

## Chapter 10

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## ARTICLE I. PATERNITY

### Sec. 10-1. Purpose.

The purpose of this chapter is to ensure that the father of each Community child or child residing on the Salt River Pima-Maricopa Indian Reservation is identified and paternity is established in order to protect the best interest of all children. Community children are the most vital and valued resource to the continued existence, the future, and integrity of the Community. The Community has a compelling interest in promoting and maintaining the health and well-being of all Community children.

(Code 1976, § 3.8; Code 1981, § 10-1(a); Code 2012, § 10-1(a); Ord. No. SRO-365-2010, § 10-1(a), 7-7-2010; Ord. No. SRO-402-2012, § 10-1(a), 5-30-2012)

### Sec. 10-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adjudicated father* means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

*Alleged father.*

- (1) The term "alleged father" means a man who alleges himself to be, or is alleged to be, the DNA father or a possible DNA father of a child, but whose paternity has not been determined.
- (2) The term "alleged father" does not include:
  - a. A presumed father; or
  - b. A man whose parental rights have been terminated or declared not to exist.

*Child* means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

*Community* means the Salt River Pima-Maricopa Indian Community.

*Court* means the Community court.

*DNA testing* means deoxyribonucleic acid, hereafter referred to as DNA, paternity test to establish that the alleged father is the child's biological father with a probability of paternity of 95 percent or higher.

*Expert* means a person who is qualified, either by actual experience, education, training or skill to form definite opinions with in a particular subject.

*Legal department* means legal services office, office of the general counsel, Community prosecutor's office, and/or parents advocate's office.

*Party* means the parent, guardian, child, appointed guardian ad litem or Community to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations:

- (1) The right to be notified of proceedings;
- (2) To retain counsel or, in some cases, to secure court-approved representation;
- (3) To appear and present evidence;
- (4) To call, examine, and cross examine witnesses;
- (5) The unlimited or restricted right to discovery and the inspection of records; and
- (6) The right to request a hearing or appeal a final order.

*Paternity* means a determination of the identity of the biological father. The term "establishing paternity" means identifying the father of a child and legally determining that he is the father.

*Presumed father* means a man who is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

*Presumption* means a fact assumed to be true under law.

*SRPMIC* means the Salt River Pima-Maricopa Indian Community.

*Subsequent documents* means every order, every written pleading subsequent to the original

complaint, every written motion, and every written notice, appearance, judgment, or other document filed with the Community court.

*Summons* means a document issued by a court informing a person that a complaint has been filed against that person and notifies the respondent of his or her obligation to appear before the court.

*Unavailable* means an individual who has failed to appear in court either in person or in writing, or who is deceased.

(Code 1976, § 3.8; Code 1981, § 10-1(b); Code 2012, § 10-1(b); Ord. No. SRO-365-2010, § 10-1(b), 7-7-2010; Ord. No. SRO-402-2012, § 10-1(b), 5-30-2012)

### **Sec. 10-3. Jurisdiction; jurisdiction over non-residents; notice.**

(a) Personal jurisdiction over an individual under this article may be established where the parties are any of the following:

- (1) Is member of the Community;
- (2) Is domiciled or residing within the Community;
- (3) Who engaged in sexual intercourse in the Community and the child may have been conceived by that act of intercourse;
- (4) An individual who consents to the jurisdiction of the court by one of the following:
  - a. Filing an action with the court;
  - b. Knowingly and voluntarily giving written consent to the jurisdiction of the court;
  - c. Entering notice of appearance before the court in an action without concurrently preserving the defense of lack of personal jurisdiction or filing a motion to dismiss for lack of personal jurisdiction within 30 days of entering the notice of appearance;
  - d. Appearing in an action before the court without asserting the defense of lack of personal jurisdiction;

- (5) Is a real party in interest to a lease of land and/or improvements within the Community and then as to matters involving such leasehold interests; or
- (6) Is a real party in interest regarding the ownership of land and/or improvements located within the reservation boundaries and sought to be acquired pursuant to the powers of eminent domain.
- (7) No other court outside of Community has jurisdiction or another jurisdiction has declined to exercise jurisdiction on the ground that the Community is the more appropriate forum, at least one of the parties resides in the Community and it is in the child's best interest that the court assume jurisdiction.

(b) The fact that the petitioner or child or both, petitioner and child, have never been residents of the Community shall not bar the proceedings.

(c) The court shall retain jurisdiction over the cause for the purpose of entering such order and any further orders as changing circumstances of the parties may in justice and equity require.

(d) Basis for jurisdiction over nonresident. In a proceeding to establish paternity under this section, the court may exercise personal jurisdiction over a nonresident individual or the individual's guardian if any of the following is true:

- (1) The individual is personally served within the Community;
- (2) The individual submits to the jurisdiction of the Community by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in the Community;
- (4) The individual resided in the Community and provided prenatal expenses or support for the child;
- (5) The child resides in the Community as a result of the acts or directives of the individual;

- (6) The individual engaged in sexual intercourse in the Community and the child may have been conceived by that act of intercourse; or
  - (7) There is any other basis consistent with the Constitutions of the Community and the United States for the exercise of personal jurisdiction.
- (e) Notice to persons outside the Community.
- (1) Notice required for the exercise of jurisdiction if a person is outside the Community may be given in a manner prescribed by the law of the Community for service of process. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective. If notice is done by publication, publication must be done in the county that the respondent last resided in and in the Community.
  - (2) Proof of service may be made in the manner prescribed by the Community.
- (f) Notice to respondents. Notice is not required if the person submits to the jurisdiction of the court.
- (1) A person submits to the jurisdiction of the court by filing a responsive pleading; or
  - (2) A person appears at any hearing.
- (Code 1981, § 10-2; Code 2012, § 10-2; Ord. No. SRO-365-2010, § 10-2, 7-7-2010; Ord. No. SRO-402-2012, § 10-2, 5-30-2012)

#### **Sec. 10-4. Paternity petition.**

- (a) *Generally.*
  - (1) A paternity proceeding under this chapter may stand alone as a separate proceeding or it may be joined with an action to determine child support, divorce, annulment, custody or any other civil action in which paternity is an issue including dependency actions.
  - (2) If the paternity action has been joined with a dependency action, the establishment of paternity shall not prohibit the juvenile court from determining other issues before the court unless required by an ordinance.
- (b) *Satisfying requirements under enrollment ordinance.* Establishing paternity under this chapter may not simultaneously satisfy the requirements under the enrollment ordinance.
- (c) *Governing rule.* Any paternity action under this chapter shall be governed by the Community's civil rules of procedure unless otherwise provided.
- (d) *Use of similar documents.* Any party may use documents other than those provided pursuant to this section if the documents are substantially similar pursuant to this section.
- (e) *Who may file petition.* A petition to request the court to establish paternity may be filed by:
  - (1) An adult child, or, a child's legal guardian;
  - (2) The child's natural mother;
  - (3) Any adult female who is pregnant, or any individual who is the legal guardian of a pregnant minor child;
  - (4) Any alleged father of the child;
  - (5) Any Community legal department with an interest in determining parentage; or
  - (6) Any court appointed guardian ad litem with an interest in determining parentage.
- (f) *Contents of petition.* A petition to establish paternity shall state:
  - (1) The names, dates of birth, addresses and whether such addresses are within the exterior boundary of the Community, and tribal affiliations, if any, of the natural mother, all potential fathers, the child, all others who have legal rights of custody, visitation, or support of the child, and of the petitioner. If any of the information is unknown, the petition should state the information is unknown;
  - (2) The basis for the court's jurisdiction pursuant to section 10-3(a)(1) through (6);



- (3) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation, and divorce, if any;
- (4) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child;
- (5) Whether there are other paternity proceedings, paternity affidavits or court orders concerning the child or whether parental rights have been terminated; and
- (6) A certified copy of the child's birth certificate shall be attached to the petition or provided to the court at least five days before the first hearing.

(Code 1981, § 10-3; Code 2012, § 10-3; Ord. No. SRO-365-2010, § 10-3, 7-7-2010; Ord. No. SRO-402-2012, § 10-3, 5-30-2012)

#### **Sec. 10-5. Presumption 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 300 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 formalized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within 300 days after the termination of cohabitation;
- (3) After the child's birth, he and the child's natural mother have attempted to marry each other by a marriage formalized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and with his consent, he is named as the child's father on the child's birth certificate;
- (4) He is named as the father by an official government issued birth certificate that is

signed by both parents acknowledging paternity and both parent's signatures are notarized; or

- (5) DNA testing affirms at least a 99 percent probability of paternity. DNA testing results must come from a DNA lab accredited by the American Association of Blood Banks and be certified.

(b) If a man has a presumption of paternity, he is considered the legal father by the court.

(c) A presumption of paternity established under this section may be rebutted only by adjudication as described herein and with clear and convincing evidence.

(Code 1981, § 10-4; Code 2012, § 10-4; Ord. No. SRO-365-2010, § 10-4, 7-7-2010; Ord. No. SRO-402-2012, § 10-4, 5-30-2012)

#### **Sec. 10-6. Initial paternity hearing; evidentiary paternity hearing; evidence relating to paternity.**

(a) *Generally.* The general public shall be excluded from the proceedings under this section. Only the parties and their counsel may attend the hearing. Any witnesses may attend the hearing but are not to remain in the courtroom until they are called to testify. After the witness has testified, the witness may be excluded and/or excused from the courtroom proceeding unless the parties have no objections to the witness's presence in the courtroom.

(b) *Service of subsequent documents.*

- (1) If service of the original petition and summons was effectuated at respondent's residence, every subsequent document shall be served upon by first class mail.
- (2) If a respondent files a responsive pleading or appears at any hearing, every subsequent document shall be served upon by first class mail.
- (3) The parties shall inform the court of their mailing address and update their address within ten days of any change of address. A parties' failure to update the court of a



change of mailing address is not a defense for the individual's lack of a notice of any court action.

(c) *Initial paternity hearing.*

- (1) The court shall set an initial paternity hearing 30 days after the respondents have been served with the original complaint and summons.
- (2) At the initial paternity hearing, the court shall:
  - a. If paternity is being contested and the court finds that it is the best interest of the minor child, order the parties to submit to DNA testing unless good cause exists pursuant to subsection (d)(2)a of this section;
  - b. Determine the good cause basis pursuant to this subsection, if applicable;
  - c. Schedule an evidentiary hearing;
  - d. Resolve any discovery and disclosure disputes;
  - e. If the alleged father is unavailable and if the court finds that it is the best interest of the minor child to establish paternity by DNA, identify potential family members to submit to DNA testing; and
  - f. Any other orders the court deems appropriate.
- (3) If the paternity proceeding has been joined with an action other than a dependency action, the court may:
  - a. Enter temporary orders in accordance with the stipulations of the parties, or if agreed to by the parties, based upon discussions, avowals, and arguments presented at the initial hearing.
  - b. Order evaluations, assessments, appraisals, appointments or other special procedures needed to properly manage the case and resolve the disputed issues.

- (4) After the initial hearing is held, the court shall issue an order regarding the actions taken within two business days.

(d) *Evidentiary paternity hearing rules.* The following rules shall apply to evidentiary paternity hearings:

- (1) The mother of the child and the alleged father shall be compelled to testify at the paternity hearing, if available. A woman may be excused from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The court may hold a closed, ex parte hearing to determine whether good cause exists. Good cause is a case that involves incest, rape or as determined by the court;
- (2) If the court finds it is the best interest of the minor child, the court may require the child, mother and alleged father's mother of the child to provide DNA samples prior to and for the paternity hearing. If the alleged father is unavailable, DNA samples may be sought pursuant to section 10-7(a)(6).
  - a. A woman may be excused from submitting to DNA testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The court may hold a closed, ex parte hearing to determine whether good cause exists. Good cause is a case that involves incest, rape or as determined by the court.
  - b. DNA results obtained pursuant to this section shall not be admissible for purposes of criminal prosecution.
- (3) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence;
- (4) Medical records may be used, if the expert is not available to provide testimony. Unless the sources of information or other

circumstances indicate lack of trustworthiness, records, reports, statements or data compilation, in any form from a medical office or agency may be used as evidence; and

- (5) The parties may provide testimony on how the costs of paternity testing shall be paid and the court will make a determination based on this testimony.

(e) *Evidence.* Evidence relating to paternity may include:

- (1) DNA test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;
- (2) Testimony and/or evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (3) An expert's opinion concerning probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (4) Written proof of father's acknowledgment; and
- (5) Any other evidence relevant to the issue of paternity of the child.

(Code 1981, § 10-5; Code 2012, § 10-5; Ord. No. SRO-365-2010, § 10-5, 7-7-2010; Ord. No. SRO-402-2012, § 10-5, 5-30-2012)

#### **Sec. 10-7. DNA testing; results; rebuttal; additional tests.**

(a) *DNA tests may be required.* The court may require the child, mother and alleged fathers to submit to DNA tests, unless good cause, as described section 10-6, exists not to require such testing. The following requirements apply to DNA testing under this section:

- (1) *Lab accredited.* The tests shall be performed by a DNA lab accredited by the American Association of Blood Banks.
- (2) *Report of DNA testing.* A report of DNA testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this article is self authenticating. Documentation from the

testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

- a. The names and photographs of the individuals whose specimens have been taken;
- b. The names of the individuals who collected the specimens;
- c. The places and dates the specimens were collected;
- d. The names of the individuals who received the specimens in the testing laboratory; and
- e. The dates the specimens were received.

- (3) *Admission into evidence.* Unless a party objects to the results of DNA tests in writing at least five days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

- (4) *Affidavit of DNA expert.* The results of DNA tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the DNA samples as described in subsection (a)(2) of this section.

- (5) *Contempt of court.* Failure to submit to DNA tests when required by the court may constitute contempt of court.

- (6) *DNA testing when specimens not available.* If a DNA testing specimen is not available from an alleged father of a child, for good cause and under circumstances the court considers to be just, the court may consider specimens from the following:

- a. The parents of the alleged father;
- b. Brothers and sisters of the alleged father;

- c. Other children of the alleged father that paternity has previously been established by DNA and their mothers; and
  - d. Other relatives of the alleged father necessary to complete DNA testing.
- (7) *Issuance of order.* Issuance of an order under this section requires a finding that a need for DNA testing outweighs the legitimate interests of the individual sought to be tested. The potential family members are not required to provide DNA samples and any collection of their DNA samples shall be collected pursuant to the individual's consent.
- (b) *DNA testing results; rebuttal.*
- (1) A man is rebuttably identified as the father of a child if the DNA testing complies with this section and the results disclose that:
    - a. The alleged father has at least a 95 percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
    - b. A combined paternity index of at least 100:1.
  - (2) A man identified under subsection (a) of this section as the father of the child may rebut the DNA testing results only by other DNA testing satisfying the requirements of this section which:
    - a. Excludes the alleged father as a DNA father of the child; or
    - b. Identifies another man as the possible father of the child.
  - (3) Except as otherwise provided herein, if more than one man is identified by DNA testing as the possible father of the child, the court shall order them to submit to further DNA testing to identify the DNA father.
- (c) *Additional DNA testing.* The court shall order additional DNA testing upon the request of a party who contests the result of the original

testing. If the previous DNA testing identified a man as the father of the child, the court may not order additional testing unless the party provides payment for the testing.

(Code 1981, § 10-6; Code 2012, § 10-6; Ord. No. SRO-365-2010, § 10-6, 7-7-2010; Ord. No. SRO-402-2012, § 10-6, 5-30-2012)

#### **Sec. 10-8. Rules for adjudication of paternity.**

The court shall apply the following rules to adjudicate the paternity of a child:

- (1) The paternity of a child having a presumed or adjudicated father may be disproved only by admissible results of DNA testing excluding that man as the father of the child or identifying another man as the father of the child.
- (2) Unless the results of DNA testing are admitted to rebut other results of DNA testing, a man identified as the father of a child must be adjudicated the father of the child.
- (3) If the court finds that DNA testing neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of DNA testing, and other evidence, are admissible to adjudicate the issue of paternity.
- (4) Unless the results of DNA testing are admitted to rebut other results of DNA testing, a man excluded as the father of a child by DNA testing must be adjudicated not to be the father of the child.

(Code 1981, § 10-7; Code 2012, § 10-7; Ord. No. SRO-365-2010, § 10-7, 7-7-2010; Ord. No. SRO-402-2012, § 10-7, 5-30-2012)

#### **Sec. 10-9. Paternity orders; default orders; paternity established by other jurisdictions.**

(a) *Paternity order.* The judgment or order of the court determining whether or not a respondent is a parent of a child shall be based on clear and convincing evidence. The court shall issue an order within two business days after the eviden-

tiary hearing is held. An order adjudicating parentage must identify the child by name and date of birth. If the judgment or order of the court establishes a different father than that on the child's birth certificate, the court shall send the order to the Department of Vital Statistics of the state in which the child was born so that the birth certificate can be amended.

(b) *Paternity records.* The records filed in a paternity action shall be confidential. Only parties to the case may obtain copies as described in section 11-28.

(c) *Default order of paternity.*

- (1) In an action to establish paternity, the court shall enter an order of paternity if:
  - a. The service of complaint and summons is complete and the respondent fails to appear at the initial or evidentiary hearing or otherwise answer; or
  - b. An order for DNA or blood testing has been entered and the respondent fails to appear without cause for an appointment to take a blood or DNA test or fails to take a blood or DNA test.
- (2) The court shall have an evidentiary hearing without respondent and establish paternity pursuant to section 10-6 prior to entering a default order of paternity.

(d) *Paternity established by other jurisdictions.* If paternity has been established in another state, tribe or federal agency by a court or administrative order, voluntary acknowledgment or birth certificate, the determination of paternity has the same force and effect in the Community as if the determination of paternity was granted by the court in the Community. (Code 1981, § 10-8; Code 2012, § 10-8; Ord. No. SRO-365-2010, § 10-8, 7-7-2010; Ord. No. SRO-402-2012, § 10-8, 5-30-2012)

#### **Sec. 10-10. Disestablishment of presumed paternity.**

An alleged father presumed to be a child's father 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. Any other interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child shall bar an action under this section. 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.

(Code 1981, § 10-9; Code 2012, § 10-9; Ord. No. SRO-365-2010, § 10-9, 7-7-2010; Ord. No. SRO-402-2012, § 10-9, 5-30-2012)

**Secs. 10-11—10-28. Reserved.**

## **ARTICLE II. MARRIAGE, DIVORCE, ANNULMENT, SEPARATE MAINTENANCE**

### **DIVISION 1. GENERALLY**

#### **Sec. 10-29. Judges may perform marriages.**

Judges of the Community court may solemnize marriages.

(Code 1981, § 10-10; Code 2012, § 10-10; Ord. No. SRO-165-93, § 1, 2-3-1993; Ord. No. SRO-315A-07, 12-13-2006; Ord. No. SRO-402-2012, § 10-10, 5-30-2012; Ord. No. SRO-465-2015, 6-17-2015; Ord. No. SRO-556-2023, 2-15-2023)

#### **Sec. 10-30. Marriages to be according to state law.**

(a) Since section 1(m), article V, amended Constitution and bylaws of the Community, approved April 19, 1954, provided that all marriages in the future shall be in accordance with the state laws, it is recognized that the powers of the Community are limited by article III, section 5(c) of the amended Constitution and bylaws of



the Salt River Tribe, but it further recognized that the limitation is for the best interests and welfare of the Community in cases of future inheritance problems or possible future state benefits. State marriage licenses may be secured at the office of the clerk of each county court.

(b) All marriages and divorces of members of the Community shall be recorded within 30 days with the Pima Agency and the Community court. (Code 1976, § 3.1(A); Code 1981, § 10-11; Code 2012, § 10-11; Ord. No. SRO-402-2012, § 10-11, 5-30-2012)

**Editor's note**—The current Constitution was approved November 23, 1970.

### **Sec. 10-31. Marriages validated.**

All purported marriages of members of the Community wherein such members have lived together within the Salt River Indian Reservation prior to December 27, 1957, date of approval of Ordinance No. 1, Revised (Law and Order Code), for the Community, and have been recognized as man and wife in their Community are hereby validated for all purposes from the date of their inception.

