

HANNAHVILLE INDIAN COMMUNITY

TITLE IV, CHAPTER 2

DIVORCE

Contents

4.2.100	Jurisdiction.....	- 2 -
4.2.101	Grounds.....	- 2 -
4.2.102	Commencement of Action.....	- 2 -
4.2.103	Contents of Complaint.....	- 2 -
4.2.104	Notice to Defendant; Subsequent Pleadings.....	- 3 -
4.2.105	Service on Plaintiff.....	- 3 -
4.2.106	Notice to Tribal Attorney or Tribal Prosecutor.....	- 3 -
4.2.107	Nature of Proceedings; Applicable Law.....	- 3 -
4.2.108	Final Hearing; Relief.....	- 4 -
4.2.109	Children of the Marriage; Definition.....	- 4 -
4.2.110	Miscellaneous Provisions.....	- 4 -
4.2.111	Retroactive Application of Divorce Code.....	- 5 -

**HANNAHVILLE INDIAN COMMUNITY
GENERAL CIVIL CODE - FAMILY/DOMESTIC LAW
TITLE IV, CHAPTER 2
DIVORCE**

4.2.100 Jurisdiction.

The Hannahville Indian Community Tribal Court shall have jurisdiction to dissolve marriages and grant judgments of divorce as follows:

- (1) The tribal court shall have the power and authority to grant a divorce where the marriage had been performed by a tribal official or other person authorized or otherwise empowered to perform marriages within the Hannahville Indian Community or within Indian Country as that term is defined in 18 USCA Section 1151, irrespective of the current residence of each party, PROVIDED that the marriage took place within the territorial jurisdiction of the Hannahville Indian Community, and both parties consent to such proceedings, and the parties are able to stipulate and agree upon the terms of a judgment of divorce.
- (2) The tribal court shall have the power and authority to grant a divorce in all cases where either the plaintiff, the defendant, or both, have resided within the territorial jurisdiction of the Hannahville Indian Community for at least one hundred and eighty (180) days immediately preceding the filing of the complaint for divorce, and the party who has so resided within the territorial jurisdiction of the tribal court is an Indian person who is a member of a federally recognized Indian tribe.

4.2.101 Grounds.

A complaint for divorce shall be filed upon the sole allegation that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

4.2.102 Commencement of Action.

An action for divorce shall be commenced by the filing of a written complaint and the payment of the applicable filing fee.

4.2.103 Contents of Complaint.

The complaint shall contain the following information:

- (1) The legal names of the parties and the present address of each party, if known.
- (2) The tribal affiliation or tribal membership of each party.
- (3) The requisite residence within the territorial jurisdiction of the Hannahville Indian Community and the length of residence of the party or parties shall be described.
- (4) The date and location of the marriage between the parties.
- (5) The statutory grounds for divorce.

- (6) The names, ages, birthdates and tribal affiliations or memberships of any children of the marriage and any other children residing in the marital home at the time the divorce is filed.
- (7) A statement as to whether or not there are any assets or liabilities to be distributed or allocated between the parties.
- (8) A statement as to any other pending court proceedings in any other jurisdiction which in any way involve any of the minor children of the marriage.
- (9) A statement of the specific relief which plaintiff desires, including without limitation dissolution of the marriage, child custody, child support, parenting time or visitation, alimony or spousal support, property division, restoration of a spouse's former name, and other relief.

4.2.104 Notice to Defendant; Subsequent Pleadings.

The complaint for divorce shall be served upon defendant as provided in this paragraph, and proof of service on defendant, or acknowledgment of receipt by defendant, shall be filed with the court. Written notice of any hearing to be held on said complaint, for either temporary or final relief, shall be served on defendant no less than seven (7) days prior to an interim hearing and no less than twenty-one (21) days prior to the final hearing. All pleadings and notices shall be served on defendant by personal delivery, until or unless defendant files a written appearance or answer, after which service of subsequent pleadings on defendant may be made by first class mail. If an attorney or advocate files a written appearance or responsive pleading on behalf of defendant, then all subsequent pleadings and notices filed by plaintiff shall be served on defendant's attorney or advocate, with no requirement to serve defendant, and may be served by first class mail. Notices or orders filed by the court, as well as notices or pleadings filed by the tribal attorney or tribal prosecutor on behalf of the minor child or children of the marriage shall be served on defendant, or defendant's attorney or advocate, in the same manner provided in this section.

4.2.105 Service on Plaintiff.

All pleadings, notices and orders filed by defendant, by defendant's attorney or advocate, by the court, or by the tribal attorney or tribal prosecutor on behalf of the minor child or children, may be served on plaintiff by first class mail. If plaintiff is represented by an attorney or advocate, then all such pleadings, notices and orders shall be served on plaintiff's attorney or advocate, with no requirement to serve plaintiff, and may be served by first class mail.

