed and sworn to by the party or sworn testimony made a part of the record of the proceedings. The affidavit or sworn testimony shall state that the party is without sufficient money, property, assets or credit to employ counsel in his own behalf. The court may require further verification of financial condition as it deems necessary.

(2) Where petitioner is an authorized agency, it shall pay for the costs of the action. Costs shall include:

- a) Fee for the guardian ad litem;
- b) Attorney's fee for an indigent party; and
- c) Other professional fees incurred by an indigent party in defense of an action brought under this act.

(3) Prior to incurring any cost under subsection (2) of this section, application shall be made to the court and written approval by the court shall be obtained.

CHAPTER 3 ADOPTION

Section 9-3-1 Jurisdiction

The court shall have original jurisdiction in adoptive matters.

Section 9-3-2 Petition for Adoption

The petition for adoption shall be filed with the court on a form prescribed by the court. It shall be verified under oath by the adoptive parent or parents, and shall contain (Form IX-12):

- (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 of the adoption where the petitioners are relatives of the child within the second degree, either by blood or affinity, or in other cases, proof of a court order terminating the parent-child relationship with respect to each living parent of the child who is to be adopted.
- (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.

Section 9-3-3 Who May File a Petition

Any adult residing within the jurisdiction of the court may file a petition to adopt a minor child residing within the jurisdiction of the 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.

Section 9-3-4 Petition by Relative Within the Second Degree

No petition for adoption by relatives of the child within the second degree, either by blood or affinity, shall be granted an adoption order unless such parent of the child, or if there is no parent, the guardian of the child's person, consents in writing to the adoption of the child by the petitioners. A minor parent may consent to an adoption provided the parents of the minor concur. The court may waive consent of the minor's parents if it finds that the withholding of such consent is arbitrary and capricious.

Section 9-3-5 Petition by Persons Who are Not Relatives Within the Second Degree of Kinship

Petition for adoption by persons who are not relatives within the second degree of kinship, either by blood or affinity, shall not be entertained unless prior to filing the petition:

(1) Form of Consent. Consents to adoption shall be acknowledged before an officer duly authorized to take acknowledgments and witnessed by a representative of the court.

(2) Consent by a Child Aged Twelve (12) or Older. The adoption of a child twelve (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 code 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 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 court, after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, and to the person seeking to withdraw consent. The court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by granting such withdrawal.

(5) Consent Irrevocable After Order of Adoption. The entry of an order of adoption renders any consent irrevocable.

Section 9-3-6 Preadoptive Study

Within five (5) days after the filing of a petition for adoption, the court shall request the assistance of the Bureau of Indian Affairs, Branch of Social Services, tribal social services department or an agency of the State, or a probation officer, or a juvenile officer where participating in the supervision of custody of the child, to inquire into, investigate, and report in writing to the court 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 of the proposed adoptions. (Form IX-13)

Section 9-3-7 Hearing of Adoption

Within five (5) days after the written report required by Section 9-3-6 is filed, the court shall fix a time for hearing on the petition for adoption. The adoptive parent or parents shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall appear personally, unless represented by a person having a 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 that 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 (1) year or may place the child in the legal custody of the petitioners for a period of not less than six (6) months prior to entering a final decree of adoption.

Section 9-3-8 Report and Final Decree of Adoption

Within one (1) year after the child has been in the custody of the petitioner, the court shall request a supplementary written report under the same procedure followed in Section 9-3-6 as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the court is satisfied the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the 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 any case where the court finds that the best interests of the child will not be served by the adoption, a guardian of the person shall be appointed and suitable arrangements for the care of the child shall be made, and the court may request the Bureau of Indian Affairs, Branch of Welfare, or state agencies or tribal agencies authorized to provide such services to assist in the placement and the care of the child. (Form IX-14)

Section 9-3-9 Adoption Records

All records, reports, proceedings and orders in adoption cases are confidential records of the court and shall not be available for release or inspection by the public. Information

contained in such records may be released upon petition to the court by the adopted person after reaching legal majority for good cause shown.