(Code 1976, § 3.1(B); Code 1981, § 10-12; Code 2012, § 10-12; Ord. No. SRO-3-64, 3-24-1964; Ord. No. SRO-402-2012, § 10-12, 5-30-2012)

### **Sec. 10-32. Procedure for judgment of validity.**

(a) Any member of the Community claiming that his or her marriage was validated by section 10-31 may file a petition in the Salt River Tribal Court for a judgment declaring that such marriage has been so validated. If the petitioner's spouse in such alleged marriage is known to the petitioner to be living, such spouse must also sign the petition, or be named as defendant and notified of the suit as provided in section 5-21. If the petitioner's spouse in such alleged marriage is not known to the petitioner to be living the petitioner must prove to the satisfaction of the court that such spouse is dead or has been absent for five successive years until the date of hearing the petition without being known to the petitioner within that time to be living, or the petition shall be dismissed.

(b) If the petitioner, having complied with subsection (a) of this section, proves to the satisfaction of the court that he or she and his or her alleged spouse lived together within the Salt River Indian Reservation prior to December 27, 1957, date of approval of Ordinance No. 1, Revised (Law and Order Code), for the Community, and were recognized as man and wife in their Community, the court shall issue a judgment that such petitioner and spouse have been validly married. If feasible, the court shall also ascertain the date of inception of such marriage and the names of the children born thereof and shall recite such information in the judgment.

(c) Any judgment of validity of marriage issued by the Salt River Tribal Court in accordance with this section may be forwarded to the superintendent of the Salt River Agency, who may then cause the marriage to be recorded in the tribal census rolls and a certificate of marriage to be issued to the petitioner.

(d) If a child whose parents are both deceased contends that such parents' marriage was validated by section 10-31, such child may file a petition in the Salt River Tribal Court for judgment that such marriage was so validated. If such petitioner proves to the satisfaction of the court that his or her parents are both deceased and that they lived together within the Salt River Indian Reservation prior to December 27, 1957, date of approval of Ordinance No. 1, Revised (Law and Order Code), for the Community, and were recognized as man and wife in their Community, the court may issue a judgment that such parents were validly married and that the petitioner is their legitimate offspring. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment. Such judgment may be forwarded to the superintendent for recording and issuance of a certificate of marriage.

(Code 1976, § 3.1(C); Code 1981, § 10-13; Code 2012, § 10-13; Ord. No. SRO-3-64, 3-24-1964; Ord. No. SRO-402-2012, § 10-13, 5-30-2012)

### **Sec. 10-33. Bigamy.**

(a) Any married person who shall marry another person without having obtained a divorce shall be deemed guilty of bigamy and upon conviction thereof shall be sentenced to imprisonment for a period not to exceed six months.

(b) This section shall not apply to the remarriage of a person whose husband or wife shall have been continually absent from such person for a period of three years or more, and shall not have been known by such person, to have been living within that time nor to any person whose former marriage shall have been declared void by any court having competent jurisdiction.

(Code 1976, § 6.9; Code 1981, § 10-14; Code 2012, § 10-14; Ord. No. SRO-402-2012, § 10-14, 5-30-2012)

#### **Sec. 10-34. Annulment of marriage.**

The court may dissolve a marriage and may decree the marriage to be null and void for any of the following causes existing at the time of the marriage:

- (1) Either spouse in the marriage annulled was under the age of legal consent and such marriage was contracted without the consent of his or her parents or guardian or person having charge of him or her, unless after attaining the age of consent such party for any time freely cohabited with the other as husband and wife.
- (2) The husband or wife of either party is living and the marriage with such former husband or wife was then in force.
- (3) The consent of either party was obtained by fraud unless such party afterwards freely cohabited with the other as husband and wife.

(Code 1976, § 3.2; Code 1981, § 10-15; Code 2012, § 10-15; Ord. No. SRO-402-2012, § 10-15, 5-30-2012)

#### **Sec. 10-35. Divorce or separate maintenance.**

##### *(a) Separate maintenance.*

- (1) *Grounds.* The court may grant or issue a decree of separate maintenance when one spouse willfully deserts or abandons the other spouse or when facts exist which would be grounds for granting an absolute divorce. An action for separate maintenance may be brought by a spouse

without the necessity of an action for absolute divorce. The action for separate maintenance or the judgment of separate maintenance shall not bar the plaintiff from maintaining an action for absolute divorce upon the same grounds.

- (2) *Proceedings.* The proceedings shall be commenced and conducted as actions for divorce and the court may award such sums for alimony and child support to be paid by the husband or wife as the court shall adjudge the circumstances and situations of the parties warrant.
- (3) *Amendment of judgment.* The court may at any time after entry of final judgment amend, alter or change the provisions of the judgment with respect to the sum to be paid, as the circumstances may require.

(b) *Divorce.* The court may grant or issue a divorce from the bonds of matrimony in any of the following cases:

- (1) When adultery has been committed by either party;
- (2) When one of the parties has been convicted of a felony and sentenced to imprisonment therefor and has not been convicted on the testimony of the other party, but such action may not be brought until one year after final judgment of the conviction; a pardon shall not be a defense to such action;
- (3) When either party has willfully deserted the other for a period of three months or for the habitual intemperance of either party;
- (4) Where the husband or wife is guilty of excesses, cruel treatment or outrages toward the other, whether by the use of personal violence or other means;
- (5) When the husband has neglected for the period of three months to provide the wife with the common necessities of life, having the ability to provide the same, or failing to do so by reason of his or her idleness or dissipation;



- (6) Prior to the marriage, either party shall have been convicted of a felony or infamous crime in any state or country without the knowledge of the other party of such fact at the time of such marriage;
- (7) In favor of the husband when the wife at the time of the marriage was pregnant by a man other than the husband and without the husband's knowledge at the time of such marriage.

(Code 1976, § 3.3; Code 1981, § 10-16; Code 2012, § 10-16; Ord. No. SRO-14-72, 4-25-1972; Ord. No. SRO-402-2012, § 10-16, 5-30-2012)

**Sec. 10-36. Procedure for annulment, divorce or separate maintenance.**

(a) *Filing of complaint.* The complaining party shall file with the court a verified complaint stating concisely his or her cause for action and thereupon the court shall issue a summons to run in the name of the Community court to the defendant apprising him or her of the pendency of action. The summons shall concisely state the grounds upon which annulment, divorce or separate maintenance is asked. The summons and complaint when issued shall be served as provided in chapter 5. The procedure for pretrial and trial of cases under this chapter shall be governed by chapter 5.

(b) *Judgment.* The court shall thereupon make and enter findings of facts and conclusions of law, and issue a signed decree after which the divorce or separate maintenance decree shall become final subject to the provisions of this Community Code of Ordinances.

(Code 1976, § 3.4; Code 1981, § 10-17; Code 2012, § 10-17; Ord. No. SRO-402-2012, § 10-17, 5-30-2012; Ord. No. SRO-516-2020, 3-4-2020; Ord. No. SRO-520-2020, 6-24-2020)

**Sec. 10-37. Legitimacy of children not affected by divorce.**

A divorce shall not affect the legitimacy of the children.

(Code 1976, § 3.5; Code 1981, § 10-18; Code 2012, § 10-18; Ord. No. SRO-402-2012, § 10-18, 5-30-2012)

**Sec. 10-38. Permanent alimony, custody of children and costs.**

In the final decree of divorce, the court may, in addition to the division of the common property of the parties, direct one spouse to pay the spouse awarded custody of the children of the parties as may be necessary for the support and maintenance of the custodial spouse and minor children of the parties. The custody of the children may be awarded to the wife or husband as may be necessary or proper, and the court may decree that alimony may be paid in one sum or in installments, and in such decree or decree of annulment of the marriage, the court may make such disposition of and expedient under all circumstances for their present comfort and future well-being. The court may assess the cost to either or both parties of the suit, and shall in the decree change the name of the wife back to a former name if especially asked for in the pleadings.

(Code 1976, § 3.6; Code 1981, § 10-19; Code 2012, § 10-19; Ord. No. SRO-402-2012, § 10-19, 5-30-2012)

**Sec. 10-39. Modification of judgment affecting alimony and support of minor children.**

The court may, from time to time, after the entry of the final decree or on petition of either party, amend, revise and alter such portions of the decree as relate to the payment of money for the support and maintenance of one spouse or the support of their minor children, as may be just; and amend, change or alter any provision therein respecting the care, custody or maintenance of the children of the parties as the circumstances of the parents and the welfare of the children may require.

(Code 1976, § 3.7; Code 1981, § 10-20; Code 2012, § 10-20; Ord. No. SRO-402-2012, § 10-20, 5-30-2012)

**Secs. 10-40—10-48. Reserved.**

## DIVISION 2. CHILD SUPPORT\*

**Sec. 10-49. Purpose.**

The purpose of this division within this Community Code of Ordinances is to establish child support guidelines and procedures for the establishment, modification and enforcement of child support orders and judgments. The establishment of these guidelines and procedures is in the best interests of Community families, and especially Community children, who have a right and need to receive support from both parents, where available. All child support orders entered after February 1, 2012, shall be made pursuant to the Community's child support guidelines, whether they are original orders or modifications of preexisting orders. Any orders entered before February 1, 2012, are presumptively valid. The enactment of the Community's child support guidelines shall not be construed as conferring a right for modifications of child support orders except as provided for pursuant to section 10-61. (Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-50. Definitions.**

The following words, terms and phrases, when used in this division within this Community Code of Ordinances, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Arrearage* means the total unpaid support owed, including child support and past support.

*Calculator* means the child support calculator, which calculates child support pursuant to the Community's child support guidelines.

*Child* means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

**\*Editor's note**—Ord. No. SRO-579-2024, adopted June 12, 2024, repealed the former div. 2, §§ 10-49—10-59, and enacted a new div. 2 as set out herein. The former div. 2 pertained to similar subject matter and derived from The 2012 Code, §§ 10-21—10-30; Ord. No. SRO-390-2012, adopted Feb. 1, 2012; Ord. No. SRO-402-2012, adopted May 30, 2012; and Ord. No. SRO-544-2022, adopted Feb. 23, 2022.

*Child support* means the financial obligation that a noncustodial parent owes for their children, whether such obligation is established through a judicial or administrative process, if applicable, or by stipulation of the noncustodial parent. The financial obligation of a noncustodial parent shall be met through the payment of monies.

*Court* means the Community court of the Salt River Pima-Maricopa Indian Reservation.

*Custodial parent* means the person who holds legal custody of the children pursuant to a court order, or who exercises primary physical custody of the children on the basis of an agreement between the parents or by the absence of the other parent. A legal guardian with primary physical custody of the children and standing in the position of the parent shall have the same rights to child support as a custodial parent.

*Emancipated* means, for the purposes of this division within this Community Code of Ordinances, a child is deemed to be emancipated upon the occurrence of any of the following:

- (1) On the date of the child's legally valid marriage.
- (2) On the child's 18th birthday.
- (3) On the date of the child's adoption.
- (4) On the date of the child's death.
- (5) Upon the termination of the child support obligation as court ordered, if child support is extended beyond the age of majority pursuant to section 10-56.

*Employer* means all persons or entities who agree to compensate another individual for services performed.

*Full faith and credit* means a child support order from any lawful jurisdiction which shall have the same faith, credit, conclusive effect and obligatory force in the Community as it would in the jurisdiction from which it originated.

*Guardian* means a person not the parent having legal custody of a child or children.

*Income* means earnings from any source, and may include, as an example, but is not limited to, income from salaries, wages, commissions,

bonuses, dividends, severance pay, pensions, interest earned, trust income, annuities, capital gains, social security benefits, per capita payments, lease payments received directly by either parent and not on behalf of a child, worker's compensation benefits, unemployment benefits, unemployment insurance benefits, disability insurance benefits, and recurring cash gifts and liquidated for cash prizes.

*Noncustodial parent* means a parent of a child, whether or not conceived during the course of marriage or by adoption, who does not hold legal custody of the child pursuant to a court order, or who does not exercise physical custody of the child on the basis of agreement between the parents or by the absence of the other parent.

*Party* means a parent, guardian, child, or the Community to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations:

- (1) The right to be notified of proceedings;
- (2) To retain counsel;
- (3) To appear and present evidence;
- (4) To call, examine and cross examine witnesses;
- (5) The unlimited or restricted right to discovery and the inspection of records; and
- (6) The right to request a hearing or appeal a final order.

*Payee* means the person or agency with the right to receive child support by court order.

*Payor* means the person with an obligation to pay child support by court order.

*Sensitive data* means a social security number, bank account number, credit card number, other financial account number, or any information that would be deemed as personal identification information.

*Sensitive data form* means a form which is created by the court to contain sensitive data.

*SRPMIC* means the Salt River Pima-Maricopa Indian Community.  
(Ord. No. SRO-579-2024, 6-12-2024)

### **Sec. 10-50.1. Full faith and credit of child support orders.**

The Community, and its enterprises, are required by 28 USC § 1738B, the Full Faith and Credit for Child Support Orders Act ("the Act") to enforce a child support order that complies with the Act, including orders that come from another state or jurisdiction, without requiring comity or domestication of such order. Any modification to such orders by the Community court must be consistent with (e), (f) and (i) of the Act.

(Ord. No. SRO-579-2024, 6-12-2024)

### **Sec. 10-51. Child support guidelines.**

(a) The Community manager, or their designee, may review, recommend, and adopt revisions to the Community's child support guidelines, as appropriate and necessary at least once every four years to ensure that the Community's child support guidelines remain sufficient.

(b) The Community's child support guidelines shall set the scale of minimum child support contributions and shall be used to determine the amount the payor must pay for support of their child pursuant to this division within this Community Code of Ordinances. The Community's child support guidelines shall place a duty for child support upon either or both parents based on their respective financial resources and the custodial arrangements for the children. The Community's child support guidelines and schedule must consider, at a minimum:

- (1) The financial resources and needs of the child.
- (2) The financial resources and needs of the custodial parent.
- (3) The standard of living the child would have enjoyed had the parties not lived apart.
- (4) The physical, mental and emotional condition of the child, and the child's educational needs.
- (5) The financial resources and needs of the noncustodial parent.

(6) The duration of parenting time and related expenses.

(Ord. No. SRO-579-2024, 6-12-2024)

### **Sec. 10-52. Jurisdiction.**

(a) *Nonresidency not to bar proceedings.* The fact that the petitioner, child, or both, have never been residents of the Community shall not bar the proceedings.

(b) *Court to retain jurisdiction.* After the finding of jurisdiction over a child support matter, the court shall retain jurisdiction over the cause for the purpose of entering such order and any further orders as changing circumstances of the parties may in justice and equity require.

(c) *Basis for jurisdiction over nonresident.* In a proceeding to establish child support under this section, the court may exercise personal jurisdiction over a nonresident individual or the individual's guardian if any of the following is true:

- (1) The individual is personally served within the Community;
- (2) The individual submits to the jurisdiction of the Community by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in the Community;
- (4) The individual resided in the Community and provided prenatal expenses or financial support for the child;
- (5) The individual engaged in sexual intercourse in the Community and the child may have been conceived by that act of intercourse; or
- (6) There is any other basis consistent with the Constitution of the Community and the United States for the exercise of personal jurisdiction.

(d) *Jurisdiction when modifying a child support order.* The basis of personal jurisdiction prescribed in this section may not be used to

acquire personal jurisdiction to modify a child support order issued by another tribe or state unless, after notice and a hearing, the court finds that either of the following is true:

- (1) The following requirements are met:
  - a. Neither the child, the payee who must be an individual, nor the payor resides in the state and/or reservation which issued the order;
  - b. A petitioner is a nonresident of the Community but seeks modification in the Community; and
  - c. The respondent is subject to the personal jurisdiction of the Community.
- (2) The child is a resident of the Community, or a party who is an individual is subject to the personal jurisdiction of the Community, and all of the parties have filed consents to modify the support order, and the parties agree that the court has continuing and exclusive jurisdiction.

(e) *Modification of child support order of another jurisdiction.*

- (1) Except as otherwise provided, the court may not modify any aspect of a child support order that may not be modified under the laws of the issuing state and/or tribe, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same payor and child, the order that is controlling and recognized establishes the aspects of the support order that are nonmodifiable.
- (2) In a proceeding to modify a child support order, the law of the state or tribe that is determined to have issued the initial controlling order governs the duration of the obligation of support. The payor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by the court.
- (3) Upon the issuance of an order by the court modifying a child support order



issued by another state or tribe, the court shall have continuing and exclusive jurisdiction.

(Ord. No. SRO-579-2024, 6-12-2024)

### **Sec. 10-53. General provisions.**

(a) *Generally.* Except as provided in this section, court proceedings under this division shall be open to the public. However, the court may close proceedings to the public upon a motion by the parties, filed at least two days before the applicable proceeding, if it finds that one of the following apply:

- (1) There is a compelling interest in closure that outweighs the public interest in attending a hearing or proceeding;
- (2) There are no alternatives to closure that will protect the compelling interest; or,
- (3) The closure is no broader than necessary to protect the compelling interest.

(b) *Instructions to the public.* The court shall inform all attendees that they are prohibited from disclosing any identifying information about any persons involved in the proceeding. Additionally, the court shall explain contempt of court to all attendees.

(c) *Sensitive data.* Sensitive data must be redacted from any paper filed with the court, unless it is specifically required by court order or this Community Code of Ordinances, and is not to be placed in any court-generated records such as judgments and orders except upon a finding of good cause. If the inclusion of sensitive data in court filings is required by court order or this Community Code of Ordinances, then it is not to be included in any filing, but is instead to be set forth in a separate sensitive data form. The sensitive data form and contents thereof are to be maintained by the court as a confidential record. The filing party is under a duty to update and supplement the information where necessary.

(d) *Financial records.* The court shall make provision for the confidentiality of financial records filed by the parties, so that they are secure from view by the general public but may be reviewed

by the parties to the case solely for the purpose of establishing, modifying or enforcing child support.

(e) *Similar documents.* Any party may use documents other than those provided pursuant to this section if the documents are substantially similar pursuant to this section.

(f) *Service and summons.* The court shall serve a copy of the petition and summons upon the parents or legal guardian against whom child support is being established. The summons shall inform the respondent of the following:

- (1) An answer must be filed with the court and served on the petitioning party within 30 days of the date of service of the petition;
- (2) If the respondent fails to enter a defense to the petition challenging the authority of the court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence;
- (3) An order of child support may obligate the respondent to pay child support until the age of majority or longer pursuant to section 10-56.

(g) *Guidelines used for determination of ability to pay.* The Community's child support guidelines shall be used in determining the ability to pay child support and the amount of payments. The obligation to pay child support is primary and other financial obligations are secondary.

(Ord. No. SRO-579-2024, 6-12-2024)

### **Sec. 10-54. Service; notice.**

(a) *Service of subsequent documents.*

- (1) If service of the original petition and summons was effectuated by personal service at the respondent's residence, by certified mail, or if respondent files a responsive pleading or appears at the hearing, all subsequent documents shall be served by first class mail.
- (2) If service is made by publication and there is no response, notice of the first

hearing shall be published according to the Community Rules of Civil Procedure, after which time subsequent orders and hearings need not be published.

- (3) The parties shall inform the court of their mailing address and update their address within ten days of any change of address. A parties' failure to update the court of a change of mailing address is not a defense for the individual's lack of a notice of any court action.

(b) *Notice to persons outside the Community.*

- (1) Notice required for the exercise of jurisdiction if a person is outside the Community may be given in a manner prescribed by the law of the Community for service of process. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective. If notice is done by publication, publication must be done in the county that the respondent last resided in and in the Community.
- (2) Proof of service may be made in the manner prescribed by the Community, as provided in the Community Rules of Civil Procedure.

