

# SMITH RIVER RANCHERIA



**TITLE 5 DOMESTIC RELATIONS**

**JULY 8, 2008**

## **CHAPTER 5-1 DOMESTIC RELATIONS**

### **5-1-1 Preamble**

This Code shall be known as the Smith River Rancheria Domestic Relations Chapter. This Chapter shall be liberally construed and interpreted to fulfill the following purposes whenever possible:

- (1) To serve the welfare and the best interests of the children, the families, and the Smith River Rancheria Community;
- (2) To preserve and strengthen the unity of the Tolowa family, along with each family's Tribal, cultural, or ethnic identity whenever possible;
- (3) To secure the rights and ensure fairness to children, parents, guardians, custodians or other parties who come before the court; and
- (4) To provide a non-adversarial forum for culturally appropriate resolution of domestic relations issues coming before the Tribal Court.

## **MARRIAGE**

### **5-1-30 Marriage License**

- (1) No marriage shall be performed under authority of this Chapter unless the parties have first obtained a marriage license from the clerk of the Tribal Court.
- (2) Upon payment of a fee to be set by the Tribal Court, the clerk shall issue a marriage license to persons who appear entitled to be married as provided in 5-1-32 of this Chapter.
- (3) The clerk shall keep a public record of all marriage licenses and certificates issued.
- (4) The marriage license, properly endorsed by the authorized person performing the marriage, shall be returned to the clerk who shall issue a marriage certificate to the parties.

### **5-1-31 Existing Marriages**

Tribal law does not recognize customary or common law marriages. However, all marriages performed other than as provided for in this Chapter, which are valid under the laws of the jurisdiction where and when performed, including customary or common law

marriages lawfully established in those jurisdictions that still permit such marriages, are valid within the Tribe's jurisdiction.

#### 5-1-32 Persons Who May Marry

No marriage license shall be issued or marriage performed unless the persons to be married are of the opposite gender and meet the following qualifications:

- (1) Both persons are at least 18 years old; however, persons who are 16 or 17 years old who have the written and properly notarized consent to marry from their parent or guardian may marry; and
- (2) At least one of the persons to be married is an enrolled member of the Smith River Rancheria.

#### 5-1-33 Who May Perform Marriages

- (1) A marriage may be solemnized and performed on Tribal Lands (as defined in the Smith River Rancheria Constitution) by any of the following:
  - (a) Any person recognized by Tribal or state law as having authority to marry;
  - (b) A judge of the Tribal Court; or
  - (c) A recognized clergyman or person recognized by his or her religion as having authority to marry.
- (2) If a person performing a marriage ceremony or solemnization lacked the actual authority to perform such ceremony or solemnization, if the parties believed that he or she had such authority and that they have been lawfully married, the marriage shall not be invalid on that basis.

#### 5-1-34 Marriage Ceremony

No particular form of marriage ceremony is required, provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and he or she must thereafter declare them to be husband and wife.

#### 5-1-35 Void and Voidable Marriages

- (1) Marriages between an ancestor and his or her descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first or second cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.

- (2) Marriages between a person who is at the time of the marriage married to another person still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:
  - (a) Actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce or annulment; or
  - (b) Actually believed, in good faith, that his or her prior spouse was dead.
- (3) When a marriage is contracted in good faith and in the belief that it is a valid marriage, the children of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.
- (4) If either party to a marriage is incapable as a result of some cause or mental dysfunction or legal incapacity to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or fraud; the marriage is voidable.

## **ANNULMENT**

### **5-1-70 Grounds for Annulment**

A marriage may be annulled for any of the following causes existing at the time of marriage:

- (1) That the party on whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other party to the marriage as husband and wife;
- (2) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;
- (3) That either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband and wife;
- (4) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;
- (5) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband and wife; or

- (6) Impotence which continues and appears to be incurable.

#### 5-1-71 Action to Annul - Parties and Limitations

An action to obtain a Decree of Annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

- (1) For causes mentioned in Subsection 5-1-70(1), by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of legal consent;
- (2) For causes mentioned in Subsection 5-1-70(2) by either party during the life of the other, or by such former husband or wife;
- (3) For causes mentioned in Subsection 5-1-70(3) by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;
- (4) For causes mentioned in Subsection 5-1-70(4) by the party injured, within two years after the discovery of the facts constituting a fraud;
- (5) For causes mentioned in Subsection 5-1-70(5) by injured party, within four years after the marriage; and
- (6) For causes mentioned in Subsection 5-1-70(6) by the injured party, within two years after the marriage.

