

## **Subpart K Domestic Relations**

### **K-1 Marriage and Divorce**

All marriages consummated according to State Law, Tribal custom or tradition, the Tribal Code, or the laws of another county shall conform to the provision of this Code.

(a) Jurisdiction. The Tribal Court shall have the authority to solemnize or conduct marriages or grant divorces when either party is a member of the Pueblo of Pojoaque.

1. The Tribal Court shall also have jurisdiction to hear and determine separate maintenance, annulment, adoptions, determination of paternity and support, custody of minor children and change of name and to determine if full faith and credit or comity should be given to judgments of a Court or other jurisdictions in these matters when an enrolled member of the Pueblo of Pojoaque is a party.

(b) Marriages. A valid marriage hereunder shall be constituted of the following:

1. The issuance of a marriage license by the State of New Mexico or any other valid jurisdiction; and
2. The solemnizations of the marriage by Pueblo tradition and custom, or by a Judge within the jurisdiction of the Pueblo of Pojoaque or by a recognized clergyman or public official authorized to do so by the laws of any State or Country.

(c) Solemnization. In the event a judge, clergyman, Tribal judge or anyone authorized to do so solemnizes a marriage, the marriage license shall be filed with the State within thirty (30) days of the solemnization. The validity of any marriage under this Code is not affected by the absence of a ceremony.

(d) Invalid or Prohibited Marriages. Marriages which are prohibited or invalid under this Code are:

1. Where either party is lawfully married to another living spouse unless the former marriage has been legally annulled or dissolved.
2. Between ancestors and descendants of every degree, between a stepfather and stepdaughter or between stepmother and stepson, between brothers and sisters, aunts and nephews, uncles and nieces, and between first cousins, whether the relationship is of the half or whole blood, and, legitimate or illegitimate.
3. When marriages are prohibited by custom and traditions of the Pueblo.
4. All such marriages listed in this Section are invalid for the purpose of this Code.

(d) Grounds for Annulment or Voidable Marriage. A marriage may be voided or annulled by the Tribal Court for any one of the following reasons upon the application of one of the parties:

1. When either party to the marriage shall be incapable of consenting thereto.
2. When the consent was obtained by force or fraud.
3. When either party was at the time of the marriage incapable of consummating the marriage or the incapacity is continuing.
4. When the marriage was invalid on one of the grounds set forth in Paragraph (d).
5. If, after correction of any of the foregoing defects, the parties shall continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of such defect.
6. Procedure for annulment must be instituted by petition of the party laboring under the disability or upon whom the force or fraud is imposed in a civil action.

(e) Effects of Annulment of Voidable Marriage. The legitimacy of children and their entitlement to enrollment conceived or born prior to a judgment of annulment shall not be affected by the judgment. The judgment shall be conclusive only as against the parties to the action and those claiming under them.

(f) Divorce. A marriage may be dissolved in the Tribal Court for incompatibility of the parties for whatever reason when either party is an enrolled member of the Pueblo of Pojoaque. The Court may require a waiting period of up to sixty (60) days before making any divorce final.

(g) Actions of the Court Pending Divorce or Annulment.

1. The Tribal Court may order:
  - A. The husband or wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just upon application therefore or in the disposition of a divorce proceeding.
  - B. The care, custody and maintenance of the minor children of the marriage during the pendency of the proceedings.
  - C. Any reasonable temporary property settlement for the use of real and personal properties, as between the parties, and the recovery and delivery to each of the parties of any of their personal property in possession or control of the other, for good and adequate reasons, and the use of any and all property, whether real or personal, and the payment of debts, all on a temporary basis until final adjudication by the Court.
  - D. To restore the maiden name of the wife, if requested.

## **K-2 Determination of Heirs**

If an Indian shall die leaving property, other than an allotment or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent shall bring suit in the Pueblo of Pojoaque Tribal Court to have that Court determine the heirs of the decedent and distribute the property.

## **K-3 Probate of Wills**

If an Indian shall die leaving a will disposing of property, other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal Court shall determine the validity of the will.