(c) *Notice to respondents.* Notice is not required if the respondent submits to the jurisdiction of the court. A respondent submits to the jurisdiction of the court by:

- (1) Filing a responsive pleading; or
- (2) Appearing at any hearing.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-55. Back child support.**

If the parties lived apart before the date of the filing of this action and if child support has not been ordered, the court may order child support retroactively to the date of the parties' separation, but not more than three years before the date of the filing for dissolution of marriage, annulment, legal separation, paternity, custody or child support. The court must first consider all relevant circumstances, including the conduct or motivation of the parties in that filing and the

diligence with which service of process was attempted on the payee or was frustrated by the payee. If the court determines that child support is appropriate, the court shall direct, using a retroactive application of the Community's child support guidelines, the amount that the parents must pay for the past support of the child and the manner in which payments must be paid, taking into account any amount of temporary or voluntary support that has been paid. Any period of time in which the responsible party has concealed himself or herself or avoided the jurisdiction of the court under this division within this Community Code of Ordinances shall not be included within the three year period.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-56. Duties of support.**

Except as provided in section 10-55, every person has the duty to provide all reasonable support for that person's natural and adopted unemancipated minor children, regardless of the presence or residence of the child in the Community. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if one of the following are true:

- (1) The child has a severe mental or physical disability that began before the child reached the age of majority, as demonstrated by the fact that the child is unable to live independently and be self-supporting.
- (2) If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program but only until the child reaches 19 years of age.

Notwithstanding any other law, a parent paying support for a child over the age of majority pursuant to this section is entitled to obtain all records related to the attendance of the child in the high school or equivalency program.

(Ord. No. SRO-579-2024, 6-12-2024)



**Sec. 10-57. Representation by Community; modification of order by Community; liability of parents.**

(a) The Community may initiate an action or intervene in an action to establish, modify or enforce a duty of child support for children who are deemed dependent in the juvenile court, when the dependent child is placed with the noncustodial parent, legally appointed guardian, or any other out-of-home placement. The child's parents or legal guardian shall pay for the care, support and maintenance of the child, consistent with section 11-98.

(b) The parent's or legal guardian's ability to pay may be rebutted only by adjudication as described within this division within this Community Code of Ordinances by clear and convincing evidence.

(c) Any previous child support orders established, modified or enforced pursuant to section 11-98 may be re-addressed and modified consistent with this division within this Community Code of Ordinances and the Community's child support guidelines upon motion by a party.

(d) The parents or legal guardians must provide their financial information necessary to accurately calculate child support pursuant to the Community's child support guidelines.

(e) The monies collected pursuant to this section shall be payable to the Community or shall be transmitted to the support clearinghouse for distribution, if a support clearinghouse is available.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-58. Petition for child support.**

(a) *Generally.* A child support proceeding may stand alone as a separate proceeding or it may be joined with an action to determine divorce, annulment, custody, guardianship or any other civil action in which child support is an issue.

(b) *Governing rules of procedure.* Any child support proceeding shall be governed by the Community's civil rules of procedure unless otherwise provided herein.

(c) *Who may file petition.* A petition to request the court to establish, modify or enforce child support may be filed by the following:

- (1) The parent of a child or a child's legal guardian;
- (2) A legal guardian of a minor parent;
- (3) Any Community legal department with an interest in determining child support; or
- (4) Any court appointed guardian ad litem with an interest in determining child support.

(d) *Contents of petition.* A petition for establishment of child support shall contain the following, and if unknown, the petition should state which information is unknown:

- (1) For each parent or person who has legal rights to the children, and for the children subject to the action, provide: names; dates of birth; addresses and whether the address are within the exterior boundaries of the Community; tribal affiliations (if applicable); and the last four digits of their social security numbers or tribal identification. Any information that is considered sensitive data should be set forth in a separate sensitive data form;
- (2) The basis for the court's jurisdiction;
- (3) The child support obligation requested or agreed upon;
- (4) Any proposed childcare or extraordinary medical or educational expenses;
- (5) The date proposed for the child support obligation to begin;
- (6) The proposed frequency of payment;
- (7) A statement of whether child support payments should be made by order of assignment;
- (8) A proposed or current parenting plan, if any, or if custody is shared, the percentage of a year that each parent has physical custody of the child;
- (9) A statement of whether any of the following proceedings involving the parents or

the child are pending or have taken place in any court or administrative agency, and if so, the date, name, and place of the court or agency:

- a. Child custody proceeding (such as dependency proceedings, child custody proceedings between parents, or guardianship proceedings);
  - b. Paternity establishment or disestablishment proceeding;
  - c. Proceeding requesting a domestic violence protective order or no contact order; or
  - d. Proceeding requesting a restraining order involving the child or the parents or legal guardian;
- (10) A statement of whether either parent has ever received state or tribal assistance, and if so, the dates and name of the state or tribe providing assistance;
- (11) Financial information, such as income as defined in section 10-50;
- (12) A statement regarding which parent should be allowed to claim the child as a dependent for income tax purposes;
- (13) Proposed worksheet based on the child support guidelines;
- (14) The respondent's employer, the SRPMIC finance department, other Community departments, or any other entity that has evidence of the parent's or legal guardian's income may be subpoenaed to provide the court with records of their income; and
- (15) The petitioner may include along with the filing of a petition an agreed child support order as allowed under the Community Code and the Community child support guidelines.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-59. Hearings; noncontested orders; orders generally.**

(a) *Initial child support hearing.*

- (1) The court shall set an initial child support hearing 30 days after the respondents have been served with the original petition and summons.

(2) The court shall:

- a. Schedule an evidentiary hearing;
- b. Resolve any discovery and disclosure disputes; and
- c. Issue any other orders the court deems appropriate.

(3) If the child support proceeding has been joined with an action other than a dependency action, the court may:

- a. Enter temporary orders:
  1. In accordance with the stipulations of the parties; or
  2. Based on presented evidence and arguments.
- b. Order evaluations, assessments, appraisals, appointments or other special procedures needed to properly manage the case and resolve the disputed issues.

(4) Within two business days after the initial hearing is held, the court shall issue and order regarding the actions taken.

(5) The initial hearing and the evidentiary hearing may be combined, if all parties agree.

(b) *Evidentiary child support hearing rules.*  
The following rules shall apply to evidentiary child support hearings:

- (1) The court shall review the contents of the petition and hear any additional evidence in order to establish the amount of the child support obligation by applying the Community's child support guidelines;
- (2) The child support amount shall be based on the child support calculator and the guidelines, unless evidence is presented regarding deviation;
- (3) If there is no reliable evidence of the respondent's income, income will be imputed according to the Community's child support guidelines and schedule; and
- (4) If the parent's or legal guardian's income is reduced as a matter of choice and not

for reasonable cause, the court will attribute income up to the parent's earning capacity.

(c) *Noncontested child support orders.* In lieu of a contested hearing under this division within this Community Code of Ordinances, the parties may enter into an agreement as to the child support obligation in accordance with this section.

- (1) *Court review.* The court may approve an agreement for a deviation from the Community's child support guidelines, under the procedures established herein, should the court find by clear and convincing evidence that it is the best interest of the minor child.
- (2) *Form.* A signed and notarized agreement shall be submitted to the court for approval and entry of an order. The agreed order shall have the same force as any other order issued by the court.
- (3) An agreement under this section is presumed valid and the court shall approve the terms of the agreement without a hearing unless there is clear and convincing evidence that:
  - a. The agreement is not in the best interests of the minor child;
  - b. One or both of the parties do not understand the terms of the agreement; or
  - c. Either party's consent was not truly voluntary.

If there is clear and convincing evidence of any or all of the above circumstances listed in subsections (a), (b), or (c), the court shall hold an initial hearing and determine whether the agreement is in the best interests of the minor child, whether both parties understand the terms of the agreement, and whether both parties' consent was voluntary. If the court finds that any of the above have not been satisfied, an order shall not be entered and the case shall proceed to an evidentiary child support hearing.

(d) *Child support order generally.* The court-ordered child support amount shall be based on the child support calculator pursuant to the Community's child support guidelines. If parties mutually agree, payments under a child support order may be made directly. Otherwise, payments under a child support order shall be made by order of assignment to the custodial parent or other payee. The court shall issue a written order within five business days after the hearing.

(e) *Content.* A child support order shall include:

- (1) The child support obligation of one or both parties, including:
  - a. The amount to be paid;
  - b. Who the child support will be paid to; and
  - c. The amount to be paid to third-parties for child care, health insurance, or extraordinary expenses, if any.
- (2) The date the child support obligation begins. If the court order does not specify the date when current support begins, the support obligation begins to accrue on the first day of the month following the entry of the order;
- (3) The frequency of child support payments such as per month or on quarterly basis;
- (4) The duration and amount of any back child support that the court ordered;
- (5) A statement that each party shall notify the court of any change of employer or change of address within ten days of the change;
- (6) A statement that the child support order is final for purposes of appeal; and
- (7) A statement of when the child support will be presumed to terminate.

(f) *Additional hearings.* The court may order further hearings to monitor compliance with all child support orders.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-60. Default.**

(a) When the respondent fails to appear or otherwise defend, upon a motion of default, the court shall enter a default child support order. After ten days after the motion was filed with the court, default judgment may be granted. A judgment by default shall not be different in kind from or exceed an amount that which was prayed for in the demand for judgment. The court shall make a finding as to the following:

- (1) That service of the petition and summons is complete and respondent has failed to appear or to otherwise answer pursuant to the Community's rules of civil procedure set forth in article II of chapter 5; and
- (2) If paternity was also at issue, a finding of paternity prior to entering a default order of child support pursuant to section 10-6.

(b) Setting aside a default or a final default judgment. The court may set aside a default for good cause.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-61. Modification of child support; termination of child support; financial information.**

(a) *Modification of child support orders.* When there has been a substantial change in the income of the payor or other factors that determined the original support obligation, a party may request, by motion, modification of a child support order. Modification orders are effective on the first day of the month following notice of the petition for modification unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for modification.

(b) *Termination of child support orders.* Termination orders are effective on the first day of the month following notice of the petition for modification or termination unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for termination.

(c) *Motion for modification or termination.* A motion for a modification or termination of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the requested modification or termination. The court shall serve the parties who may be affected by the modification or termination with a copy of the motion and notice of the hearing.

(d) *Modification or termination hearing.* Grounds for modification or termination of a child support order include:

- (1) A substantial increase or decrease in the gross income that was the basis of the current support order. For purposes of this section, substantial increase or decrease, is at least 15 percent;
- (2) A change in custody of a child;
- (3) A change in Community's child support guidelines;
- (4) Death of child;
- (5) Reaching age of the majority of a child; or,
- (6) Other substantial change in circumstance that justifies a modification.

(e) *Financial information.* Both parties shall file updated financial information forms at least ten days before the modification hearing, unless the parties agree to the modified amount.

(f) *Request for information.* Either party to an order for child support may request the following information from the SRPMIC finance department, an employer, self-employed person:

- (1) Complete name;
  - (2) Social security number;
  - (3) Date and place of birth;
  - (4) Present and past employment status;
  - (5) Earnings, income, entitlements or other monies without regard to source; and
  - (6) Current or last known address.
- (Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-62. Enforcement.**

(a) *Motion to enforce child support order.* Any judgment, order or decree, whether arising from a dissolution, divorce, separation, annulment, custody determination, paternity determination or dependency proceeding or in any other proceeding regarding support that provides for child support may be enforced as a matter of right by attachment, garnishment or any other form of relief provided by law as an enforcement remedy for civil judgments. An affidavit regarding all payments in default under the support order, along with a copy of the underlying support order, shall be filed with the court along with the appropriate petition or motion. The court must serve the payor with a copy of the motion and notice of the hearing.

(b) *Enforcement hearing.* If the moving party proves by a preponderance of the evidence that the child support obligation is at least 30 days overdue in an amount equal to one month's child support obligation or that the party has a history of noncompliance, the court may order any of the remedies available, including, but not limited to:

- (1) Wage withholding;
- (2) Attachment of assets;
- (3) Garnishment;
- (4) Assignment of per capita or any other income derived from the Community; and
- (5) Verification of income.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-63. Order for support; methods of payment.**

(a) The SRPMIC finance department, an employer, or another entity, will collect and disburse monies in the following priority:

- (1) Current child support or current court ordered payments for the support of a family when combined with the child support obligation.
- (2) Current spousal maintenance.
- (3) Past due child support.
- (4) Past due spousal maintenance.

(5) Restitution.

(6) Court fines and costs.

(7) Civil judgments.

(b) If a payor is obligated to pay support to more than one payee and the amount available is not sufficient to meet the total combined current support obligation, any monies shall be allocated to each payee as follows:

- (1) The amount of current support ordered in each case shall be added to obtain the total support obligation.
- (2) The ordered amount in each case shall be divided by the total support obligation to obtain a percentage of the total amount due.
- (3) The amount available from the payor's income shall be multiplied by the percentage under subsection (b)(2) of this section to obtain the amount to be allocated to each payee.

(c) If a payor cannot satisfy their child support obligation, and the SRPMIC finance department disburses the support amount, then the SRPMIC finance department shall inform the recipient of the shortfall or non-payment.

(d) The right of a payee entitled to receive support as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law. A party entitled to receive support may also file a request for written judgment for support arrearages.

(e) An order of support shall include the following language: Your child support order is subject to the Salt River Pima-Maricopa Indian Community's Code of Ordinances section 10-63. (Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-64. Statute of limitations.**

If the payee or their agents make efforts to collect a child support debt more than ten years after the emancipation of the youngest child subject to the order, the payor may assert as a defense, and has the burden to prove, that the payee, Community or social services department



unreasonably delayed in attempting to collect the child support debt. On a finding of unreasonable delay, the court may determine that some or all of the child support debt is no longer collectible after the date of the finding.  
(Ord. No. SRO-579-2024, 6-12-2024)

#### **Sec. 10-65. Assignment.**

(a) In a proceeding in which the court orders a person to pay support, the court shall assign to the person or agency entitled to receive the support that portion of the person's income. The order shall include per capita payments if the payor receives such payment, and/or income received from employment with any Community agency or any other employment outside the Community, if the payor receives wages or other income, necessary to pay the amount ordered by the court.

(b) If the court has issued a previous child support order and the payor has failed to pay their court-ordered child support, the payee may file a verified petition, pursuant to the Community's civil rules of procedure, requesting the court to issue an ex parte order of assignment. The petition for the ex parte order of assignment may include payment for current support or child support arrearages. The petition shall include the following:

- (1) The name of the payee or agency entitled to receive support.
- (2) The name and last known address of the payor, and the name of employer, if known.
- (3) The monthly amount of any current support ordered by the court, and a certified copy of the order.
- (4) The specific amount requested for any support arrearages.
- (5) The name and address of the payor to whom it is requested the order of assignment be directed and the name of the person obligated to pay support.

(c) After receipt of a request for an ex parte order of assignment, the court, without a hearing or notice to the payor, shall issue an order of assignment. The order of assignment shall include

the last four digits of social security number of the obligated payor. On issuance of an ex parte order of assignment, the court shall issue a notice directed to the payor including the following:

#### **Notice**

To: The Payor (the person ordered to pay support)

This is to notify you that part of your income or other monies had been judicially deducted from your (paycheck, per capita, lease payment) by the enclosed order of assignment that was issued on (date). The order of assignment has been issued for a child support order currently in place, based on the claim of (include name of payee), a requesting party, that you are obligated to pay this. If you believe the enclosed order of assignment is:

- 1) Improper or unlawful;
- 2) That your property is exempt by law; or
- 3) That your employer or SRPMIC Finance Department is withholding more than is permitted by law, you may request a hearing before the court.

You must file a request to terminate or adjust the order of assignment on forms provided by the court within Seven Days After Your Receipt of the Order For Assignment, request for an order of assignment and this notice. If you request a hearing, it will be held no more than ten days after you file your request with the court.

Here are some other important things you should know:

- 1) The order of assignment is effective immediately on service of the order to your employer or SRPMIC Finance Department.
- 2) The employer or SRPMIC Finance Department served shall not withhold or deduct amounts specified in the ex parte order of assignment for 14 calendar days from the date of service to allow you, the



payor, an opportunity to contest the order of assignment as provided in this section.

- 3) A future employer or SRPMIC Finance Department may begin deductions sooner than the 14-day period after the order of assignment is received.
- 4) No more than one-half of your disposable earnings for any pay period may be taken to satisfy an order issued. The amount of disposable earnings exempt from the order of assignment must be paid to you when due.
- 5) Disposable income means the remaining portion of your wages, salary or compensation for personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program or a deferred compensation plan, after deducting from such earnings the amounts required by law to be withheld.

Any employer or SRPMIC Finance Department when it receives the order of assignment will deduct \$2.25 for handling fees. The employer or SRPMIC Finance Department, on whom the order of assignment, is served will continue to withhold the amount set in the order and will forward the payment to the payee until you file with the court. The petition shall be based on one of the following:

- 1) The court adjusts the order of assignment because there has been a change of circumstances since the time of the issuance of the order, or there is other good cause to do so.
- 2) The court terminates the order of assignment if all obligations have been satisfied, or will be satisfied within 90 days.
- 3) A notarized stipulation stating that the obligation to pay support has ended and that all arrearages either have been satisfied or have been waived, and the court terminates the order of assignment.

An employer may not refuse to hire, may not discharge or may not otherwise discipline you as a result of the order of assignment. Unless

a court has expressly ordered otherwise, you must notify the court in writing of the address of your residence and of your employment and, within ten days, of a change in either one. Your failure to do so may subject you to sanctions for contempt of court. Official notices will be delivered to you at the most recent addresses you have provided to the court.

(d) Any order of assignment shall be issued only for child support and child support arrearages. The order of assignment shall state the total amount that the employer or SRPMIC finance department shall withhold. The order of assignment also shall specify the monthly amount of current support and any other payment ordered for child support and child support arrears. If the payor's disposable earnings from the primary employer or other income source does not meet the support obligation, the court shall issue an order of assignment to a secondary employer or other income source of the payor in order to meet the full support obligation. If the payor's disposable earnings from the primary employer or other income source does not meet the support obligation, the payor is still obligated to pay the ordered amount until the payor obtains a modification, if applicable.

(e) An order of assignment shall be served on any employer or SRPMIC finance department by first class mail return receipt requested, electronic transmission or personal delivery or pursuant to the Community's rules of civil procedure set forth in article II of chapter 5.

(f) Any employer or the SRPMIC finance department who has received any order of assignment shall withhold the amount specified in the order of assignment, together with the handling fee in the amount of \$2.25 from the income of the person obligated to pay support. Once an order of assignment has been issued, the payor may not make any adjustments to tax or other holdings that would contravene the ability for the ordered child support payment amount to be withheld. Any employer or the SRPMIC finance department shall transmit the withheld monies to the support clearinghouse, if a support clearinghouse is available and being utilized by the Community, or the withheld monies shall be

collected and disbursed to the appropriate party by the SRPMIC finance department. The handling fee shall be deducted monthly and disbursed to the Community's general fund. An employer or the SRPMIC finance department may combine in a single payment withheld monies for more than one payee, provided, when doing so, the employer or the SRPMIC finance department separately identifies the portion of the remittance that is attributable to each payor and shall include the last four digits of each payor's social security number. An employer or the SRPMIC finance department shall notify the court in writing when the payor is no longer employed or the right to receive income or other monies has been terminated. If within 90 days of the last payment, the employer or the SRPMIC finance department reemploys the payor or becomes obligated to pay the payor, the employer or the SRPMIC finance department is again bound by the order of assignment and is required to perform as required by this section.

(g) After service of an ex parte order of assignment on the payor, the payor may request a hearing to dispute the ex parte order of assignment. The request filed with the court shall be made in writing, and the payor shall state under oath the specific grounds for the request. The court shall hold a hearing within ten days after the request is filed. The court shall serve a copy of the request for and notice of hearing on the person entitled to receive support/payee. If the payor files a request for hearing within seven days after receipt of the order of assignment, the court may order SRPMIC finance department not to disburse any monies received pursuant to the order of assignment until further order of the court. The payor may dispute the withholding only for one or more of the following grounds:

- (1) There is an error in the identity of the payor.
- (2) There is an error in the amount of support.
- (3) There is a finding of invalidity of the order for support.
- (4) Current support is no longer owed, if the order of assignment includes a payment for current support.

