

QUAPAW TRIBE OF OKLAHOMA

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Resolution No. 072415-A

To adopt an ordinance enacting a dissolution of marriage code

BEFORE THE BUSINESS COMMITTEE OF THE QUAPAW TRIBE
OF OKLAHOMA (O-GAH-PAH)

July 24, 2015

The TRIBAL BUSINESS COMMITTEE introduced the following Resolution
to approve and adopt a Tribal dissolution of marriage code.

WHEREAS, the Quapaw Tribe of Indians of Oklahoma (O-Gah-Pah) is a federally recognized Indian Tribe and is governed by a Governing Resolution adopted by the Quapaw Indian Council on August 19, 1956, and approved by the Commissioner of Indian Affairs on September 20, 1957; and

WHEREAS, the Quapaw Tribe asserts tribal governmental jurisdiction to the fullest extent recognized by law over the lands within the original Quapaw Reservation, as established as a homeland for the Quapaw Tribe by the Treaty of May 13, 1833; and

WHEREAS, the Governing Resolution delegates authority to the Quapaw Tribal Business Committee to speak and act on the behalf of the Quapaw Tribe; and

WHEREAS, the Quapaw Tribal Business Committee is thus empowered and obligated to transact Tribal business, including but not limited to enacting laws and ordinances for the Tribe, including laws relating to the dissolution of marriage; and

WHEREAS, the Business Committee hereby adopts new laws for the dissolution of marriage including divorce and property division, child custody, child support and alimony thereunder.

NOW THEREFORE BE IT RESOLVED by the Tribal Business Committee that the following ordinance enacting a dissolution of marriage code shall be enacted as the law of the Tribe:

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13 **PART I. DISSOLUTION OF MARRIAGE—IN GENERAL**

14 **§ 1. Definitions**

- 15 (a) “Alimony” means support or maintenance payments made by an ex-spouse
- 16 to another to avoid inequitable economic consequences resulting from a divorce, not
- 17 including child support payments.
- 18 (b) “Child” means a person under 18 years of age naturally born to or legally
- 19 adopted by the parties.
- 20 (c) “Clerk” means the Quapaw Court Clerk.
- 21 (d) “Court” means the Quapaw Tribal Court or other court under the Tribe’s
- 22 jurisdiction, including any judge of such court.
- 23 (e) “Custodial parent” means a parent or third-party caretaker who has
- 24 physical custody of a child more than 182 days per year.
- 25 (f) “Decree” means a divorce, legal separation, or annulment decree which
- 26 sets forth orders that may include child custody orders, child visitation orders, child
- 27 support orders, property division orders, alimony orders, or any other order provided by
- 28 the court, in compliance with this Ordinance.
- 29 (g) “Deployment” means the movement of a service member for more than
- 30 ninety (90) days but less than eighteen (18) months pursuant to orders that are
- 31 designated as unaccompanied, do not authorize dependent travel, or otherwise do not
- 32 permit the movement of family members to the location to which the service member is
- 33 deployed.
- 34 (h) “Divorce” means the dissolution of marriage other than annulment.
- 35 (i) “Home jurisdiction” means a jurisdiction in which a child lived with a
- 36 parent or a person acting as a parent for at least six (6) consecutive months immediately
- 37 before the commencement of a child custody proceeding. In the case of a child less than
- 38 (6) six months of age, the term means the jurisdiction in which the child lived from birth
- 39 with any of the persons mentioned.
- 40 (j) “Joint custody” means the condition under which both parties share legal
- 41 custody and neither party’s legal custody rights are superior, except as provided by the
- 42 Quapaw Court.

- 1 (k) "Legal custody" means the right to make major decisions concerning the
2 child.
- 3 (l) "Marriage" means the partnership entered into between two persons as
4 spouses, recognized by the Quapaw Tribal Court or the court where the marriage was
5 consummated.
- 6 (m) "Marshal" means the chief of the Quapaw Tribal Marshals Service or his
7 or her delegee.
- 8 (n) "Noncustodial parent" means a parent who has physical custody of a child
9 182 days per year or less
- 10 (o) "Parent" means the birth or adoption parent of a child.
- 11 (p) "Petitioner" means a person who files for an action for divorce, annulment,
12 legal separation, or other action under this Ordinance.
- 13 (q) "Physical custody" means the right to have the child physically placed with
14 that party and has the right and responsibility to make, during the placement, routine
15 daily decisions regarding the child's care.
- 16 (r) "Prosecutor" means the Quapaw tribal prosecutor.
- 17 (s) "Quapaw jurisdiction" means within the Quapaw Tribe's jurisdiction
18 extended to the furthest extent federal law allows.
- 19 (t) "Quapaw Reservation" means the lands within the states of Oklahoma and
20 Kansas granted to the Quapaw People through the treaty between the Tribe and the
21 United States of America of May 13, 1833.
- 22 (u) "Respondent" means a person who an action for divorce, annulment, legal
23 separation, or other action under this Ordinance was filed against.
- 24 (v) "Significant other" means a partner in a social relationship of a romantic or
25 intimate nature.
- 26 (w) "Sole custody" means the condition under which one parent has the legal
27 or physical custody of a child.
- 28 (x) "Tribal member" means an enrolled member of the Quapaw Indian tribe.
- 29 (y) "Tribe" means the Quapaw Indian Tribe.

30 **§ 2. Jurisdiction**

31 (a) General Jurisdiction.

32 (1) Nothing in this Ordinance shall limit the jurisdiction of the Quapaw
33 Tribe, which shall extend to the furthest extent permitted under Federal law.

34 (2) Except as stated in subparagraph (3), the Quapaw Court shall have
35 the authority to perform actions under this Ordinance, including issuing a divorce
36 decree and orders provided therein, when:

37 (A) either party to the marriage has resided within the Quapaw
38 Reservation or on Quapaw trust land for at least ninety (90) days prior to the
39 filing of the complaint and either party is a member, or is eligible to be a
40 member, of the Quapaw Tribe; or

1 (B) Federal and tribal law otherwise permits the Quapaw Court to
2 assume jurisdiction.

3 (3) For child custody cases, the Quapaw Court shall only exercise its
4 jurisdiction as provided in Part IV, Subpart B, of this Ordinance.

5 (b) Continuing Jurisdiction. Once the Quapaw Court has determined that
6 jurisdiction exists in regard to issues addressed under this Ordinance, the Quapaw Court
7 may retain jurisdiction over such issues and have the authority to decide all related
8 equitable and legal issues between the parties.

9 (c) Exercise of Jurisdiction.

10 (1) Unless otherwise provided, the Quapaw Court shall have the
11 authority to perform the following actions in a marriage dissolution proceeding:

12 (A) apportion or assign between the parties the non-trust property and
13 non-trust assets belonging to either or both parties;

14 (B) grant alimony for either spouse in amounts and for periods of time
15 the court deems just;

16 (C) order either or both parents owing a duty of support to a child to pay
17 an amount reasonable and necessary for the child's support;

18 (D) make child custody determinations;

19 (E) determine or order determined the paternity of a child;

20 (F) restore a spouse's former name; and

21 (G) other actions, authorized under this Ordinance or other Quapaw law
22 determined necessary by the Quapaw Court.

23 (2) If at any time the Quapaw Court determines that the exercise of
24 jurisdiction under this Ordinance is not in the best interest of the Quapaw Tribe, the
25 court may abstain from exercising jurisdiction when the court determines the
26 following:

27 (A) the orders sought will be impossible for the Quapaw Court to
28 enforce;

29 (B) another jurisdiction is available and provides a more convenient
30 forum for the parties;

31 (C) another jurisdiction is attempting to exercise authority over the
32 issues addressed and comity should be extended to allow such court to act; or

33 (D) the Quapaw Court is without the financial means to adequately
34 address the case.

35 **§ 3. Notice**

36 (a) Notice of the pendency of an action shall have no effect unless service of
37 process is made upon the respondent(s).

38 (b) Notice and proof of service may be made in a manner prescribed by the
39 law of the Quapaw Court or by the law in the jurisdiction where the service is made.

1 (c) Serve is not required for the exercise of jurisdiction with respect to a
2 person who submits to the jurisdiction of the Quapaw Court for these proceedings.