#### 5-1-72 Legitimacy of Children

When a marriage is annulled for any reason, children begotten before judgment are legitimate and succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents may require.

#### 5-1-73 Conclusiveness of Judgment of Annulment

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

## **DISSOLUTION OF MARRIAGE**

### **5-1-100 Dissolution and Annulment Procedure**

Proceedings in dissolution and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final Decree of Divorce shall restore the parties to the status of unmarried persons.

### **5-1-101 Dissolution and Annulment Residency Requirement**

In order to maintain an action for divorce or annulment in the Tribal Court, at least one party to the marriage must be an enrolled member of the Smith River Rancheria and have lived within the territorial jurisdiction of the Tribal Court for at least ninety (90) days prior to bringing the action, except that an annulment may be granted where either party lives within the jurisdiction of the Court and the marriage was performed under authority of this Chapter.

### **5-1-102 Grounds for Dissolution**

The sole grounds for dissolution shall be that the marriage is irretrievably broken.

### **5-1-103 Right to Dissolution**

The husband may in all cases obtain a dissolution from his wife for the same causes and in the same manner as the wife may obtain a dissolution from her husband.

### **5-1-104 Maintenance and Suit Money; Temporary Orders; Restraint**

- (1) The Court may order either party to pay a sum of money for the temporary or permanent separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action.
- (2) The Court may issue temporary custody and support orders for good cause shown pursuant to 5-1-109, and may order the parties to participate in appropriate education or services regarding the impact of dissolution on children.
- (3) The Court may temporarily or permanently restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the dissolution proceedings. In addition, civil contempt proceedings may be brought against any person violating a valid court order obtained pursuant to this section.

#### 5-1-105 Pleadings; Findings; Decree

The petition for dissolution shall be in writing and signed by the petitioner or the petitioner's attorney or spokesperson. No Decree of Dissolution shall be granted upon default or otherwise, except upon legal evidence taken in the case by the Court who shall make and file its findings and decree upon the evidence. The decree shall become absolute upon entry unless the judge orders otherwise. No final dissolution decree may be granted until at least ninety (90) days after the petition for dissolution and summons have been served, unless the Court finds good cause to waive this time restriction.

#### 5-1-106 Disposition of Property and Children

When a Decree of Dissolution is made the Court may make such orders in relation to the children, property, and parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes, modifications or new orders may be made by the Court with respect to the custody of the children as shall be reasonable and proper.

#### 5-1-107 Child Custody Proceeding - Commencement - Notice - Intervention

- (1) A child custody proceeding is commenced in the Tribal Court:
  - (a) By a parent:
    - (i) By filing a petition for dissolution of marriage, annulment or declaration of invalidity; or
    - (ii) By filing a petition seeking custody of the child; or
  - (b) By a person other than a parent, by filing a petition seeking custody of the child; but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.
- (2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The Court may, upon a showing of good cause, permit the intervention of other interested parties.

#### 5-1-108 Child Custody - Relevant Factors in Awarding Custody

The Court shall determine custody in accordance with the best interests of the child and, secondarily, the traditions and customs of the Smith River Rancheria Tolowa people. The Court shall consider all relevant factors including:

- (1) The cultural heritage of the child;
- (2) The wishes of the child's parent or parents as to custody and visitation privileges;
- (3) The wishes of the child as to his custodian and as to custody and visitation privileges;
- (4) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
- (5) The child's adjustment to his home, school, and community; and

The mental and physical health of all individuals involved.

The Court shall not consider conduct of a proposed custodian or guardian that does not affect the welfare of the child.

#### 5-1-109 Child Custody - Temporary Custody Order – Vacating the Order

- (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by affidavit. The Court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.
- (2) If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.
- (3) If a custody proceeding commences in the absence of a petition for dissolution of marriage, legal separation, or declaration of invalidity, is dismissed, any temporary order is vacated.

#### 5-1-110 Child Custody - Temporary Custody Order or Modification of Custody Decree - Affidavits Required

A party seeking a temporary custody order or modification of a custody decree shall submit together with the motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. The Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

**5-1-111 Child Custody - Interview with Child by Court - Advice of Professional Personnel**

- (1) The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation privileges. The Court may permit counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be made part of the record in the case. However, records involving juveniles are confidential and may only be obtained by parties to the case, unless for good cause the Court orders otherwise.
- (2) The Court may seek the advice of professional personnel or persons knowledgeable in the welfare of Indian children whether or not they are employed on a regular basis by the Court. The advice given shall be in writing and shall be made available by the Court and available to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Court.

