

FALLON PAIUTE-SHOSHONE TRIBE



LAW AND ORDER CODE

Title 12

Domestic Relations

Fallon Paiute-Shoshone Tribe

Law & Order Codes

LAW & ORDER CODE TITLE 12 DOMESTIC RELATIONS

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Law and Order Code
TITLE 12
DOMESTIC RELATIONS

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TITLE 12 – DOMESTIC RELATIONS

12-10 MARRIAGE

12-10-010 Scope

This Part 12-10 establishes the requirements for a valid marriage and the procedures that must be followed by all persons wishing to enter into a valid marriage.

12-10-020 Consent

The consent of both parties is required before there can be a valid marriage. The parties must have the ability to consent.

12-10-030 Ability To Consent

The following persons are legally incapable of giving a valid consent to the marriage contract, and therefore shall not be issued a license:

- (a) A person under eighteen (18) years of age. However, a parent or guardian may give a valid consent for a person between the age of sixteen and eighteen.
- (b) A person who lacks mental capacity because of mental disease or defect of either a temporary or permanent nature. Absent any other factor, a person suffering from epilepsy shall not be considered as lacking mental capacity.
- (c) A person whose mental capacity is seriously impaired by drugs or alcohol.

12-10-040 Court Orders

- (a) Availability of Court Orders - In the event that a parent or guardian will not consent to the marriage of a person under eighteen (18) years of age, or if there is no parent or guardian or if the person wanting to be married is under sixteen years of age, a Tribal Court order permitting the marriage may be obtained by filing a petition with the Tribal Court.
- (b) Contents of Petition - The petition shall state the names of the parties who wish to be married, their ages, the name of the parent(s) or guardian(s), the reason the consent of the parent(s) or guardian(s) could not be obtained, and the reason the marriage should be permitted.
- (c) Procedure - The Court Clerk shall give the petition to the Tribal Judge immediately after filing. The Judge may schedule a hearing if more information is required. The hearing shall be held within 20 days from the day the petition is filed and the judge shall announce his decision within 10 days from the date of the hearing. The Judge shall order that the marriage be permitted if a sufficient reason is given. Pregnancy, while it is a factor to be considered, is neither determinative nor required.

12-10-050 Marriage Licenses

- (a) Requirement - A marriage license is required before a marriage ceremony may be performed within the Tribe's jurisdiction.
- (b) Procedure - Persons wishing to marry shall request a license from the Tribal Court Clerk. The license shall be on a form approved by the Tribal Judge. The Clerk shall issue a license as long as he or she is satisfied as to the parties' ability to consent.
- (c) Contents - The license shall state the names of the parties, their ages, and their addresses, and the names of a party's parent(s) or guardian(s), when necessary. The license shall be signed and dated by the Tribal Court Clerk.
- (d) Denial of License - If the Tribal Court Clerk refuses to issue a license because he or she is not satisfied as to the parties' ability to consent, the parties may request a hearing before the Tribal Court. Said hearing shall be held within twenty (20) days. The Tribal Judge shall resolve all disputes as to marriage licenses.
- (e) Certificate of Marriage - The Tribal Court Clerk shall issue a blank certificate of marriage at the same time the license is issued. The certificate shall be on a form approved by the Tribal Judge. The certificate shall contain a space to fill in the names of the parties and their ages, and their tribe (if any), the name and title of the person performing the ceremony, and shall contain a statement that the parties consent to the establishment of the relationship of husband and wife between themselves, such statement to be signed by the parties at the time of the ceremony. The certificate shall also include a space for the signature of the person performing the ceremony and for the date the ceremony was performed, and spaces for the signatures of the two persons who witness the marriage ceremony, and a space for signature of the Tribal Court Clerk.
- (f) Time Limit for Validity - A license is valid for thirty (30) days. A ceremony performed with a license issued more than 30 days previously is not valid.
- (g) The fee for issuing and filing a license shall be \$20.
- (h) The Tribal Court shall maintain a marriage registry for all marriages performed in the Tribe's jurisdiction. The Tribal Court may provide a certified copy of a marriage certificate in the registry for a fee as established by the Tribal Court from time to time.

12-10-060 Validity Of Licenses Issued Outside The Jurisdiction

A marriage license issued outside the Tribe's jurisdiction may not be used for ceremonies performed within the Tribe's jurisdiction.

12-10-070 Marriage Ceremonies

- (a) No particular form of ceremony is required. However, the parties must express their consent to the establishment of the relationship of husband and wife between themselves.
- (b) Any religious practitioner, or any Tribal Judge or the Tribal Chairman may perform a marriage ceremony.
- (c) Persons wishing to marry must present their valid license to the person performing the ceremony.
- (d) The ceremony shall be witnessed by two adult persons.
- (e) Marriage ceremonies performed under this Title must occur within the Tribe's jurisdiction.

12-10-080 Certificate Of Marriage

- (a) Persons authorized by Section 12-10-070 to perform marriage ceremonies shall request the marriage certificate from the couple, and shall see that it is properly filled out and signed.
- (b) The original of the certificate shall be given to the parties and one (1) copy shall be given to the Tribal Court Clerk to be placed in the registry.

12-10-090 Marriage Entered Into Outside This Jurisdiction

Marriages entered into outside the Tribe's jurisdiction are valid within the Tribe's jurisdiction if they are valid in the jurisdiction in which they were entered into.

12-10-100 Marriages Entered Into Prior To The Adoption of This Title 12

Marriages entered into on the Fallon Paiute-Shoshone Reservation and Colony prior to the adoption of this Title 12, are valid if they were valid when entered into.