- (5) Arrearages are not owed and the order of assignment mistakenly includes a payment for arrearages.

(h) If the payor's disposable earnings from the primary employer or other income source does not meet the support obligation, the payor is still obligated to pay the ordered amount until the payor obtains a modification, if applicable.

(i) If a payor is obligated to pay child support for more than one payee and the amount available for withholding is not sufficient to meet the total combined current child support obligation, any monies withheld from the payor's income shall be allocated to each payee as follows:

- (1) The amount of current child support ordered in each case shall be added together to obtain the total current child support obligation.
- (2) The amount of current child support ordered in each case shall be divided by the total current child support obligation to obtain the percentage of the total current child support obligation to be allocated to each case.
- (3) The amount withheld from the payor shall be multiplied by the percentage for each case to obtain the amount to be allocated to each case.
- (4) An order of support shall include the following language: Your child support order is subject to the Salt River Pima-Maricopa Indian Community's Code of Ordinances section 10-63.

(j) The person entitled to receive support, the payee, shall notify the SRPMIC finance department in writing of any change of residential address within ten days of any change.

(k) Any order of assignment may be adjusted if there has been a change of circumstances since the date the order of assignment was issued or for good cause.

(l) Any Community legal agencies or a person obligated to pay or entitled to receive support may file a request to terminate any order of assignment if the obligation to pay support has ended or will end within 90 days after the filing

of the request and if all arrearages either have been paid or will be paid within the period or have been waived. The request shall state the reason why termination is requested. A copy of the request shall be served pursuant to the Community's rules of civil procedure set forth in article II of chapter 5 on all other parties. A party receiving this notice may request a hearing within 20 days, or within 30 days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the court shall issue an order terminating the order of assignment as appropriate. Within two business days after the date the order is issued, the court shall transmit a copy of the order terminating the order of assignment to the employer or SRPMIC finance department. If a hearing is requested, the court shall set the hearing within 20 days after receiving the request and shall issue an appropriate order. A person who is ordered to pay support may request the court to terminate an order of assignment at any time if an employer is making deductions on multiple assignments for an obligation for the same minor children. Notwithstanding any law to the contrary, the court shall not charge a fee to a person who files a request to terminate an order of assignment if an employer is making deductions on multiple assignments for an obligation for the same minor children.

(m) If a request to adjust or terminate an order of assignment is filed, the court may order that the SRPMIC finance department not disburse any monies in dispute until further order of the court.

(n) The court shall issue an order terminating the order of assignment if the parties, file a notarized stipulation with the court that all obligations of support have been satisfied and that the payor is no longer obligated to pay support. The stipulation shall state that the current obligation of support no longer exists and that all arrearages either have been satisfied or waived. Within five business days after the date the stipulation is filed, the court shall transmit a copy of the order terminating the order of assignment to the employer or SRPMIC finance department and parties.  
(Ord. No. SRO-579-2024, 6-12-2024)

### **Sec. 10-66. Termination.**

(a) On petition of a person who has been ordered to pay child support pursuant to a presumption of paternity established pursuant to section 10-5, except for good cause shown, the payor's child support obligations continue in effect until the court has ruled in favor of the petitioner. The court shall order the petitioner, each child who is the subject of the petition and the child's mother to submit to genetic testing and shall order the appropriate testing procedures pursuant to section 10-7. If the court finds that the petitioner is not the child's biological father, the court shall vacate the determination of paternity and terminate the support obligation.

(b) On petition of a person who has been ordered to pay child support, the court may order the child support to terminate without a hearing:

- (1) If clear and convincing evidence is provided showing that the minor child has reached the age of majority and graduated high school,
- (2) If clear and convincing evidence is provided showing the minor child has reached age of 19; or
- (3) Court has not issued continuing child support due to a child's disability.

(c) If the payee of a child support order marries the payor of the child support order, that order automatically terminates on the last day of the month in which the marriage takes place and arrearages do not accrue after that date. However, the payee may collect child support arrearages that accrued before that date.

(d) Unless otherwise ordered by the court, an order vacating a support obligation is prospective and does not alter the petitioner's obligation to pay child support arrearages or any other amount previously ordered by the court.

(e) A minor's receipt of their own per capita payments shall not prevent a parent from continuing to receive child support. The court may reduce the child support obligation upon show-

ing that the child's per capita or trust distributions goes toward the child's support and care needs.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-67. Determination of controlling order.**

(a) If a proceeding is brought under this division within this Community Code of Ordinances and another tribunal has previously issued a child support order, the previously issued order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under this division within this Community Code of Ordinances, and two or more child support orders have been issued by the court or in the state or another state or another tribe with regard to the same payor and same child, the court having personal jurisdiction over both the payor and individual payee shall apply the following rules and by order shall determine which order controls:

- (1) If only one of the tribunals would have continuing, exclusive jurisdiction, the order of that tribunal controls and must be recognized.
- (2) If more than one of the tribunals would have continuing, exclusive jurisdiction:
  - a. An order issued by a tribunal where the child has resided for the last six months controls;
  - b. If an order has not been issued where the child has resided for the last six months, the order most recently issued controls.
- (3) If none of the tribunals would have continuing, exclusive jurisdiction, the court can issue a child support order.

(c) Sovereign immunity. Nothing in this division within this Community Code of Ordinances shall be construed as a waiver of sovereign immunity of the Community.

(Ord. No. SRO-579-2024, 6-12-2024)

**Sec. 10-68. Overpayments.**

(a) A payor whose obligation to pay support has terminated may file a request for reimbursement against the payee for support payments made in excess of the amount ordered if made within three years of when the overpayment was issued.

(b) The court may enter a judgment for reimbursement against the payee if the court finds that the payor's obligation to pay support has terminated and that all arrearages have been satisfied.

(c) The payee must pay the judgment through the clerk of the court. The court may order payments to be made pursuant to section 10-65.

(d) A judgment entered pursuant to this section does not constitute a support judgment and is enforceable in the same manner as a civil judgment.

(Ord. No. SRO-579-2024, 6-12-2024)

**Secs. 10-69—10-76. Reserved.**

**ARTICLE III. ADOPTION**

**Sec. 10-77. Adoption of a minor.**

Any minor child may be adopted by an adult person, in the cases and subject to the rules prescribed in this article.

(Code 1976, § 3.9; Code 1981, § 10-31; Code 2012, § 10-31; Ord. No. SRO-402-2012, § 10-31, 5-30-2012)

**Sec. 10-78. Age of person adopting.**

The person adopting the child must be at least ten years older than the child adopted.

(Code 1976, § 3.10; Code 1981, § 10-32; Code 2012, § 10-32; Ord. No. SRO-402-2012, § 10-32, 5-30-2012)

**Sec. 10-79. Consent of spouse.**

A married person not lawfully separated from his or her spouse cannot adopt a child without



the consent of the spouse, provided that the spouse not consenting is capable of giving such consent.

(Code 1976, § 3.11; Code 1981, § 10-33; Code 2012, § 10-33; Ord. No. SRO-402-2012, § 10-33, 5-30-2012)

**Sec. 10-80. Consent to adoption by natural parents and by child over 12 years.**

(a) *Parents/guardian.* No adoption shall be granted unless consent to adopt has been obtained and filed with the court from the following:

- (1) From both natural parents, if living, except in the following cases:
  - a. Consent is not necessary from a parent who has been declared incompetent;
  - b. Consent is not necessary from a parent whose parental rights have been judicially terminated;
  - c. Consent is not necessary from a parent who has previously consented that the child be placed for adoption;
  - d. Consent is not necessary from a father who is not married to the mother of the child both at the time of its conception and at the time of its birth, unless the father under oath has acknowledged in a document filed with the court at or prior to the time the petition for adoption is filed, or unless the parentage of the father has been previously established by judicial proceeding.
- (2) From any guardian of the person of the child appointed by a court and given authority by it to consent to the child's adoption.
- (3) From an agency which has been given consent to place the child for adoption by the parent or parents whose consent would be necessary under subsection (a)(1) of this section, or which has been given authority in other legal proceedings to place the child for adoption.

(b) *Child of 12 years.* Where the child is 12 years of age or older, the adoption shall not be granted without his or her consent. Such consent shall be given in open court or shall be in conformity with this section or in such other form as the court may direct.

(c) *Waiver of consent.* Notwithstanding the provisions of section 10-82, the court may waive the requirement of the consent of any person required to give consent when, after a hearing on actual notice to all persons adversely affected, the court determines that the interest of the child will be promoted thereby. In such case, the court shall make written findings of all facts upon which its order is founded.

(d) *Minority no bar to competence.* The minority of the child or parent shall not affect his or her competency to give consent in the instances set forth in this section.

(Code 1976, § 3.12; Code 1981, § 10-34; Code 2012, § 10-34; Ord. No. SRO-402-2012, § 10-34, 5-30-2012)

**Sec. 10-81. Form and content of consent to adoption.**

(a) *Written; witnessed.* All consents to adoption shall be in writing and signed by the person giving the consent and witnessed by two or more credible witnesses who are at least 18 years of age and who subscribed their names in the presence of the person giving the consent or shall be duly acknowledged before an officer authorized to take acknowledgments by the person giving consent.

(b) *Time limit.* A consent given before 72 hours after the birth of the child is invalid.

(c) *Dated; identified.* The consent shall be dated and shall sufficiently identify the party giving the consent and the child to whose adoption the consent is given.

(d) *Designation of placement agency, adoptive parent.* The consent shall designate either of the following:

- (1) The particular person or persons authorized by the party giving the consent to place the child for adoption;



- (2) The particular person or persons authorized to adopt the child by the person giving the consent.

(e) *True names to be used; exceptions.* The true names of the adopting person or persons shall be used except that fictitious names may be used if the person or persons are considered by the court to be acceptable to adopt the child, the consenting party knows that the names used are fictitious and does not wish to know the true names and the consenting party has been furnished with all information which the consenting party wished to know about the adopting person or persons.

(f) *Invalidity of certain consent.* A consent, other than to any agency, which does not designate a particular person or persons, or which purports to permit a third person to locate or nominate an adoptive parent, is invalid.

(Code 1976, § 3.15; Code 1981, § 10-35; Code 2012, § 10-35; Ord. No. SRO-402-2012, § 10-35, 5-30-2012)

#### **Sec. 10-82. Termination of parental rights.**

Any person or agency that has a legitimate interest in the welfare of a child, including but not limited to a relative, foster parents, physician or a private license child welfare agency, may file a petition for the termination of the parent-child relationship if one or more of the following grounds exist:

- (1) The parent has abandoned the child or the parent has made no effort to maintain a parental relationship with the child. It shall be presumed the parent intends to abandon the child if a child has been left without any provision for his or her support and without any communication from such parent for a period of six months or longer. If, in the opinion of the court, the evidence indicates that such parent has made only token efforts to support or communicate with the child, the courts may declare the child abandoned by such parent.
- (2) The parent has neglected or willfully abused the child.

- (3) The parent is unable to discharge the parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that the condition will continue for a prolonged, indeterminate period of time.

- (4) The parent is deprived of his or her civil liberties due to the conviction of a felony if the felony of which such parent was convicted is of such nature as to prove the unfitness of such parent to have future custody and control of the child, or if the sentence of such parent is of such length that the child would be deprived of a normal home for a period of years.

- (5) The parents have relinquished their rights to the child to an agency or have consented to the adoption.

(Code 1976, § 3.13; Code 1981, § 10-36; Code 2012, § 10-36; Ord. No. SRO-402-2012, § 10-36, 5-30-2012)

#### **Sec. 10-83. Hearing to be by juvenile court; ruling on grounds for termination.**

(a) Adoption cases shall be heard by the juvenile court. The general public shall be excluded and only such persons shall be admitted whose presence the judge finds to have a direct interest in the case or the work of the court, provided that such person so admitted shall not disclose any information secured at the hearing. The court may require the presence of any parties and witnesses it deems necessary to the disposition of the petition, except that a parent who has executed a waiver of his or her presence at said hearing or who has relinquished his or her rights to the child shall not be required to appear at the hearing.

(b) The court's findings with respect to grounds for termination shall be based upon a preponderance of the evidence under the rules applicable and adhering to the trial of civil cases. The court may consider any and all reports submitted or ordered by the court for the assistance in making a determination.

(Code 1976, § 3.14; Code 1981, § 10-37; Code 2012, § 10-37; Ord. No. SRO-402-2012, § 10-37, 5-30-2012)

**Sec. 10-84. Hearing, order and rights under adoption order.**

(a) Petitions filed under this article shall be heard by the court and such hearings shall be as informal as the requirements of due process and fairness permit. The person petitioning for adoption, the spouse of a petitioner and the child to be adopted shall attend unless the court orders otherwise. Only such other persons shall be admitted as the court shall find to have a direct interest in the case before the court. Any such person so admitted shall not disclose any information secured at the hearing. The court may require the presence of such other witnesses as it deems necessary.

(b) The court's finding shall be based upon a preponderance of the evidence. The court may consider any and all reports which it may order or which may be submitted to the court.

(c) If, after the hearing and consideration of all the evidence, the court is satisfied that the requirements of this article have been met and that the adoption is in the best interest of the child, the court shall make an order granting the adoption. The order may change the name of the child to that of the petitioner. The order of the court shall be in writing and shall recite the findings of fact upon which such order is based, including findings pertaining to the court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry subject to appeal as is provided for by this Community Code of Ordinances.

(d) Upon entry of the decree of adoption, the relationship of parent(s) and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural relationship of child and parent(s) shall thereafter exist between the adopted child and the adoptive parent(s), the same as though the child were born to the adoptive parent(s), including the right to inherit property not disposed of by a will, subject to Community inheritance laws.

(e) Upon entry of the decree of adoption, the parent-child relationship between the adopted child and the persons who were his or her parents just prior to the decree of adoption shall

be completely severed and all the legal rights, privileges, duties, obligations and other legal consequences of the relationship shall cease to exist, including the right to inherit property not disposed of by a will; except, that in the event the adoption is by the spouse of the child's parent, the relationship between that child and that parent shall remain unchanged by the decree of adoption.

(f) Upon the entry of a decree of adoption whereby a child who is an enrolled member of the Community is adopted by parent(s) not members of the Community, the Community court shall send a copy of such decree to the Community enrollment office. Upon receipt of such adoption notice, the Community membership office will note the fact of adoption by nonmember parents in the records. The adopted child's membership shall not be affected by the decree of adoption.

(Code 1976, § 3.16; Code 1981, § 10-38; Code 2012, § 10-38; Ord. No. SRO-196-95, § 1, 5-3-1995; Ord. No. SRO-402-2012, § 10-38, 5-30-2012)

**Sec. 10-85. Adoption of illegitimate child by father.**

The father of an illegitimate child by publicly acknowledging it as his own, receiving it as such, with the consent of his wife if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child thereupon shall be deemed for all purposes legitimate from the time of the child's birth. The foregoing provisions of this article do not apply to such adoption.

(Code 1976, § 3.18; Code 1981, § 10-39; Code 2012, § 10-39; Ord. No. SRO-402-2012, § 10-39, 5-30-2012)

**Secs. 10-86—10-96. Reserved.**

**ARTICLE IV. GUARDIANSHIP**

**DIVISION 1. GENERALLY**

**Secs. 10-97—10-113. Reserved.**

## DIVISION 2. GUARDIANSHIP FOR MINORS

**Sec. 10-114. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abuse registry* means any registry maintained in any jurisdiction that contains information based on substantiated reports of abused, neglected or exploited vulnerable adult or minor child.

*Child* means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

*Conservator* means the office of the public fiduciary, a person or a financial institution appointed by the Community court to manage real property and/or financial assets of a minor.

*Court* means the Community court of the Salt River Pima-Maricopa Indian Reservation.

*Dangerous instrument* means anything that under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing death or serious physical injury.

*Deadly weapon* means anything designed for lethal use, including a firearm.

*Estate* shall have the same meaning as the term "property."

*Guardian* means a person appointed to take care of a person or the person's property.

*Guardian's acknowledgment* is a form which the appointed guardian acknowledges the terms of the legal guardianship and the guardian agrees to assume responsibilities in accordance to the applicable terms.

*Guardianship of a minor* means a legal relationship created by the court when an individual, who is not the minor child's parent, is ordered by the court to assume the responsibilities of care and control of a minor child. A guardianship of a minor takes away the parents' right to make

decisions about their child's life and/or child's estate, if applicable, unless the parent has joint guardianship with another person.

*Guardianship of property* shall have the same meaning as conservator.

*Incapacitated* means an impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person.

*Party* means the parent, guardian, child, Community to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations:

- (1) The right to be notified of proceedings;
- (2) To retain counsel;
- (3) To appear and present evidence;
- (4) To call, examine and cross examine witnesses;
- (5) The unlimited or restricted right to discovery and the inspection of records; and
- (6) The right to request a hearing or appeal a final order.

*Permanent guardianship* means a legal relationship created by the court when an individual, who is not the minor child's parent, is ordered by the court to assume the responsibilities of care and control of a minor child. A guardianship of a minor takes away the parents' right to make decisions about their child's life and/or child's estate, if applicable, unless the parent has joint guardianship with another person. There shall be a presumption of continued permanent guardianship in order to provide stability of the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardians rather than the competency or suitability of the parents. The court may appoint a permanent guardian pursuant to chapter 11.

*Property* means something of value that is owned.

*Public fiduciary* means the appointment by the Community court of the office of the public fiduciary-conservator division to act in the capacity of conservator for a minor.

*Temporary guardianship* means a person who is appointed on a temporary basis for a specific period not to exceed six months, if the child has no guardian and an emergency exists. (Code 1976, § 3.30; Code 1981, § 10-51; Code 2012, § 10-51; Ord. No. SRO-383-2011, § 10-51, 8-10-2011; Ord. No. SRO-402-2012, § 10-51, 5-30-2012; Ord. No. SRO-445-2014, § 10-114, 7-2-2014; Ord. No. SRO-580-2024, 7-31-2024)

#### **Sec. 10-115. Types of guardianship.**

The types of guardianship shall include the following:

- (1) Guardianship of property;
  - (2) Permanent guardianship;
  - (3) Guardianship of a minor; and
  - (4) Temporary guardianship.
- (Code 1976, § 3.19; Code 1981, § 10-52; Code 2012, § 10-52; Ord. No. SRO-383-2011, § 10-52, 8-10-2011; Ord. No. SRO-402-2012, § 10-52, 5-30-2012)

#### **Sec. 10-116. Petition for guardianship.**

##### *(a) Generally.*

- (1) Confidentiality. The records filed under this article shall be confidential and section 11-28 applies to this article.
- (2) Any guardianship action under this article shall be governed by the Community's rules of civil procedure set forth in article II of chapter 5 unless otherwise provided.
- (3) Any party may use documents other than those provided pursuant to this section if the documents are substantially similar pursuant to this section.

##### *(b) Who may file a petition.*

- (1) Any person petitioning for legal guardianship must be at least 21 years of age, of

good moral character and demonstrates the ability to properly care for the minor child. If the minor child is a sibling of the individual petitioning for legal guardianship, the person must be at least 18 years of age, of good moral character and demonstrate the ability to properly care for the minor child;

- (2) Office of the prosecutor or office of the general counsel with an interest in establishing guardianship for a minor child if it is in the minor child's best interests; or
- (3) The court appointed guardian ad litem with an interest in establishing guardianship for a minor child if it is in the minor child's best interests.