**5-1-112 Child Custody - Priority Status of Proceedings - Hearings - Record - Expenses of Witnesses**

- (1) Custody proceedings shall receive priority in being set for hearing.
- (2) Either party may petition the Court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the Court deems necessary to determine the best interests of the child.
- (3) The Court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the Court.
- (4) If the Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the Court may make an appropriate order sealing the record.

**5-1-113 Child Custody - Visitation Rights**

- (1) Any person may petition the Court for visitation rights at any time including, but not limited to, custody proceedings.
- (2) A parent, grandparent, or any other person able to show to the Court a traditional right or custom of child care, and not granted custody of the child may be granted reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The Court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

- (3) The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the Court shall not restrict a parent's or grandparent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health.

5-1-114 Child Custody - Powers and Duties of Custodian - Supervision by Appropriate Agency When Necessary

- (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his or her education, health care, and religious training, unless the Court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.
- (2) If both parents or all parties agree to the order, or if the Court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the Court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the Court at any time upon petition by any party.

5-1-115 Child Custody Decree - Modification

- (1) Except as otherwise provided in this Chapter, the Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the Court shall retain the custodian established by the prior decree unless:
  - (a) The custodian agrees to the modification;
  - (b) The child has been integrated into the family of the petitioner with the consent of the custodian; or
  - (c) The child's present environment is detrimental to his or her physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.
- (2) If the Court finds that a motion to modify a prior custody order has been brought in bad faith, the Court shall assess the attorney's fees and court costs of the custodian against the petitioner.

**5-1-116 Child Support - Apportionment of Expense**

In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the Court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for the support of the child.

**5-1-117 Advocates and Spokespersons - Payment of Costs, Fees and Disbursements**

- (1) Any party may be represented by an attorney, advocate or spokesperson at that party's expense, provided that such persons is eligible to be admitted to practice in the Smith River Rancheria Court.
- (2) The Court may appoint an advocate or spokesperson to represent the interests of a minor or dependent child with respect to his custody, support, and visitation. The Court shall enter an order for costs, fees, and disbursements, if any, in favor of the child's advocate. The order shall be made against either or both parents.

**5-1-118 Support or Maintenance Payments -To Whom Paid**

- (1) The Court may, upon its own motion or upon motion of either party, order support or maintenance payments to be made to:
  - (a) The person entitled to receive the payments;
  - (b) The appropriate tribal department; or
  - (c) The clerk of Court as trustee for remittance to the person entitled to receive the payments.
- (2) If payments are made to the clerk of Court:
  - (a) The clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order; and
  - (b) The parties affected by the order shall inform the clerk of the Court of any change of address or of other conditions that may affect the administration of the order.

**5-1-119 Support or Maintenance Payments - Order to Make Assignment of Periodic Earnings or Other Tribal Income or Benefits - Duty of Payor to Withhold and Transmit**

The Court after hearing may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or other Tribal income or benefits to the person or agency entitled to receive the payments. The assignment is binding on the employer, trustee or other payor of the funds two weeks after service upon him of notice that the assignment has been made. The payor shall withhold from the earnings or other Tribal income or benefits payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding ten dollars as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

**5-1-120 Payment of Costs, Attorney's Fees, etc.**

The Court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under this Chapter and for reasonable counsel or attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs.

**SEPARATE MAINTENANCE AND PROPERTY RIGHTS**

**5-1-150 Separate Maintenance**

- (1) A parent of minor children, living on the lands of the Smith River Rancheria, who through no fault of his or her own or by agreement with his or her spouse, is living separate and apart from his or her spouse, or whose spouse has deserted him or her, or has failed to support him or her when otherwise able to do so, may maintain an action for a decree of separate maintenance.
- (2) During the pendency of the action the Court may order the spouse to pay temporary maintenance and suit money as in an action for dissolution.
- (3) If it appears that the spouse is entitled to such, the Court shall grant a decree of separate maintenance awarding custody of children, maintenance, child support and expenses of suit as may be equitable under the circumstances.

**5-1-151 Property Rights of Married Persons**

- (1) Either a wife or a husband can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.
- (2) Either a wife or a husband can enter into contracts and sue or be sued to the same

extent and in the same manner as if unmarried.

- (3) Neither a wife nor a husband nor the property of either in which their spouse has no interest is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.
- (4) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.
- (5) The Smith River Rancheria shall accept and apply the relevant community and separate property laws of the parties' state of residency currently in force at the time of any decree or order under this Chapter as its own; except as specifically provided in this Chapter.