12-20 RIGHTS OF HUSBAND AND WIFE

12-20-010 Scope

This Part 12-20 establishes the property rights of each party to a marriage.

12-20-020 Community Property

- (a) Defined - All property acquired after the marriage by either the husband, the wife, or both, is community property, with the exception of the property described in Section 12-20-030.
- (b) Rights in Community Property:
 - (1) The husband and the wife have present, existing, and equal interests in all community property.
 - (2) The husband and the wife have an equal right to manage community property.
 - (3) One spouse may give to the other spouse the right to control a particular community asset. This agreement must be in writing and signed by both parties.
 - (4) Neither spouse may make a substantial gift of community property without the written consent of the other spouse or any other gift of community property without the consent of the other spouse. A gift made without the necessary consent is void.
- (c) Joint Agreement of Spouses Required for Certain Transactions - Notwithstanding any other provision of this Section 12-20-020, neither spouse may sell or encumber in any way community household goods, furnishings, appliances, automobiles, or any real property, unless the other spouse jointly executes the agreement involved. Any agreement which is not jointly executed is void.

12-20-030 Separate Property

- (a) Defined - All property owned by either the husband or the wife before marriage, or acquired afterwards by gift, by will, or through the laws of inheritance of any jurisdiction, or by an award of personal injury damages, together with the rents, interest, or profits from any such property, is the separate property of the owner.
- (b) Rights in Separate Property - The owner has exclusive control and management of his or her separate property.

- (c) Interests in Fallon Paiute-Shoshone Tribal Housing Department (“Housing Department”) housing units may be the separate property of the spouse that entered into the agreement depending on the terms of the agreement with the Housing Department.
- (d) Interests in allotments owned in trust by the United States for an individual, together with the rents, interest, or profits from any such property, is the separate property of the individual.
- (e) Interests in land assignments issued by the Fallon Business Council to an individual, together with the rents, interest, or profits from any such property, is the separate property of the individual.

12-20-040 Community Debts

- (a) Defined - Community debts are those debts jointly undertaken by the husband and wife, debts incurred in the purchase of community property, and debts incurred in the support of the husband and/or wife and/or their children, while the husband and wife are living together.
- (b) Responsibility for Community Debts – The husband and wife are jointly and equally responsible for community debts. In any action in which both spouses are parties, the court may require that the community property, or if there is insufficient community property, the separate property of the husband and/or the wife, be used to pay community debts.

12-20-050 Separate Debts

- (a) Defined - All debts undertaken by the husband or the wife, individually, except for any debts described in Section 12-20-040 above, are separate debts.
- (b) Responsibility for Separate Debts - The Court shall not require the separate property of the wife to be used to pay the debts of the husband, nor shall it require that separate property of the husband be used to pay the debts of the wife, unless the owner of the separate property has previously agreed in writing that his or her separate property may be used to pay for the debts of his or her spouse.

12-20-060 Individual Property Agreements

Spouses may create their own agreements as to property and alter the provisions in this Part 12-20. Such property agreements must be in writing, must be signed by the parties, and must specifically itemize the assets to be affected.

12-20-070 Applicability Of This Part 12-20 To Indian Trust Land And Money And To Tribal Assignments

The provisions of this Part 12-20 are generally not applicable to interests in Indian trust land, to money held in trust for Indian individuals, or to assignments or other interests in Tribal lands.

12-30 VOID MARRIAGES

12-30-010 Definition

A void marriage is a marriage which is not valid for any legal purpose. A void marriage does not create any property rights or obligations, other than to support any children that may be born of the marriage.

12-30-020 Marriages That Are Void

- (a) Bigamous and incestuous marriages are void.
- (b) Definitions -

- (1) A bigamous marriage is one that is entered into by any person who is already married, i.e., the person's prior marriage has not been annulled or dissolved, and the prior spouse is still alive.
- (2) An incestuous marriage is one between a parent and a child, or a brother and sister of the whole or half blood, or an uncle and niece or aunt and nephew of the whole or half blood, or between first cousins.
- (3) For purposes of this Part 12-30, an aunt is defined as the sister of the person's parent of the whole or half blood, an uncle is defined as the brother of the person's parent of the whole or half blood, and a first cousin is the child of the person's aunt or uncle.

12-30-030 Court Declaration Of Voidness

Either party to a void marriage may file a petition with the Clerk requesting that the marriage be declared void. However, the void marriage is of no legal effect whether or not the parties obtain a Court order declaring it void.

12-30-040 Jurisdiction Of The Tribal Court To Declare Marriages Void

- (a) The Tribal Court has jurisdiction to declare void any marriage described in Section 12-30-020 which was entered into within the Tribe's jurisdiction.
- (b) The Tribal Court has jurisdiction to declare void any marriage described in Section 12-30-020 which was not entered into within the Tribe's jurisdiction, if either of the parties to the marriage have resided within the Tribe's jurisdiction for at least six (6) weeks immediately preceding the filing of the petition.

12-30-050 Procedure

- (a) A petition requesting that a marriage be declared void shall be filed with the Court Clerk. It must conform to the requirements of Section 12-30-060.
- (b) A summons shall be issued and served on the other spouse, in accordance with Title 2 Civil Procedure, unless the other spouse joins in the petition.
- (c) The Tribal Court shall hold a hearing if the matter is contested, but may grant the order without a hearing if the matter is not contested, and evidence as to the bigamous or incestuous character of the marriage is presented with the petition.
- (d) If the matter is contested, the Court shall issue an order declaring the marriage void, if the evidence indicates that it is more likely than not that the marriage is incestuous or bigamous.
- (e) Any order as to property, child support and/or custody, or damages shall be made in accordance with Sections 12-30-070, and 12-30-080, and 12-30-090.

