

ROUND VALLEY INDIAN TRIBES
A Sovereign Nation of Confederated Tribes

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LOCATION: ON STATE HWY 162
ONE MILE NORTH OF COVELO
IN ROUND VALLEY
TRIBAL TERRITORY SINCE TIME BEGAN

ROUND VALLEY RESERVATION ESTABLISHED 1856

ROUND VALLEY INDIAN TRIBES

Emergency Temporary

Domestic Relations Code

Enacted: 2014-09-02 (120 days)

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ROUND VALLEY INDIAN TRIBES
REVISED EMERGENCY TEMPORARY DOMESTIC RELATIONS CODE

1. PURPOSE

The purpose of this Domestic Relations Code (“Code”) is to provide policies and guidance for the Round Valley Indian Tribes (“Tribe”) to take an active role in providing for the health, safety, and welfare of the Tribe’s people, to preserve and strengthen family ties whenever possible, to protect and preserve tribal heritage and cultural identity of the persons within the Tribe’s jurisdiction, and to promote cooperation with the Tribe by other courts and agencies in fulfilling the purposes of this Code.

The intention of this Code is to promote the health, safety, and welfare of the most valuable resource of the Tribe, the Tribe’s people. The welfare of the children is of the foremost importance. The children must receive the care and guidance necessary to allow them to become healthy, content and productive members of the Tribe and society in general.

2. AUTHORITY AND JURISDICTION

The Tribe regulates domestic relations matters under the authority of its inherent sovereign powers as a federally recognized Indian tribe, under any additional new powers so delegated by Congress, under unwritten tribal law, under the Constitution of the Tribe, and under written tribal ordinances. The Tribal Court shall have the authority to hear and decide all matters in this Code where one or more of the parties in a case are members or are eligible for membership in the Tribe, or where the health, safety, or welfare of the tribal members or other residents is affected.

3. JURISDICTION OVER CHILDREN MATTERS

Once the Tribal Court exercises its authority in any child’s case under this Code, the Tribal Court assumes *exclusive* authority over all stages of the case as a matter of Tribal law until the case is dismissed or concluded, or until the Tribal Court gives authority to another government or another court by Tribal Court Order.

4. BEST INTERESTS OF THE CHILD

In all cases involving children, the Tribal Court shall hear all the facts and evidence brought before it and shall consider the rights of all parties in the case, however, those of the child shall be most important. The best interest of the child shall be more important than the rights of any other person or entity.

In determining what is in the best interest of the child, the Court shall consider the following factors:

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- 4.1 The child's wishes if he or she is old enough and understands what the proceedings mean;
- 4.2 The love and affection existing between the involved adults and the child;
- 4.3 The needs of the child, including educational needs, physical and medical needs, emotional needs, mental needs, religious needs, cultural needs, and any other special needs of the child;
- 4.4 The stability of the home environment likely to be offered by the involved adults;
- 4.5 Whether the involved adults are likely to encourage a loving relationship between the child and the other persons with whom the child has emotional ties;
- 4.6 Any evidence of violence determined by a criminal background check and/or by testimony of reliable sources, domestic violence, child abuse or child neglect in the involved adult's household(s);
- 4.7 Any evidence of substance abuse by the involved adults or someone living with them that would or does directly affect the emotional or physical well being of the child;
- 4.8 The locations of persons to whom the child has emotional ties, whether the child is enrolled in school near one of those persons and the desirability of the child remaining at that school;
- 4.9 The advantages of keeping the child in the community where the child resides;
and
- 4.10 Any other things the Tribal Court feels are relevant to the best interest of the child.

5. CHILD AND FAMILY PROTECTION

To the extent that the Round Valley Indian Tribes' Child and Family Protection Code conflicts with any provision of this Code, the Child and Family Protection Code shall control.