#### 5-1-152 Family Expenses

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or either of them, and they may be enforced jointly or separately.

#### 5-1-153 Custody of Children and Property

- (1) Absent a judicial decree of property distribution or custody or otherwise, neither the husband nor the wife can remove the other or the children from the place of family dwelling without the consent of the other, provided, however, that children may be removed from the family residence by one parent without the consent of the other if such appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is made to the Court within ten days for an order of the Court, modifiable at any time, approving such removal of the children.
- (2) If either spouse abandons the other spouse, the abandoned spouse is entitled to custody of and legal guardianship over all children under the age of 18 unless a court of competent jurisdiction shall otherwise direct. Abandonment shall be defined as voluntary absence of a parent from the home in which the children reside for a period of 180 days without intent to return.

### **GUARDIANSHIP**

#### 5-1-180 Jurisdiction

The Tribal Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or their estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of either minors or persons incompetent by

reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol. Guardianships shall proceed pursuant to the relevant provision of the Smith River Rancheria Children's Code.

## **PARENTAGE**

### **5-1-220 "Parent and Child Relationship" Defined**

As used in this Chapter, "parent and child relationship" means the legal relationship existing between a child and his or her natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

### **5-1-221 Presumption of Paternity**

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 three hundred days after the marriage is terminated by death, annulment, declaration of  
  
invalidity, divorce, or dissolution, or after a decree of separation is entered by a court;
- (2) 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 or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation;
- (3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and
  - (a) he has acknowledged his paternity of the child in writing filed with the state registrar of Vital Statistics or the Smith River Rancheria Enrollment Office;
  - (b) with his consent, he is named as the child's father on the child's birth certificate; or
  - (c) he is obligated to support the child under a written voluntary promise or by court order.
- (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 child; or

- (5) He acknowledges his paternity of the child in a writing filed with the registrar of Vital Statistics, or the Smith River Rancheria Enrollment Office, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the registrar of Vital Statistics. If another man is presumed under subsection (1), (2), (3) or (4) of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

A presumption under this section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

#### 5-1-222 Artificial Insemination and Surrogacy

- (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the registrar of Vital Statistics or with the Smith River Rancheria Enrollment Office, where it shall be kept confidential and in a sealed file.
- (2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the registrar of Vital Statistics or with the Smith River Rancheria Enrollment Office, where it shall be kept confidential and in a sealed file.
- (3) The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.
- (4) In cases of egg donation, the parental rights of Intended and Surrogate parents shall be governed by the parties' egg donation or surrogacy contract.

**5-1-223 Determination of Father and Child Relationship - Who May Bring Action - When Action Maybe Brought**

- (1) A child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the Smith River Rancheria, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.
- (2) A man presumed to be a child's father under SRR CODE 5-1-221 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.
- (3) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this section.
- (4) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.
- (5) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

**5-1-224 Jurisdiction**

- (1) The Tribal Court shall have jurisdiction of any action to determine paternity brought under this Chapter. The action may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, filiation, support, or any other civil action in which paternity is an issue including proceedings in Juvenile Court.
- (2) Any person who has sexual intercourse within the lands of the Smith River Rancheria with a person who is a member of the Smith River Rancheria thereby submits to the jurisdiction of the courts of the Tribe as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside Tribal Lands or by service in accordance with the Tribal Code as now or hereafter amended.

### 5-1-225 Parties

The child shall be made a party to the action. If the child is a minor, the child shall be represented by the child's advocate, guardian or a guardian ad litem appointed by the Court. The child's mother or father may not represent the child as guardian ad litem or otherwise. The natural mother, each man presumed to be the father and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the Court, shall be given notice of the action in a manner prescribed by the Court and an opportunity to be heard. The Court may align the parties.

### 5-1-226 Blood Tests

- (1) The Court may, upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to blood tests. If an alleged father objects to a proposed order requiring him to submit to paternity blood tests, the Court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based. The Court shall order blood tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity blood testing appointed by the Court. The expert's verified report identifying the blood characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (a) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and (b) the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the blood samples is admissible to establish the chain of custody. The Court may consider published sources as aids to interpretation of the test results.
- (2) The Court, upon request by a party, shall order that additional blood tests be performed by the same or other experts qualified in paternity blood testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to the advance the costs or if the Court finds, after hearing, that (a) the requesting party is indigent, and (b) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial blood test results. The Court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.
- (3) In all cases, the Court shall determine the number and qualifications of the experts.