4.2.106 Notice to Tribal Attorney or Tribal Prosecutor.

In every divorce where there is one or more minor children, an additional copy of all pleadings and notices filed by each party, or by the attorney or advocate of a party, shall be provided to the court for delivery to the tribal attorney or tribal prosecutor, one of whom shall appear on behalf of the minor child or children to represent the best interests of each child as required under § 2.103(10) of the Hannahville Children's Code.

4.2.107 Nature of Proceedings; Applicable Law.

The dissolution of a marriage and determinations with respect to all relief related thereto shall be heard and determined by the tribal court as a matter of equity, based on principles of fairness, reasonableness and the best interests of the parties and the minor children. Whenever applicable, Indian culture, traditions and education shall be factors for consideration relative to child custody and parenting time or visitation. The divorce laws and procedures of the State of Michigan and of other Indian communities may be relied upon as persuasive authority whenever a matter of law or procedure is not addressed by this code or by other codes of the Hannahville Indian Community.

4.2.108 Final Hearing; Relief.

The final divorce hearing may be conducted by the court at any time after the expiration of sixty (60) days from the date of filing the complaint in an action where there are no minor children of the marriage. In cases where there is a minor child or children of the marriage, the final hearing shall not be conducted until the expiration of one hundred eighty (180) days from the date of filing the complaint. However, in cases with a minor child or children where there is unusual hardship or such compelling necessity as shall appeal to the conscience of the court, and upon written request by one of the parties, the court in its discretion may take testimony and enter a judgment of divorce at any time after the expiration of sixty (60) days from the date of filing the complaint.

The court shall have the authority to dissolve the marriage, grant custody of any minor children, order child support, provide for parenting time or visitation by the non-custodial parent, divide the marital assets and debts, award alimony or spousal support to either spouse, restore a spouse's former name, and grant any other relief as may be necessary to completely carry out the authority of this divorce code. Pension and retirement benefits accruing to either party during the marriage are marital assets and shall be equitably divided or allocated.

4.2.109 Children of the Marriage; Definition.

Children of the marriage: shall include (a) the natural child of one spouse, who is adopted by the other spouse, prior to or during the marriage, (b) a child jointly adopted by the spouses, prior to or during the marriage, (c) a child born to a spouse during the marriage, (d) a child born to a spouse prior to the marriage, when there is no other lawful parent of the child and the spouses have considered the child to be a child of the marriage or have otherwise held the child out to be, or treated the child as, a child of the marriage during the marriage, and (e) a child adopted by one spouse prior to or during the marriage, when there is no other lawful parent of the child and the spouses have considered the child to be a child of the marriage or have otherwise held the child out to be, or treated the child as, a child of the marriage during the marriage.

4.2.110 Miscellaneous Provisions.

On a temporary basis during the pendency of divorce proceedings or upon the final hearing, the tribal court shall have authority to do the following:

- (1) The tribal court shall have the authority to determine the paternity of children born to a spouse during the marriage when paternity has been disputed, or adopted by one spouse during the marriage and to determine the paternity of children born to or adopted by a spouse prior to the marriage. The legitimacy of children conceived during the marriage shall be presumed, unless and until the contrary is shown by clear and convincing evidence. DNA blood and tissue testing results from a qualified laboratory shall be admissible and conclusive.

- (2) The tribal court shall have the authority, upon good cause shown, and upon the motion of either party, or upon motion of the tribal attorney or tribal prosecutor on behalf of any minor children of the marriage, or upon its own motion, either temporarily during the pendency of the action or permanently thereafter, to enjoin either party to do or to refrain from doing such acts or omissions as the court shall find necessary or appropriate for the well being of the parties and their minor child or children.
- (3) On a temporary basis pending the final hearing or permanently at the final hearing, the tribal court may grant either party such relief as it shall find to be warranted, appropriate and equitable for the benefit of the parties and their minor child or children.
- (4) If either party to the divorce proceedings fails or neglects to comply with an order of the tribal court which was served upon or entered in the presence of said party, then that party shall be subject to the contempt powers of the court.

4.2.111 Retroactive Application of Divorce Code.

Each and every divorce previously granted in the tribal court pursuant to the inherent jurisdiction and authority of the court is hereby determined and declared to be valid and enforceable, PROVIDED that such divorce meets one of the jurisdictional requirements of this code. Judgments of divorce granted by the tribal court prior to the adoption of this code shall be deemed valid as of the date of entry of the judgment, notwithstanding other procedural variances from this code, PROVIDED that one of the jurisdictional requirements of this code is satisfied. Any divorce action pending upon adoption of this code shall be deemed valid, PROVIDED that it meets one of the jurisdictional requirements of this code. Each divorce proceeding pending upon adoption of this code shall hereafter comply with the procedural requirements hereof.

Enacted by the Hannahville Indian Community Tribal Council for immediate effect on 8/03/15.

Votes in favor 10; Votes opposed 0; Abstentions 1.