3 **§ 4. Recognition of Marriage**

4 Any marriage duly licensed and performed under the laws of the United States, any
5 state, or any tribe shall be recognized as valid by the Quapaw Tribe for purposes of this
6 Ordinance.

7 **§ 5. Full Faith and Credit**

8 (a) If the Quapaw Court receives a petition from a court of another jurisdiction
9 to enforce an order of a similar nature as those permitted under this Ordinance, such as
10 those contained in a divorce decree, the Quapaw Court shall extend full faith and credit
11 to such order, if proper and valid, including enforcement of the order as requested by the
12 court.

13 (b) If the Quapaw Court finds that a party subject to an order under this
14 Ordinance is now residing within the jurisdiction of another court, the Quapaw Court
15 shall petition such court for reciprocal enforcement and provide it with a copy of the
16 order and necessary documentation.

17 **PART II. DISSOLUTION OF MARRIAGE—ANNULMENT,**
18 **SEPARATION, AND DIVORCE**

19 **SUBPART A. ANNULMENT**

20 **§ 6. Annulment**

21 The Quapaw Court may annul a marriage within 60 days of the marriage if the court
22 determines the marriage was illegal under the laws of the jurisdiction where the
23 marriage was consummated.

24 **§ 7. Procedure for Annulment**

25 (a) A petition requesting that a marriage be annulled shall be filed with the
26 Clerk.

27 (b) A summons shall be issued and served on any party to the marriage not
28 joining in the petition.

29 (c) The Quapaw Court shall hold a hearing to determine whether the marriage
30 qualifies for annulment under this Subpart.

31 (d) If the Quapaw Court grants the annulment, a decree shall be entered
32 specifying any orders as to child custody, child visitation, child support, division of
33 property, and damages as required under this Ordinance.

34 (e) The Quapaw Court may order a spouse's former name to be restored upon
35 request.

36 (f) The annulment decree shall be filed with the Quapaw Court Clerk.

37 **§ 8. Petition for Annulment**

38 A petition for annulment shall contain the following, where applicable:

39 (a) the names, birthdates, and social security numbers of the parties to the
40 marriage;

1 (b) a copy of the certificate of degree of Indian blood or tribal enrollment cards
2 of the parties;

3 (c) the date and place of the marriage;

4 (d) the domicile and all current residences of the parties;

5 (e) whether there are any minor children of the marriage;

6 (f) the name, birth date, and social security number of each minor child of the
7 parties, if any; and

8 (g) the reason for the requested annulment.

9 **§ 9. Effect of Annulment**

10 (a) After an annulment order, the parties are restored to the status of single and
11 unmarried person.

12 (b) Neither party to an annulled marriage shall be required to pay alimony.

13 (c) Upon motion by a party, the court may award damages to a party damaged
14 from the marriage and subsequent annulment.

15 **SUBPART B. LEGAL SEPARATION**

16 **§ 10. Petition for Legal Separation**

17 Either or both parties may petition for legal separation which does not dissolve the
18 marriage but may result in a legal separation decree specifying living arrangements,
19 child custody, child visitation, and child support.

20 **§ 11. Procedure for Legal Separation**

21 A legal separation shall follow the same process and requirements as a divorce
22 under Section 15, where applicable.

23 **§ 12. Counseling During Separation**

24 The Quapaw Court is authorized to require marriage counseling under a legal
25 separation decree.

26 **§ 13. No Property Division or Alimony**

27 The Quapaw Court shall not order alimony or a division of property in a legal
28 separation.

29 **SUBPART C. DIVORCE**

30 **§ 14. Grounds for Divorce**

31 The Quapaw Court may grant a divorce for any purpose, including irreconcilable
32 differences.

33 **§ 15. Procedure for Divorce**

34 (a) Petition for a Divorce.

35 (1) Either or both parties to a marriage may initiate an action for divorce
36 by filing a signed petition with the court.

37 (2) A petition for divorce shall include the following:

- 1 (A) the name, birth date, social security numbers, and occupation of the
2 parties to the marriage;
- 3 (B) the date and place of the marriage;
- 4 (C) the domicile and all current residences of the parties;
- 5 (D) the name, birth date, and social security number of each minor child
6 of the parties, if any;
- 7 (E) a copy of the tribal enrollment card or certificate of degree of Indian
8 blood for parties to the marriage and any minor of the marriage, if applicable;
- 9 (F) whether the wife is pregnant and whether her spouse is the expected
10 father of the child;
- 11 (G) whether or not an action for divorce, annulment, or legal separation
12 by either of the parties is or has been at any time commenced or is pending in
13 any other court;
- 14 (H) whether the divorce is contested by the other party;
- 15 (I) a copy of any written agreement pertaining to the support, custody,
16 visitation, alimony and division of property;
- 17 (J) a description of the relief requested;
- 18 (K) an affidavit by the party verifying the truthfulness of the petition and
19 agreeing to refrain from the prohibited acts under Section 16; and
- 20 (L) written consent to the jurisdiction of the Quapaw Court.
- 21 (3) If the petition is for custody of a child, the petition shall also
22 contain:
- 23 (A) the child's current address and location;
- 24 (B) the places where the child has lived during the last five (5) years;
- 25 (C) the names and present addresses of the persons the child has resided
26 with during that period;
- 27 (D) whether the party has participated in or is aware of any other
28 proceeding concerning the custody of the child, or any proceeding that may
29 affect the Quapaw Court's proceeding, and, if so, identify the court, the case
30 number, and the date of such proceeding; and
- 31 (E) the names and addresses of any person not a party to the proceeding
32 who has or claims rights to custody of or visitation with the child.
- 33 (4) The petition may contain:
- 34 (A) a description of any property or debts to be divided by the Quapaw
35 Court;
- 36 (B) any requests as to child custody and/or support;
- 37 (C) any requests for alimony; and
- 38 (D) that the party's former name be restored.

1 (5) If the information required by this Section is not provided, the court,
2 upon motion of a party or its own motion, may stay the proceeding until the
3 information is provided.

4 (6) Each party has a continuing duty to inform the court of any
5 proceeding in this jurisdiction or any other jurisdiction that could affect the current
6 proceeding.

7 (b) Summons of a Party to a Divorce.

8 (1) A copy of the petition and summons shall be served to the
9 respondent advising him or her to file an answer to the petition within 30 days.

10 (2) If a service of process is not made upon a respondent within one
11 hundred twenty (120) days after the filing of the petition and the petitioner cannot
12 show good cause why such service was not made within that period, the action shall
13 be dismissed without prejudice.

14 (3) Service may be made upon the respondent by:

15 (A) delivering a copy to him or her personally;

16 (B) mailing a copy with certified mail;

17 (C) leaving a copy at the person's office with the person in charge;

18 (D) leaving a copy at the person's dwelling with a person fifteen (15)
19 years of age or older then residing therein; or

20 (E) by any other method allowable under the Quapaw Ordinance or the
21 jurisdiction where the party is served.

22 (c) Answer to a Petition for Divorce.

23 (1) A respondent shall have thirty (30) business days to file a response
24 or counterclaim after the date of service.

25 (2) A counterclaim or response to a petition for divorce shall include all
26 of the provisions of an original petition for divorce described in paragraph (a).

27 (d) Notice of a Divorce Hearing.

28 (1) Upon receiving an answer from the respondent, the court shall hold
29 a hearing with the parties to discuss and consider the scheduling, process,
30 limitations, disputes, and stipulations of the action.

31 (2) The court shall determine whether mediation is necessary, as
32 described in paragraph (h).

33 (3) The court shall require the parties to prepare an affidavit, either
34 together or separately, describing the personal and real property belonging to the
35 marriage to be divided, as required in Section 24.

36 (e) Temporary Orders During a Divorce Proceeding.

37 (1) During a divorce proceeding and upon motion of either party, the
38 Quapaw Court may make a temporary order specifying child custody, child
39 visitation, child support, property division, alimony, and court expenses, to be
40 enforced during the pendency of the action, as determined by the court to be fair and

1 proper. The motion shall be accompanied by an affidavit setting forth the factual
2 basis for the motion and the action and amounts requested.