##### *(c) Contents of the petition.*

- (1) A petition for legal guardianship shall be verified under oath by potential guardian(s) and shall contain the following information:
  - a. The names, dates of birth, addresses and whether such addresses are within the exterior boundary of the Community, and tribal affiliations, if any, of the natural mother, all potential father(s), the child, all others who have legal rights of custody, visitation, or support of the child, and of the potential guardian(s). If any of the information is unknown, the petition should state the information is unknown;
  - b. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
  - c. Potential guardian(s)' occupation, relationship to the child and the basis for the petitioner's request;
  - d. Basis of the court's jurisdiction pursuant to section 10-3(a);



- e. The name and address of the person or agency having legal or temporary custody of the child;
  - f. The type of guardianship requested;
  - g. A full description and statement of the value of all property owned, possessed or in which the child has an interest, if guardian of property is requested;
  - h. A copy of the child's birth certificate shall be attached to the petition or provided to the court at least five days before the first hearing;
  - i. Verification that they will submit to the criminal background check and a home study; and
  - j. Whether the minor child is or was a ward of the court.
- (2) Every proposed appointee shall provide to the court, under oath, the following information and shall be included in the petition:
- a. Whether or not the proposed appointee has been convicted of a felony in any jurisdiction and, if so:
    - 1. The nature of the offense;
    - 2. The name and address of the sentencing court;
    - 3. The case number;
    - 4. The date of conviction;
    - 5. The terms of the sentence;
    - 6. The name and telephone number of any current probation or parole officer; and
    - 7. The reasons why the conviction should not disqualify the proposed appointee;
  - b. Whether or not the proposed appointee has acted as guardian or conservator for another person within three years of the petition and, if so, the number of individuals for whom the proposed appointee is currently serving and the number of individuals for whom the proposed appointee's appointment has been terminated within the three-year period;
  - c. Whether or not the proposed appointee has a working knowledge of the powers and duties imposed on a guardian or a conservator;
  - d. Whether or not the proposed appointee has acted within three years of the petition in a fiduciary capacity pursuant to a power of attorney and, if so, the number of persons for whom the appointee has so acted. If the proposed appointee has ever acted in such capacity for the proposed child or a protected person, the proposed appointee shall specify the date of execution of such power of attorney, the place where the power of attorney was executed, the actions taken by the proposed appointee pursuant to such power of attorney and whether or not such power of attorney is currently in effect;
  - e. Whether or not, to the best of the proposed appointee's knowledge, the proposed appointee is listed in any (child or elder) abuse registry as having committed abuse, neglect, or financial exploitation of any person;
  - f. Whether or not, to the best of the proposed appointee's knowledge, the proposed appointee is listed in any sex offender registry;
  - g. Whether or not, the proposed appointee has failed to file any report of guardian or conservatorship accounting following receipt of notice of delinquency;
  - h. Whether or not the proposed appointee has ever been removed as a guardian or conservator and, if so, for whom and under what circumstances;



- i. The nature of the proposed appointee's relationship to the proposed child, and how the proposed appointee met the proposed child;
- j. The proposed appointee shall identify and disclose any relationships, positions, interests, or circumstances in which the proposed appointee is involved that he or she believes could be in conflict with or adverse to the best interests of the proposed child; and
- k. A signed guardian's acknowledgment.

(Code 1976, § 3.22; Code 1981, § 10-53; Code 2012, § 10-53; Ord. No. SRO-383-2011, § 10-53, 8-10-2011; Ord. No. SRO-402-2012, § 10-53, 5-30-2012; Ord. No. SRO-406-2012, § 10-53, 8-8-2012)

**Sec. 10-117. Service of the petition for guardianship; notice of hearing.**

(a) *Service of petition for guardianship.* The service of the petition for guardianship and notice of hearing shall be completed as follows:

- (1) The court shall serve the petition of guardianship and shall issue notice of the hearing for guardianship at least 20 calendar days before the hearing is scheduled to take place. The notice shall include:
  - a. The date, time, and place of the hearing and a copy of the petition for guardianship; and
  - b. A statement to the effect that the rights of the parent or parents may be affected, that certain persons are proposed to be appointed as legal guardians in the proceedings, and that if the parent or parents fail to appear at the time and place specified in the summons, the court may appoint those persons as legal guardians and take any other action that is authorized by law.

- (2) Service of the petition for guardianship and notice shall be personally served on:
  - a. The petitioner and potential guardian(s), if different;
  - b. The child who is the subject of the petition if the minor child is 14 years of age or older; and
  - c. The child's parents or current guardian, if their parental rights have not been terminated.
- (3) Notice shall be served via first class and certified mail, return receipt requested on:

- a. Any person interested in any cause under this article, such as any relative, that the parties, the Community prosecutor, the guardian ad litem or the court deem necessary for proper adjudication; and
- b. The person, excluding shelter care persons, who has had the principal care and custody of the minor during the 60 days preceding the date of the petition.

- (4) If any party who is required to be personally served is outside the Community's service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice pursuant to the Community's rules of civil procedure set forth in article II of chapter 5. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective. If notice is done by publication, publication must be done in the county that the respondent last resided in and in the Community.
- (5) Proof of service may be made in the manner prescribed by the Community.

(b) *Notice to respondent(s).* Notice is not required if the person submits to the jurisdiction of the court.

- (1) A person submits to the jurisdiction of the court by filing a responsive pleading; or

(2) A person appears at any hearing.

(c) *Service of subsequent documents.*

- (1) If service of the original petition and notice of hearing was effectuated, as described in subsection (a) of this section, every subsequent document shall be served upon by first class mail.
- (2) If a respondent files a responsive pleading or appears at any hearing, every subsequent document shall be served by first class mail.
- (3) The parties shall inform the court of their mailing address and update their address within ten days of any change of address. A party's failure to update the court of a change of mailing address is not a defense for the individual's lack of a notice of any court action.

(Code 1976, § 3.31; Code 1981, § 10-54; Code 2012, § 10-54; Ord. No. SRO-383-2011, § 10-54, 8-10-2011; Ord. No. SRO-402-2012, § 10-54, 5-30-2012; Ord. No. SRO-406-2012, § 10-54, 8-8-2012)

#### **Sec. 10-118. Guardianship report and background study.**

In order to determine the applicant's suitability as a guardian:

- (1) The prospective guardian(s) shall provide the completed criminal background report, which shall be based on fingerprints of the applicant and all adults residing in the applicant home for at least six months or more; and a home study report for appointment of guardians of minors. A home study shall not be required for the appointment of guardianship of property. The public fiduciary is not subject to these requirements but shall update their criminal background with the Community subject to human resources' policies pursuant to their employment with the Community. Social services division shall be available to assist prospective guardian(s) in obtaining criminal background report(s) and home study as requested. The applicant shall bear the

cost, if any, of obtaining the criminal background information. The cost shall not exceed the actual cost of obtaining the applicant's criminal background information.

- (2) Each prospective guardian shall submit a full set of fingerprints, pursuant to subsection (1) of this section, to the department of social services or any public safety department for the Community for the purpose of obtaining a state and federal criminal records check. These fingerprints shall then be submitted to the state department of public safety which may exchange the fingerprint data with the Federal Bureau of Investigation pursuant to A.R.S. § 41-1750 and Public Law 92544.
- (3) The applicant shall not be eligible to serve as guardian of the minor child, or the child's estate, or both, if the applicant has any criminal conviction in any state or federal jurisdiction or the Community for:
  - a. Child abuse or neglect;
  - b. Homicide;
  - c. Kidnapping;
  - d. Any felony involving the use of a dangerous instrument or deadly weapon;
  - e. Any registrable sexual offense as indicated in chapter 6.5.
- (4) Criminal convictions within the last ten years other than those listed pursuant to subsection (3) of this section may also be considered by the court when determining appropriateness of the applicant.
- (5) The court shall require a home study report be provided by the social services department or a licensed child welfare services agency that has satisfied the standards of the Community social services department, provided that the agency is able to produce a report as required by this section. The report shall address the suitability and character of the legal guardian, including, but not

limited to, the financial, physical, the criminal background, as described in subsection (3) of this section, and general background of the legal guardian and their home. The report shall include a summary of the criminal background report and reflect contact with all appropriate agencies and individuals who have relevant knowledge and information. The report shall contain recommendations regarding the legal guardianship, and whether social services department or a licensed child welfare services agency believes that such legal guardianship will be in the best interest of the child.

(Code 1976, § 3.23; Code 1981, § 10-55; Code 2012, § 10-55; Ord. No. SRO-383-2011, § 10-55, 8-10-2011; Ord. No. SRO-402-2012, § 10-55, 5-30-2012; Ord. No. SRO-406-2012, § 10-55, 8-8-2012; Ord. No. SRO-581-2024, 7-31-2024)

#### **Sec. 10-119. Guardianship hearing.**

(a) *Purpose/time limit.* A hearing shall be commenced within 90 calendar days of filing of a petition for legal guardianship to determine if it is in the child's best interests to be appointed a legal guardian.

(b) *Attendance of guardian required.* The court shall not grant a guardianship, if the prospective guardian(s) is/are not present at the evidentiary hearing.

(c) *Judicial inquiry.* The court shall inquire of all persons appearing as to whether the best interests of the minor child will be promoted by the legal guardianship and if parent(s) agree(s) to the guardianship.

- (1) Should either parent dispute the guardianship action, the court shall not continue with the guardianship proceedings until the matter is investigated by child protective services, if applicable, and the guardian ad litem.
- (2) Should there be allegations of child neglect or abuse, the court shall refer the matter to child protective services pursuant to section 11-156.

- (3) Should either parent dispute the guardianship action, the court shall appoint a guardian ad litem to investigate what is the best interest of the minor child and to make recommendations to the court regarding the pending guardianship proceeding.
- (4) Should either parent fail to appear in court absent good cause showing and they were properly noticed, the court shall consider their failure to appear as consent.
- (5) Should prospective guardian(s) wish to pursue further action, but where the parents do not consent and the guardian ad litem does not recommend the guardianship action, prospective guardian(s) may proceed with termination of parental rights and adoption proceeding.

(d) *General public exclusion from proceedings.* The general public shall be excluded from the proceedings under this section. Only the parties and their counsel may attend the hearing unless the parties consent to interested person's attendance. Any witnesses may attend the hearing but are not to remain in the courtroom until they are called to testify. After the witness has testified, they may be excluded and/or excused from the courtroom proceeding unless the parties have no objections to their presence in the courtroom.

(e) *Emergency temporary guardianship.*

- (1) A court, prior to evidentiary guardianship hearings, may appoint an emergency temporary guardian for the person or property, or both, of the minor child. The court must specifically find that there appears to be imminent danger that the physical or mental health or safety of the minor child will be seriously impaired or that the minor child's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The powers and duties of the emergency temporary guardian must be specifically enumerated by court order.

- (2) The prospective guardian(s) shall also petition for appointment of guardianship at the time of filing for an emergency temporary guardianship if the prospective guardian(s) is requesting that the guardianship last longer than the temporary grant of six months.
- (3) The authority of an emergency temporary guardian expires 90 days after the date of appointment or when a guardian is appointed, whichever occurs first. The authority of the emergency temporary guardian may be extended for an additional 90 days upon a showing that the emergency conditions still exists, not to exceed six months.
- (4) The court may issue an injunction, restraining order, or other appropriate writ to protect the physical or mental health or safety of the minor child who is the ward of the emergency temporary guardianship.
- (5) The emergency temporary guardian shall take an oath to faithfully perform the duties of a guardian, outlined in the guardian's acknowledgment that was signed and filed with the court.
- (6) An emergency temporary guardian's authority and responsibility begins upon issuance of the court's order.
- (7) An emergency temporary guardian shall file a final report no later than 30 days after the expiration of the emergency temporary guardianship.
  - a. If an emergency temporary guardian is a guardian for the property, the final report must consist of a verified inventory of the property as of the date the letters of emergency temporary guardianship were issued, a final accounting that gives a full and correct account of the receipts and disbursements of all the property of the minor child over which the guardian had control, and a statement of the property of the minor child on hand at the end of the emergency temporary guardianship.
  - b. If the emergency temporary guardian becomes the successor guardian of the property, the final report must satisfy any additional requirements pursuant to the court's order.
  - c. If the emergency temporary guardian is a guardian of the minor child, the final report must summarize the activities of the temporary guardian with regard to residential placement, medical condition, mental health and rehabilitative services, and the social condition of the minor child to the extent of the authority granted to the temporary guardian in the letters of guardianship. If the emergency temporary guardian becomes the successor guardian of the person, the final report must satisfy any additional requirements pursuant to the court's order.

- d. A copy of the final report of the emergency temporary guardianship shall be served on the successor guardian and the minor child.

(f) *Initial guardianship hearing.*

- (1) At the initial guardianship hearing, the court shall:
  - a. Schedule an evidentiary hearing;
  - b. Determine whether fingerprints have been submitted;
  - c. Verify a home study and any applicable criminal background will be completed prior to the evidentiary hearing;
  - d. Determine whether the child will be required to testify or be present at the evidentiary hearing;
  - e. Resolve any discovery and disclosure disputes; and
  - f. Issue any other orders the court deems appropriate.
- (2) If the guardianship proceeding has been joined with an action other than a dependency action, the court may:
  - a. Enter temporary orders in accordance with the stipulations of the parties, or if agreed to by the parties, based upon discussions, avowals, and arguments presented at the initial hearing; and
  - b. Order evaluations, assessments, appraisals, appointments or other special procedures needed to properly manage the case and resolve the disputed issues.
- (3) After the initial hearing is held, the court shall issue an order within two business days regarding the actions that were taken and the court's orders.

(g) *Evidentiary guardianship hearing rules.* The following rules shall apply to evidentiary guardianship hearings:

- (1) The court shall review the contents of the petition and hear any additional evidence in order determine whether there is clear

and convincing evidence that the guardianship is in the best interests of the child and that the prospective guardian(s) will meet the child's needs; and

- (2) The prospective guardian(s) shall take an oath to faithfully perform the duties of a guardian, outlined in the guardian's acknowledgment that was signed and filed with the court. The court shall make a recitation of the guardian's duties and require the guardian to acknowledge the acceptance of each duty during the evidentiary hearing.

(h) *Determination by the court.* The court shall issue an order within five business days after the hearing, with its written findings, conclusions of law, and the type of guardianship as described in section 10-115 that the court is ordering.

(i) *Final order.* An order establishing legal guardianship shall be a considered a final order for the purposes of appeal.

- (1) The court may impose restrictions or conditions on the appointment of a guardian or conservator, or of a category of guardian or conservator, that it finds necessary to provide for the appropriate care and supervision of the child or the child's property.
- (2) In the interest of fostering independence and self-reliance of the child or for other good cause, the court, at the time of appointment or later, on appropriate petition or motion of the minor or other interested person may create a limited guardianship by limiting the powers of a guardian otherwise granted by this section.
- (3) The court shall send a copy of the appointment of conservator to the office of the public fiduciary if the court has appointed this office to be conservator of a minor child's real property and/or financial assets.
- (4) The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.



(j) *Guardianship by default.*

- (1) When the responding party, who may be the parent, legal custodian or legal guardian, fails to appear or otherwise defend, upon the request of the potential guardian(s), the court shall enter a default guardianship order. Prior to the evidentiary hearing, the court shall make a finding of the following:

- a. The service of the petition and summons is complete and respondent has failed to appear absent good cause showing at the initial or evidentiary hearing or otherwise answer pursuant to the Community's rules of civil procedure set forth in article II of chapter 5.
- b. If paternity was also at issue, the court must make a finding of paternity prior to entering a default order of guardianship pursuant to section 10-6.

- (2) Prior to entering a default order of guardianship, the court shall have an evidentiary hearing to establish guardianship pursuant to subsection (g) of this section.

(Code 1976, § 3.27; Code 1981, § 10-56; Code 2012, § 10-56; Ord. No. SRO-383-2011, § 10-56, 8-10-2011; Ord. No. SRO-402-2012, § 10-56, 5-30-2012; Ord. No. SRO-406-2012, § 10-56, 8-8-2012; Ord. No. SRO-445-2014, § 10-119(i)(3), 7-2-2014)

### **Sec. 10-120. Jurisdiction over court-appointed guardians.**

The Community court shall have exclusive jurisdiction over a guardian appointed by the court. By accepting a court appointment as guardian, a guardian submits personally to the jurisdiction of the court.

(Code 1976, § 3.24; Code 1981, § 10-57; Code 2012, § 10-57; Ord. No. SRO-383-2011, § 10-57, 8-10-2011; Ord. No. SRO-402-2012, § 10-57, 5-30-2012)

### **Sec. 10-121. Appointment by will.**

If the primary custodial parent deceases, the surviving parent shall be awarded as the primary custodial parent unless good cause exists to deny

custody to the surviving parent. In the event that no surviving parent exists, deference will be given to the deceased parent's will, if validly executed, for the determination of guardianship.

(Code 1976, § 3.20; Code 1981, § 10-58; Code 2012, § 10-58; Ord. No. SRO-383-2011, § 10-58, 8-10-2011; Ord. No. SRO-402-2012, § 10-58, 5-30-2012)

### **Sec. 10-122. Rules for selection of court-appointed guardian.**

In appointing a guardian, the court is guided by the following considerations:

- (1) By what appears to be for the best interest of the child in respect to its temporal, mental and moral welfare;
- (2) In the court's discretion, the parents' or previous guardian's preference, may be considered but may not be the controlling factor in determining guardianship;
- (3) When the minor child who is the subject of the petition for guardianship is 14 years of age or older, the court shall consider his or her preference in appointing a guardian;
- (4) If more than one sibling is having a guardian appointed, preference shall be given to a qualified person that can serve as guardian for all siblings;
- (5) The results of the criminal background check and the home study report;
- (6) The recommendations of the guardian ad litem, if applicable; and
- (7) When two persons are requesting guardianship of a child, the court shall consider who has been caring for the minor child for the last six months, what is in the child's best interests and the following placement preference:
  - a. The wishes of the deceased parent;
  - b. Members of the extended family;
  - c. A family of tribal affiliation with the Community;
  - d. Any other Indian family, and preference given to any tribe that the child has affiliation with; and

e. Any other suitable nonrelative placement.  
(Code 1976, § 3.21; Code 1981, § 10-59; Code 2012, § 10-59; Ord. No. SRO-383-2011, § 10-59, 8-10-2011; Ord. No. SRO-402-2012, § 10-59, 5-30-2012)

**Sec. 10-123. Rights and responsibilities of guardians.**

(a) *Duties of a guardian.*

- (1) The legal guardian shall be responsible for reporting to the court on a yearly basis or more often, as required by the court.
- (2) The legal guardian shall be responsible for the following, if the court has appointed the guardian over the minor child:
  - a. To protect, nurture, discipline, and educate the child;
  - b. To provide food, clothing, shelter, education as required by law, and health care for the child, including, but not limited to, medical, dental, mental health, psychological and psychiatric care and treatment;
  - c. To consent to health care for the child and sign a release authorizing the sharing of health care information with appropriate authorities, in accordance with applicable law;
  - d. To update any records that relate to the minor child;
  - e. To consent to the child's participation in social and school activities; and
  - f. To notify the court of a change of address of the guardian and the child.
- (3) The legal guardian shall be responsible for the following, if the court has appointed the guardian over the property:
  - a. To make an inventory of all real and/or personal property of the child's estate and all other property that comes to their knowledge or possession;
  - b. To manage the child's estate, take reasonable steps to take control and

protect the estate and to utilize the child's estate for the care, custody and education of the child;

- c. To update any records that relate to the minor child;
- d. Within 90 days after appointment, prepare and file with the court an inventory of the estate owned by the child on the date of the appointment, listing it with reasonable detail and indicating the fair market value as of the date of appointment of each item listed;
- e. Keep suitable records related to the use of the child's property;
- f. To provide an account, under oath, of the management and disposition of the property or estate of the child and all proceeds or interest derived from the property or estate within three months after the appointment, at least once a year thereafter and at other times as the court directs; and
- g. At the expiration of the guardian's appointment, the guardian is required to settle their account with the court of the Community, or with the child, if they are of full age, or the child's legal representatives and to pay over and deliver all the property of the estate, monies, and effects remaining with the guardian, or due from the guardian for settlement of an account.

