

**SOUTHERN UTE INDIAN TRIBAL CODE**

**TITLE 7**

**DOMESTIC RELATIONS CODE**

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## TITLE 7

### SOUTHERN UTE INDIAN TRIBAL CODE

#### DOMESTIC RELATIONS CODE

**7-1-101. Jurisdiction.** The Southern Ute Indian Tribal Court shall have jurisdiction over the domestic relations of members of the Southern Ute Indian Tribe, including but not limited to, marriage, divorce, annulment, separate maintenance, determination of paternity and support, custody of minor children, change of name, and guardianship.

**7-1-102. Existing Marriages.** All marriages consummated before the effective date of this Code in accordance with tribal custom are declared valid and binding. Parties to such marriages may obtain a marriage certificate upon proof to the clerk of the Southern Ute Indian Tribal Court by affidavit or otherwise of the validity of their marriage and payment of a fee to be established by the court.

**7-1-103. Marriage.**

(1) **Persons Who May Marry.** No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

- (a) Both parties are at least 15 years of age, and if under age 18 have a written, properly notarized consent to marry from their parent or guardian.
- (b) At least one of the persons to be married is an enrolled member of the Southern Ute Indian Tribe.
- (c) Each female applicant under the age of forty-five shall file with the Southern Ute Indian Tribal Court a certificate which states that the applicant has been given an examination which includes a standard serological test for rubella immunity and Rh type. The certificate filed by the applicant shall be from a physician licensed to practice medicine, and the physician shall obtain blood samples from the female applicant and cause standard serological tests to be made for rubella immunity and Rh type by serological methods specified by the Colorado Department of Health or the Indian Health Service, and he shall provide her with his certificate stating that such test has been made and inform her of the results of such test and its medical significance; except that, whenever the examining physician finds that the female applicant is incapable of bearing a child because of prior surgery or other physical condition, the standard serological test for rubella immunity and Rh type shall not be required, and his certificate shall so state. For purposes of this section, a “standard serological test” means a test for rubella immunity and Rh type, approved by the Colorado Department of Health or the Indian Health Service and

made at a laboratory approved by either of the aforesaid departments to make such tests.

**7-1-104. Marriage License.** A marriage license shall be issued by the clerk of the court in the absence of any showing that the proposed marriage would be invalid under any provision of this Code or under tribal custom and usage. A license will be issued upon written application of an unmarried male and female 18 years of age or older, or upon written application of an unmarried male and female one or both of whom are at least 15 but less than 18 years of age but who have a written, properly notarized consent to marry from their parent or guardian, such application is filed with the clerk of the Court and, pursuant to 7-1-103(1)(c) above, is accompanied by a certificate of a physician reflecting completion of required testing of the female party.

**7-1-105. Marriage Ceremony – Who May Perform.**

- (1) The marriage ceremony may be performed by the following persons:
  - (a) A recognized clergyman or person who under his religion has authority to marry;
  - (b) A judge of the Tribal Court;
  - (c) A member of the Southern Ute Indian Tribal Council.
- (2) No marriage solemnized 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.

**7-1-106. 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. He must thereafter declare them to be husband and wife and return to the Southern Ute Indian Tribal Court the marriage license signed by him and by two witnesses to the marriage and the parties to the marriage.

**7-1-107. Void Marriages.**

- (1) Marriages are void under this Code when:
  - (a) Either party is lawfully married to another living spouse;
  - (b) The marriage is between an ancestor and a descendant or between a brother and a sister or between an uncle and a niece or between an aunt and a nephew or between cousins who are within the first or second

degree of kindred, whether the relationship is by the half or the whole blood;

- (c) The marriage is prohibited by custom of the Southern Ute Indian Tribe;
- (d) Either-party was under age as provided by §7-1-103(1)(a) above of this Code, and did not have the consent of his parent or guardian.

**7-1-108. Annulment.**

- (1) **Grounds for Annulment.** A marriage may be annulled by the Southern Ute Indian Tribal Court for any one of the following reasons upon application of one or both parties to the marriage:
  - (a) When either party to the marriage was incapable of consenting thereto;
  - (b) When consent of either party to marry was obtained by force or fraud, unless such party afterwards with full knowledge of the facts constituting the fraud freely cohabited with his spouse, the marriage is voidable;
  - (c) When the party making application was of unsound mind at the time of the marriage;
  - (d) When either party was at the time of the marriage incapable of consummating the marriage and the incapacity continues, the marriage is voidable.