3 (2) Except as provided in subparagraph (3) the court shall not issue a
4 temporary order until at least fifteen (15) days notice of a hearing has been given to
5 both parents of a minor child and the Quapaw Tribe. After notice and hearing, the
6 Quapaw Court may issue a temporary order for custody of the child.

7 (3) A temporary order may be issued if the court finds that irreparable
8 harm will result from proceeding under the notice and hearing requirements of
9 subparagraph (2).

10 (f) Marriage Counseling.

11 If the respondent does not agree to a divorce, the Quapaw Court may, at its
12 discretion, require marriage counseling or reconciliation, but the divorce proceedings
13 shall resume in no fewer than ninety (90) days if the petitioner does not agree to
14 withdrawal the petition for divorce upon conclusion of counseling.

15 (g) Educational Program.

16 (1) In all actions for divorce, separation, custody or visitation where the
17 interest of a child younger than fifteen (15) years of age is involved, the court may,
18 in its discretion, require all adult parties to attend an educational program
19 concerning, as appropriate, the impact of separate parenting and coparenting on
20 children, the implications for visitation and conflict management, development of
21 children, separate financial responsibility for children and such other instruction as
22 deemed necessary by the court.

23 (2) If it appears to the court that domestic violence or child abuse has
24 occurred, the court may require the parents, either jointly or separately, to attend an
25 educational program on the impacts of domestic violence and child abuse on the
26 victim's mental health and well-being.

27 (h) Mediation and Agreements.

28 (1) To promote amicable settlement of disputes between parties seeking
29 to dissolve a marriage, the parties shall attempt to enter into a written separation
30 agreement containing provisions for property division, alimony, child support, child
31 custody, and child visitation.

32 (2) If the parties cannot enter into a separation agreement between them,
33 the court may order mediation in order to resolve outstanding disputes between the
34 parties.

35 (3) Upon conclusion of mediation, but in no case more than sixty (60)
36 days, the mediator shall submit a mediation report to the court, stating the terms and
37 provisions the parties agreed to and those pending.

38 (4) In a proceeding for a dissolution of marriage or for legal separation,
39 the terms of the separation agreement, including those providing for support,
40 custody, and visitation of children, are binding upon the court unless the court finds
41 the agreement to be unconscionable or not in the best interest of the child or
42 children.

1 (5) If the court finds the separation agreement unconscionable or not in
2 the best interest of the child or children, it may request the parties to submit a
3 revised separation agreement or may make its own orders, after a hearing described
4 under paragraph (i) is conducted.

5 (6) Any unresolved provisions shall be subject to determination by the
6 court after holding a hearing as described under paragraph (i).

7 (i) Divorce Hearing.

8 (1) Upon completion of any mediation required in paragraph (h), the
9 court shall hold a hearing to validate any agreement entered into and resolve all
10 remaining matters still pending in the action.

11 (2) The court may require the parties to file briefs supporting their
12 arguments for property division, child custody, visitation, child support, and
13 alimony.

14 (j) Judgment and Decree.

15 (1) Upon completion of the requirements under this Section, a divorce
16 shall be granted by the court and a final divorce decree entered, specifying, where
17 applicable, the property division, child custody, child visitation, child support, and
18 alimony.

19 (2) Every divorce decree shall recite the day and date when the
20 judgment is rendered. If the divorce decree is appealed, the part of the decree in
21 dispute does not become final or take effect until the appeal is determined. The
22 divorce shall take effect on the date the divorce decree is rendered.

23 (3) When a judgment for divorce is granted, it shall be effective
24 immediately.

25 (k) Set-aside of a Decree.

26 (1) When a divorce decree has been issued by the Quapaw Court, the
27 Quapaw Court is hereby authorized to dissolve said decree within 180 days of entry
28 thereof upon the request of both parties to a divorce.

29 (2) For a divorce decree to be revoked, both parties to the divorce must
30 consent to the revocation in writing.

31 (3) When a divorce decree is revoked, the property, children, and parties
32 to the marriage are restored to pre-divorce status.

33 (l) Restoration of a former name. When a divorce is granted, the court may
34 order a spouse's former name to be restored upon request by the party.

35 **§ 16. Prohibited Acts During the Pendency of a Divorce**

36 (a) Parties of a divorce proceeding are prohibited from the following acts and
37 omissions:

38 (1) intimidating, harassing, disparaging, abusing, or otherwise agonizing
39 the other party or other interested parties in the proceedings;

40 (2) encumbering, concealing, damaging, destroying, transferring,
41 cancelling, altering, or otherwise disposing of property, money, funds, accounts, or

1 insurance policies owned or claimed to be owned by both parties, except when such
2 use or action is in the usual course of business, agreed to in writing by both parties,
3 or permitted by the court;

4 (3) opening mail addressed to the other party;

5 (4) hiding a child from a parent or otherwise interfering with a parent's
6 legal custody, physical custody, or visitation rights, or otherwise committing an act
7 of custodial interference under Section 49; and

8 (5) establishing a residence with a child to the parties outside the
9 jurisdiction of the Quapaw Court or removing the minor child from the jurisdiction
10 of the Quapaw Court except with approval of the Quapaw Court.

11 (b) Any violation of this Section may constitute contempt of court and be
12 referred for prosecution, in addition to other penalties that may be prescribed by law.

13 **SUBPART D. MISCELLANEOUS**

14 **§ 17. Pro Se Representation**

15 Any party to an action under this Ordinance may choose to represent himself or
16 herself in court or mediation without the aid of counsel, unless the court holds the party
17 does not have the mental capacity to make decisions in his or her own best interest.

18 **§ 18. Guardian Ad Litem**

19 (a) In any proceeding where custody or visitation of a minor child is contested
20 by any party, the Quapaw Court may appoint a guardian *ad litem* upon motion of the
21 court or upon application of any party to appear for and represent the minor child.

22 (b) The guardian *ad litem* may be appointed to objectively advocate on behalf
23 of the child and act as an officer of the court to investigate all matters concerning the
24 best interests of the child. In addition to other duties required by the court and as
25 specified by the court, a guardian *ad litem* shall have the following responsibilities:

26 (1) to review documents, reports, records and other information relevant
27 to the case, meet with and observe the child in appropriate settings, and interview
28 parents, caregivers and health care providers and any other person with knowledge
29 relevant to the case including, but not limited to, teachers, counselors and child care
30 providers;

31 (2) to present written reports to the parties and court prior to trial or at
32 any other time as specified by the court on the best interests of the child that include
33 conclusions and recommendations and the facts upon which they are based; and

34 (3) to maintain confidentiality of information related to the case.

35 **§ 19. Costs and Fees**

36 (a) A filing fee of one hundred twenty-five dollars (\$125.00) shall be paid for
37 a divorce or annulment.

38 (b) The court may award and distribute to or among the parties court costs,
39 attorney fees, counseling and mediation costs, guardian *ad litem* costs, and any other
40 reasonable costs and expenses incurred from action under this Ordinance, when the
41 court determines such award and distribution is just and equitable.

1 (c) Costs, fees, and other payments ordered by the court under this Ordinance
2 shall draw interest at the rate of ten percent (10%) per year from the date they become
3 delinquent, which shall be collected in the same manner as the payments of principal.

4 **§ 20. False Accusations of Child Abuse**

5 During any proceeding under this Ordinance, if the court determines that a party has
6 intentionally made a false or frivolous accusation to the court of child abuse or neglect
7 against the other party, the court may, in addition to contempt of court, consider the
8 false allegation in determining custody and award the obligation to pay all court costs
9 and legal expenses encumbered by both parties arising from the allegations to the
10 accusing party.

11 **PART III. DIVISION OF PROPERTY**

12 **§ 21. Division of Property**

13 (a) The Quapaw Court shall determine what property is marital property and
14 make an equitable division of the marital estate, including assets and debts.

15 (b) The division of property may be made in kind, or by setting the same apart
16 to either of the parties and requiring the party to pay the other such sum as may be
17 necessary for an equitable division of property. The court may require a lien be placed
18 on the divided property to secure such payments.

19 **§ 22. Postnuptial and Prenuptial Agreements**

20 When the parties have agreed to a valid postnuptial or prenuptial contract in writing,
21 the agreement shall control the division of the property.