12-30-060 Form Of Petition

- (a) Required Contents of Petition - A petition requesting the Court to declare a marriage void shall be verified and shall state:
 - (1) The names, ages, and residences of the parties to the marriage;
 - (2) The date and place of the marriage;
 - (3) An allegation as to the Court's jurisdiction; and
 - (4) The reason the marriage should be declared void.
- (b) Additional Contents - The petition may include:
 - (1) Requests as to division of property and debts;
 - (2) Requests as to child custody and/or support; and

- (3) Allegations as to damages.
- (c) Petitions Must Be Signed - The petition must be signed by one or both of the parties to the marriage.

12-30-070 Property And Debts Of Void Marriages

- (a) Community Property Rules Do Not Apply - Because a void marriage is of no legal effect there is no community property. However, the Court shall ordinarily give to each person one-half or the equivalent value of one-half of what would be community property if the marriage were valid.
- (b) Division of Debts - The Court shall ordinarily divide equally between the parties' responsibility for all debts that would be community debts if the marriage were valid.
- (c) Discretionary Equitable Awards - The Court may, in its discretion, award to one party more than one-half of what would be community property if the marriage were valid if the party also assumes more than one-half of the debts, or if it would be fair and equitable to do so.
- (d) In spite of the above provisions, the parties may make their own agreement as to division of property and/or debts, but such agreements are subject to review and approval by the Court.

12-30-080 Children Of Void Marriages

- (a) Support Obligations - Parties to a void marriage have the same obligations to support their children as if the marriage were valid.
- (b) Custody - The standards set forth in Part 12-60 of this Title should be followed to determine custody and/or support of any children.
- (c) Legitimacy - Children of a void marriage are legitimate for all purposes.

12-30-90 Damages

- (a) Any person who knowingly contracts a bigamous marriage shall pay damages of \$250 to the other party to the bigamous marriage, if that other party was without knowledge of the bigamous nature of the marriage.
- (b) Any person who knowingly contracts a bigamous marriage shall pay damages of \$250 to the spouse from the first marriage, if that spouse has sued or commences to sue for divorce or annulment.
- (c) Any party to a void marriage who is injured thereby, shall receive such other damages as can be proven, in addition to any damages under (a) above.

12-30-100 Filing Of Order

Orders obtained pursuant to this Part 12-30 shall be filed with the Tribal Court Clerk. The Tribal Court Clerk shall file a copy with the county recorder.

12-40 ANNULMENT

12-40-010 Reasons For Annulment Of Marriages

The Court may grant an annulment of a marriage for the following reasons:

- (a) Lack of ability to consent because of age.
- (b) Lack of ability to consent because of mental disease or defect.
- (c) Lack of ability to consent because of serious mental impairment due to the use of drugs or alcohol.
- (d) Force or fraud in obtaining consent to the marriage.

12-40-020 Jurisdiction Of The Tribal Court

- (a) The Tribal Court has jurisdiction to annul any marriage which was entered within the territory of the Tribe.
- (b) The Tribal Court has jurisdiction to annul any marriage which was not entered into on this Reservation if either of the parties to the marriage have resided within the territory of the Tribe for at least six (6) weeks immediately preceding the filing of the complaint.

12-40-030 Commencement Of Annulment Actions

An action to obtain an annulment must be commenced within the following time periods and by the following persons:

- (a) For cause described in Section 12-40-010(a), by the underage party before reaching the age of twenty (20) or by the parent or guardian of the underage party before the party reaches eighteen (18). However, a parent, guardian or party may not commence an annulment action if a court order was obtained pursuant to section 12-10-040 of if he gave his consent to the marriage pursuant to Section 12-10-030(a).
- (b) For cause described in Section 12-40-010(b), by the party lacking capacity within two years of regaining capacity, or by the guardian of the person lacking capacity within two years of the marriage.
- (c) For cause described in Section 12-40-010(c), by the party not freely consenting within two months of the marriage.
- (d) For cause described in Section 12-40-010(d), by the party not freely consenting within two years of the marriage.

12-40-040 Procedure

- (a) A complaint requesting that a marriage be annulled shall be filed with the Clerk. It must conform to the requirements of Section 12-40-050.
- (b) A summons shall be issued and served in accordance with Title 2, Rules of Civil Procedure on any party to the marriage not joining in the complaint.
- (c) The Court shall hold a hearing whether or not the matter is contested.
- (d) If the Court is satisfied that the evidence indicates that it is more likely than not that the allegations in the complaint are true and is satisfied as to the Court's jurisdiction, the annulment shall be granted.
- (e) Any orders as to child custody and/or support shall be in compliance with Part 12-60 of this Title.
- (f) Any order as to damages shall be in accordance with Section 12-40-080 below.
- (g) Any order as to property and debts shall be in accordance with the standards set forth in Section 12-50-070.
- (h) The Court shall restore the wife's former name if requested to do so by the wife or her representative.