Section 9-3-10 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 court upon the evidence adduced at the hearings. A true and correct copy of each adoption order shall be filed with the Executive Secretary of the Joint Business Council of the Shoshone and Arapaho Tribes and as required by the regulations of the Bureau of Indian Affairs. (Form IX-15)

Section 9-3-11 Name and Legal Status of Adopted Child

Minor children adopted by order of the 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 children or heirs of the person adopting them.

CHAPTER 4 PARENTAGE

Section 9-4-1 Relationship Established

The parent and child relationship may be established between a child and:

- (1) The natural mother by proof of her having given birth to the child or as provided in this act.
- (2) The natural father as provided in this act.
- (3) An adoptive parent by proof of adoption.

Section 9-4-2 Presumption of Paternity; Rebuttal Thereof

- (1) A man is presumed to be the natural father of a child if:
 - a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment or divorce or after a decree of separation is entered by a court;

b) Before the child's birth, he and the child's natural mother 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:

i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within three hundred (300) days after its termination by death, annulment or divorce; or

ii) if the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation;

c) After the child's birth, he and the child's natural mother 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:

i) he has acknowledged his paternity of the child in writing filed with the state office of vital records services;

ii) with his consent, he is named as the child's father on the child's birth certificate; or

iii) he 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, he receives the child into his home and openly holds out the child as his natural child.

(2) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) 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. A presumption is rebutted by a court decree establishing paternity of the child by another man.

Section 9-4-3 Artificial Insemination; Consent Required; Filing Thereof; Limitation on Inspection; Legal Status of Husband and Donor

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated as if he were the natural father of a child thereby conceived. The husband's consent shall be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the state office of vital records and services, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and

records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor or semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated as if he were not the natural father of a child thereby conceived.

Section 9-4-4 Right to Bring Paternity Action; Effect of Agreements; Proceedings When Child not Yet Born

(1) A child, his natural mother or a man presumed to be his father under 9-4-2 (1) (a) (b) or (c) may bring an action:

a) At any time for the purpose of declaring the existence of the father and child relationship presumed under 9-4-2 (1) (a) (b) or (c); or

b) For the purpose of declaring the nonexistence of the father and child relationship presumed under 9-4-2 (1) (a) (b) or (c) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five (5) 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 he 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 9-4-2 (1) (d).

(3) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 9-4-2 may be brought by the child, the Department of Health and Social Services, the mother or personal representative of the child, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself 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, other than an agreement approved by the court in accordance with 9-4-11, 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 shall be stayed until after the birth except service of process and the taking of depositions to perpetuate testimony.

Section 9-4-5 Statute of Limitations for Paternity Actions; Effect on Probate Matters

An action to determine the existence of the father-child relationship as to a child who has no presumed father under 9-4-2 may not be brought later than three (3) years after the birth of the child, or later than three (3) years after the effective date of 9-4-2 through 9-4-20, 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 (3) years after the child reaches the age of eighteen (18). Sections 9-4-4 and 9-4-5 do not extend the time within which a right of inheritance or a right to 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.

Section 9-4-6 Jurisdiction; Joinder with Action for Divorce, etc; Venue

(1) The Shoshone and Arapaho Tribal Court has jurisdiction of an action brought under 9-4-1 through 9-4-20. The action may be joined with an action for divorce, annulment, separate maintenance, support or any action affecting the parent-child relationship.

(2) A person who has sexual intercourse on the Wind River Indian Reservation which has resulted in the birth of a child who is the subject of the proceedings under 9-4-1 through 9-4-20 thereby submits to the jurisdiction of the Shoshone and Arapaho Tribal Court in an action brought under this act.