22 **§ 23. Marital and Separate Property**

23 (a) Marital property, whether real property or personal property, is property
24 which has been acquired by the parties jointly during their marriage, whether the title
25 thereto is held jointly or separately.

26 (b) Marital Property shall include:

27 (1) income from any increase in value of separate property if due to the
28 effort of either spouse; and

29 (2) pension benefits acquired and interest earned during the marriage,
30 including profit-sharing and retirement plans.

31 (c) Property that is not marital property is separate property, which includes
32 property:

33 (1) acquired prior to marriage;

34 (2) acquired by one of the spouses by gift during the marriage;

35 (3) acquired by one of the spouses during the marriage by inheritance;

36 (4) acquired solely due to enrollment in a Tribe, such as per capita
37 payments;

38 (5) acquired in exchange for separate property, unless it changes
39 character due to transmutation;

- 1 (6) disability insurance proceeds; and
2 (7) income from and appreciation of separate property if due to the
3 inherent nature of the property or market.

4 **§ 24. Disclosure of Possessions**

5 Unless otherwise agreed upon by the parties in writing, each party shall deliver to
6 the other within thirty (30) days from the service of summons, the following documents:

- 7 (a) federal and state income tax returns of each party for the past two (2) years,
8 including supporting documentation;
9 (b) any nonpublic, limited partnership and privately held corporate returns for
10 any entity in which either party has an interest;
11 (c) two (2) months of the most recent pay stubs from each employer;
12 (d) statements for the past six (6) months for all bank accounts held in the
13 name of either party individually or jointly, or in the name of another person for the
14 benefit of either party, or held by either party for the benefit of the child or children of
15 the parties; and
16 (e) documentation regarding all debts in the name of either party individually
17 or jointly, showing the most recent balance due and payment terms.

18 **§ 25. Considerations for Division of Property**

19 (a) When determining the division of the property, the following shall be
20 considered:

- 21 (1) the contribution of each party to the marriage, giving appropriate
22 value to each party's contribution in homemaking and child care services;
23 (2) the physical and emotional health of the parties;
24 (3) the contribution by one party to the education, training, or increased
25 earning power of the other;
26 (4) the earning capacity of the party, including education background,
27 training, employment skills, work experience, length of absence from the job
28 market, custodial responsibilities for children, and the time and expense necessary
29 to acquire sufficient education and training to enable the party to find appropriate
30 employment;
31 (5) the awarding of the ownership of the family home or right to live
32 therein;
33 (6) the tax consequences to each party; and
34 (7) any written agreement made by the parties concerning arrangements
35 for property distribution.

36 (b) The court shall not consider fault in the divorce as a factor in division of
37 property.

38 **§ 26. Finality**

39 (a) Upon a determination of how the marital property is to be divided, the

1 court shall make an order for the division of property to be contained in the decree.

2 (b) Except as stated in paragraph (b) of Section 21, a divorce or annulment
3 shall bar any claim of either party to the property of the other, except in cases where
4 actual fraud has been committed by or on behalf of the successful party.

5 (c) Payments pertaining to a division of property are irrevocable and not
6 subject to subsequent modification by the Quapaw Court.

7 **§ 27. Violation of Property Orders**

8 Any order pertaining to the division of property pursuant to a divorce, annulment or
9 legal separation action, if willfully disobeyed, shall constitute contempt of court and
10 may be referred for prosecution, in addition to other penalties that may be prescribed by
11 law.

12 **PART IV. CUSTODY AND VISITATION OF CHILDREN**

13 **SUBPART A. CUSTODY AND VISITATION UNDER TRIBAL LAW**

14 **§ 28. Tribal Policy**

15 It is the policy of the Quapaw Tribe to assure that children have frequent and
16 continuing contact with parents who have shown the ability to act in the best interest of
17 their children and to encourage parents to share in the rights and responsibilities of
18 rearing their children after the parents have dissolved their marriage. Under this policy,
19 liberal visitation and communication for a noncustodial parent shall be encouraged and
20 accommodated when in the best interest of the child.

21 **§ 29. Custody**

22 If the parties dissolving a marriage under this Ordinance have a child between them,
23 the court shall make an order for the legal and physical custody of the child to be
24 contained in the decree and specify the visitation rights of a noncustodial parent, when
25 joint custody is not granted.

26 **§ 30. Initial Request**

27 Any party to the proceeding requesting custody of the child shall file a petition with
28 the court, either jointly with the other party or separately, a plan for the care and custody
29 of the child, including physical living arrangements for the child and visitation rights.

30 **§ 31. Interested Parties**

31 (a) When grandparents have maintained a relationship similar to a parent-child
32 relationship with the child, the court may, at its discretion, permit the grandparents of
33 the child to enter the custody proceedings as an interested party.

34 (1) A grandparent who has intervened in a child custody proceeding
35 under may submit an amicus curiae brief expressing what custodial action the
36 grandparent believes is in the best interest of the child.

37 (2) The court may grant a reasonable visitation right to the grandparent,
38 independent of either parent of the child, if the court determines that visitation is in
39 the best interest of the child.

40 (3) For purposes of this paragraph (a), when determining whether
41 independent visitation rights by a grandparent is in the best interest of the child, the

1 court shall consider the following factors:

2 (A) the preexisting relationship with the grandparent and importance of
3 continuing such relationship;

4 (B) the length, quality and intimacy of the preexisting relationship
5 between the child and the grandparent;

6 (C) the custodial and visitation rights of a the grandparent's child who is
7 the child's parent;

8 (D) the likelihood and motivation of the parent denying a grandparent's
9 visitation with the child;

10 (E) the importance of the grandparent's relationship with the grandchild
11 in teaching or preserving any applicable tribal culture, customs, and traditions;
12 and

13 (F) the detrimental impact, if any, granting visitation rights to a
14 grandparent would have on the parent-child relationship.

15 (b) The Quapaw Tribe may, in the court's discretion, be an interested party in
16 a child custody proceeding where the child of the marriage is a member of the Quapaw
17 Tribe. As an interested party, the Tribe may submit an amicus curiae brief expressing
18 how preserving the child's ties or relationship with the Quapaw Tribe, its culture, and its
19 traditions, would be in the best interest of the child.

20 **§ 32. Parentage**

21 (a) When necessary for determining child support or child custody, the court
22 shall determine paternity disputes under this Section.

23 (b) Upon a motion by a party, the court may order a paternity test when the
24 paternity of a child is in dispute.

25 (c) There shall be a presumption that a man is the father of a child when:

26 (1) the man has executed an effective act of acknowledgement that he is
27 the father;

28 (2) the child is born during the marriage;

29 (3) the man's name is on the birth certificate of the child;

30 (4) the man promised in writing to support the child;

31 (5) the child resides with the man and he openly holds the child out as
32 his natural child for at least two (2) years of the child's life; or

33 (6) a genetic test shows a 99% probability the man is the father.

34 (d) If a man is presumed to be the father of the child, an action disputing
35 paternity must be brought within three (3) years of the birth of the child.

36 **§ 33. The Best Interest of the Child**

37 In determining the custody of a child, the best interests of the child, including the
38 child's physical and mental and moral welfare, with due consideration for tribal custom,
39 shall be the primary factor.

1 **§ 34. Preference of the Child**

2 (a) In considering the best interests of the child, the Quapaw Court may
3 consider the child’s opinion, including the custodial preference of the child. A child’s
4 opinion does not diminish the discretion of the court in determining the best interest of
5 the child. The court shall not be bound by the child's choice or opinion and shall take all
6 factors into consideration in awarding custody or limits of or period of visitation.

7 (b) Before hearing a child’s opinion, the court shall first determine whether the
8 best interest of the child would be served by allowing the child to express an opinion.
9 In making the determination, the court shall consider the child’s willingness to share an
10 opinion and the mental hardship that sharing an opinion may have on the child.

11 (c) If the court determines allowing the child to express an opinion would
12 serve the best interest of the child, and the child is capable of forming an intelligent
13 preference, taking into consideration the child’s age, the court may consider the opinion
14 of the child in determining a parent’s rights to custody and visitation.