**7-1-109. Statute of Limitations on Actions to Annul.** In actions to obtain the decree of annulment of a marriage for a cause mentioned in the preceding section, annulment proceedings must be commenced within 2 years after discovery of each of said causes.

**7-1-110. Legitimacy of the Children.** When a marriage is annulled for any reason other than for fraud in that the wife is pregnant with a child from a man other than her husband, children conceived before judgment of annulment 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 as circumstances of the parents or child require.

**7-1-111. Dissolution of Marriage.**

- (1) **Dissolution of Marriage, Residency Requirement.** In order to maintain an action in dissolution of marriage in the Southern Ute Indian Tribal Court, at least one party to the marriage must be an enrolled member of the Southern Ute

Indian Tribe and must have lived within the exterior boundaries of the reservation for at least 60 days prior to the bringing of the action.

(2) **Grounds for Dissolution of Marriage.**

- (a) **Purpose.** The purpose of this act is to promote rational settlement of disputes that have arisen between parties to a marriage, to lessen the harm to spouses and their children caused by the process of legal dissolution of marriage and to make the dissolution process more effective for dealing with the realities of matrimonial experience.
- (b) **Decree – When Entered.** The Southern Ute Indian Tribal Court shall enter a decree of dissolution of marriage when the court finds:
  - (i) That one of the parties is a registered member of the Southern Ute Indian Tribe and has been domiciled within the exterior boundaries of the reservation for 60 days preceding the commencement of the action; and
  - (ii) That the marriage is irretrievably broken.

(3) **Custody, Support, Alimony Property Disposition.** In connection with every decree of dissolution of marriage and to the extent of its jurisdiction to do so, the court shall consider, approve, or make provision for child custody, support of any child, alimony of either spouse and disposition of property. The entry of a decree with respect to custody, support, alimony or disposition of property may be deferred by the court until a time subsequent to the decree of dissolution of marriage upon finding that such a deferral is necessary in the best interests of the parties.

(4) **Petition Proceedings, How Commenced.** All proceedings shall be conducted in accordance with the Southern Ute Indian Tribal Code of Civil Procedure.

**7-1-112. Temporary Orders.**

- (1) In the proceedings of dissolution of marriage or related matters, either party may move for temporary payments of debts, use of property, alimony, custody, support of a child of the marriage, or payment of attorney's fees. The motion shall be supported by an affidavit setting forth the factual basis for the motion and the amounts requested. In addition, either party may request a temporary injunction restraining any parties:
  - (a) From encumbering or transferring property;
  - (b) From molesting or disturbing the peace of the other party or of any child;

- (c) Excluding the party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result; or
- (d) The court may issue a temporary restraining order requiring notice to the other party on the basis of the moving affidavit or other evidence that irreparable injury would result to the moving party if no order were issued until the time for responding had elapsed. A temporary order or temporary injunction terminates when the final decree is entered, unless continued by the court for good cause to a date certain, or when the petition for dissolution or legal separation is voluntarily dismissed. The duration of a temporary injunction shall not exceed 45 days.

**7-1-113. Separation Agreement.** Both parties may present to the court an agreement signed by them determining property settlement, custody, child support, and other matters. If the court finds the separation agreement is not unconscionable as to support, maintenance, and property, it shall enter a property settlement agreement as part of its final orders. The terms of the agreement set forth in the decree shall be enforced by all remedies available for the enforcement of a judgment, including contempt.

**7-1-114. Disposition of Property.**

- (1) All property shall be equitably divided. In determining how property should be divided, the court shall consider:
  - (a) Contribution of each spouse to the acquisition of marital property, including the contribution of a spouse as homemaker;
  - (b) The value of the property set apart to each spouse;
  - (c) The economic circumstances of each spouse;
  - (d) Any increases or decreases in the value of the separate property of either spouse during the marriage or depletion of the separate property for marital purposes.
- (2) For purposes of, this section (§7-1-114) only, marital property means all property acquired by either spouse subsequent to marriage except:
  - (a) Property acquired by gift, bequest, devise or descent;
  - (b) Property acquired by a spouse after a decree of legal separation;
  - (c) Property acquired in exchange for property acquired prior to the marriage; and

(d) Property excluded by valid agreement of the parties.