(b) *Responsibilities of a guardian.*

- (1) Take reasonable care of the child's personal effects and commence protective proceedings, if necessary, and if applicable, to the appointment protect any property of the child.
- (2) Apply any available monies of the child to the child's current needs for support, care and education.
- (3) Conserve any excess monies for the child's future needs.

## (4) A guardian may:

- a. Receive monies payable for the support of the child under the terms of any Community benefit, insurance system, private contract, devise, trust, conservatorship or custodianship, and monies or property of the child paid or delivered.
- b. Take physical custody of the person of the child and establish the child's place of residence in or outside this state, if consistent with the terms of an order of a court of competent jurisdiction relating to the detention or commitment of the child.
- c. Take physical custody of the child and establish the child's residence in or outside this state if it is consistent with the terms of an order of a court of competent jurisdiction in relation to the detention or commitment of the child.
- d. If a conservator for the child's estate has not been appointed, to initiate proceedings, including administrative proceedings, or take other appropriate action to enforce the duty by any person to support the child or to pay amounts for the welfare of the child.
- e. Consent to the marriage or adoption of the child.
- f. If reasonable, delegate to the child certain responsibilities for decisions affecting the child's well-being.

(c) *Child support.* A guardian may petition for child support pursuant to article I of this chapter. (Code 1976, § 3.25; Code 1981, § 10-60; Code 2012, § 10-60; Ord. No. SRO-383-2011, § 10-60, 8-10-2011; Ord. No. SRO-402-2012, § 10-60, 5-30-2012)

**Sec. 10-124. Removal of guardian; relinquishment proceedings; revocation of guardianship.**

(a) *Involuntary removal, petition to remove a guardian.*

- (1) Who may file. A petition to remove a guardian may be filed by:
  - a. The Community prosecution office on behalf of the Community.
  - b. The guardian ad litem for the child.
  - c. Any advocate or attorney representing the child.
  - d. A parent.
- (2) Contents of petition. The petition to remove of a guardian shall include the following to the best information and belief of the petitioner:
  - a. The address of the guardian;
  - b. The full name, sex, date of birth, place of residence and tribal affiliation of the child;
  - c. The basis for the court's jurisdiction;
  - d. The length of time the guardian has been the custodian or legal guardian of the child;
  - e. The names, addresses and places of residence, tribal affiliation of the child's legal parents;
  - f. The ages of the child's parents, if the parents are under 18 years of age;
  - g. Where the child's parent is under the age of 18 years, the names, addresses and place of residence of the parent's parents or guardian;
  - h. The name and address of any person or agency having legal or temporary custody of the child;
  - i. The grounds and basic facts in support of such on which the removal is sought under pursuant subsection (a)(3) of this section;
  - j. A list and statement of value of all assets of the child; and

- k. When any of the facts required by this subsection are unknown, the petition shall so state.
- (3) Grounds for involuntary removal of a guardian. Any one of the following allegations proven by the Community at trial shall be grounds for the involuntary removal of a guardian:
- a. The guardian is or has been incarcerated for more than 24 months (including separate incarceration periods), requiring the child to be separated from the guardian;
  - b. The guardian willfully, intentionally or negligently caused the death of a child;
  - c. The guardian sexually assaulted or molested a child;
  - d. The guardian assaulted a child resulting in serious physical injuries;
  - e. The guardian willfully or intentionally caused the death of any person;
  - f. The guardian has had a separate guardianship or parental rights as to another child involuntarily terminated;
  - g. The guardian is seriously mentally ill and is not likely to maintain mental sufficiency in order to meet a child's needs;
  - h. The guardian willfully or intentionally inflicted serious or chronic emotional abuse upon a child;
  - i. The guardian engaged in egregious conduct that poses a risk to a child's well-being;
  - j. The guardian had knowledge of emotional or physical abuse or neglect of a child and failed to protect that child from such harm;
  - k. The guardian cannot adequately support a child financially, or is otherwise incapable of meeting a child's needs for care and supervision;
  - l. The guardian has demonstrated gross immorality;
  - m. The guardian has abused his or her trust or powers of a guardian;
  - n. The guardian has continuously failed to perform his or her duties as a guardian;
  - o. The guardian is incapable of fulfilling his or her duties; and
  - p. The guardian was convicted of a felony offense during his or her appointment as guardian.
- (4) When the court receives a petition to remove a guardian that is filed by a parent, child, child's attorney, guardian ad litem or any other person/entity other than the Community prosecutor, the court shall make a written referral to child protective services within three business days. The court shall also provide a copy of the petition to the Community prosecutor and notice the prosecutor for any hearing. When a petition to remove a guardian is filed, the case shall be adjudicated by the juvenile court and shall be conducted with procedures consistent with section 11-163.
- a. An initial hearing for formal trial shall be set within ten days of the petition to remove a guardian.
  - b. The Community shall have a right to resume the case as the petitioner and shall have the burden of proof pursuant to section 11-163.
  - c. When the Community does not choose to exercise the right to resume the case as petitioner, the petitioner will have the burden of proof through the formal hearing stages of the case, and the case shall be assumed by the Community prosecutor after removal of guardian, when there is no other legal parent or guardian remaining. The Community prosecutor shall have a right to be present at all hearings.
- (5) If the court determines that cause for removal of the guardian exists, the court may remove the guardian, and enter judgment accordingly. In the case of a guard-

ianship of the estate, order the guardian to file an accounting and to surrender the estate to the person legally entitled thereto. When a guardian is deemed removed, the guardian shall have no legal standing on the matter and shall not be privileged to receive any confidential information regarding the minor without the court's consent.

- (6) If it appears that the minor or the minor's estate may suffer loss or injury due to negligent or abusive action by the guardian during the time required for notice and hearing under this article, the court, on its own motion or on petition, may do either or both of the following:

- a. Suspend the powers of the guardian pending notice and hearing to such extent as the court deems necessary;
- b. Compel the guardian to surrender the estate to a custodian designated by the court.

(b) *Relinquishment proceedings.*

- (1) A guardian may petition for permission to relinquish guardianship.
- (2) Any petition to relinquish guardianship shall identify the reasons for the relinquishment and any proposed legal and physical custody of the child. When the court receives a petition to relinquish that appears on its face to allege that the guardian is unwilling or unable to provide appropriate care and supervision for the child, the court shall make a written referral to child protective services. The court shall also provide a copy of the petition to the Community prosecutor and notice the prosecutor for any hearing.
- (3) A hearing shall be commenced within 60 calendar days of filing of a petition for relinquishment.
- (4) Notice of a hearing on a petition for an order subsequent to appointment shall be given to a child who is at least 14 years of age, the guardian and the child's parents if their parental rights have not been

terminated and any other person as described in section 10-117 the court orders to receive the notice.

- (5) After proper notice and a hearing on a petition for permission to relinquish, the court may terminate the guardianship and make any further order that may be appropriate. If the court grants the relinquishment, and no legal parent is able to safely resume care, and the court does not appoint a replacement guardian, pursuant to section 10-122, the child shall be deemed dependent and a ward of the court under the legal custody of the Community social services division. The court shall set an initial hearing within ten days, pursuant to section 11-163, and serve the Community prosecutor, child protective services, any parent with legal rights and the guardian ad litem.

- (6) If, at any time in the proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint a guardian ad litem or an attorney/advocate to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

(c) *Revocation of guardianship.*

- (1) The child, or a parent of the child may file a petition for the revocation of an order granting guardianship if there is a significant change of circumstances, including:
  - a. The child's parent is able and willing to properly care for the child and the guardianship appointment did not arise from a dependency action;
  - b. The child's permanent guardian is unable to properly care for the child and the parent is able to resume care of the child; when a case is filed to revoke a permanent guardianship, the court shall make a written referral to child protective services within three business days. The court shall also provide a copy of the petition to



the Community prosecutor and provide notice to the prosecutor for any hearing;

- c. The minor child is seeking emancipation.
  - (2) The court shall appoint a guardian ad litem for the child in any proceeding for the revocation of permanent guardianship when the guardianship initiated out of a dependency action.
  - (3) The court may revoke the order granting guardianship if the party petitioning for revocation proves a change of circumstances by clear and convincing evidence and the revocation is in the child's best interest.
  - (4) If it appears that the minor or the minor's estate may suffer loss or injury due to negligent or abusive action by the guardian during the time required for notice and hearing under this article, the court, on its own motion or on petition, may do either or both of the following:
    - a. Suspend the powers of the guardian pending notice and hearing to such extent as the court deems necessary;
    - b. Compel the guardian to surrender the estate to a custodian designated by the court.
  - (5) A petition for revocation of guardianship shall not be filed if grounds for removal of a guardian exist pursuant to subsection (a)(3) of this section.
- (Code 1976, § 3.26; Code 1981, § 10-61; Code 2012, § 10-61; Ord. No. SRO-383-2011, § 10-61, 8-10-2011; Ord. No. SRO-402-2012, § 10-61, 5-30-2012)

**Sec. 10-125. Termination of powers of guardians appointed by court.**

A guardian's authority and responsibility terminates on the death, relinquishment or removal of the guardian or on the minor's death, adoption, marriage, emancipation or attainment of majority. Termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for the child's monies and assets.

Resignation of a guardian does not terminate the guardianship until it has been approved by the court.

(Code 1976, § 3.28; Code 1981, § 10-62; Code 2012, § 10-62; Ord. No. SRO-383-2011, § 10-62, 8-10-2011; Ord. No. SRO-402-2012, § 10-62, 5-30-2012)

**Sec. 10-126. Delegation of powers by parent or legally appointed guardian.**

(a) A parent or a legally appointed guardian of a minor, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any powers he or she may have regarding care, custody or property of the minor child or child, except power to consent to marriage or adoption of the minor. A properly executed power of attorney is one that was signed by the parent or legally appointed guardian and their signature was notarized and a noninterested witnessed by at least one individual who has also signed verifying authenticity of the document.

(b) Military member power of attorney; definition.

(1) A military member who is a parent or guardian of a minor child may delegate to another person, for a period not to exceed one year, any powers the parent or guardian have regarding care, custody or property of the minor child, except the power to consent to marriage or adoption of the minor child.

(2) For the purposes of this section, the term "military member" means an active duty member of the armed services, or a member of the reserve or National Guard.

(Code 1976, § 3.29; Code 1981, § 10-63; Code 2012, § 10-63; Ord. No. SRO-383-2011, § 10-63, 8-10-2011; Ord. No. SRO-402-2012, § 10-63, 5-30-2012)

**Secs. 10-127—10-150. Reserved.**

**DIVISION 3. GUARDIANS FOR INCOMPETENT ADULTS**

**Sec. 10-151. Guardians of incompetent members.**

When it is represented to the court, by verified petition of any relative or friend, that any mem-

ber of the Community is from any cause mentally incompetent to manage his or her property, the Community Court must cause notice to be given to the supposed incompetent person of the time and place of hearing such petition, not less than five days before the time of such hearing; and such person, if able to attend, must be brought before the court. If after a full hearing and examination upon such petition, it appears to the court that the person in question is incapable of taking care of himself or herself and managing his or her property, the court shall appoint a guardian of his or her person and estate with the general duties specified in division 1 of this article. The court may, in its discretion, exclude all nonparticipants from such hearing.

(Code 1976, § 3.32; Code 1981, § 10-71; Code 2012, § 10-71; Ord. No. SRO-402-2012, § 10-71, 5-30-2012)

#### **Sec. 10-152. Duties; bond.**

Every guardian appointed as provided in section 10-151 has the care and custody of the person of his or her ward and the management of all his or her estate, until such time as the guardian is legally discharged, and he or she must give bond to such ward in like manner and with the like conditions as prescribed with respect to the guardian of a minor.

(Code 1976, § 3.33; Code 1981, § 10-72; Code 2012, § 10-72; Ord. No. SRO-402-2012, § 10-72, 5-30-2012)

#### **Sec. 10-153. Restoration of capacity.**

Any person who has been declared mentally incompetent, or the guardian or any relative of such a mentally incompetent person within the third degree, or any friend, may apply by petition to the Community court to have the fact of his or her restoration to capacity judicially determined. The petition shall be verified and shall state that such person is mentally competent. Upon receiving the petition, the court shall appoint a day for the hearing and cause notice of the hearing to be given to the guardian of the petitioner if there be a guardian, and to his/her husband or wife, if there be one, and to his/her father or mother, if living on the Community. The guardian or relative of the petitioner, or in the discretion of the

court, any person, may contest the right of the petition to the relief demanded. Witnesses may be required to appear and testify as in other cases, and may be called and examined by the court. If it is found that the petitioner is of sound mind and capable of taking care of himself or herself and his or her property, his or her restoration to capacity shall be adjudged, and the guardianship of such person, if such person is not a minor, shall cease. (Code 1976, § 3.34; Code 1981, § 10-73; Code 2012, § 10-73; Ord. No. SRO-402-2012, § 10-73, 5-30-2012)

#### **Sec. 10-154. State laws applicable.**

The Community court shall apply the laws of the State of Arizona insofar as such laws do not conflict with the provisions of this article in the appointment of a guardian for a mentally incompetent member of the Community and shall have exclusive jurisdiction over the guardian so appointed.

(Code 1976, § 3.35; Code 1981, § 10-74; Code 2012, § 10-74; Ord. No. SRO-402-2012, § 10-74, 5-30-2012)

#### **Secs. 10-155—10-160. Reserved.**

### **DIVISION 4. GUARDIAN AD LITEM**

#### **Sec. 10-161. Purpose.**

To ensure that an individual's best interests are being protected by appointing a guardian ad litem, and that the appointed guardian ad litem is performing his or her role appropriately and adequately to protect the individual's best interests throughout the legal action.

(Code 2012, § 10-75; Ord. No. SRO-386-2011, § 10-75, 9-28-2011; Ord. No. SRO-402-2012, § 10-75(a), 5-30-2012)

#### **Sec. 10-162. Legal services office to administer.**

Pursuant to section 11-160, the guardian ad litem program within the legal services office will provide representation to individuals pursuant to cases filed under this chapter.

(Code 2012, § 10-75; Ord. No. SRO-386-2011, § 10-75, 9-28-2011; Ord. No. SRO-402-2012, § 10-75(b), 5-30-2012)

**Sec. 10-163. Scope of rules.**

Notwithstanding any other provision, these standards shall apply to all attorneys and/or advocates representing individuals as guardian ad litem in the following, but not limited to, probate, involuntary commitment, adoption, custody and/or guardianship over an incapacitated adult or minor child.

(Code 2012, § 10-75; Ord. No. SRO-386-2011, § 10-75, 9-28-2011; Ord. No. SRO-402-2012, § 10-75(c), 5-30-2012)

**Sec. 10-164. Appointment of guardian ad litem.**

The court may appoint a guardian ad litem to represent the best interests of the following:

- (1) An incapacitated adult pursuant to a case filed under this division within this Community Code of Ordinances or article VI of this chapter unless the incapacitated adult is represented by independent counsel and the court does not require recommendations from a guardian ad litem.
- (2) A minor child under this chapter unless the minor child is represented by independent counsel and the court does not require recommendations from a guardian ad litem.

(Code 2012, § 10-75; Ord. No. SRO-386-2011, § 10-75, 9-28-2011; Ord. No. SRO-402-2012, § 10-75(d), 5-30-2012)

**Sec. 10-165. Training.**

A guardian ad litem is required to participate, before he or she begins practicing in Community court under this chapter, in either:

- (1) Training. Eight hours of mental health and/or family law. The training shall include applicable ordinances, cultural awareness and rules of court. Training in related practice areas such as guardianship, conservatorship, long-term care, financial exploitation, incapacitated persons is recommended; or
- (2) At least six months of experience in related practice area in which the attorney and/or advocate has demonstrated compe-

tency in the representation of his or her client in another jurisdiction or in the Community.

A guardian ad litem will participate, at a minimum, in four hours of continuing legal education per year, which is specific to the area of mental health law and/or family law.

(Code 2012, § 10-75; Ord. No. SRO-386-2011, § 10-75, 9-28-2011; Ord. No. SRO-402-2012, § 10-75(e), 5-30-2012)

**Sec. 10-166. Timing of appointments.**

The guardian ad litem shall be appointed immediately after the earliest of:

- (1) The filing of petition of involuntary commitment, guardianship, or conservatorship over an incapacitated adult.
- (2) Once the need for a guardian ad litem has been identified in a guardianship, custody, adoption, or conservatorship action of a minor child as applicable under this Community Code of Ordinances.
- (3) The court shall appoint a guardian ad litem prior to the next scheduled hearing if a guardian ad litem has not been appointed previously described pursuant to this section.

(Code 2012, § 10-75; Ord. No. SRO-386-2011, § 10-75, 9-28-2011; Ord. No. SRO-402-2012, § 10-75(f), 5-30-2012)

**Sec. 10-167. Appointment procedure.**

A guardian ad litem appointed under this section and any requirements and duties prescribed to the court or any other entity shall be in accordance with the provisions in section 11-160. (Code 2012, § 10-75; Ord. No. SRO-386-2011, § 10-75, 9-28-2011; Ord. No. SRO-402-2012, § 10-75(g), 5-30-2012)

**Secs. 10-168—10-178. Reserved.****ARTICLE V. PROTECTION FOR ELDERLY AND VULNERABLE ADULTS****Sec. 10-179. Generally.**

(a) *Title.* This article shall be known and cited as the Community's "Elderly and Vulnerable Adult Protection Code."

(b) *Policy.* It is the tradition and custom of the Community to honor and protect the elderly and vulnerable of the Community. The elderly are the possessors of the spiritual and collective wisdom and traditions of the Community. Elderly or vulnerable adults are also in need of special concern and protection of the Community and warrant special concern and protection. The elderly and vulnerable adult protection ordinance is to be liberally construed for their protection.

(c) *Purpose.*

- (1) The purpose of this article is to protect the elderly and vulnerable adults within the jurisdiction of the Community, including enrolled members who do not live within the Community, from abuse, neglect, or exploitation.
- (2) The subsidiary purpose of this article should be family reunification if it is possible to protect an elderly or vulnerable adult within the family unit. The protective services worker shall seek to maintain each elderly or vulnerable adult in his or her familiar environment by strengthening his or her capacity for self-maintenance or by providing supportive services. Therefore, families who are not providing adequate care to an elderly or vulnerable adult should be offered resources, services and education to enable them to properly care for the elderly or vulnerable adult.

(d) *Civil nature of article.* Except where expressly criminal, the provisions of this article are civil and regulatory in nature and are intended to provide assistance and protection to elderly or vulnerable adults who may be at risk of abuse, neglect, and/or exploitation. This article does not amend or alter any applicable provisions of the Community's Code of Ordinances unless specifically stated.

(e) *Interpretation of this section.* Nothing in this section shall be construed to mean that an elderly or vulnerable adult is abused, neglected or in need of protective services for the sole reason that he or she relies on treatment from a recognized religious or cultural method of healing in lieu of mainstream medical treatment.

(f) *Liberal interpretation of article.* This article shall be interpreted liberally to achieve its purpose as set forth in this section.

(Code 1981, § 10-81; Code 2012, § 10-81; Ord. No. SRO-152-92, § 1, 5-27-1992; Ord. No. SRO-364-2010, § 10-81, 4-28-2010; Ord. No. SRO-402-2012, § 10-81, 5-30-2012)

## **Sec. 10-180. Definitions.**

In this article, unless the context requires otherwise, the following terms shall have the meanings herein ascribed to them:

*Abuse* means the infliction or threatened infliction of physical, sexual, emotional, psychological or spiritual harm intentionally, negligently, recklessly, knowingly or by omission.

*Adult protective services (APS)* means the Community program tasked with carrying out this article.

*Caregiver* means a person who has been entrusted with or has assumed responsibility for the care of the property of an elderly person or vulnerable adult. The term "caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, and health care providers.

*Community law enforcement agency* means the Salt River Police Department (SRPD) or its successor.