15 (d) The court may receive the child’s opinion in a private interview with the
16 child without the parents, attorneys or other parties present, at the consent of each of the
17 parties. However, if the court has appointed a guardian *ad litem* for the child, the
18 guardian *ad litem* shall be present with the child when expressing an opinion. The
19 parents, attorneys or other parties may provide the court with questions or topics for the
20 court to consider in its interview of the child; however, the court shall not be bound to
21 ask any question presented or explore any topic requested by a parent, attorney or other
22 party.

23 **§ 35. Domestic Abuse**

24 (a) In every case involving the custody or visitation of a child, the Quapaw
25 Court shall consider evidence of ongoing domestic abuse. If the occurrence of ongoing
26 domestic abuse is established by clear and convincing evidence, there shall be a
27 rebuttable presumption that it is not in the best interests of the child to have custody,
28 guardianship or unsupervised visitation granted to the abusive person.

29 (b) If a parent is absent or relocates as a result of an act of domestic violence
30 by the other parent, the absence or relocation shall not be a factor in determining
31 custody or visitation.

32 **§ 36. Drug Testing**

33 (a) The court may order the mother, child or father to submit to blood, saliva,
34 urine, hair, nail clipping, or any other test deemed necessary by the court in determining
35 that the custody of or visitation with the child will be in the best interest of the child.

36 (b) If so ordered and any party or child refuses to submit to such tests, the
37 court may enforce its order if the rights of others and the interests of justice so require
38 unless such individual is found to have good cause for refusing to cooperate.

39 **§ 37. Other Factors in Determining the Best Interest of the Child**

40 (a) When determining the best interest of the child, the court shall also
41 consider:

42 (1) which parent is more likely to allow the child frequent and
43 continuing contact with the noncustodial parent;

- 1 (2) whether the parent or person residing with the parent:
2 (A) has a history of committing child abuse or domestic violence;
3 (B) is an alcohol-dependent or drug-dependent person and can be
4 expected in the near future to inflict or attempt to inflict serious bodily harm to
5 himself or herself as a result of such dependency; or
6 (C) is a registered sex offender.
- 7 (3) When determining the custody of the parent, the court shall not give
8 preference to a parent because of a parent's:
9 (A) gender;
10 (B) financial circumstances; or
11 (C) active military service, including any possibility for deployment.

12 **§ 38. Right to be Heard**

13 Before a child custody determination is made under this Part, notice and an
14 opportunity to be heard must be given to both parents of the child and any person
15 having legal custody of the child.

16 **§ 39. Visitation Orders**

- 17 (a) If the court order determines that either of the parents to the child is not to
18 be a custodial parent, the court shall determine the visitation rights of the noncustodial
19 parent to be contained in the decree. Except for good cause shown, visitation by a
20 noncustodial parent shall be in the best interest of the child.
- 21 (b) The court's visitation order shall specify the noncustodial parent's right to
22 visitation, including the minimum amount of time and communication with the child.
- 23 (c) The court may award visitation by a parent who repeatedly committed
24 domestic or family violence only when adequate protection for the safety of the child
25 and other victims can be made.

26 **§ 40. Joint Custody and Visitation Schedules**

- 27 (a) When determining custody and visitation schedules, the court shall
28 consider:
29 (1) the continuity and stability of the life of the child;
30 (2) the regular school hours of the child;
31 (3) the work schedule of both parents;
32 (4) the distance between the parties and the expense of necessary travel;
33 and
34 (5) any other factors the court deems to be appropriate.
- 35 (b) As the court deems appropriate, custody and visitation schedules should
36 address:
37 (1) custody and visitation on specific days such as:
38 (A) midweek and weekend time-sharing;

- 1 (B) holidays, including Friday and Monday holidays;
- 2 (C) summer vacation break;
- 3 (D) midterm school breaks;
- 4 (E) the birthday of the child;
- 5 (F) traditional tribal events and ceremonies, including pow-wows; and
- 6 (G) special circumstances, including weddings, funerals, family
- 7 reunions, and other ceremonies;
- 8 (2) notice requirements and authorized reasons for cancellations;
- 9 (3) transportation and transportation costs, including pick up and return
- 10 of the child;
- 11 (4) grandparent and family contact;
- 12 (5) sibling visitation schedules;
- 13 (6) communication rights, including telephone calls and video
- 14 conferencing;
- 15 (7) emergency situations; and
- 16 (8) any other factors the court deems to be appropriate.

17 **§ 41. Final Placement Plan**

18 The court shall issue a final plan for the exercise of joint care, custody, and control
19 of the children, to be placed in the decree, based upon any plan submitted by the
20 parents, separate or jointly, with appropriate changes deemed by the court to be in the
21 best interest of the child.

22 **§ 42. Records**

23 The Quapaw Court shall preserve the pleadings, orders, decrees, records of
24 hearings, evaluations, and other pertinent records with respect to a child custody
25 proceeding until the child attains eighteen (18) years of age.

26 **§ 43. Modifications to a Custody or Visitation Order**

27 (a) A custody or visitation order may only be modified with approval by the
28 court.

29 (b) A parent seeking modification of a custody order within five (5) years of
30 its enactment must establish that a permanent, substantial, and material change of
31 conditions that directly affects the best interest of the child has occurred and the welfare
32 of the child would be improved if the order was modified.

33 (c) After five (5) years from a custody order becoming effective, either party
34 may file for a rehearing for modification of child support payments for any reason.

35 (d) When determining whether to modify or terminate a custody order, the
36 court shall consider:

- 37 (1) the best interests of the child;
- 38 (2) any change in circumstances from the previous order;

- 1 (3) any change in the physical placement of a parent;
- 2 (4) the success of the previous order; and
- 3 (5) the parties compliance with the previous order.
- 4 (e) Visitation may be terminated if:
- 5 (1) the visiting parent repeatedly violates the terms of the visitation;
- 6 (2) the child becomes severely distressed in response to visitation;
- 7 (3) there is clear guidance that the visiting parent intends to harm or flee
- 8 with the child, or harm the custodial parent.
- 9 (f) On the death of a parent with visitation rights, the court may order the
- 10 visitation rights to other members of the family and between siblings when in the best
- 11 interest of the child.

12 **§ 44. Parental Relocation**

13 (a) Except when the court determines otherwise, the custodial parent of a child

14 must provide at least sixty (60) days notice to a noncustodial parent and any person

15 entitled to visitation of any proposed relocation of the child’s principal residence to a

16 distance at least ninety (90) miles away from such party. The location must include the

17 address of relocation, the date of relocation, the reasons for relocation, and a statement

18 that the noncustodial parent may oppose the relocation within thirty (30) days of

19 receiving the notice.

20 (b) A noncustodial parent may contest the relocation within thirty (30) days of

21 receiving notice of the custodial parent and child’s relocation. If the noncustodial

22 parent contests the relocation, the court shall hold a hearing and may issue a temporary

23 order pending a final hearing.

- 24 (c) The court shall consider the following factors when deciding whether to
- 25 grant the relocation of the child against the will of a noncustodial parent:
- 26 (1) the best interest of the child;
 - 27 (2) the child’s relationship with each of the parents;
 - 28 (3) the age, development, and needs of the child;
 - 29 (4) the feasibility of preserving the relationship with the nonrelocating
 - 30 parent;
 - 31 (5) the child’s preference;
 - 32 (6) the motive of the relocating parent;
 - 33 (7) the timing of the relocation;
 - 34 (8) the motive of the parent seeking to prohibit relocation; and
 - 35 (9) any other factors deemed appropriate by the court.