(3) Action may be brought on the reservation in which the child resides, is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

Section 9-4-7 Parties; Notice and Hearing Required

The child shall be made a party to the action. If he is a minor, he shall be represented by his guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father under 9-4-2, and each man alleged to be the natural father may be made parties and shall 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.

Section 9-4-8 Informal Hearing; Refusal of Witnesses or Parties to Testify; Testimony of Physician

(1) As soon as practicable after an action is brought to declare the existence or nonexistence of the father and child relationship, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public is barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness or party to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

Section 9-4-9 Blood Tests; Experts

(1) The court may, and upon request of a party shall require the child, mother or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types 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 blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

Section 9-4-10 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) Blood test results weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(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 or the man to submit to appropriate tests; and

(5) All other evidence relevant to the issue of paternity of the child.

(1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties which may include any of the following:

a) That the action be dismissed with or without prejudice;

b) That the matter be compromised by an agreement among the alleged father, the mother and the child, in which the father and child relationship is not determined, but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee shall consider the best interest of the child in light of the factors enumerated in 9-4-13(5), discounted by the improbability as it appears to him of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential and may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; or

c) That the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1) of this section, judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) of this section and blood tests have not been taken, the court shall require the parties to submit to blood tests if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) The guardian ad litem of the child may accept or refuse to accept a recommendation under this section.

(5) The informal hearing may be terminated and the action set for trial if the judge or referee finds it unlikely that all parties would accept a recommendation he might make under subsection (1) or (3) of this section.

(6) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, the action shall be dismissed.

Section 9-4-12 Civil Action; Testimony and Admissibility of Evidence; Demand for Jury

(1) An action under this act is a civil action governed by the Shoshone and Arapaho Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 9-4-8 (2) and (3), 9-4-9 and 9-4-10 apply.

(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 as evidence unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible as evidence only if the alleged father has undergone and made available to the court blood tests which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

(4) The trial shall be by the court, without a jury, unless either party demands a trial by jury.

Section 9-4-13 Effect of Judgment or Order; New Birth Certificate; Provisions of Support, Etc.; Determination of Support; Continuing Jurisdiction

(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 a new birth certificate be issued.

(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 ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court, as it deems just, may

limit the father's liability for past support of the child to the proportion of the expenses already incurred.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including:

- a) The needs of the child;
- b) The standard of living and circumstances of the parents;
- c) The relative financial means of the parents;
- d) The earning ability of the parents;
- e) The need and capacity of the child for education, including higher education;
- f) The age of the child;
- g) The financial resources and the earning ability of the child;
- h) The responsibility of the parents for the support of others; and
- i) The value of services contributed by the custodial parent.

(6) The court has continuing jurisdiction to modify a judgment or order made pursuant to this act.

Section 9-4-14 Fees and Costs

The court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings including blood tests, to be paid by the parties in proportions and at times determined by the court. Filing fee is \$25.00.

Section 9-4-15 Court Order for Support Payments; Failure to Obey

(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 act or under prior law, the court may order support payments to be made to the mother, the clerk of the court or a person, corporation or agency designated to administer them for the benefit of the child under the supervision of the court. (Form IX-16)

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement or judgments apply.

Section 9-4-16 Right to Counsel; Free Transcript for Appeal

(1) At the pretrial hearing and in further proceedings any party may be represented by counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

Section 9-4-17 Confidentiality of Proceedings and Records

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceedings. All papers and records other than the final judgment pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the state office of vital records services or elsewhere, are subject to inspection only by court order.

Section 9-4-18 Action to Declare Mother and Child Relationship

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of the act applicable to the father and child relationship apply.

Section 9-4-19 Written Promise to Furnish Support; Confidentiality Thereof

(1) Any promise in writing to furnish support for a child growing out a presumed father and child relationship does not require consideration and is enforceable according to its terms subject to 9-4-4 (4).