### 5-1-227 Evidence Relating to Paternity

Evidence relating to paternity may include:

- (1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (3) Blood test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;
- (4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
- (5) All other evidence relevant to the issue of paternity of the child.

**5-1-228 Civil Action - Testimony - Evidence**

- (1) Any paternity action under this Chapter is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify.
- (2) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that said witness may be incriminated thereby, and if a party requests the Court to order that person to testify or provide the evidence, the Court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

If, but for this section, such a witness would have been privileged to withhold the answer given or the evidence produced by him or her, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but he or she shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he or she has been ordered to testify pursuant to this section. He or she may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Court.

- (3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
- (4) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Court concerning his sexual

intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the Court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the Court shall be made a defendant in the action.

- (5) The trial shall be by the Court without a jury.

**5-1-229 Judgment or Order Determining Parent and Child Relationship - Support Judgment and Orders - Custody**

- (1) The judgment and order of the Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.
- (2) If the judgment and order of the Court is at variance with the child's birth certificate, the Court shall order that an amended birth certificate be issued.
- (3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the Court; the custody and guardianship of the child, visitation privileges with the child; the furnishing of bond or other security for the payment of the judgment; or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
- (4) Support judgment and orders shall be for periodic payments which may vary in amount. The Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Court deems just: Provided however, that the Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for support and other services previously furnished to the child.
- (5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the Court shall consider all relevant facts, including, but not limited to:
  - (a) The needs of the child;
  - (b) The standard of living and circumstances of the parents;
  - (c) The relative financial means of the parents;
  - (d) The earning ability of the parents;

- (e) The need and capacity of the child for education, including higher education;
  - (f) The age of the child;
  - (g) The responsibility of the parents for the support of others; and
  - (h) The value of services contributed by the custodial parent.
- (6) In determining custody, a court, in accordance with the best interests of the child, shall consider the factors set forth in Section 5-1-108.
- (7) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the Tribal Child Welfare Services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the Court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

**5-1-230 Support Orders - Time Limit, Exception**

A Court may not order payment for support provided or expenses incurred more than five years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Court under this Chapter shall not be included within the five-year period.

**5-1-231 Temporary Support - Temporary Restraining Order - Preliminary Injunction - Support Debts, Notice**

- (1) If the Court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the Court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (2) Any party may request the Court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:
- (a) Molesting or disturbing the peace of another party;
  - (b) Entering the home of another party; or

- (c) Removing a child from the jurisdiction of the Court.
- (3) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.
- (4) The Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.
- (5) A temporary order, temporary restraining order, or preliminary injunction:
  - (a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;
  - (b) May be revoked or modified;
  - (c) Terminates when the final order is entered or when the petition is dismissed; and
  - (d) May be entered in a proceeding for the modification of an existing order.

#### 5-1-232 Enforcement of Judgments or Orders

- (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Chapter or under other or prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent it has furnished or is furnishing these expenses.
- (2) The Court may order support payments to be made to a parent, the clerk of the Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Court.
- (3) All remedies for the enforcement of judgments apply.

#### 5-1-233 Modification of Judgment or Order - Continuing Jurisdiction

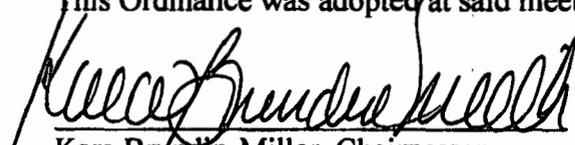
The Court has continuing jurisdiction to prospectively modify a judgment and order for future education and future support upon showing a substantial change of circumstances unless otherwise provided by the Tribal Council.

5-1-234 Action to Determine Mother and Child Relationship

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this Chapter applicable to the father and child relationship apply.

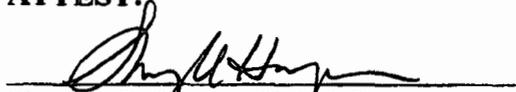
**CERTIFICATION**

I, the undersigned, as Chairperson of the Smith River Rancheria Tribal Council, do hereby certify: that the Smith River Rancheria Tribal Council is composed of seven (7) members, of which at least (4) were present constituting a quorum, at a regular meeting thereof, duly and regularly called, noticed, and convened, on 8 July 2008.  
This Ordinance was adopted at said meeting.

  
Kara Brundin-Miller, Chairperson  
Smith River Rancheria

7/8/08  
Date

**ATTEST:**

  
Sharyne R. Harper, Tribal Secretary  
Smith River Rancheria

8 July 2008  
Date