12-40-050 Form Of Complaint

- (a) The Complaint shall be verified and shall contain the following where applicable:
 - (1) The names of the parties to the marriage;
 - (2) The date of the marriage;
 - (3) The place of the marriage;
 - (4) Whether there are any minor children;
 - (5) The reason for the requested annulment;
 - (6) An allegation as to the Tribal Court's jurisdiction; and

- (7) If the person filing the complaint is not one of the parties to the marriage, the relationship of that person to the parties.
- (b) Additional Contents - The Complaint may include:
 - (1) A description of any property or debts to be divided by the court;
 - (2) Any requests as to child custody and/or support; and
 - (3) Any allegations as to damages;
 - (4) A request that the wife's former name be restored.

12-40-060 Effect Of An Order Of Annulment

- (a) After an annulment the parties are restored to the status of single and unmarried persons.
- (b) Children of an annulled marriage are legitimate for all purposes.

12-40-070 Alimony Not Awarded

Neither party to an annulled marriage shall be required to pay alimony.

12-40-080 Damages

Any person who is damaged because of a marriage that is subsequently annulled, may receive such damages as can be proven.

12-40-090 Filing Of Annulment Orders

The order of annulment shall be filed in the Tribal Court Clerk's office. The Tribal Court Clerk shall file a copy with the county recorder.

12-50 DISSOLUTION OF MARRIAGE

12-50-010 Reasons For Dissolution

A dissolution of marriage may be granted if either party of the marriage is incompatible.

12-50-020 Jurisdiction Of The Tribal Court

The Tribal Court shall have jurisdiction to dissolve any marriage described in Section 12-50-010 if:

- (a) Either of the parties to the marriage has resided on this Reservation for at least six (6) weeks preceding the filing of the complaint; or
- (b) Either party of the marriage is a member of the Fallon Paiute-Shoshone Tribe and the other party consents to the Tribal Court's jurisdiction.

12-50-030 Procedure

- (a) A complaint requesting a dissolution shall be filed with the Clerk. It must conform to the requirements of Section 12-50-040.
- (b) A summons shall be issued and served in accordance with Title 2, Civil Procedure on the other party to the marriage.
- (c) The Court shall hold a hearing whether or not the matter is contested, except if the case is a joint complaint then the court shall have the discretion on whether or not to hold a hearing.
- (d) The dissolution shall be granted if the Court is satisfied that it has jurisdiction, and if the complaint substantially satisfies the requirements of Section 12-50-040.
- (e) Any order as to child support or custody shall be in accordance with Part 12-60 of this Title.
- (f) Any order as to property or debts shall be in accordance with Section 12-50-070 below.

- (g) The Court shall restore the wife's former name if requested to do so by the wife or her representative.

12-50-040 Form Of Complaint

- (a) Required Contents - A complaint for dissolution of marriage, which may be also called a petition, shall be verified and shall contain:
 - (1) The names of the parties to the marriage;
 - (2) The date of the marriage;
 - (3) The place of the marriage;
 - (4) Whether there are any minor children;
 - (5) An allegation of the Court's jurisdiction; and
 - (6) An allegation of the incompatibility in the marriage, which allegation may be stated in general terms.
- (b) Additional Contents - The complaint may contain:
 - (1) A description of any property or debts to be divided by the Court;
 - (2) Any requests as to child custody and/or support;
 - (3) Any requests for alimony;
 - (4) A request that the wife's former name be restored; and/or
 - (5) A statement that the complaint is not contested and is filed jointly by both parties. In such a case, both parties must verify the complaint by their signatures.

12-50-050 Evidence Considered.

- (a) Fault is irrelevant and no evidence as to fault will be heard by the Court.
- (b) Testimony must be given, by a person who is not a party to the marriage, as to the facts required under Section 12-50-020 above.
- (c) No evidence as to the failure of the marriage need be present by the party requesting the dissolution.

12-50-060 Alimony

- (a) Alimony may be awarded to either party as part of the order granting the dissolution.
- (b) Alimony may be awarded for a limited time and in a limited amount and is conditioned on necessity and ability to pay.
- (c) Alimony terminates automatically on the remarriage of the party receiving it, or upon the death of either party. It may be terminated at any time by the Court, if the necessity for it no longer exists, upon motion by the person paying alimony.
- (d) Alimony does not terminate because of the remarriage of the person paying the alimony.

12-50-070 Division Of Property And Debts

- (a) Ordinarily, one-half or the equivalent of one-half of the community property as defined in this Title 12 shall be given to each party.
- (b) All separate property remains the property of its owner.
- (c) Ordinarily, community debt shall be divided so that each party is responsible for an equal share.
- (d) All separate debts remain the responsibility of the party who incurred them.
- (e) The Court may, in its discretion, award more than half of the community property to one party, if that party also assumes more than half of the community debts, or if it would be fair and equitable to do so.

- (f) In spite of the above provisions, the parties may make their own agreement as to division of property and/or debts, but such agreements are subject to review and approval by the Court.

12-50-080 Effect

The effect of an order of dissolution is to restore the parties to the status of single and unmarried persons.

12-50-090 Filing Of Orders

The order granting the dissolution shall be filed in the Tribal Court Clerk's office.

12-50-100 Tribal Custom Divorces

Tribal custom divorces or dissolutions are not recognized and have no legal effect.

12-60 CUSTODY AND SUPPORT OF CHILDREN

12-60-010 Nature Of Action

A proceeding for custody and/or support of children may be joined with a proceeding under any other Part of this Title 12, or may be commenced as a separate proceeding.

12-60-020 Proper Parties To Commence Action

The following persons may bring an action for custody and/or support of a child:

- (a) The child.
- (b) Either parent.
- (c) Any person who provides one-half of the total support of the child. Support means those items necessary and essential to the child's well- being, including such items as food and lodging. However, a social service agency may bring an action only for support, and only to recoup any payments made by the agency on behalf of the child.