(2) In the best interest of the child or the mother, the court may and upon the promisor's request shall order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise. (Form IX-17)

Section 9-4-20 Parental Tort Liability for Property Damage of Certain Minors; Exception; Action Cumulative

(1) Any property owner is entitled to recover damages from the parents of any minor under the age of seventeen (17) years and over the age of ten (10) years who maliciously and willfully damages or destroys his property. The recovery is limited to the actual damages in an

amount not to exceed \$300.00 in addition to taxable court costs. This section does not apply to parents whose parental custody and control of the child has been removed by court order.

(2) The action authorized in subsection (1) of this section is in addition to all other actions which the owner is entitled to maintain and nothing in this section precludes recovery in a greater amount from the minor, parents or any person for damages for which the minor or other person would otherwise be liable. The purpose of this section is to authorize recovery from parents in situations where they would not otherwise be liable.

Section 9-4-21 Liability for Support; Right of Action; Venue; Service; Measure of Recovery; Remedies Cumulative; Execution

(1) Any person legally responsible for the support of a child under the age of eighteen (18) years who abandons, deserts, neglects or unjustifiably fails to support the child is liable for support of the child. It is no defense that the child was not or is not in destitute circumstances.

(2) Either of the parents of the child or any other person, agency or institution furnishing the physical care or support of the child may commence civil action against the person responsible for the support of the child to recover expenses incurred. If the child is supported or partially supported by public assistance funds, the director of the county department or public assistance and social services may file the petition and maintain this action and no costs shall be collected for filing fees or service of process.

(3) The measure of recovery from the defendant is the reasonable value of the care or support which has been furnished to the child by the petitioner. In addition, the court may make other suitable order for future care or support of the child. These remedies are cumulative and in addition to other remedies provided by law.

(4) Execution of judgment for nonsupport of a child shall be as provided by federal, tribal or Wyoming state law as applicable.

CHAPTER 5 MARRIAGE AND DIVORCE

Section 9-5-1 Jurisdiction

The Shoshone and Arapaho Tribal Court shall have original jurisdiction of all actions brought pursuant to this act wherein:

(1) The defendant is a member of the Shoshone or Arapaho Tribes or a non-enrolled member of the Tribes or any other Indian within the reservation; or

(2) The defendant is not an Indian but is within jurisdiction of the court.

Section 9-5-2 Marriage - Applicable Law

To the extent they are not inconsistent with this act, the laws of the State of Wyoming shall apply to all matters concerning the creation of marriage, marital rights and obligations, annulments and marriages which are void or voidable.

Section 9-5-3 Petition to Affirm Marriage

When the validity of any marriage is denied by either party, the other party may file a petition for affirming the marriage. Upon due proof of the validity thereof, it shall be declared valid by a decree of court which is conclusive upon all persons concerned.

Section 9-5-4 Petition for Divorce

(1) Procedure. A proceeding for dissolution of the marriage shall be commenced by filing a "Petition for Divorce." A copy of the petition together with a copy of a summons shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally under Title II, Rules of Civil Procedure. The filing fee is \$50.00. (Form IX-18)

(2) Grounds. The court may decree a dissolution of the marriage on either of the following grounds which shall be pleaded generally:

- a) Irreconcilable differences, which have caused the irremediable breakdown of the marriage; or
- b) Incurable insanity.

(3) Misconduct; Evidence Inadmissible. In any pleadings or proceedings for dissolution of marriage, including depositions and discovery proceedings, evidence of specific acts of misconduct shall be improper and inadmissible, except where child custody is an issue and such evidence is relevant to that issue.