*Court* means the Salt River Pima-Maricopa Indian Community (SRPMIC) court.

*Elderly person* means any person who has reached the age of 55 years or older.

*Entity* means and includes any corporation, partnership, limited partnership association, labor union or other legal entity, any group of persons associated in fact although not a legal entity, and any other form of organization that is not a natural person.

*Exploitation.*

- (1) The term "exploitation" means:

- a. Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly or vulnerable adult's funds, assets, or



property with the intent to temporarily or permanently deprive the elderly or vulnerable adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly or vulnerable adult by a person who:

1. Stands in a position of trust and confidence with the elderly person or vulnerable adult; or
  2. Has a business relationship with the elderly person or vulnerable adult.
- b. Obtaining or endeavoring to obtain or use or conspiring with another to obtain or use an elderly person's or vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly or vulnerable adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or vulnerable adult, by a person who knows or reasonably should know that the elderly person or vulnerable adult lacks the capacity to consent.
- (2) The term "exploitation" may include, but is not limited to:
- a. Breaches of fiduciary relationships, such as the misuse of power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale or transfer of properties;
  - b. Unauthorized taking of personal assets;
  - c. Misappropriation, misuse, or transfer of monies belonging to an elderly person or vulnerable adult from a personal or joint account; or
  - d. Intentional or negligent failure to effectively use an elderly person or vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

*Health and human services department (HHS)* means the Community health and human services department.

*Intimidation* means a communication by word or act to an elderly person or vulnerable adult that the elderly person or vulnerable adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical or spiritual services, money or financial support, or will suffer physical violence.

*Neglect of an elderly person or vulnerable adult* means a caregiver's:

- (1) Failure or omission to provide an elderly person or vulnerable adult with the care, supervision, and services necessary to maintain the elderly person's or vulnerable adult's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine and medical services, that a prudent person would consider essential for the well-being of the elderly person or vulnerable adult; or
- (2) Failure to make reasonable effort to protect an elderly person or vulnerable adult from abuse, neglect, exploitation by another person.

Neglect of an elderly person or vulnerable adult may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in serious physical, or psychological injury, or a substantial risk of death, to an elderly person or vulnerable adult.

*Next friend* means a person or entity who appears in court in place of another who is not competent to do so because they are elderly or a vulnerable adult. Often the role is filled by a relative, but can be any legally competent person whose interests do not run counter to those of the person on whose behalf they are acting. The next friend is not a part to the proceedings, nor are they a formally appointed guardian. Instead they are someone whose role is to protect the rights of the elderly or vulnerable adult. Although a protective services worker cannot be appointed as guardian, a protective services worker can act as next friend.



*Order of protection* means an elderly or vulnerable adult order of protection issued by the Community court pursuant to this article.

*Protective services* means a program of identifiable and specialized services appropriately offered to address problems which have produced signs of vulnerability, abuse, exploitation or neglect.

*Protective services worker* means an employee who has been selected by and trained under the requirements of the HHS and the senior services department to provide protective services to elderly or vulnerable adults.

*SRPD officer* means a duly sworn officer of the Community police department.

*Sexual abuse or exploitation.*

- (1) The term "sexual abuse or exploitation" means a form of physical abuse or exploitation that means any sexual conduct for the purpose of arousing or satisfying the sexual desire of the abuser including, but not limited to, kissing, inappropriate touching, indecent exposure, deviate sexual conduct, incest or molestation that the elderly or vulnerable person did not consent to or that the other person knows or should know that the elderly or vulnerable adult is unable to consent, decline or resist due to mental illness, disease, fear of retribution, or hardship.
- (2) The term "sexual abuse or exploitation" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal care giving action or appropriate display of affection.

*Substantiated* means there is sufficient evidence and/or information for a reasonable belief that an elderly or vulnerable adult was or is abused, neglected or exploited.

*Unreasonable confinement* means any confinement beyond what is necessary for the vulnerable person's protection or restriction of movements in a manner which interferes substantially with

such person's liberty or daily life including isolation or any confinement that is not the least restrictive alternative.

*Unsubstantiated* means that after an investigation, insufficient evidence has been found to corroborate the allegations of abuse, neglect or exploitation.

*Vulnerable adult* means any person between 18 and 54 years of age who because of physical or mental impairment is unable to meet the person's own needs or to seek help without assistance. (Code 1981, § 10-82; Code 2012, § 10-82; Ord. No. SRO-152-92, § 2, 5-27-1992; Ord. No. SRO-364-2010, § 10-82, 4-28-2010; Ord. No. SRO-402-2012, § 10-82, 5-30-2012)

#### **Sec. 10-181. Reporting abuse, neglect or exploitation of an elderly or vulnerable adult.**

(a) *Responsibility.* Any person who knows or has reasonable cause to suspect that an elderly or vulnerable adult has been abused, neglected, or exploited as defined in section 10-180 should, immediately after learning of or forming the suspicion of such abuse, neglect, or exploitation, report the suspicion to the senior services department and to the Community law enforcement agency. A person reporting under this section may remain anonymous.

(b) *Persons mandated to report.*

- (1) The following persons who know or have reasonable cause to suspect that an elderly or vulnerable adult has been abused, neglected or exploited, financially or otherwise, shall immediately, after learning of or forming the suspicion of such abuse, neglect, or exploitation, report the same to the senior services department and to the Community law enforcement agency:
  - a. Physician, hospital intern or resident, surgeon, nurse, dentist, chiropractor, podiatrist, optometrist, Community health worker or other health care provider.

- b. Adult services worker, public assistance worker, social worker or worker in an adult group home, residential or day care facility.
  - c. Law enforcement officer, probation officer, or other officer of the court, or worker in an adult rehabilitation or detention facility through the appropriate chain-of-command for investigation. A report shall also be transmitted to the senior services department.
  - d. Guardian.
  - e. Any other person having responsibility for the care of elderly or vulnerable adults whose observation or examination discloses evidence of abuse or death which appears to have been inflicted on an elderly or vulnerable adult by other than accidental means or which is not explained by the available medical history as being accidental in nature.
  - f. Any adult living in the same residence with an elderly or vulnerable adult.
- (2) The following persons who know or have reasonable cause to suspect that an elderly or vulnerable adult has been financially exploited shall immediately, after learning of or forming the suspicion of exploitation, report the same to the senior services department and the Community law enforcement agency:
- a. Attorneys.
  - b. Accountants.
  - c. Property managers.
  - d. Financial institutions.
  - e. Any other person or agency, including employees thereof, with fiduciary duties to elderly or vulnerable adults.

(c) *Reports.* Those persons mandated to report who make an oral report to the APS worker or law enforcement agency shall forthwith follow with a

written report. The following information, unless unavailable, shall be included in the written report:

- (1) Name, address, and place of residence of the elderly or vulnerable adult, if known.
- (2) Narrative as to the nature and extent of the elderly or vulnerable adult's abuse, neglect or exploitation, including previous abuse, if known, neglect or exploitation of the elderly or vulnerable adult or the elderly or vulnerable adult's siblings and the suspected date of the abuse, neglect or exploitation. The narrative should include a statement by the person reporting, explaining why they believe the elder or vulnerable adult is being abused, neglect or exploited.
- (3) Name, age, address, and place of residence of the person alleged to be responsible for the elderly or vulnerable adult's abuse, neglect or exploitation, if known.
- (4) Name, address, agency and telephone number of the person making the report.

(d) *Notification.* When reports are received by the Community police department, they shall immediately notify the senior services department and make such information as necessary to evaluate the situation and determine which services are to be made available to the victim. Conversely, in the event reports of suspected abuse, neglect and/or exploitation are made to the senior services department, that department shall immediately notify the police department and make such information available to the police for further investigation.

(e) *Civil remedies for not reporting.*

- (1) Any person mandated under subsection (b) of this section to report known or suspected cases of elderly or vulnerable adult abuse, neglect or exploitation who fails to immediately report such abuse, neglect or exploitation shall be subject to a civil fine of not more than \$5,000.00.
- (2) Any person who supervises, or has authority over, a person described under subsection (b) of this section, and who prevents

that person from making the known or suspected elderly or vulnerable adult abuse, neglect or exploitation report or intentionally suppresses such report, shall be subject to a civil fine of not more than \$5,000.00.

(f) *Anonymous reports.* Anything to the contrary notwithstanding, anonymous reports shall be investigated pursuant to this article. (Code 1981, § 10-83; Code 2012, § 10-83; Ord. No. SRO-152-92, § 3, 5-27-1992; Ord. No. SRO-364-2010, § 10-83, 4-28-2010; Ord. No. SRO-402-2012, § 10-83, 5-30-2012)

**Sec. 10-182. Procedure for investigation of allegations of abuse, exploitation or neglect of an elderly or vulnerable adult.**

(a) It is the policy of the Community that examinations and interviews of an elderly or vulnerable adult suspected of having been subject to abuse, neglect or exploitation shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma and maintain the privacy of the elderly or vulnerable adult. It shall be the responsibility of the Community departments involved in the investigation and prosecution of the alleged offenses to coordinate their interviews and intrusive examinations with respect to the elderly or vulnerable adult in a manner that respects and maintains the dignity of the individual.

(b) APS shall receive reports and/or referrals of suspected abused, exploited or neglected elderly or vulnerable adults, and any other information regarding an elderly or vulnerable adult who may be in need of protective services.

(c) Upon receipt of such report or referral:

- (1) Adult protective services (APS) shall, within two business days, initiate an investigation of alleged abuse, neglect or exploitation to determine if the elderly or vulnerable adult may be in need of protective services and what services, if any, are needed.
- (2) If the allegations indicate imminent and serious danger, investigate as soon as

possible but, in any case, within the same day as the report or referral was received.

(d) Adult protective services (APS) shall conclude an investigation within three days that shall include some or all of the following actions, as appropriate:

- (1) In-person interviews with:
  - a. The elderly or vulnerable adult;
  - b. The elderly or vulnerable adult's family and caretakers;
  - c. The person suspected of having committed the acts reported;
  - d. Employees of agencies or institutions with knowledge of the elderly or vulnerable adult circumstances; and
  - e. Any other person the APS worker believes has pertinent information.
- (2) An assessment of the elderly or vulnerable adult living conditions in coordination with the Community housing division standards for safe and healthy housing.
- (3) The adult protective services (APS) worker may also use any other observations, documented observations, assessments, or documents that may aid in completing an accurate report.
- (4) Ascertain the existence and/or contents of medical records. Police records and other reports of abuse, neglect or exploitation.
- (5) Collection of any other information that is relevant to the issues.
- (6) APS shall conduct its investigation in coordination and cooperation with any on-going criminal investigations so as to lessen the impact of the investigatory process on the elderly or vulnerable adult.

(e) A protective services worker must promptly report to the Community police department any information that may involve, or appears to involve, criminal activity, including but not limited to care of dependent persons, assault, theft, and false imprisonment.

## (f) The written report.

- (1) The written report shall be prepared and filed with the senior services department.
  - a. A substantiated report will remain on file for a period of 25 years.
  - b. If it is determined there is insufficient evidence to pursue any legal action in court or to take any lesser measures at that time the records will be retained for ten years.
- (2) An investigation report shall include findings of fact including those described in section 10-183(b), the results of the protective service worker's interviews, observations, assessments, and recommended actions.

## (g) Procedure after written report.

- (1) If there is a need for case management or ongoing services needed after an investigation of elderly or vulnerable adult, neglect or self-neglect, or exploitation is completed, the APS worker shall refer the matter to the senior services department to have a social worker promptly assigned.
- (2) Upon request from the senior services department, the office of the general counsel will file petitions as appropriate pursuant to this article or for the appointment or change of a temporary or continuing guardian and/or conservator.

(h) If at any time it is found that a report of abuse appears to have been made in bad faith, the investigation report shall be turned over to the Community police department for investigation of possible criminal and/or civil violations pursuant to section 10-186, or any other possible violations. (Code 1981, § 10-84; Code 2012, § 10-84; Ord. No. SRO-152-92, § 4, 5-27-1992; Ord. No. SRO-364-2010, § 10-84, 4-28-2010; Ord. No. SRO-402-2012, § 10-84, 5-30-2012)

**Sec. 10-183. Immunity of participants; nonprivileged communication.**

(a) Any person making a report, furnishing a report, information or records required or authorized by this article, investigating or otherwise

participating in the program authorized by this article is immune from any civil or criminal liability by reason of such action, unless such person:

- (1) Acted with malice or unless such person has exploited or neglected the vulnerable elderly or vulnerable adult subject of such otherwise immune activity; or
- (2) Is suspected of or has been charged with abusing or neglecting the elderly or vulnerable adult in question.

(b) Immunity from liability. All persons or agencies reporting, in good faith, known or suspected instances of abuse, neglect or exploitation, or anyone participating in a judicial proceeding resulting from such report shall be immune from civil liability and criminal prosecution. Any provision of law or code of ethics that protects or requires confidentiality shall not apply with respect to information regarding abuse, neglect or exploitation of an elderly or vulnerable adult, and such provisions of law or code of ethics shall not be a defense to a charge of failing to report elderly or vulnerable adult abuse, neglect or exploitation.

(c) The name of a person who reports abuse, neglect or exploitation as required or allowed by this article is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the court.

(d) The court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the elderly or vulnerable adult is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent as determined necessary to protect the elderly or vulnerable adult.

(e) Except as provided in subsection (b) of this section the physician-patient privilege, husband-wife privilege or any other generally recognized privilege, except the attorney-client privilege, shall not be valid in any investigation or civil or criminal litigation in which elderly or vulnerable adult's, abuse, neglect or exploitation is an issue. (Code 1981, § 10-85; Code 2012, § 10-85; Ord. No. SRO-152-92, § 5, 5-27-1992; Ord. No. SRO-364-2010, § 10-85, 4-28-2010; Ord. No. SRO-402-2012, § 10-85, 5-30-2012)



**Sec. 10-184. Medical and financial records.**

(a) Upon request of the senior services department through the office of the general counsel (OGC), the Community court may issue subpoenas for the release of medical and financial records upon motion for expedited consideration by the office of the general counsel in order to facilitate investigations of reported elderly or vulnerable adult abuse.

- (1) After a hearing, the court shall issue the subpoena if it finds reasonable grounds to believe that elderly abuse or exploitation is occurring or has occurred and that the records may be relevant to investigating the allegations.
- (2) Upon service of such subpoena, a person having custody or control of medical or financial records of an elderly or vulnerable adult for whom a report is legally required or authorized shall promptly make such reports or a copy of such reports available as required by the subpoena.

(b) If psychiatric records are requested pursuant to subsection (a) of this section, the custodian of the records shall notify the attending psychiatrist, psychologist or certified counselor.

- (1) the psychiatrist, psychologist or certified counselor may excise from the records, before they are made available:
  - a. Personal information about individuals other than the patient.
  - b. Information regarding specific diagnosis or treatment of a condition, if the attending psychiatrist, psychologist, or certified counselor certifies in writing that release of the information would be detrimental to the patient's well-being or treatment.
- (2) If any portion of a psychiatric record is excised pursuant to subsection (b)(1) of this section, the Community court, upon application of the appropriate Community agency through the office of the general counsel (OGC) and after an in camera inspection, may order that the entire record or any portion of such record containing information relevant to the reported

abuse, neglect or exploitation be made available to the Community agency investigating the abuse, neglect or exploitation.

(c) Records disclosed pursuant to this subsection are strictly confidential.

- (1) Such records may be used only in an investigation resulting from a report required or authorized under this article, or in a judicial or administrative proceeding related to such investigation.
- (2) Any such records obtained pursuant to such a subpoena shall be kept separately in a secure locked storage cabinet or similar container.
- (3) If such records are used in court, the court shall keep such records under seal in a sealed envelope with a notice that access is allowed only by order of the court upon good cause.

(Code 1981, § 10-86; Code 2012, § 10-86; Ord. No. SRO-152-92, § 6, 5-27-1992; Ord. No. SRO-364-2010, § 10-86, 4-28-2010; Ord. No. SRO-402-2012, § 10-86, 5-30-2012)

**Sec. 10-185. Causing or permitting imperilment of life, health or property; criminal penalties; civil remedies.**

- (a) A person who:
  - (1) Has been employed to provide care to;
  - (2) Has assumed a legal duty to provide care to;
  - (3) Voluntarily provides care to;
  - (4) Lives with;
  - (5) Has been appointed by a court to provide care to; or
  - (6) Has access directly or indirectly to the finances of;

and who knowingly or negligently causes or permits the life, health or property of the elderly or vulnerable adult to be endangered or exploited, is guilty of a violation of this section.



(b) Such violation is criminally punishable by imprisonment for a period not to exceed one year or a fine not to exceed \$5,000.00, or both. In addition, such violation is also civilly regulated and may be remedied by imposition of a civil fine of not more than \$5,000.00.

(c) An elderly or vulnerable adult whose life, health or finances are being or have been endangered, injured or imperiled by neglect or abuse or who has been financially exploited may file a civil action in the Community court against any person or entity described in subsection (a) of this section for having caused or permitted such conduct.

- (1) If the respondent is found to be responsible for a violation of this section, the remedies may include, but are not limited to, an injunction, damages, restitution and/or punitive damages, or any other legal or equitable remedy the court may impose for the violation.
- (2) Prior to the final hearing in such a matter, the court may issue an order of protection, temporary restraining order or a preliminary injunction upon a showing of probable cause.
- (3) If the elderly or vulnerable adult is physically, mentally, emotionally or otherwise unable to file an action, then a guardian or next friend may file the action on behalf of such person pursuant to subsection (c) of this section.

(Code 2012, § 10-87; Ord. No. SRO-364-2010, § 10-87, 4-28-2010; Ord. No. SRO-402-2012, § 10-87, 5-30-2012)

#### **Sec. 10-186. Other violations; remedies.**

- (a) It shall be a violation to:
  - (1) Interfere intentionally with a lawful investigation of suspected elderly abuse, neglect or exploitation.
  - (2) Retaliate by any means against any person who has made a good faith report of suspected elderly abuse or who cooperates with an investigation of suspected abuse, neglect or exploitation of an elderly or vulnerable adult.

(b) Any person who is found to have violated the provisions of this section shall be enjoined from such activity and may, after a court hearing, be subject to a civil fine of up to \$5,000.00 per occurrence.

- (1) Notice of such determination shall be provided to appropriate licensing agencies, if any, and to such person's employer.
- (2) If such person is employed by the Community and in addition to the remedy described in this section, disciplinary action may be taken consistent with the Community's employment policies.

(c) Violations of this section shall also be referred to the Community prosecutor for consideration of additional applicable charges including, but not limited to, interfering with a criminal investigation and/or a police officer.

(Code 2012, § 10-88; Ord. No. SRO-364-2010, § 10-88, 4-28-2010; Ord. No. SRO-402-2012, § 10-88, 5-30-2012)

#### **Sec. 10-187. Court proceedings.**

(a) The Community court has jurisdiction to hear a cause of action for protection of an elderly or vulnerable adult when a verified petition has been filed alleging that such elderly or vulnerable adult has been or is being abused, neglected or exploited as defined in this article.

(b) The Community court, after a petition and hearing, has jurisdiction to enforce this article, including but not limited to:

- (1) Issue orders to prevent, restrain and remedy the conduct proscribed in this article; and
- (2) Issue orders to enjoin the refusal of any person mandated under this article.

(c) The senior services department, via the office of the general counsel, may file a civil action pursuant to this section on behalf of, or to protect, an elderly or vulnerable adult.

(d) Criminal charges related to this article shall be filed by the office of the Community prosecutor.

(e) Civil matters under this article shall be filed by the office of the general counsel on behalf of the Community senior services department. (Code 2012, § 10-89; Ord. No. SRO-364-2010, § 10-89, 4-28-2010; Ord. No. SRO-402-2012, § 10-89, 5-30-2012)

# **Sec. 10-188. Hearings.**

(a) A hearing on a petition authorized under this article shall be conducted with the purpose of protecting the elderly or vulnerable adult, using the least restrictive alternatives.