12-60-030 Procedure

- (a) A petition concerning child custody and/or support shall be filed with the Clerk. It must conform to the requirements of Section 12-60-040.
- (b) A summons shall be issued and served in accordance with Title 2, Civil Procedure on all interested persons, including but not limited to the child's parents, grandparents, and any other person with whom the child resides.
- (c) A hearing shall be held whether or not the matter is contested.
- (d) At the hearing the Court shall first determine if there is compliance with Sections 12-60-020 and 12-60-030 above, and then shall make its order based on the standards in section 12-60-050 and/or Section 12-60-070 below.

12-60-040 Form Of Petition

The petition shall be verified and state the following information, if known:

- (a) The name, age, place of birth and residence of the child;
- (b) The name, age, residence, and relationship to the child of the person having physical custody;
- (c) The name, age, residence and relationship to the child of the person seeking custody, if a custody order is sought;
- (d) The name, age, residence and relationship to the child of the person to be charged with the support obligation, if a support order is sought;

- (e) The name, age, residence and relationship to the child of the person bringing the petition; and
- (f) The reason(s) custody and/or support is sought.

12-60-050 Standards To Be Applied And Evidence Considered In Determining Custody

- (a) The Tribal Court shall make its decisions on legal and physical custody based on what will be in the best interests of the child.
- (b) The Tribal Court shall presume that joint legal custody will be in the best interests of the child.
- (c) For physical custody, the wishes of a child under the age of 14 may be considered by the Court, and the wishes of a child 14 years of age and older, though not decisive, will be given a substantial amount of weight.
- (d) No presumptions as to the greater or lesser suitability of one sex or the other as a guardian shall be used.
- (e) No presumptions as to the suitability of persons of particular ages shall be used.
- (f) Reasons for annulments or dissolutions irrelevant in custody proceedings.
- (g) Custody may be given to a non-parent only if neither parent wants the child and they have both waived their rights in writing, or the child is found to be a dependent child in accordance with Title 10, Juvenile Proceedings.
- (h) If custody is to be given to a non-parent, grandparents or other relatives shall be preferred over non-relatives as guardians of the child.
- (i) If the child is to be placed with a guardian, the child shall not be removed from the Reservation unless there is not a suitable person on the Reservation to act as guardian.
- (j) The Judge may request a Youth and Family Services report, which will be admissible in evidence, to aid him in his determination of custody. A copy of such report must be given to every interested party at least 48 hours before the hearing.
- (k) The Tribal Court shall consider any domestic violence issue as required by Title 13 – Domestic Violence of the Law and Order Code.

12-60-060 Visitation Rights

The non-custodial parent, and any other interested relative may be given reasonable rights of visitation upon a showing to the Court of the best interests of the child.

12-60-070 Support Obligations

- (a) In every case where the Tribal Court makes a permanent custody determination, the Court shall also enter an order regarding the support of the minor child. The Court may include a support obligation if it makes a temporary custody determination.
- (b) Nature of obligation - Both parents of a child have a continuing obligation to support their child until the child is 18 years of age or the age of 19 years if the child is enrolled in high school. This obligation is not affected by the parent's remarriage, and is not affected by any award of custody of the child.
- (c) Determination of obligation - The Court shall consider the amount of support which is reasonably necessary, and the financial resources of each parent. The Court shall then require each parent to pay a just and reasonable amount for the support of the child.
- (d) The Tribal Court shall take into account physical custody orders and requirements in calculating child support.

12-60-080 Modification Of Support And Custody Orders

Support and custody orders are modifiable due to changed circumstances upon petition to the Court according to the procedures set out in this Part 12-60.

12-60-090 Enforcement Of Support Orders

The Court may use its contempt power to enforce a support order.

12-60-100 Filing And Service Of Custody And Support Orders

Custody and support orders shall be filed with the Tribal Court Clerk and served upon all parties whose obligations are affected by them.

12-70 DETERMINATION OF PARENTHOOD**12-70-010 Purpose And Applicability**

- (a) The purpose of this Part 12-70 is to establish the relationship of parent and child.
- (b) An action under this Part 12-70 may be joined with a proceeding for custody and/or support under Part 12-60.

12-70-020 Proper Parties To Bring Action

The following persons may bring an action under this Part 12-70:

- (a) The child;
- (b) Either parent; or
- (c) Any person who provides one-half of the total support of the child. Support means those items necessary and essential to the child's well-being, including such items as food and lodging. The Tribe's Youth and Family Services or a social service agency is a proper party to bring an action under this section.

12-70-030 Procedure

- (a) A petition alleging parenthood shall be filed with the Court Clerk. It must conform to the requirements of Section 12-70-040.
- (b) A summons shall be issued and served on any parent who does not join in the Petition in accordance with Title 2, Rules of Civil Procedure.
- (c) A hearing shall be held whether or not the matter is contested.
- (d) The Court shall issue a decree of parenthood if a preponderance of the evidence indicates that a parental relationship exists.

12-70-040 Presumptions of Paternity

- (a) A man is presumed to be the natural father of a child if:
 - (1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 285 days after the marriage is terminated by death, annulment, declaration of invalidity or divorce, or after a decree of separation is entered by a court.
 - (2) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit through the period of conception.
 - (3) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:

- (i) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce; or
 - (ii) If the attempted marriage is invalid without a court order, the child is born within 285 days after the termination of cohabitation; or
- (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.
- (b) A conclusive presumption that a man is the natural father of a child is established if tests for the typing of blood or tests for genetic identification by generally recognized methods show a probability of 99 percent or more that he is the father except that the presumption may be rebutted if he establishes that he has an identical sibling who may be the father.
- (c) A presumption under subsection (a) may be rebutted in an appropriate action only by clear and convincing evidence. The presumption is rebutted by a court decree establishing paternity of the child by another man.