(4) Insanity; Dissolution

- a) A marriage may be dissolved on the grounds of incurable insanity only upon proof, including competent medical or psychiatric testimony, that the insane spouse was at the time the petition was filed, and remains, incurably insane;
- b) No decree granted on this ground shall relieve a spouse from any obligation imposed by law as a result of the marriage for the support of the spouse who is incurably insane, and the court may make such order for support, or require a bond therefor, as the circumstances require;

c) If the insane spouse has a guardian or conservator, other than the spouse bringing the action, the petition and summons shall be served upon the insane spouse and the guardian or conservator. The guardian or conservator shall defend and protect the interests of the insane spouse. If the insane spouse has no guardian or conservator, or if the spouse bringing the action is the guardian or conservator of the insane spouse, the court shall appoint a guardian ad litem, who may be the prosecutor or other advocate or attorney to defend and protect the interests of the insane spouse; and

d) As used in subdivision c), “guardian or conservator” means:

i) with respect to the issue of the dissolution of the marriage relationship, the guardian or conservator of the person; or

ii) with respect to support and property division issues, the guardian or conservator of the estate.

(5) Contents. The Petition for Divorce shall allege and include the names and last known addresses of the parties, facts giving the court jurisdiction of the matter, whether any debts or property have been accumulated during the marriage, whether any children have been born of the marriage or adopted and, if so, their names, birth dates, and current residences, and whether any custody proceeding is pending with regard to said children in any other court.

Section 9-5-5 Residence Requirements

A judgment decreeing a dissolution of a marriage may not be entered unless the petitioner has resided on the Wind River Indian Reservation at least sixty (60) days preceding the filing of the Petition for Divorce.

Section 9-5-6 Restraining Orders

If, after filing a complaint for divorce, it appears probable to the court that either party is about to do any act that would defeat or render less effective any order which the court might ultimately make concerning child custody, property or pecuniary interests, an order shall be made for the prevention thereof and such process issued as the court deems necessary or proper. On motion of either party, the court may prohibit the other party from harassing or committing assault or battery upon the other, committing trespass upon the lands or property of the other or otherwise interfering with the personal liberties of the other during the pendency of the action. (Form IX-19 and IX-20)

Section 9-5-7 Support During Pendency of Action

In every action brought for divorce, the court may require either party to pay any sum necessary to enable the other to carry on or defend the action and for support and the support of

the children of the parties during its pendency. The court may decree costs against either party and award execution for the costs, or it may direct costs to be paid out of any property sequestered, in the power of the court, or in the hands of a receiver. The court may also direct payment to either party for such purpose of any sum due and owing from the person. (Form IX-21, Form IX-22 and Form IX-23)

Section 9-5-8 Examination; Court Orders; Temporary Custody of Children

(1) In a proceeding for divorce, the court may cause the attendance of either party and compel an answer under oath concerning his property, rights or interests, or money that he may have or money due or to become due to him from others, and make such order thereon as is just and equitable. To enforce its orders concerning alimony, temporary or permanent, or property or pecuniary interests, the court may require security for obedience thereto, or may enforce the orders by attachment, commitment, injunction or by other means.

(2) On the application of either party, the court may make such order concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of the action as is proper and necessary and may enforce its order and decree in the manner provided in subsection (1) of this section.

Section 9-5-9 Child Custody

(1) In granting a divorce or annulment of a marriage, the court may make such disposition of the children as appears most expedient and beneficial for the well-being of the children. The court shall consider the relative competency of both parents, and no award of custody shall be made solely on the basis of gender of the parent. On the petition of either of the parents, the court may revise the decree concerning the care, custody and maintenance of the children as the circumstances of the parents and the benefit of the children requires. (Form IX-24)

(2) If there is issue of a marriage annulled on the grounds of force or fraud, the court shall award their custody to the innocent person, and may also provide for their education and maintenance out of the estate and property of the guilty party.

Section 9-5-10 Property Division

In granting a divorce, the court shall make such disposition of the property of the parties as appears just and equitable, having regard for the respective merits of the parties and the condition in which they will be left by the divorce, the party through whom the property was acquired, and the burdens imposed upon the property for the benefit of either party and children. The court may decree to the wife reasonable alimony out of the estate of the other, having regard for his ability, and may order so much of his real estate or the rents and profits thereof as is

necessary to be assigned and set out to either party for life, or may decree a specific sum be paid by either party.