**7-1-115. Alimony.** A court will order alimony only if it finds that the party seeking alimony lacks sufficient property to provide for his reasonable means and is unable to support himself through appropriate employment or when circumstances make it appropriate for the custodian of a child not to be required to seek employment outside the home. The amount of alimony will depend on the following factors:

- (1) The time necessary for the person seeking alimony to acquire sufficient education or training to be self-supporting;
- (2) The standard of living established during the marriage;
- (3) The duration of the marriage;
- (4) The age and physical and emotional condition of the spouse seeking alimony; and
- (5) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking alimony.

**7-1-116. Temporary Orders for Custody.**

- (1) A party to a custody proceeding may move for a temporary custody order. The motion shall be supported by an affidavit as provided herein. The court may award temporary custody after having a hearing or, if there is no objection, rule solely on the basis of the affidavit.
- (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless 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.
- (3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

**7-1-117. Interviews.**

- (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian. Presence of counsel or a parent shall be in the discretion of the court.
- (2) The court may seek the advice of professional personnel 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 of record, the parties and other expert witnesses upon request, but it shall otherwise be considered confidential and shall not be open to public inspection without the consent of the court.

**7-1-118. Affidavit Practice.**

- (1) A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the request, order or modification and shall give notice together with a copy of his affidavit.
- (2) The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavit, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

**7-1-119. Investigations and Reports.**

- (1) In all custody proceedings, the court may, upon motion of either party or the court's own motion, ask the Southern Ute Indian Tribe Social Services Department to investigate and to file a written report concerning custodial arrangements for the child.
- (2) In preparing the report concerning the child, the investigator, upon order of the court, may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past, without obtaining the consent of the parent or the child's custodian.
- (3) The court shall mail the investigator's report to the counselor to the parties not represented by counsel at least 10 days prior to the hearing. The investigator may be subject to examination.
- (4) All such reports shall be considered confidential and not open to public scrutiny without the express consent of the court.

**7-1-120. Hearings.**

- (1) Custody proceedings shall receive priority in being set for hearing.
- (2) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing and admit only those persons with a direct and legitimate interest in the particular case.



- (3) The court may, if necessary, keep all custody proceedings confidential and make an appropriate order sealing the record.

**7-1-121. Visitation.**

- (1) A parent not granted custody of the child is entitled to reasonable rights of visitation unless the court finds after a hearing that visitation by the parent would endanger the child's physical health or impair his emotional development.
- (2) The court may make or modify an order granting or denying visitation rights whenever such order or modification would serve the best interests of the child, but the court shall not restrict the parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his emotional development.
- (3) At any time during which child is a minor, any grandparent of a child may petition the Tribal Court or may appear in person to request reasonable grandchild visitation rights.
  - (a) Said petition shall contain the names of the child or children, their relationship to the petitioners, the name and address of the legal guardian, and shall set forth facts supporting the requested order. Such petition shall be verified. A sample form of petition is to be found at the end of Title 7.
  - (b) Notice and a copy of the petition shall be given to the legal guardian, who may file opposing affidavits. Other interested persons may also file opposing affidavits with the permission of the Court.
  - (c) If no hearing is required or ordered, the court may determine the petition on the basis of the affidavits.
  - (d) In making a determination on the petition, the Court shall consider the traditional role of grandparents in the heritage of the Southern Ute Indian Tribe in determining the best interests of the child as defined by the Southern Ute Indian Tribal Code.

**7-1-122. Modification of Custody.**

- (1) If a motion for modification of custody has been filed, whether or not it was granted, no subsequent motion may be filed within 2 years after disposition of the prior motion unless there is reason to believe that the child's present environment may endanger his physical health or significantly impair his emotional development.

- (2) The court shall not modify a prior custody decree unless it finds upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that modification is necessary to serve the best interests of the child. The court shall not modify custody orders unless:
  - (a) The custodian agrees to the modifications;
  - (b) The child has been integrated into the family of the petitioner with the consent of the custodian; or
  - (c) The child's present environment endangers his physical health or significantly impairs his emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

**7-1-123. Statutory Interpretation.** Insofar as possible, the custody provisions of the Southern Ute Indian Domestic Relations Code shall be read as a whole.