12-70-040 Form Of Petition

The petition shall be verified and contain the following:

- (a) The name, age, place of birth and residence of the child;
- (b) The name, age, place of birth and residence of the alleged parent;
- (c) The name, age, residence and relationship to the child of the person bringing the petition; and
- (d) A short statement of the facts on which the allegation of parenthood is based.

12-70-050 Admissible Evidence

The following types of evidence are admissible in an action to determine parenthood:

- (a) Medical and scientific evidence, if reliable.
- (b) Actions or words on the part of the purported parent that indicate a parental relationship.
- (c) Any other evidence that is helpful to the court and is admissible in a civil action under Title 3, Rules of Evidence.

12-70-060 Effect Of Decree

The effect of a decree of parenthood is to establish the relationship of parent and child with all the attendant rights and responsibilities, including all inheritance rights.

12-70-070 Filing Of Decrees

All decrees of parenthood shall be filed with the Tribal Court Clerk and shall be served on all persons affected by them.

12-80 ADOPTION OF MINOR CHILDREN

12-80-010 Scope

This Part 12-80 sets forth the procedures for establishing the relationship of parent and child, between a child and an adult other than a natural parent of the child.

12-80-020 Procedure

- (a) A petition requesting an adoption shall be filed with the Clerk. It must comply with the requirements of Section 12-80-030.

- (b) A summons shall be issued and served, in accordance with Title 2, Civil Procedure on the natural parents, and grandparents, any person with whom the child resides, and any other interested person(s), unless they have signed affidavits of consent or are the petitioner.
- (c) A hearing shall be held whether or not the matter is contested.
- (d) The hearing shall be held in closed court.

12-80-030 Form Of Petition

The petition shall be verified and shall contain:

- (a) The name, age, date and place of birth of the child if known, with documentary proof if possible;
- (b) The name(s), age(s) of the person(s) seeking to adopt;
- (c) The name(s) and address(es) of the natural parents, if known;
- (d) Any affidavits of consent as required by Section 12-80-040;
- (e) A statement of any real or personal property owned by the child;
- (f) A request that the relationship of parent and child be established; and,
- (g) A statement describing the home environment of the petitioner(s).

12-80-040 Affidavit Of Consent

- (a) The consent(s), by affidavit, of the following person(s) is required when applicable:
 - (1) Of the child if he or she is 14 years of age or over.
 - (2) Of each of the natural parents, unless their parental rights have been judicially terminated.
 - (3) Of the spouse of the adopting party, unless the spouse joins in the petition.
- (b) Any consent obtained prior to the birth of the child or for two weeks thereafter is void.

12-80-050 Standards Applied And Evidence Considered

- (a) A petition for adoption shall be granted if the adoption would be in the best interest of the child.
- (b) No petition for adoption shall be granted until such time the child has resided in the home of petitioner for at least six (6) months.
- (c) Single persons of either sex may adopt a child.
- (d) Adopting parents who are married must be at least ten (10) years older than the child.
- (e) Adopting single persons must be at least 15 years older than the minor child, unless the minor child is the brother, sister, nephew, niece, or first cousin of the adopting single person.
- (f) There is no upper age limit on suitability as an adoptive parent.
- (g) Grandparents and other relatives shall be preferred as adoptive parents over non-relatives.
- (h) The court may request a social services report on the adoptive parents, which shall be admitted into evidence, to aid in the determination of whether or not the adoption would be in the best interest of the child. A copy of such report must be given to every interested party at least 48 hours before the hearing.
- (i) The Tribal Court shall consider and address any post-adoption contact agreements between the adopted parents and any interested parties to the adoption.
- (j) The Tribal Court shall not enter a permanent decree of adoption unless the biological parents have been served a copy of the petition or unless the Tribal Court finds that such service is not possible.

12-80-060 Temporary Decrees Of Adoption

- (a) If the Court feels that the best interest of the child would be served, it may issue a temporary decree of adoption.
- (b) Such decree is valid for up to one (1) year, at which time another hearing must be held and a permanent decree granted or denied.

12-80-070 Effect Of Entry Of Decree

- (a) Establishment of the Relationship of Parent and Child - A temporary or permanent decree of adoption establishes the relationship of parent and child between the parties.
- (b) Inheritance Rights - After the entry of a permanent decree of adoption, an adopted child inherits from and through the adoptive parent(s), and adoptive parent(s) inherit from and through the adopted child. The adopted child does not inherit from or through the natural parent(s), and the natural parent(s) do not inherit from or through the adopted child.
- (c) Stepparent Adoptions - When a stepparent adopts a child, it does not affect the relationship between the child and the natural parent who is the spouse of the stepparent.