6. DEFINITIONS

- 6.1 "Adult" means a person who is eighteen 18 years of age or older.
- 6.2 "Child" means a person who is under eighteen years of age.
- 6.3 "Child In Need Of Aid" means a child who:

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- 6.3.1 Refuses to live at home with significant reason, or refuses to accept available care;
 - 6.3.2 Has no parent, guardian, custodian or relative caring or willing to provide care;
 - 6.3.3 Is in need of medical treatment, needs help to relieve or prevent substantial physical harm or mental harm as shown by failure to thrive, severe anxiety, depression, withdrawal, or exaggerated, inappropriate or unusual aggressive behavior or hostility toward others and the child's parents are unwilling to provide the medical treatment;
 - 6.3.4 Suffered substantial physical harm or there is substantial and immediate risk that the child will suffer such harm as a result of the actions of or conditions created by the child's parents, guardian or custodian to adequately supervise the child;
 - 6.3.5 Has been sexually abused either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian or by the failure of the parent, guardian or custodian to adequately supervise the child; or
 - 6.3.6 Has suffered substantial physical abuse or neglect as result of conditions created by the child's parent, guardian or custodian.
- 6.4 "Child protection proceeding" means a case where a child is found to be a "child in need of aid," a foster care placement case, a termination of parental rights case, a pre-adoptive or adoptive placement case, or an adoption case that is contested by a parent, custodian or guardian.
- 6.5 "Corporal Punishment" means the infliction of excessive bodily pain as a penalty for disapproved behavior. It includes actions such as shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling or action that seeks to induce pain.
- 6.6 "Custodian" means a person who has been given responsibility to care for a child either by a parent, or under tribal custom, court order, tribal law or State law.
- 6.7 "Domestic violence" Domestic violence means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, or a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator.
- 6.8 "Extended family" means a person's parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins, sisters, and

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brothers, or someone who is considered to be extended family under the traditional laws of the Tribe.

6.9 "Foster care placement" means any action removing a child from his/her parent or custodian for temporary placement in a foster home, a relative's home, an institution or the home of a guardian where the parent or custodian cannot have the child returned on demand.

6.10 "Foster home" means a home certified or licensed to provide foster care by the Tribe or another federally recognized tribe or a state licensed home.

6.11 "Guardian" means a person who is not a parent and is appointed by a tribal or state court to have legal custody of a child. A "Guardian" is not the same thing as a "Guardian ad litem."

6.12 "Guardian Ad Litem" means a person appointed by the Tribal Court to look after the best interests of any child involved in a case under this Code. The guardian ad litem (or "GAL") shall be a full party in all cases. The guardian ad litem's job is to investigate facts in the case and advise the Court what actions the Court should take that would be in the child's best interest. The Court may adopt the advice of the GAL in whole or in part, or for good cause, may act or order action that is different than the advice of the GAL.

6.13 "Involved agency" means an agency that is a party to the case due to the request of the Tribe or because of the jurisdiction of another government over the case. Examples of this might be the social services department of another tribe or county in another state.

6.14 "Most significant contacts" means, among other things, that the Tribal Court shall consider the following factors:

6.14.1 Length of time the child has lived in or near the Tribal Reservation;

6.14.2 The child's participation in the activities of the Tribe;

6.14.3 The child's fluency in the Native language of the Tribe;

6.14.4 Whether there has been a previous case with respect to the child by the Tribal Court;

6.14.5 The tribal membership of the child's custodial parent or other custodian;

6.14.6 The child's self identification with the Tribe; and

6.14.7 Any other information relevant to the child's contacts with the Tribe.

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- 6.15 "Parent" means the biological parent of a child or any person who has lawfully adopted a child, whether in State or Tribal Court, or under tribal custom. It shall not mean the unwed father where the father has not admitted or acknowledged in writing or otherwise that he is the father, or where a Court Order establishing paternity has not been entered (i.e. "paternity" has not been established). It shall not mean any person as to whom the parent-child relationship has been lawfully terminated.
- 6.16 "Parties" means Petitioner(s) and Respondent(s) listed in the Petition to use the Tribal Court, the guardian ad litem and any other person or entity who is given the right by the Tribal Court to express and protect their interests in a case.
- 6.17 "Preadoptive placement" means the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in place of adoptive placement.
- 6.18 "Probable cause" for the purposes of a "child protection proceeding" means evidence from a reasonable, trustworthy source that would be a reasonable ground for belief that a child is a "child in need of aid" and that an investigation and hearing should be conducted to determine all the facts.
- 6.19 "Termination of parental rights" means any action resulting in the termination of the parent-child relationship.
- 6.20 "Ward" means a child who has been taken into custody by the Court making the Court the child's legal guardian.

7. CONFIDENTIALITY OF CHILD CUSTODY CASES

All child custody cases shall be considered and treated as confidential. All Tribal Court Judges, the Tribal Court Clerk, tribal employees or other tribal officials who participate in a case, and involved agency personnel shall be sworn to confidentiality.