**7-1-124. Child Support.**

- (1) **Policy.** It is the policy of the Southern Ute Indian Tribe to place the ultimate obligation for the support of a child on the parents of the child.
- (2) **Applicability.** This section shall apply to any proceeding involving a child, whether the action is brought pursuant to this title or pursuant to any other provision of the Tribal Code, including the Children's Code.
- (3) **Scope of Order.** The court shall have the authority, after notice and a hearing to order either or both parents owing a duty of support to pay for the care and maintenance of a child. Support payments may be ordered to be paid through the Registry of the Tribal Court and, in addition to child support, may include but are not limited to the following:
  - (a) the expense of any medical, psychiatric, or psychological examination;
  - (b) the cost of any medical, psychiatric, or psychological treatment; and
  - (c) the cost of out-of-home placement.

The court may order such payments, whether for future support or for expenses incurred prior to the initiation of the support action, in a lump sum payment or payments or in periodic installments.

- (4) **Factors to be Considered.** The court may order either or both parents owing the duty or support to pay an amount reasonably necessary for the child's support after considering all relevant factors, including but not limited to:
- (a) The financial resources of the child;
  - (b) The financial resources of both parents;
  - (c) The standard of living the child would have otherwise enjoyed; and
  - (d) The child's special needs, including his educational needs.
- (5) **Effect and Enforcement of Support Orders.** Each installment of any support order becomes a final money judgment when it is due and not paid and has the same effect as a judgment in a civil case. Such judgments shall be fully enforceable by contempt proceedings, through the provisions for the collection of judgments in the Civil Procedure Code, and pursuant to the provisions of this section for the collection of child support through garnishment proceedings.
- (6) **Garnishment to Enforce Support Orders.** The court may issue an order to any employer, trustee, financial agency, or other person, firm, or other entity, over which the Court has jurisdiction and which may be indebted to the party ordered to pay support, to withhold monies from such party and pay them over to the clerk of the Tribal Court when they become due. The amount withheld shall not exceed the lesser of the following:
- (a) The amount ordered to be paid by the court for the support of the child; or
  - (b) Fifty percent of the individual's earnings, after deductions for taxes and health insurance, due each pay period; provided, however, that the court may order an additional five percent withheld if the court finds from the evidence before the court that the garnishment includes child support arrearages.
- (7) **No Exemptions.** Property of the parents, or either of them, shall not be exempt from execution to enforce collection of support orders, except that property held in trust by the United States shall be subject to the conditions of the trust.
- (8) **Support from Other Sources.** If the court finds that the parents of the child are unable to pay for the full support and expenses of the child, or if the parents cannot be located and served in the support action, or if efforts to enforce the support order issued by the court have proven futile, and no other provision for the payment of such support and expenses has been made, the court may request

Tribal Services, the Tribal Council, or any other public or tribal agency or department with funds available for such purposes to pay for such support and expenses. Such request shall not relieve the parents of their support obligations.

**7-1-125. Representation of Child.** The court may, upon the motion of either party or upon its own motion, appoint an attorney to represent the interests of a child with respect to custody, support and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against any or all parties except that if the responsible party is indigent, the costs, fees and disbursements shall be borne by the Southern Ute Indian Tribe.

**7-1-126. Paternity Proceedings.**

- (1) Paternity proceedings may be initiated by the mother, the putative father, the child's guardian or representative, or by a representative of any agency that had been making support payments. However, no proceedings may be initiated after a child is 5 years old unless a father has acknowledged his paternity.
- (2) **Proceedings – How Initiated.** Proceedings under this article shall be started by filing a petition alleging the person named is the father of the child and requesting the court to make a declaration of paternity, enter an order for support, and arrange for any other appropriate relief.
- (3) **Procedure – Hearing.**
  - (a) Upon filing said petition, a summons shall be issued and a hearing set according to the Southern Ute Indian Code of Civil Procedure.
  - (b) The court may exclude the general public from the hearing room.
  - (c) Blood grouping tests, including, but not limited to, HLA (human leukocyte antigen) tissue typing, are admissible into evidence to exclude or establish paternity.
- (4) **Orders.**
  - (a) The court shall dismiss the action if it finds the named party is not the father;
  - (b) If the court enters an order declaring paternity, it shall make such orders concerning support as are authorized under the Code.
- (5) The court may require security to be given in order to insure enforcement of its orders.

**7-1-127. Attorney's Fees.** The court, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost of the other party's maintaining or defending any proceeding under this title (Title 7) and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. If both parties are earning approximately equally, then neither party shall be required to pay the attorney's fees of the other.