12-80-080 Report Of Adoption; Amendment Or Annulment Of Adoption To State Registrar

- (a) After an order or decree of adoption. has been entered, the court shall direct the petitioner or his attorney to prepare a report of adoption on a form prescribed and furnished by the state registrar of vital statistics. The report shall:
 - (1) Identify the original certificate of birth of the person adopted;
 - (2) Provide sufficient information to prepare a new certificate of birth for the person adopted;
 - (3) Identify the order or decree of adoption; and
 - (4) Be certified by the Court Clerk.
- (b) The Tribe's Youth and Family Services shall provide the petitioner or his attorney with any factual information which will assist in the preparation of the report required in subsection (a).
- (c) If an order or decree of adoption is amended or annulled, the petitioner or his attorney, shall prepare a report to the state registrar of vital statistics which includes sufficient information to identify the original order or decree of adoption and the provisions of that decree which were amended or annulled.
- (d) The petitioner or his attorney shall forward all reports required by the provisions of this section to a state registrar of vital statistics within thirty (30) days of when the order or decree was entered, or earlier if requested by the state registrar, together with any related material the state registrar may require.

12-80-090 Right To Tribal Membership

An adoption shall not change a person's rights to enroll in the Fallon Paiute Shoshone Tribe as established by the Tribal Constitution and the Tribe's Enrollment Ordinance. An adopted child's blood inherited from his/her natural parents shall not be affected by an adoption for enrollment purposes.

12-90 ADOPTION OF ADULTS

12-90-010 Scope

This Part 12-90 sets forth the procedures for establishing the relationship of parent and child, between persons 18 years of age or over:

12-90-020 Consents

No consents are required except that of the adopted person and that of the adopting person(s).

12-90-030 Procedure

- (a) A petition requesting an adoption shall be filed with the Clerk. It must comply with the requirements of Section 12-90-040.
- (b) Notice shall be given to the natural parents.
- (c) The Court shall hold a hearing and shall issue the decree of adoption, unless it finds that one of the parties does not understand the effect of adoption, or if there is evidence of lack of consent.

12-90-040 Form Of Petition

The petition shall be verified and shall state:

- (a) The name, age, and residence of the person to be adopted;
- (b) The name(s), age(s), and residence of the person(s) wishing to adopt; and
- (c) A request that the relationship of parent and child be established.

12-90-050 Effect Of Entry Of Decree

- (a) Establishment of the Relationship of Parent and Child - A decree of adoption establishes the relationship of parent and child between parties.
- (b) Inheritance Rights - Adopted adults inherit from and through their adoptive parent(s) and the adoptive parent(s) inherit from and through the adopted adult. Adopted adults do not inherit from or through their natural parent(s) and the natural parent(s) do not inherit from or through the adopted adult.

12-90-060 Filing Of Decrees

- (a) All decrees obtained pursuant to this Part 12-90 shall be filed with the Tribal Court Clerk.
- (b) After an order or decree of adoption. has been entered, the court may direct the petitioner or his attorney to prepare a report of adoption on a form prescribed and furnished by a state registrar of vital statistics. The report shall:
 - (1) Identify the original certificate of birth of the person adopted;
 - (2) Provide sufficient information to prepare a new certificate of birth for the person adopted;
 - (3) Identify the order or decree of adoption; and
 - (4) Be certified by the Court Clerk.
- (c) If an order or decree of adoption is amended or annulled, the petitioner or his attorney, shall prepare a report to the state registrar of vital statistics which includes sufficient information to identify the original order or decree of adoption and the provisions of that decree which were amended or annulled.
- (d) The petitioner or his attorney shall forward all reports required by the provisions of this section to a state registrar of vital statistics within thirty (30) days of when the order or decree was entered, or earlier if requested by the state registrar, together with any related material the state registrar may require.

12-100 GUARDIANSHIP PROCEEDINGS

12-100-010 Scope

This Part 12-100 establishes the procedure for the appointment of guardians for adults who are unable to manage their property and business affairs and/or physically care for themselves; and shall apply to guardianships for children to the extent it is not inconsistent with Title 10, Chapter 10-80.

12-100-020 Commencement Of The Action

Any person may file a petition for a guardianship, including the person to be placed under the guardianship.

12-100-030 Procedure

- (a) A petition requesting a guardianship shall be filed with the Clerk. It shall comply with the requirements of Section 12-100-040.
- (b) If the proposed ward is an adult, a summons shall be issued and served in accordance with Title 2, Rules of Civil Procedure on all persons who would be interested heirs of the proposed ward under the provisions of the Tribe's Probate Code or other applicable probate law.
- (c) If the proposed ward is a child, a summons shall be issued and served, in accordance with Title 2, Rules of Civil Procedure, on the natural parents, unless they join in the petition.
- (d) The Court shall hold a hearing whether or not the matter is contested.

12-100-040 Form of Petition

The petition shall be verified and shall state:

- (a) The name, age, and residence of the proposed ward;
- (b) Whether the proposed guardianship is of the property and business affairs and/or of the physical care of the proposed ward and the reason therefore;
- (c) The name, age and relationship to the proposed ward of the person filing the petition;
- (d) The name of a proposed guardian, and the relationship of the proposed ward to the proposed guardian;
- (e) A description of the proposed ward's income and property.

12-100-050 Standards Applied

- (a) The petitioner must show that a guardianship is necessary for the well-being of the person and/or the management of his or her property and business affairs.
- (b) The necessity of the guardianship must be shown by clear and convincing evidence.

12-100-060 Selection And Approval Of Guardians

- (a) The Court shall appoint a guardian only after the hearing required by Section 12-100-030(d). The Court may approve the guardian suggested by the petition, or may appoint any other person, as the best interests of the ward require. Wards 14 years of age or over may suggest their own guardian.
- (b) The duties of the guardian may be split, with one person chosen to care for the individual and another person or an institution chosen to manage the property.