8. TRIBAL COURT RECORDS OF CHILD CUSTODY CASES

Court records in child custody cases shall not be released to anyone besides the parties to the case without the consent of the Tribal Court. Hard copies of such records shall be kept behind a two-lock system, and records stored on computer hard drives or in cyberspace shall be secured, and shall only be accessible by persons directly authorized by the Tribal Court. Information may be given as needed to schools, hospitals, banks, or similar entities for the purpose of verification of who has custody, guardianship, or parental rights to a child.

9. CHILD CUSTODY INVOLVING DISPUTES BETWEEN PARENTS AND/OR CUSTODIANS

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9.1 Beginning a Child Custody Case. If there is a dispute between parents and/or custodians over custody of a child, the matter may be brought in front of the Tribal Court. A child custody case shall be started by filing a Petition to use the Tribal Court.

9.2 The Petition shall provide the following information:

- 9.2.1 The name, address and age of the child;
- 9.2.2 The names and addresses of the child's parents and any custodians of the child;
- 9.2.3 The names and addresses of any other person or tribe with a specific interest in the child;
- 9.2.4 The reason the Petitioner is requesting custody of the child;
- 9.2.5 The facts that make the Petitioner believe that the best interest of the child require that a custody Order be issued by the Court; and
- 9.2.6 A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership. This statement should include facts that indicate that the Tribe is the tribe with the most significant contacts with the child.

9.3 Temporary Custody Hearing and Order.

- 9.3.1 Temporary Custody Hearing. After the Court determines that it has jurisdiction to hear and decide the case, the Court may hold a temporary custody hearing in cases where it will take considerable time to hold a custody hearing. Before holding the temporary custody hearing, the Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian, or guardian of the child, within a reasonable length of time before the hearing.
- 9.3.2 Temporary Custody Order. At the temporary custody hearing, all parties shall have an opportunity to present evidence and question witnesses. After the hearing is completed, the Court may issue a temporary custody Order giving a particular person or persons temporary physical custody of the child until a custody hearing is held.
- 9.3.3 Equal Access When not Harmful to Child. Unless it is shown to be harmful to the child, the child shall have reasonable equal access to both parents and/or custodians during the duration of the temporary custody Order. The temporary custody Order may also set out a reasonable visitation schedule for a person or persons.

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- 9.3.4 Monitoring and Investigating. The temporary custody Order may be monitored as directed by the Tribal Court. The Court may also direct a designated person to investigate the facts contained in a Petition, or for any other purpose required by this Code.

9.4 Custody Hearings

- 9.4.1 Custody Hearing Within 30 Days: After a temporary custody Order is issued by the Court, the Court shall set a custody hearing within 30 days of the temporary custody hearing, or as soon as is reasonable and agreeable to the Parties in the case.
- 9.4.2 Purpose of the Custody Hearing: The purpose of the custody hearing is to make a decision about who should have custody of the child, and what visitation, if any, should be awarded for those persons who do not have custody.
- 9.4.3 Witnesses: At the hearing, all parties shall have the opportunity to present evidence and question witnesses.
- 9.4.4 Deciding Custody and Visitation: After the hearing is completed, the Court shall make a decision as to who shall have custody and what, if any, visitation should be awarded. In making this decision, the Court shall consider all factors defining the best interest of the child as mandated by this Code. The best interest of the child shall be considered above all else.

9.5 Custody Order

- 9.5.1 Court Orders: After the custody hearing, the Court may Order that:
- 9.5.1.1 A party or parties be given legal and physical custody of a child;
 - 9.5.1.2 That a party not given physical custody be given specified visitation with the child; or
 - 9.5.1.3 That a party not be given custody of a child.
- 9.5.2 Child Support Orders: The Court may also order a parent to pay child support to the child's custodian, and may take into account the parent's ability to contribute in cash or in goods, and also the child's needs.

- 9.6 **Change of Custody Order.** Any person may request that an award of custody of a child or visitation with a child be modified by filing a Petition to use the Tribal Court form. It is up to the discretion of the Court to hold a hearing to consider the request in the Petition. If the Court decides to hold a hearing based on the

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Petition, reasonable notice shall be provided to all parties, and any new decisions of the Court shall be made through a new custody Order.