**7-1-128. Decree.**

- (1) A decree of dissolution of marriage is final when entered.
- (2) No decree that may enter shall relieve a spouse from any obligation imposed by law as a result of the marriage or for the support of or alimony of a spouse adjudicated to be mentally incompetent prior to the decree unless such spouse has an independent means of support.

**7-1-129. Modification and Termination of Provisions for Maintenance, Support, and Property Disposition.**

- (1) Except as otherwise provided, the provisions of any decree in respect to maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continual as to make the terms of the original agreement unconscionable. The provisions as to property disposition may not be revoked or modified unless the court finds the existence of conditions that justify the reopening of a judgment.
- (2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future alimony is terminated upon the death of either party or the remarriage of the party receiving alimony.
- (3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by the emancipation of the child, but not by the death of a parent obligated to support the child. When the parent obligated to pay support dies, the amount of support may be modified, revoked or changed to a lump sum payment to the extent just and appropriate under the circumstances.

**7-1-130. Commencement of Custody Proceedings.**

- (1) **Jurisdiction.** A child custody proceeding may be commenced in the Southern Ute Indian Tribal Court by a parent, by the filing for dissolution of marriage, or by the filing of a petition seeking custody of the child if the child is permanently

a resident or is physically present in a location other than the residence of his legal guardian.

- (2) **Best Interests of the Child.** The court shall determine custody in accordance with the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors, including:
  - (a) The wishes of the child's parents as to his custody;
  - (b) The wishes of the child as to his custodian;
  - (c) The interaction and relationship of the child with his parents, siblings, and any other person who may significantly affect the child's best interests;
  - (d) The child's physical adjustment to his home, school and community; and
  - (e) The mental and physical health of all individuals involved.
  - (f) The court shall not consider the conduct of a proposed custodian that does not affect his relationship to the child.

**7-1-131. Change of Name.**

- (1) Petition, Content – Proceedings
  - (a) Any person residing within the exterior boundaries of the Southern Ute Indian Reservation who wishes to change his name may present a petition to that effect, verified by affidavit, to the Tribal Court. Any member of the Southern Ute Indian Tribe may file for change of name regardless of residency.
  - (b) The petition shall set forth:
    - (i) The petitioner's full name;
    - (ii) The new name desired; and
    - (iii) A concise statement of the reason for such desired change.
  - (c) The court shall order such change to be made, after publication required herein, if the court is satisfied that the desired change would be proper, and not detrimental to the interests of the public or of any person.
- (2) **Publication of Change.** The Court shall publish the proposed name change at least twice prior to entry of the Court order and at least twice within 30 days

after the court enters an order approving the name change in a newspaper circulated throughout the Southern Ute Indian Reservation.

- (3) All orders of court for change of name of Southern Ute Indian Tribal members will be submitted to the Southern Ute Indian Tribal Council.

**7-1-132. Short Title.** This title of the Southern Ute Indian Tribal Code shall be known as and may be cited as the Domestic Relations Code.

**TITLE 7**  
**DOMESTIC RELATIONS CODE**  
**History and Amendments<sup>1</sup>**

Title 7 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on February 25, 1981.

Sections 3(A)(3)(4), 7(A)(2)(4), 11(A), 11(B)(2), 11(D), 12(A)(4), 15, 19(A), 25, 26(A), 26(B), 26(C) (3), 27, 28(B), 30(A), 31(A), 31(C), 31(D), 31(E), 32, 33(A), 33(B), 33(C), 35, 37(B), 41(A), and 41(B) revised and amended, and §34(D) deleted by Tribal Resolution No. 86-14, approved by the Bureau of Indian Affairs and effective on August 18, 1986.

Section 21(C) added by Tribal Resolution No. 87-02 and 87-14, approved by the Bureau of Indian Affairs and effective on March 24, 1987.

Title 7 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, effective on March 21, 1989.

Sections 7-1-131 through 7-1-140 repealed by Tribal Resolution No. 00-172, approved by the Bureau of Indian Affairs and effective when approved.

**Title 7 – Domestic Relations** repealed and replaced (Resolution No. 2021-151) with a reformatted version for online publication and Section 7-1-131(2) amended. Amended reformatted version approved by the Bureau of Indian Affairs on July 28, 2023 and adopted by the Tribal Council (Resolution No. 2023-125) with an effective date of August 8, 2023.

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<sup>1</sup> This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.