12-100-070 Duties Of A Guardian

- (a) General - The duties of a guardian shall be set forth below, depending on the age of ward, the reason for the guardianship, and whether or not the duties of the guardian are split.
- (b) Guardians of the Person - Guardians of a ward's physical person are responsible for providing the necessities of life to the ward, and shall have the authority to enroll a ward in school, to consent to medical treatment, to obtain any state or Indian benefits for the ward, and to exercise similar duties' and authority.
- (c) Guardians of the Estate – Guardians of a ward's property or business affairs shall manage the ward's property in the manner in which a prudent person would manage his own property.
- (d) Other Specific Duties - In addition to the duties listed above the Court may enumerate specific duties for the guardian in its order, if such duties would be in the best interest of the ward.

12-100-080 Costs And Fees

Guardians may request the Court to approve payment for costs and fees arising from the management of property, and as reasonable compensation for their services. The financial assets of the ward shall be used to pay any fees, costs, or compensation approved by the Court.

12-100-090 Posting Of Bond

Guardians may be required by the Court to post a bond, to insure protection of the ward's property.

12-100-100 Change Of Guardian

Persons placed under a guardianship may petition the Court at any time for a change of guardian.

12-100-110 Review Of Guardianships

All guardianships shall be reviewed by the Court at least once every 12 months as to continued necessity and as to the suitability of the guardian unless the court determines that a longer period of time is satisfactory. The Tribal Court Clerk shall keep a calendar on which the review dates shall be entered. The guardian, ward, and other interested parties shall receive at least two weeks notice of any review.

12-100-120 Termination Of Guardianships

- (a) An adult may petition the Court and have his or her guardianship terminated when the ward regains ability to manage his or her property or business affairs and/or physically care for himself or herself.
- (b) The Court may terminate a guardianship on its own motion, in conjunction with any review conducted in accord with Section 12-100-110.

12-100-130 Temporary Guardianships

- (a) Defined - A temporary guardianship over either the business affairs or the physical care of a person may be granted, on petition, but without notice or hearing, for up to three (3) months. All aspects of a temporary guardianship are the same as for a permanent one, except no petition is required for termination.
- (b) Procedure - The petition must be accompanied by a written consent from the natural parents if the proposed ward is a child, or a written consent from the proposed ward if the ward is an adult, or a statement why such consent is not available.

- (c) Conversion into Permanent Guardianships - A new petition must be filed to change a temporary guardianship into a permanent one, and a full hearing must be held.

12-100-140 Filing Of Guardianships

All Court Orders as to guardianships and all guardianships must be filed with the Tribal Court Clerk and must be served on the guardian, ward, and other interested parties.



FALLON PAIUTE-SHOSHONE TRIBE

Resolution No. 19-F-060

BE IT RESOLVED BY THE GOVERNING BODY OF THE FALLON PAIUTE-SHOSHONE TRIBE, THE FALLON BUSINESS COUNCIL, THAT:

WHEREAS: the Fallon Business Council ("Council") is the recognized Governing Body of the Fallon Paiute-Shoshone Tribe ("Tribe") and was established to exercise the privileges and powers of self-government, to conserve and develop the Tribe's resources for the social and economic well-being of its members, and to preserve and protect the civil rights of its members; and

WHEREAS: the Fallon Paiute-Shoshone Tribe is federally recognized by the United States Government and the Secretary of the Interior as a Native American Tribe, and by the power vested by the Tribal Constitution and Bylaws pursuant to Article VI – Powers & Duties of the Business Council, Section 1(h), the Business Council has the power "to promulgate and enforce ordinances governing the conduct of all people within the territorial boundaries of the Tribe, as provided by Federal Law; and to provide for the maintenance of law and order and establishment of a tribal court"; and

WHEREAS: pursuant to this power, the Business Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's Reservation and Colony; and

WHEREAS: the Business Council has recognized the importance of reviewing and updating the Law and Order Code to ensure the Code meets the Tribe's needs and best serves to protect the interests of the Tribe, its members and persons living and working on Tribal lands; and

WHEREAS: to meet this goal, the Business Council recognized a need to adopt laws addressing domestic relations so prepared a new Title of the Law and Order Code titled "Domestic Relations"; and

WHEREAS: the new Title was posted for at least thirty days to allow for public comment, but no comments were received; and

WHEREAS: the posted version of the new title was labeled "Title 11" but that designation has previously been used for the "Licensing and Taxation Ordinance," so the Domestic Relations sections will now be labeled "Title 12 – Domestic Relations";

NOW THEREFORE BE IT RESOLVED the Fallon Business Council, the governing body of the Fallon Paiute-Shoshone Tribe, hereby adopts the attached version of the new Title 12 – Domestic Relations of the Tribe's the Law and Order Code, which shall go into effect on July 8, 2019; and

Resolution No. 19-F-060

BE IT FINALLY RESOLVED that the Fallon Business Council hereby directs that the Tribal Secretary make the new Title 12 – Domestic Relations of the Tribe's Law and Order Code available to those Tribal members and attorneys/advocates who request a copy. The expense for each copy will be at the cost of the requester.

CERTIFICATION

At a duly held meeting of the seven members of the Governing Body of the Fallon Paiute-Shoshone Tribe, five of which constitute a quorum, there were 6 members present on the 4th day of June, 2019, who **VOTED 6 FOR, 0 AGAINST, and 0 ABSTENTION(S)**, in the adoption of the foregoing resolution, in accordance with the powers vested by the Fallon Paiute-Shoshone Tribe's Constitution and By-Laws.


Margot Dyer, Secretary
Fallon Business Council