36 **§ 45. Military Deployment of a Parent**

37 (a) If a parent of a child subject to a custody order under this Ordinance is

38 ordered to be deployed for military service, the court may issue a temporary custody

- 1 order setting forth the caretaking authority among the parents and other designated
2 persons which may include:
- 3 (1) the allocation of custody among the parents or other designate
4 custodial nonparent;
 - 5 (2) the decision-making authority regarding the child;
 - 6 (3) the contact of a nonparent with the child on behalf of a deployed
7 parent;
 - 8 (4) the communication between the child and the deployed parent and
9 the role to be played by the other parent in facilitating such communication; and
 - 10 (5) any other provision deemed appropriate by the court.
- 11 (b) The temporary custody order should attempt to provide, when in the best
12 interest of the child, for liberal communication between the deploying parent and the
13 child during deployment and liberal contact between the deploying parent and the child
14 when the deploying parent is on leave, or otherwise available, and upon a reasonable
15 time after return from deployment, even if the time of contact exceeds the time the
16 deploying parent spent with the child before entry of the temporary order.
- 17 (c) The court may grant part of a deploying parent's decision-making
18 authority, if the deploying parent is unable to exercise that authority, to a nonparent who
19 is an adult family member of the child or an adult with whom the child has a close and
20 substantial relationship. The court shall specify the decision-making powers granted to
21 any non-parent, including the decisions regarding the child's education, health care,
22 cultural and religious practices, and travel.
- 23 (d) Upon receiving notice of deployment, both parents of a child shall make a
24 good faith effort to enter into a temporary custody agreement for granting custodial
25 responsibility and visitation rights during deployment and for a reasonable time
26 thereafter. The agreement shall be submitted to the court for approval and shall not be
27 valid unless and until such agreement is approved by the court.
- 28 (e) If an agreement cannot be reached under paragraph (d), the court may issue
29 a temporary custody order, upon a motion by either party, after an opportunity for a fair
30 hearing has been provided.
- 31 (f) Unless the best interest of the child requires otherwise, the grant of
32 authority to a nonparent under a temporary custody agreement shall be limited to the
33 rights the deploying parent has the right to exercise but, due to deployment, is
34 unavailable to exercise such rights.
- 35 (g) A temporary agreement granting custodial responsibility under this Section
36 terminates at the time specified on the temporary custodial order, or, upon a court's
37 order, at the motion of a party, upon the return of the deploying parent, but in no case
38 within thirty (30) days after the deploying parent has returned from deployment.

39 **§ 46. Custody During Separation**

40 If the parents of a child are separated without being divorced, a parent may petition
41 the Quapaw Court to issue a custody order pertaining to the child, in compliance with
42 this Ordinance.

1 **§ 47. Denial of Visitation or Communication**

2 Violation of an order providing for visitation or communication of a noncustodial
3 parent with any of the children of such noncustodial parent may constitute contempt of
4 court and may be referred for prosecution, in addition to other penalties that may be
5 prescribed by law.

6 **§ 48. Denial of Visitation for the Safety of a Child**

7 A parent who, in good faith and with a reasonable belief supported by fact,
8 determines that the child is a victim of or in danger of child abuse or neglect may take
9 necessary actions to protect the child, including refusing to permit visitation.

10 **§ 49. Interference with Custodial or Visitation Rights**

11 (a) When a person’s custodial or visitation rights have been denied, such
12 person may file with the Quapaw Court Clerk a motion for enforcement of such rights.

13 (b) Upon filing of the motion, the Quapaw Court shall issue an order for
14 mediation or set a hearing on the motion.

15 (c) Notice of a hearing shall be given to all interested parties.

16 (d) If the Quapaw Court finds that visitation rights of the noncustodial parent
17 have been unreasonably denied or otherwise interfered with by the custodial parent, the
18 Quapaw Court shall enter an order that may include:

- 19 (1) a specific visitation schedule;
- 20 (2) compensation visitation time for the visitation denied;
- 21 (3) posting of a bond, either cash or with sufficient surety, conditioned
22 upon compliance with the order granting visitation rights;
- 23 (4) attendance to counseling sessions;
- 24 (5) supervised visitation;
- 25 (6) modification of the child custody order; or
- 26 (7) any other remedy the court considers appropriate.

27 (e) A pattern of failure to allow court-ordered visitation may be determined to
28 be contrary to the best interests of the child and may be grounds for modification of the
29 child custody order.

30 **SUBPART B. COOPERATION WITH OTHER JURISDICTIONS**

31 **§ 50. Quapaw Tribal Court Jurisdiction**

32 (a) The Quapaw Court shall exercise its jurisdiction to determine child custody
33 if:

- 34 (1) the Quapaw jurisdiction is the home jurisdiction of the child on the
35 date of the commencement of the proceeding, or was the home jurisdiction of the
36 child within six (6) months before the commencement of the proceeding and the
37 child is absent from this jurisdiction but a parent continues to live in this
38 jurisdiction;

1 (2) a court of another jurisdiction does not have jurisdiction under
2 subparagraph (1), or the court with home jurisdiction of the child has declined
3 jurisdiction; and:

4 (A) the child or the child's parents, or the child and at least one parent or
5 a person acting as a parent, has a significant connection with this jurisdiction
6 other than mere physical presence; and

7 (B) substantial evidence is available concerning the child's care,
8 protection, training, and personal relationships;

9 (3) all courts having jurisdiction under subparagraphs (1) and (2) have
10 declined jurisdiction on the ground that the Quapaw Court is the more appropriate
11 form to determine the custody of the child; or

12 (4) no court of another jurisdiction would otherwise exercise
13 jurisdiction under the criteria specified in subparagraphs (1), (2), and (3).

14 (b) Physical presence of, or personal jurisdiction over, a party or a child is not
15 necessary or sufficient to make a child custody determination.

16 **§ 51. Exclusive Jurisdiction**

17 (a) The Quapaw Court, when making a child custody determination under this
18 Part, shall have exclusive, continuing jurisdiction over the determination until the
19 Quapaw Court terminates such jurisdiction.

20 (b) The Quapaw Court, when it has made a child custody determination, shall
21 have exclusive jurisdiction to modify that determination unless it has expressly waived
22 such right to another court.

23 (c) The Quapaw Court shall not modify a child custody determination made
24 by a court of another jurisdiction unless:

25 (1) the court of another jurisdiction determines it no longer has
26 exclusive, continuing jurisdiction or that the Quapaw Court would be a more
27 convenient forum; or

28 (2) the Quapaw Court determines the court that made the initial child
29 custody determination did not have the right to exercise jurisdiction over such
30 determination.

31 **§ 52. Temporary Emergency Jurisdiction**

32 (a) The Quapaw Court has temporary emergency jurisdiction to make a child
33 custody determination if the child is present in the jurisdiction and the child has been
34 abandoned or it is necessary in an emergency to protect the child because the child, or a
35 sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

36 (b) If there is no previous child custody determination that is enforceable and a
37 child custody proceedings has not been commenced in a court of another jurisdiction, a
38 child custody determination made under this Section remains in effect until a proper
39 order is obtained from the court of jurisdiction. If a child custody proceeding has not
40 been or is not commenced in a court of another jurisdiction within a reasonable amount
41 of time, a child custody determination under this Section becomes a final determination,
42 if it so provides, and this jurisdiction becomes the home jurisdiction of the child.

1 (c) If there is a previous child custody determination that is enforceable, or a
2 child custody proceeding has been commenced in a court of another jurisdiction, any
3 order issued by the Quapaw Court must specify in the order a period that the court
4 considers reasonable to allow the person seeking an order to obtain an order from
5 another jurisdiction. The order issued by the Quapaw Court remains in effect until an
6 order is obtained from the other jurisdiction within the period specified or the period
7 expires.

8 (d) If the Quapaw Court has been asked to make a child custody determination
9 in emergency circumstances similar to this Section, the Quapaw Court shall
10 immediately communicate with the court of another jurisdiction to resolve the
11 emergency and to protect the safety of the parties and the child.

12 **§ 53. Cooperation Between Courts**

13 (a) The Quapaw Court may request the appropriate court of another
14 jurisdiction to:

15 (1) hold an evidentiary hearing;

16 (2) order a person to produce or give evidence pursuant to procedures of
17 that jurisdiction;

18 (3) order that an evaluation be made with respect to the custody of a
19 child involved in a pending proceeding;

20 (4) forward to the Quapaw Court a certified copy of the transcript of the
21 record of the hearing, the evidence otherwise presented, and any evaluation
22 prepared in compliance with the request; and

23 (5) order a party to a child custody proceeding or any person having
24 physical custody of the child to appear in the proceeding with or without the child.

25 (b) Upon request of a court in another jurisdiction, the Quapaw Court may
26 hold a hearing and enter an order described in subparagraph (a).