## **K-4 Domestic Violence Ordinance**

(a) Jurisdiction. The Pueblo of Pojoaque has criminal jurisdiction over any act of domestic violence that occurs within the exterior boundaries of the Pueblo that involves an Indian. The Tribal Court has civil jurisdiction over any act of domestic violence that occurs within the exterior boundaries of the Pueblo of Pojoaque owned land.

(b) Definitions. In addition to the definitions contained in Subpart A-3,

1. “Act of Domestic Violence” means physical harm, bodily injury, or assault; or, the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or, terroristic threats; or, criminal sexual conduct.

2. “Domestic Violence” means acts of violence committed by a current or former spouse or current or former partner of the victim, by a person with whom the victim shares a child in common, by a person or partner who is cohabitating with or has cohabitated with the victim as a spouse or partner, or by a person similarly situated to a spouse or partner of the victim, by persons involved in a significant romantic or sexual relationship, or by a person related to the victim by blood.

3. “Order of Protection” means a Tribal Court action. No fees shall be charged either when a Petition for an Order of Protection is filed with the Tribal Court, or when comity or full faith or credit is requested for any order of Protection issued by another court of competent jurisdiction. After a petition is filed, the petitioner’s address shall be kept confidential by the Tribal Court, except for the purposes of notifying the petitioner of further court actions or for law enforcement purposes.

(c) Procedure for Order of Protection. Upon receipt of a written petition for an Order of Protection, or for comity or full faith and credit of another court’s order, the Tribal Court shall either schedule an emergency ex parte hearing, if the respondent is not available, or a hearing with all parties present. The written petition shall include the allegations, a police report if available, and the address and phone number of the respondent.

(d) Hearings; Ex Parte Order; Mutual Orders of Protection.

1. If an ex parte Order of Protection is granted, the Court shall include in the Order either a date for a full hearing with all parties present or the opportunity for the respondent to be heard at a hearing with all parties present. If a full hearing is not scheduled by the Tribal Court, the Tribal Court shall schedule a full hearing after the respondent contacts the Tribal Court, in writing, of the desire for a full hearing.
2. All Orders of Protection shall include the precise conditions that the respondent must follow. The duration of the Order of Protection shall be determined solely by the Tribal Judge.
3. Mutual Orders of Protection and/or any provisions for restraining both parties shall only be issued if there are facts cited in the order that indicate that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. Both parties must file for an Order of Protection and/or request provisions for restraint before a Mutual Order of Protection and/or any provisions for restraint are issued.

(e) Penalties.

1. Civil Penalties for Not Following Orders of Protection. Any person not following the provisions in an Order of Protection shall be subject to a charge of civil violation of a Tribal Court Order of Protection. Fines may be levied up to five thousand dollars (\$5,000) and restitution to the petitioner may be ordered.
2. Criminal Penalties for Not Following Orders of Protection. Any Indian not following the provisions in an Order of Protection shall be subject to a charge of criminal violation of a Tribal Court Order of Protection. Upon conviction, the violator may be imprisoned for not more than one year, fined up to five thousand dollars (\$5,000), and ordered to pay restitution to the petitioner.

(f) Procedures for Criminal Prosecution of an Act of Domestic Violence.

1. Arrest. Upon a finding of probable cause that an act of domestic violence has been committed by an Indian, the Pueblo of Pojoaque Tribal Police shall arrest the alleged violator.
2. Criminal Complaint. Upon the filing of a criminal complaint with the Tribal Court, the Judge may issue any necessary restraining order or Order of Protection as the Judge deems advisable to protect the alleged victim.
3. Criminal Procedure. The Tribal Police and Tribal Court shall follow the criminal procedure contained in the Tribal Law and Order Code for the arraignment and advisement of rights of any alleged violator of the Domestic Violence Ordinance.
4. Penalties. Any Indian violating the Domestic Violence Ordinance may be subject to fines of up to five thousand dollars (\$5,000), restitution to any abused party,

probation with conditions, parole with conditions, or imprisonment of up to one year, at the discretion of the Tribal Judge.