Section 9-5-11 Appointment of Trustees

Upon every divorce when provision is made for the children, the court may order any amount set apart for them to be paid to a trustee or trustees appointed by the court, upon trust to invest the same and to apply the income thereof to the support of the children in such manner as the court directs. (Form IX-25)

Section 9-5-12 Modification of Decree

The court may from time to time, on the petition of either of the parties, revise and alter the divorce decree respecting any of the matters which the court might have made in the original action. (Form IX-26)

Section 9-5-13 Legitimacy of Children Presumed

A dissolution of marriage shall not affect the legitimacy of the issue of the marriage. In every case, the legitimacy of all children conceived or born before the commencement of the action is presumed until the contrary is shown.

Section 9-5-14 Summary Divorce

A marriage may be dissolved by the summary divorce procedure outlined in 9-5-15 of this act when all of the following conditions exist at the time the proceeding is commenced:

- (1) Either party has resided on the Wind River Indian Reservation for at least sixty (60) days.
- (2) Irreconcilable differences have caused the irremediable breakdown of the marriage and the marriage should be dissolved.
- (3) There are no children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage, and the wife, to her knowledge, is not pregnant.
- (4) The marriage is not more than five (5) years in duration at the time the petition is filed.
- (5) Neither party has acquired after the date of their marriage any interest in real property wheresoever situated.

(6) There are no unpaid obligations in excess of \$3,000.00 incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligation with respect to an automobile.

(7) The total fair market value of community property assets, excluding all encumbrances and automobiles, is less than \$10,000.00, and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of \$10,000.00.

(8) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community, and have duly executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(9) The parties waive any rights to spousal support.

(10) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal, their rights to request findings of fact and conclusions of law, and their rights to move for a new trial.

(11) The parties desire that the court dissolve the marriage.

Section 9-5-15 Summary Divorce Procedure

(1) A proceeding for summary dissolution of the marriage shall be commenced by filing a joint petition in the form prescribed by the Chief Judge of the Tribal Court. The petition shall be signed under oath by both the husband and wife, and shall state that as of the date of the filing of the joint petition each and every condition set forth in 9-5-14 has been met. Such joint petition shall state the mailing address of both the husband and the wife. The joint petition shall also state whether or not the wife elects to have her maiden or former name restored, and, if so, shall state the name to be restored. (Form IX-27)

(2) Final Judgments. When six (6) months have expired from the date of the filing of the joint petition for summary dissolution, the court may, upon application of either party, enter the final judgment dissolving the marriage, and such final judgment shall restore them to the status of single persons and permit either to marry after the entry thereof. The clerk shall send a notice of entry of final judgment to each of the parties at his last known address. (Form IX-28)

(3) Revocation

a) At any time prior to the filing of application for final judgment, either party to the marriage may revoke the joint petition, and thereby terminate the summary dissolution proceeding filed pursuant to this chapter;

b) The revocation shall be effected by filing with the clerk of the court where the proceeding was commenced a notice of revocation in such form and content as shall be prescribed by the Chief Judge of the Shoshone and Arapaho Tribal Court; and

c) The revoking party shall personally serve or send a copy of the notice of revocation to the other party by first class mail, postage prepaid, at his last known address.

(4) Waiver of Rights. Entry of the final judgment shall constitute a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights, and shall constitute a waiver of their respective rights to spousal support, rights to appeal, rights to request findings of fact and conclusions of law, and rights to move for a new trial.