27 **§ 54. Simultaneous Proceedings**

28 (a) Except for as provided in Section 52, the Quapaw Court may not exercise
29 jurisdiction in a child custody proceeding if, at the time of the commencement of the
30 proceeding, a proceeding concerning the custody of the child has been properly
31 commenced in a court of another jurisdiction, unless the proceeding has been terminated
32 or is stayed by the court of the other jurisdiction because the Quapaw Court is a more
33 convenient forum.

34 (b) Except for as provided in Section 52, the Quapaw Court, before hearing a
35 child custody proceeding, shall examine the court documents and other information
36 supplied by the parties pursuant to Section 15. If the Quapaw Court determines that a
37 child custody proceeding has been properly commenced in a court of another
38 jurisdiction, the Quapaw Court shall stay its proceeding and communicate with the court
39 of the other jurisdiction.

40 (c) In a proceeding to modify a child custody determination, the Quapaw
41 Court shall determine whether a proceeding to enforce the determination has been
42 commenced in another jurisdiction. If a proceeding to enforce a child custody
43 determination has been commenced in another jurisdiction, the court may:

1 (1) stay the proceeding for modification pending the entry of an order of
2 a court of the other jurisdiction enforcing, staying, denying, or dismissing the
3 proceeding for enforcement;

4 (2) enjoin the parties from continuing with the proceeding for
5 enforcement; or

6 (3) proceed with the modification under conditions it considers
7 appropriate and in compliance with Section 51(c).

8 **§ 55. Inconvenient Forum**

9 (a) If the Quapaw Court has jurisdiction to make a child custody
10 determination, it may decline to exercise its jurisdiction at any time if it determines that
11 it is an inconvenient forum under the circumstances and that a court of another
12 jurisdiction is a more appropriate forum. The issue of inconvenient forum may be
13 raised upon motion of a party, the court's own motion, or request of another court.

14 (b) If the Quapaw Court determines that it is an inconvenient forum and that a
15 court of another jurisdiction is a more appropriate forum, it may stay the proceedings
16 upon condition that a child custody proceeding be promptly commenced in another
17 designated jurisdiction and impose any other condition the court considers just and
18 proper.

19 **§ 56. Jurisdiction Declined by Reason of Conduct**

20 If the Quapaw Court has jurisdiction under this Subpart because a person seeking to
21 invoke its jurisdiction has engaged in unjustifiable conduct, the Quapaw Court may
22 abstain from exercising its jurisdiction.

23 **§ 57. Appearance of Parties Outside Quapaw Jurisdiction**

24 If a party to a child custody proceeding whose presence is desired by the court is
25 outside the Quapaw Court's jurisdiction, the Quapaw Court may order that a notice be
26 given directing the party to appear in person with or without the child and informing the
27 party that failure to appear may result in a decision adverse to the party.

28 **§ 58. Temporary Visitation Order**

29 If the Quapaw Court does not have authority to modify a child custody
30 determination under this Subpart, it may issue a temporary order enforcing:

31 (a) a visitation schedule made by a court of another jurisdiction; or

32 (b) the visitation provisions of a child custody determination of another
33 jurisdiction that does not provide for a specific visitation schedule.

34 **§ 59. Registration of a Child Custody Determination**

35 (a) A child custody determination issued by a court of another jurisdiction
36 may be registered in the Quapaw Court, with or without a simultaneous request for
37 enforcement, by sending to the Quapaw Court:

38 (1) a letter or other document requesting registration;

39 (2) two (2) copies, including one (1) certified copy, of the determination
40 sought to be registered, and a statement under penalty of perjury that to the best of

1 the knowledge and belief of the person seeking registration the order has not been
2 modified; and

3 (3) the name and address of the person seeking registration and any
4 parent or person acting as a parent who has been awarded custody or visitation in
5 the child custody determination sought to be registered, unless this Ordinance
6 provides otherwise.

7 (b) Upon receipt of the documents under subparagraph (a), the Quapaw Court
8 shall:

9 (1) file the judgment, together with one (1) copy of accompanying
10 documents and information, regardless of their form; and

11 (2) serve notice upon the persons named and provide them with an
12 opportunity to contest the registration in accordance with paragraph (d).

13 (c) The notice served to the named persons under paragraph (b) must state
14 that:

15 (1) a registered determination is enforceable as of the date of the
16 registration in the same manner as a determination issued by the Quapaw Court;

17 (2) a hearing to contest the validity of the registered determination must
18 be requested within 20 days after service of notice; and

19 (3) failure to contest the registration will result in confirmation of the
20 child custody determination and preclude further contest of that determination with
21 respect to any matter that could have been asserted.

22 (d) A person seeking to contest the validity of a registered order must request a
23 hearing within twenty (20) days after service of the notice. At that hearing, the Quapaw
24 Court shall confirm the registered order unless the person contesting registration
25 establishes that:

26 (1) the issuing court did not have jurisdiction;

27 (2) the child custody determination sought to be registered has been
28 vacated, stayed, or modified by a court having jurisdiction to do so; or

29 (3) the person contesting registration was entitled to notice, but notice
30 was not given in the proceedings before the court that issued the order for which
31 registration is sought.

32 (e) If a timely request for a hearing to contest the validity of the registration is
33 not made, the registration is confirmed as a matter of law and the person requesting
34 registration and all persons served must be notified of the confirmation.

35 (f) Confirmation of a registered order, whether by operation of law or after
36 notice and hearing, precludes further contest of the order with respect to any matter that
37 could have been asserted at the time of registration.

38 **§ 60. Enforcement of a Child Custody Determination**

39 Upon the filing of a petition, the Quapaw Court shall issue an order directing the
40 respondent to appear in person with or without the child at a hearing and may enter any
41 order necessary to ensure the safety of the parties and the child.

1 **§ 61. Hearing and Order**

2 Unless the Quapaw Court issues a temporary emergency order pursuant to Section
3 52, upon a finding that a petitioner is entitled to take immediate physical custody of the
4 child, the court shall order that the petitioner may take immediate physical custody of
5 the child unless the respondent establishes that:

6 (a) the child custody determination has not been registered and confirmed and
7 that:

8 (1) the issuing court did not have jurisdiction;

9 (2) the child custody determination for which enforcement is sought has
10 been vacated, stayed, or modified by a court having jurisdiction to do so; or

11 (3) the respondent was entitled to notice, but notice was not given in the
12 proceedings before the court that issued the order; or

13 (b) the child custody determination for which enforcement is sought was
14 registered and confirmed but has been vacated, stayed, or modified by a court having
15 jurisdiction to do so.

16 **§ 62. Warrant to Take Physical Custody of Child in Certain**
17 **Situations**

18 (a) Upon the filing of a petition seeking enforcement of a child custody
19 determination, the petitioner may file a verified application for the issuance of a warrant
20 to take physical custody of the child if the child is immediately likely to suffer serious
21 physical harm or be removed from this jurisdiction.

22 (b) If the court, upon the testimony of the petitioner or other witness, finds that
23 the child is imminently likely to suffer serious physical harm or be removed from this
24 jurisdiction, it may issue a warrant to take physical custody of the child. The court shall
25 hold the hearing on the first judicial day possible.

26 (c) A warrant to take physical custody of a child must:

27 (1) recite the facts upon which a conclusion of imminent serious
28 physical harm or removal from the jurisdiction is based;

29 (2) direct the marshal or law enforcement officers to take physical
30 custody of the child immediately; and

31 (3) provide for the placement of the child pending final relief.

32 (d) The respondent must be served with the petition, warrant, and order
33 immediately before or after the child is taken into physical custody.

34 **§ 63. Role of Marshal**

35 (a) In a case arising under this Part, the tribal marshal may take any lawful
36 action to locate a child, obtain the return of a child, or enforce a child custody
37 determination if there is:

38 (1) a violation of an existing child custody determination;

39 (2) a request to do so from the Quapaw Court in a pending child custody
40 proceeding; or

1 (3) a reasonable belief that the child has been wrongfully removed or
2 retained in violation of this Part.

3 (b) A marshal acting under this Section acts on behalf of the court and not as a
4 representative to any party.

5 **PART V. CHILD SUPPORT**

6 **§ 64. Order of Child Support**

7 If the parties dissolving a marriage under this Ordinance have children between
8 them, the court may include a child support order in the decree to enforce a payment by
9 a parent for the support of the child. The order shall describe the amount to be paid and
10 the methods of payment.