10. MARRIAGES

10.1 **Tribal Policy.** It is the policy of the Tribe to uphold the validity of marriages whenever possible. The Tribal Court shall recognize the validity of any marriage performed under the law of the jurisdiction where it was performed.

10.2 **Procedure for Tribal Marriages.** Persons wishing to be married by the Tribal Court shall file a Petition to use the Tribal Court form. Marriages performed by the Tribal Court are subject to the following requirements:

10.2.1 Both parties must be at least 18 years of age, or provide evidence of written consent by their parents or legal guardians. If there are two parents or legal guardians, both must consent if their child is under 18.

10.2.2 A filing fee of \$50 shall be paid to the Tribal Court, or the Court may waive the fee upon a finding that both parties are destitute.

10.2.3 Both parties must attest that they are not currently married.

10.2.4 Marriages conducted by the Tribal Court are a privilege and not a right. The Court shall have discretion to decline to perform a marriage for any reason, including if the Tribal Court finds that the marriage is inconsistent with the custom law of the Tribe.

10.2.5 Following the marriage, the Court shall issue a marriage license.

11. DIVORCES AND ANNULMENTS

11.1 **Divorces.** Divorce proceedings shall begin with a filing of a Petition to use the Tribal Court. The Court may hear the case or dismiss a Petition where it finds that it lacks necessary personal or subject matter jurisdiction, or where it finds that the action is otherwise inconsistent with Tribal law. The Court shall have the option to issue any Order that it finds appropriate, including, but not limited to the following:

11.1.1 Where the Court finds that it has jurisdiction to dissolve a marriage, but lacks jurisdiction to adjudicate property rights, it may issue such an Order and proceed accordingly.

11.1.2 Where the Court finds that as a matter of comity to another jurisdiction, it should refrain from ruling on all or a part of the requested relief in a Petition for divorce, it may issue an Order setting forth its decision, and proceed accordingly.

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11.2 **Annulments.** Persons wishing to have a marriage annulled may bring the matter before the Tribal Court by filing a Petition to use the Tribal Court. A marriage performed by the Tribal Court may be annulled where the Tribal Court finds any of the following grounds:

11.2.1 The marriage was the result of fraud or duress;

11.2.2 One of the parties was of unsound mind at the time of the marriage;

11.2.3 There was failure to consummate the marriage; or

11.2.4 The marriage violated any applicable written law or any unwritten custom law of the Tribe.

12. SEVERABILITY

If any section, clause, or provision of this Code, or its application to any person or circumstance, is declared invalid for any reason by a court of competent jurisdiction, the remaining provisions of this Code and application to any other person or circumstance shall remain be valid and in effect.

13. JURISDICTION/POLICE PROCEDURES

13.1 This Code shall fall within the inherent jurisdiction of the Round Valley Indian Tribes, which per federal law includes civil regulatory jurisdiction over all persons, member or non-member, while in Round Valley Indian Country, and over all Indians while upon any Reservation or Indian Country lands. Nothing about this Code shall operate or construed to cause the Tribe to accede to any state civil regulatory jurisdiction in Round Valley Indian Country. The Tribal Council hereby disclaims any application or enforcement of state civil regulatory laws in Round Valley Indian Country, including in instances wherein the state has asserted adjudicatory jurisdiction pursuant to Public Law 280.

13.2 When a tribal member is situated on Indian Country trust land, a state officer's civil regulatory authority extends only so long as that officer does not circumvent or contravene governing Tribal procedure. Because of the likelihood that State officers will seek to enforce state laws upon persons in Round Valley Indian Country, state police officers shall give reasonable advance tribal notification prior to entrance into Round Valley Indian Country if it is reasonably likely that said entrance will result in the enforcement of state laws.

13.3 State police officers shall not only provide that reasonable advance tribal notification required by Section 13.3, but shall also consult, communicate, and coordinate any state law enforcement investigation activities, with Tribal Police. Should the Tribal Police elect to cooperate in the execution any such activities, state police officers shall not frustrate such cooperation by any dispatched Tribal Police officer.

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13.4 The Tribal codified procedures concerning any state law investigation activities in Round Valley Indian Country, set forth in Sections 13.2, 13.3 and 13.4, are mandatory. This Section 13 is also hereby incorporated by reference into Round Valley Indian Tribes' Child and Family Protection Code.