(5) Fraud

a) A final judgment made pursuant to section 9-5-15 (2) shall not prejudice nor bar the rights of either of the parties to institute an action to set aside such final judgment for fraud, duress, accident, mistake or other grounds recognized at law or in equity;

b) The parties should not rely exclusively on this brochure which is not intended as a guide for self-representation in proceedings under this chapter;

c) A concise summary of the provisions and procedures of this Code relating to Summary Divorce;

d) The nature of marital and other counseling services, if available;

e) That neither party to the marriage can in the future obtain spousal support from the other;

f) A statement in boldface type to the effect that upon entry of the final judgment, the rights and obligations of the parties to the marriage with respect to the marriage, including property and spousal support rights, will be permanently adjudicated without right of appeal, except that neither party shall be barred from instituting an action to set aside such final judgment for fraud, duress, accident, mistake, or other grounds at law or in equity;

g) That the parties to the marriage retain the status of married persons and cannot remarry until final judgment dissolving the marriage is entered; and

h) Such other matters as may be appropriate.

CHAPTER 6 DEFINITIONS USED IN CODE

Section 9-6-1 Application

As used in this Code, the definitions in section 2 shall apply.

Section 9-6-2 Meanings

- (1) “Abuse” means as defined in Title III, Ch. 1, Sec. 6, Children’s Code.
- (2) “Adult” means a person who is eighteen (18) years of age or older, or who is legally married.
- (3) “Authorized agency” means the Social Services Department of the Bureau of Indian Affairs, any state social services department, or any tribal department handling such matters.
- (4) “Child” or “minor” means any person under the age of eighteen (18) years.
- (5) “Court” means the Shoshone and Arapaho Tribal Court.
- (6) “Domestic abuse” means physical abuse, threats of physical abuse or acts which unreasonably restrain the personal liberty of any household member by another household member.
- (7) “Guardianship of the person” means the duty and authority vested in a guardian of another which relate to and affect rights of a personal nature, such as the general power to make decisions in major matters affecting the life, development and welfare of the person including, but not limited to such decisions as consent to major medical, psychiatric and surgical treatment, consent to marriage, consent to enlistment in the armed forces, authority to represent the person in legal action, etc.
- (8) “Household member” means spouses, persons living together as spouses, former spouses, parents, adult and minor children, and other persons sharing a common household.
- (9) “Irreconcilable differences” means those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.
- (10) “Mental health professional” means a person with an advanced degree in one of the behavioral sciences including a psychologist, social worker, clinical counselor, etc.
- (11) “Neglect” means as defined in Title III, Ch. 1, Sec. 6, Children’s Code.

(12) “Order of protection” means a court order granted for the protection of victims of domestic abuse.

(13) “Parent” means:

- a) The natural mother;
- b) A person as to whom the child is presumed to be a legitimate child;
- c) A father as to whom a child is legitimate; or
- d) An adoptive parent.

(14) “Parent-child relationship” means all rights, privileges, duties and obligations existing between parent and child, including inheritance rights.

(15) “Protective supervision” means a legal status created by the court whereby the child is under the protective supervision of the court.

(16) “Relatives within the second degree either by blood or affinity” means stepparents, sisters, brothers, grandparents, aunts and uncles.

CHAPTER 7 JUDICIAL SEPARATION

Section 9-7-1 Procedure; Powers of Court; Defenses

(1) When circumstances are such that grounds for a divorce exist, the aggrieved party may institute a proceeding by complaint in the same manner as if petitioner were seeking a decree of divorce, but praying instead to be allowed to live separate and apart from the offending party.

(2) No separation by decree entered hereunder shall be grounds for a divorce on the grounds of desertion or two (2) year separation unless those grounds existed at the time of petitioning for judicial separation. A decree of divorce may be granted after the decree of judicial separation is entered upon proper grounds arising thereafter.

(3) The procedure for judicial separation is the same as though petitioner were seeking a decree of divorce. The court may make such orders and decrees as appear just, including custody of the children, provision for support, disposition of the properties of the parties, alimony, restraint of the spouse during litigation and restraint of disposition of property. The court may impose a time limitation on the decree or render a perpetual separation. The parties may at any time move the court to be discharged from the decree.

(4) All defenses available in an action for divorce are available under this section.

History: Adopted 1987. Restated Nov. 1, 2004, by the Shoshone & Arapaho Tribal Court.