11 **§ 65. Computation of Child Support**

12 Computation of child support can be determined by any recognized Oklahoma tribal
13 or state court. If a computation of child support is made by any court other than the
14 Quapaw Court, it shall be filed with the Quapaw Court for approval.

15 **§ 66. Parentage**

16 If parentage is in dispute, it may be determined under Section 32.

17 **§ 67. Health Insurance and Medical Expenses**

18 In addition to child support payments, the Quapaw Court may order a parent to
19 provide or share in the expenses of health insurance and out-of-pocket medical
20 expenses, including dental expenses.

21 **§ 68. Security Bond**

22 The Quapaw Court may order a person obligated to support a child to post a bond or
23 other guarantee in an amount satisfactory to the Quapaw Court to ensure the payment of
24 child support.

25 **§ 69. Income Assignment Order**

26 The court, at its discretion, may require payments for child support to be paid by
27 income reassignment or garnishment under Section 75.

28 **§ 70. Use of Child Support Funds**

29 (a) Child support received by a parent shall be spent on the costs and expenses
30 necessary for caring for the child. Failure to spend child support payments on expenses
31 of the child may be grounds for modification of the child support, custody, or visitation
32 orders.

33 (b) Upon a motion by the noncustodial parent and a showing that the custodial
34 parent has failed to properly expend the child support funds on the child, the court may
35 require a separate account for child support funds, and may require the records of the
36 separate child support account to be subject to review by the noncustodial parent or the
37 court.

38 **§ 71. Modification and Rehearing**

39 (a) The person obligated to pay support or the person entitled to the support
40 may petition the Quapaw Court to modify, suspend or terminate the child support order.

1 (b) The Quapaw Court may order a modification of the child support order
2 within two (2) years of a support order being issued only if there is a material change in
3 circumstances affecting the child support order. A material change in circumstances
4 includes:

5 (1) the remarriage or voluntary cohabitation of a custodial parent with a
6 significant other;

7 (2) a significant increase or decrease in the costs required to meet the
8 needs of the child;

9 (3) a significant increase or decrease in the income or financial
10 resources of the parents;

11 (4) a significant change in child care expenses; and

12 (5) a significant change in the cost of medical insurance or medical
13 costs.

14 (c) After two (2) years from the issuing of a child support order, either party
15 may file for a rehearing for modification of child support payments for any reason.

16 **§ 72. Enforcement of Child Support Orders**

17 (a) The Quapaw Child Welfare Division or tribal marshal shall have the
18 authority to enforce child support orders, as authorized under tribal law or by the
19 Quapaw Court.

20 (b) Any payment of child support required pursuant to any order, judgment, or
21 decree of the Quapaw Court shall become a judgment by operation of law, on and after
22 the date it becomes past due.

23 **§ 73. Civil Contempt**

24 Any violation of a child support order may constitute contempt of court and may be
25 referred for prosecution, in addition to other penalties that may be prescribed by law.

26 **§ 74. Interest on Delinquent Payments**

27 Child support payments shall draw interest at the rate of ten percent (10%) per year
28 from the date they become delinquent, which shall be collected in the same manner as
29 the payments of principal.

30 **§ 75. Garnishment of Wages**

31 When a child support order is issued by the Quapaw Court, the order may require
32 that a portion of a parent's wages be withheld, in compliance with chapter 11 of Title 21
33 of the Quapaw Code, to secure child support payments. Such garnishment may be
34 required upon a motion by the court or by either of the parties. The amount to be
35 withheld may include the principal amount, delinquent payments, and interest.

36 **§ 76. Liens**

37 (a) An arrearage in child support payments required by the court or any past
38 due child support judgment may become a lien against real and personal property of the
39 person ordered to make support payments.

40 (b) Notice of the lien placed on the property shall be given by filing a

1 judgment with the Quapaw Court Clerk and the clerk of the court of jurisdiction where
2 the property is located.

3 **§ 77. Loss of Tribal Privileges**

4 It is the policy of the Quapaw Tribe that child support is a legal right of the children,
5 that mothers and fathers have a legal obligation to provide financial support for their
6 children and that child support payments can have a substantial impact on proper
7 upbringing and future success of the child. It is therefore the Quapaw Tribe's intent to
8 encourage payment of child support by taking any action deemed appropriate, including,
9 withholding, suspending, terminating, and disqualifying a parent from receiving
10 Quapaw tribal benefits including access to tribal facilities and functions.

11 **§ 78. Denial of Visitation**

12 (a) A parent shall not be denied visitation or communication rights solely
13 because he or she is delinquent on child support payments.

14 (b) Denial of visitation rights by the custodial parent shall not be a reason for
15 nonpayment of child support.

16 **§ 79. Incarceration**

17 It is the general policy of the Quapaw Tribe that incarcerating a parent for failure to
18 pay child support should be avoided when at all possible.

19 **PART VI. ALIMONY**

20 **§ 80. Order of Alimony Payment**

21 (a) Upon a motion by either party to the marriage, the court may order a party
22 to pay alimony in the form of monetary payments in either gross or installments, as the
23 court may deem just and equitable.

24 (b) A divorce decree which provides for periodic alimony payments shall
25 plainly state the amount of money which is necessary for alimony payments and that
26 which is pertaining to a division of property.

27 **§ 81. Factors to Consider in Determining Alimony**

28 (a) The following shall be taken into account when determining the amount of
29 alimony to award, if any:

- 30 (1) the need of the recipient arising from the marriage;
- 31 (2) the ability of the party to make alimony payments;
- 32 (3) a party's role in homemaking and its impact on the economic
33 stability, employability, and education of the spouse;
- 34 (4) the amount of property divided;
- 35 (5) the age and caretaking needs of children in custody of the parent and
36 the child or children's impact on the parent's employment;
- 37 (6) the standard of living during the marriage;
- 38 (7) the length of the marriage; and
- 39 (8) any other factors deemed to be appropriate by the court.

1 (b) The following shall not be taken into account when considering the amount
2 of alimony to award, if any:

- 3 (1) the gender of the parties;
- 4 (2) marital misconduct; and
- 5 (3) fault of the divorce.

6 **§ 82. Modification of Alimony**

7 (a) The provisions of any divorce decree pertaining to the payment of alimony
8 may be modified upon a significant change in circumstances relating to the need for
9 support or ability to support which make the terms of the existing decree unreasonable.

10 (b) If no alimony was awarded in the original decree, a decree shall not be
11 modified to later require alimony payments.

12 **§ 83. Termination of Alimony**

13 Alimony payments shall terminate under the following circumstances:

- 14 (a) when the divorce decree requires the alimony payments to terminate;
- 15 (b) when a recipient remarries or cohabitates with a significant other, unless
16 the recipient spouse applies to the court within ninety (90) days of such act showing a
17 reason why some amount of support is still needed and discontinuation of the payments
18 would be inequitable, in which case the order may be modified under Section 82;
- 19 (c) death of the recipient or payor; and
- 20 (d) upon an order by the court.

21 **§ 84. Enforcement of Alimony Orders**

22 (a) Any violation of an order to pay alimony may constitute contempt of court
23 and may be referred for prosecution, in addition to other penalties that may be
24 prescribed by law.

25 (b) An arrearage of alimony payments may become a lien against the real
26 property of the person ordered to make such payments.

27 (c) Alimony payments shall draw interest at the rate of ten percent (10%) per
28 year from the date they become delinquent, which shall be collected in the same manner
29 as the payments of principal.
30

*BE IT FURTHER RESOLVED that the Tribal Business Committee hereby
finds and resolves as follows:*

*1. The foregoing dissolution of marriage code shall become effective
immediately upon certification of this Resolution.*

*2. The foregoing ordinance shall be codified by the General Counsel in
the Quapaw Code as the permanent law of the Tribe.*

CERTIFICATION

The foregoing resolution of the Quapaw Tribal Business Committee was presented and duly adopted through an electronic/telephonic vote of the Tribal Business Committee on July 24, 2015, with a vote reflecting 7 yes, 0 no, 0 abstaining, and 0 absent.



John L. Berrey, Chairman
Quapaw Tribal Business Committee



Thomas Crawfish Mathews, Vice-Chairman
Quapaw Tribal Business Committee