(b) No hearing shall be held unless notice has been given to the elderly or vulnerable adult and other interested parties, including the elderly or vulnerable adult family and caretaker.

(c) The elderly or vulnerable adult and all other interested parties shall have the right and opportunity to be heard fully and to present evidence.

(d) Within two business days of the filing of a petition, the court shall make a determination on the record whether or not an advocate or attorney and/or a guardian ad litem will be appointed.

(e) The court shall conduct a hearing on the petition to determine whether the facts support a finding that the elderly is in need of protection.

- (1) All material and relevant evidence which is reliable and trustworthy may be admitted and relied upon by the court to the extent of its probative value, including hearsay contained in a written investigative report, provided that the preparer of the report is present and available to provide testimony or foundation is shown that the report fits within the traditional hearsay exception that it is a regularly kept business or governmental record.
- (2) The parties, including the elderly or vulnerable adult, shall be afforded an opportunity to examine and controvert written reports, and cross examine individuals whose testimony is presented.

(3) The court may rely on conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

(f) The court shall make a decision at the conclusion of the hearing, and shall immediately issue any orders, if the allegations of the petition:

- (1) Are not sustained by a preponderance of the evidence, the court shall dismiss the matter;
- (2) Are sustained, the court shall find that the elderly is in need of protection, and shall enter further orders as necessary, for evaluation, assessment or other orders to protect the elderly or vulnerable adult.

(g) The court shall issue a written decision within ten days. The written decision shall contain specific findings of fact and conclusions of law.

- (1) Records of an investigation of elderly abuse or of a court hearing regarding an elderly or vulnerable adult abuse are confidential. Such records shall be open only to the elderly or vulnerable adult and the elderly or vulnerable adult family and caretaker, unless the family or caretaker is the suspected abuser. If the executive director of the Community department of health and human services, senior services department, law enforcement officers, court officials, coroner or medical examiner, or any other person has reason to believe that an elderly or vulnerable adult died as the result of abuse, neglect or exploitation, the court shall determine who has reasonable cause to have access to such records.
- (2) A proceeding held pursuant to this article will be closed and confidential. Persons who may attend are the elderly or vulnerable adult, the elderly or vulnerable adult family and caretaker, representatives of the department, necessary court officials, advocates/attorneys, and guardian ad litem for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal

information about the proceeding unless ordered to do so pursuant to a court order.

- (3) Any person who violates the confidentiality provisions of this section shall be subject to a civil penalty of up to \$5,000.00 per occurrence. The court shall assess the penalty after a petition, notice, opportunity for a hearing, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Community, the person may be subject to appropriate disciplinary action as allowed in the Community employment policies and procedures.

(h) After a determination of liability such court orders may include, but are not limited to, ordering the payment of:

- (1) Actual and consequential damages, as well as punitive damages, costs of suit and reasonable attorney fees, to those persons injured by the conduct described in this section;
- (2) All costs and expenses of the prosecution and investigation of the conduct described in this section, civil and criminal, incurred by the Community as appropriate, to be paid to the general fund of the Community.

(Code 2012, § 10-89.1; Ord. No. SRO-364-2010, § 10-89.1, 4-28-2010; Ord. No. SRO-402-2012, § 10-89.1, 5-30-2012)

#### **Sec. 10-189. Orders prior to a final determination.**

Prior to a final determination, the court may issue orders for the protection of the alleged abused, neglected or exploited elderly or vulnerable adult including, but not limited to, orders of protection, temporary restraining orders, temporary injunctions, or orders, including, but not limited to, acceptance of satisfactory performance bonds, creation of receiverships and appointment of qualified receivers, appointment of an attorney or advocate and/or guardian ad litem, and the enforcement of constructive trusts, as the court deems proper.

(Code 2012, § 10-89.2; Ord. No. SRO-364-2010, § 10-89.2, 4-28-2010; Ord. No. SRO-402-2012, § 10-89.2, 5-30-2012)

#### **Sec. 10-190. Elderly or vulnerable adult order of protection; petition; procedure for issuance; contents; emergency orders; violation.**

##### *(a) Petition.*

- (1) A petition for an order of protection may be requested and granted regardless of whether or not there is a pending lawsuit, complaint, petition, or other action by the Community, by another jurisdiction, or between the parties.
- (2) Such a petition may be filed by:
  - a. The elderly or vulnerable adult believed to be abused, neglected or exploited;
  - b. A senior services department employee;
  - c. The person's attorney/advocate;
  - d. The guardian or guardian ad litem; or
  - e. A next friend of the person elderly or vulnerable adult.
- (3) A victim, or anyone acting on behalf of a victim, is not required to post a bond to obtain relief in any proceeding under this article.

*(b) Order of protection.* An order for protection of any kind issued under this article:

- (1) Does not prejudice the rights of a party which are to be adjudicated at subsequent hearings in the proceedings;
- (2) May be revoked, modified or extended;
- (3) May be presented in a proceeding for the modification of an existing order, judgment or decree.

*(c) Contents of orders of protection.* Orders of protection shall include the following:

- (1) The name of the victim.
- (2) The victim's address shall be separately disclosed to the court for purposes of service but, in order to protect the victim, the address shall not be placed in the court file or given out to anyone except to the

APS investigator and law enforcement, prosecutorial as necessary for criminal prosecution, or office of the general counsel personnel for civil action for the protection of the elderly or vulnerable adult.

- a. The release of such information shall be documented in writing and placed the court's file;
  - b. The court shall maintain a separate, locked, confidential register of names and addresses of alleged abused, neglected or exploited elderly or vulnerable adults.
- (3) Name, current address, and last known address of the alleged perpetrator(s) and all possible locations where he, she or they may be contacted for service, if known;
  - (4) Specific statement made under oath, including descriptions and such details as are known of the abuse, neglect and/or exploitation alleged;
  - (5) Relationship between the parties and whether there is a pending action between the parties;
  - (6) Desired relief and other relief as the court deems appropriate.
- (d) *Procedure for issuance of order of protection.*
- (1) The order shall include the immediate granting of an ex parte order of protection without bond if, based on the specific facts stated under oath, the court has reasonable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of abuse, neglect and/or exploitation committed by the respondent.
  - (2) Within 72 hours of the issuance of an ex parte order, a hearing shall be held to determine whether the order should be vacated, extended for an additional period of time, made permanent, or modified in any respect.
  - (3) If reasonable efforts to serve the perpetrator have been made and service of the ex parte order and notice of hearing cannot

be completed within 48 hours, service shall be made by posting copies of the order and notice prominently at the court, the PHS clinic, the administration building, the Salt River and Lehi Community Centers, and Community bulletin board located on the southeast corner of Longmore and Osborn.

- (4) If the court does not find sufficient reasonable cause to grant an ex parte order, the court shall serve notice to appear upon both parties and hold a hearing on the petition for an order of protection within 72 hours after the filing of the petition. If notice of hearing cannot be personally served within 48 hours, the parties shall be served by posted notice, as described in subsection (d)(3) of this section, and the court shall reset a hearing date no later than 15 days after the filing of the petition.
  - (5) An order of protection granted pursuant to this section shall be forwarded by the clerk of the court to the police department within 24 hours of issuance. In the case of an emergency order for protection, it shall be filed immediately upon issuance. The police department shall make available to each officer, information as to the existence and status of every order for protection issued under this section.
- (e) *Contents of order.*
- (1) If the court determines that there is evidence of abuse, neglect or exploitation of an elderly or vulnerable adult, a protection order which provides appropriate protection for the elderly or vulnerable adult shall be issued which may contain, but is not limited to the following:
    - a. Removal of the elderly or vulnerable adult from the place where abuse, neglect, or exploitation has taken or is taking place, including the elderly or vulnerable adult's home; and/or
    - b. Removing the person who abused, neglected, or exploited an elderly or

- vulnerable adult from the elderly or vulnerable adult's home immediately.
- c. Placing the elderly or vulnerable adult under protective supervision, wherein the elderly or vulnerable adult is permitted to remain in the home providing the Community protective services or a designated agent provides supervision and assistance to correct the neglect or exploitation of the elderly or vulnerable adult.
  - d. Restraining the person who has abused, neglected or exploited the elderly or vulnerable adult from continuing such acts.
  - e. Requiring any party having a fiduciary duty to the elderly or vulnerable adult to account for the elderly or vulnerable adult's funds and or property.
  - f. Requiring compensatory damages to be paid by an abuser or neglectful person to the elderly or vulnerable adult for any injuries or any damages resulting from abuser's or neglectful person's wrongful acts.
  - g. Appointing a representative, guardian ad litem, or recommending a representative payee for the elderly or elderly or vulnerable adult.
  - h. Ordering Community protective services to prepare a plan to deliver protective services which provides the least restrictive alternative to satisfy the elderly or vulnerable adult's needs.

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(2) The order shall include the following statement in bold letters:

*Warning*

This is an Official Court Order. If you disobey this court order, the court may find you in contempt of court. You may also be arrested and prosecuted for the willful disobedience of an order lawfully issued by the court and any other crime you may have committed in disobeying this order.

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(f) *Duration and amendments.* An elderly or vulnerable adult order of protection shall be enforced until further order of the court, but not to exceed 180 days, and may be subject to amendment for extension at the discretion of the court or at the request of one of the parties.

(g) *Emergency orders.*

- (1) A petition for an emergency protection order shall contain the following, to the best of the knowledge of the petitioner's knowledge:
  - a. The name, address, location, and interest of the petitioner if the petitioner is not the elderly or vulnerable adult himself or herself.

- b. The name and condition of the elderly or vulnerable adult.
- c. The victim's address or location shall be separately disclosed to the court for purposes of service but, in order to protect the victim, the address shall not be placed in the court file or given out to anyone except to an APS investigator and law enforcement, prosecutorial as necessary for criminal prosecution, or office of the gen-



eral counsel personnel for a civil action for the protection of the elderly or vulnerable adult.

1. The release of such address information shall be documented in writing and placed in the court's file;
  2. The court shall maintain a separate, locked, confidential register of names and addresses of alleged abused, neglected or exploited elderly or vulnerable adults.
- d. The nature of the emergency.
  - e. The nature of the elderly or vulnerable adult's personal or financial injury.
  - f. The proposed protective services, and where applicable, protective placement.
  - g. The attempts, if any, to secure the elderly or vulnerable adult's consent to services.
  - h. Any other facts the petitioner believes will assist the court.
- (2) During the hours that the court is closed, the court shall provide for the availability of a judge or other authorized personnel who shall authorize the issuance of emergency and temporary orders for protection by telephone or by any other appropriate and effective method.
  - (3) The court may issue an ex parte emergency protection order authorizing emergency services or protective placement upon clear and convincing evidence that an elderly or vulnerable adult:
    - a. Is at risk of immediate physical harm;
    - b. No one is authorized by law or court order to give consent;
    - c. The elderly or vulnerable adult or authorized caretaker is incapacitated and cannot consent to services; and
    - d. An emergency exists.

(4) The emergency protection order shall:

- a. Set out the specific services to be provided to remove the emergency;
- b. Allow protective placement only if the evidence indicates that it is absolutely necessary;
- c. Designate the person or agency required to implement the order; and
- d. Be issued for 72 hours excluding weekends and holidays.

If there is evidence of a continuing emergency such order may be renewed for 72 additional hours.

(h) *Warrant for forcible entry.* The court may issue a warrant for forcible entry by the Community police department if attempts to gain voluntary access for service have failed.

(i) *Preliminary hearing on petition to provide protective services.* The court shall hold a preliminary hearing on a petition to provide protective services within 72 hours, excluding weekends and holidays, after an emergency protection order is issued unless good cause exists to grant a delay. The court shall state on the record any cause for such delay.

- (1) All named and interested parties including but not limited to APS, attorneys/advocates, guardians, custodians, guardians ad litem, and family members are permitted to attend the preliminary hearing for a protection order.
- (2) The hearing may be conducted ex parte if the alleged perpetrators have not been served after diligent attempts at service or if the court finds that the Community's interest to protect the elderly or vulnerable adult so requires.
- (3) The sufficiency of the petition will be determined on a totality of circumstances test and goes into effect upon immediate granting of the order by the court.

(j) *Action in emergency situation.* If there is good cause to believe that an emergency exists where an elderly or vulnerable adult is at risk of immediate and irreparable physical harm based

on personal observation and if the protective service worker and a law enforcement officer believe the elderly or vulnerable adult will be irreparably harmed during the time it takes to secure an emergency protection order, the protective service worker and the law enforcement officer shall immediately take action to protect the elderly or vulnerable adult. This includes, where necessary, transporting the elderly or vulnerable adult for medical treatment or to an appropriate facility. Immediately after the elderly or vulnerable adult is protected, a petition for an emergency protection order shall be filed and the procedures set out in this section followed.

(k) *Immunization from criminal or civil suit.* Anyone who acts in reasonable good faith pursuant to this section shall be immune from criminal or civil suit even if the suspected abuse, neglect or exploitation results in an unsubstantiated report.

(l) *Violation; penalties; remedies.*

- (1) In addition to any other penalties available under law or equity, a person who knowingly violates, or a person who aides and abets another person to knowingly violate an order of protection is guilty of an offense and shall be sentenced to a maximum of 180 days' imprisonment, or fined an amount not to exceed \$5,000.00, or both.
- (2) A person who enters the Community with the intent to engage in conduct that violates a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued shall be punished and/or fined as provided in subsection (l)(1) of this section.
- (3) A person who causes an elderly or vulnerable adult to enter or leave the Community by force, coercion, duress, or fraud, and, in the course or as a result of that conduct, intentionally commits an act that injures such person's family or household member in violation of a valid protection

order issued by the Community shall be punished as provided in subsection (l)(1) of this section.

(Code 2012, § 10-89.3; Ord. No. SRO-364-2010, § 10-89.3, 4-28-2010; Ord. No. SRO-402-2012, § 10-89.3, 5-30-2012)

**Sec. 10-191. General rules applicable to court proceedings under this article.**

(a) A defendant convicted in any criminal proceeding hereunder is precluded from subsequently denying in any civil proceeding the essential allegations of the criminal offense of which he or she was convicted. For the purpose of this subsection, a conviction may result from a verdict, a plea of guilty, or a plea of no contest.

(b) The initiation of civil proceedings related to this section shall be commenced within four years after actual discovery of the cause of action.

(c) The standard of proof in civil actions brought pursuant to this section is the preponderance of the evidence.

(d) The office of the general counsel on behalf of the Community may, upon timely application, intervene in any civil action or proceeding brought under this section at its discretion. Upon intervention, the office of the general counsel may assert any available claim and is entitled to the same relief as if the office of the general counsel had initiated a separate action.

(e) In addition to the Community's right to intervene as a party in any action under this section, the office of the general counsel may appear as a friend of the court in any proceeding in which a claim under this section has been asserted.

(f) Any civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law. Civil remedies provided under this article are supplemental and not mutually exclusive.

(g) The senior services department, including any successor, shall maintain a registry containing such public records as are available identifying the names of persons and entities against

whom civil or criminal complaints have been filed with the court pursuant to this article, the dates of the conduct set forth in the complaint, the general nature of the complaint and the disposition of the complaint, if known. This information is available to the public on written request. A person or agency that distributes information in the registry in good faith is immune from civil liability or criminal penalty based on the release of the information. Any person or entity desiring to do so may present a written statement in his or her own behalf to the custodian of the record for distribution in response to all inquiries concerning such person or entity.

(h) The cause of action or the right to bring a cause of action pursuant to subsection (b) or (c) of this section shall not be limited or affected by death of the incapacitated person.

(Code 2012, § 10-89.4; Ord. No. SRO-364-2010, § 10-89.4, 4-28-2010; Ord. No. SRO-402-2012, § 10-89.4, 5-30-2012)

**Secs. 10-192—10-220. Reserved.**

## ARTICLE VI. COMMITMENT AND TREATMENT OF MENTALLY ILL PERSONS

### **Sec. 10-221. Policy.**

It is the policy of the Community to protect the health and welfare of its members and, to that end, to protect them from injurious actions of persons who suffer from mental disorders and who pose a danger to themselves or others. It is further the policy of the Community to adhere to the strictest standards of due process under the law to ensure the rights of persons suffering from mental disorders where such persons are forcibly restrained, detained, or involuntarily committed to a mental health institution.

(Code 1981, § 10-91; Code 2012, § 10-91; Ord. No. SRO-166-93, § 1, 2-3-1993; Ord. No. SRO-402-2012, § 10-91, 5-30-2012)

### **Sec. 10-222. Definitions.**

For the purposes of this article and unless context indicates otherwise, the following terms shall have the meanings herein ascribed to them:

*Danger to others* means behavior which constitutes a danger of inflicting substantial bodily

harm upon another person based upon a history of inflicting or attempting to inflict substantial bodily harm upon another person within 12 months preceding the petition as follows:

- (1) If the person has existed under conditions of being restrained by physical or pharmacological means, or of being confined, or of being supervised, which have deterred or tended to deter him or her from carrying out acts of inflicting or attempting to inflict bodily harm upon another person, the time limit of within 12 months preceding the hearing may be extended to a time longer than 12 months as consideration of the evidence indicates; or
- (2) If the bodily harm inflicted upon or attempted to be inflicted upon another person was grievous or horrendous, the time limit of within 12 months preceding the hearing may be extended to a time longer than 12 months as consideration of the evidence indicates.

*Danger to self* means behavior which constitutes a danger of inflicting substantial bodily harm upon oneself, including attempted suicide. Danger to self is not present if the hazards to self are restricted to those which may arise from conditions defined under grave disability.

*Detention* means the taking into custody of a person.

*Evaluation* means a professional analysis of a person's medical and psychological conditions conducted by a licensed physician or certified psychologist. Such evaluation may be assisted by a mental health or social worker familiar with mental health and human services.

*Gravely disabled* means a condition in which a person is unable to provide for his or her basic personal needs for foods, clothing and shelter as a result of a mental illness of a type which has developed:

- (1) Over a long period of time and has been of long duration;
- (2) As a manifestation of degenerative brain disease during old age; or

- (3) A manifestation of some other degenerative physical illness of long duration.

*Mental disorder.*

- (1) The term "mental disorder" means a substantial disorder of the person's emotional processes, thought cognition or memory which has led to or may lead to danger to self or others.
- (2) The term "mental disorder" does not mean:
  - a. Conditions which are primarily those of drug abuse, alcoholism or mental retardation, unless in addition to one or more of these conditions the person has a mental disorder.
  - b. The declining mental abilities that directly accompany impending death.
  - c. Character and personality disorders characterized by lifelong and deeply ingrained anti-social behavior patterns, including sexual behaviors which are abnormal and prohibited by law.

(Code 1981, § 10-92; Code 2012, § 10-92; Ord. No. SRO-166-93, § 8, 2-3-1993; Ord. No. SRO-402-2012, § 10-92, 5-30-2012)

**Sec. 10-223. Emergency apprehension.**

(a) A police officer may apprehend, without a warrant or order, a person who he or she has reasonable cause to believe poses an immediate danger to self or to others due to a mental disorder and who is apparently in need of immediate care and treatment.

(b) All persons so apprehended shall be transported to an appropriate detention facility. The Community police department shall notify immediately the Community mental health services director of the apprehension who shall direct an evaluation of the person by a licensed physician or certified psychologist within 72 hours of apprehension.

(Code 1981, § 10-93; Code 2012, § 10-93; Ord. No. SRO-166-93, § 2, 2-3-1993; Ord. No. SRO-402-2012, § 10-93, 5-30-2012)

**Sec. 10-224. Petition for evaluation; filing time.**

(a) Any licensed physician, certified psychologist, or Community social worker, or the Community prosecutor, either upon request by an interested party or upon their own volition, may petition for a court-ordered mental health evaluation by a licensed physician or certified psychologist of a person who is alleged to be, as a result of a mental disorder, a danger to self or to others or gravely disabled and who is incapable of or unwilling to undergo a voluntary evaluation.

(b) The petition for evaluation shall contain the following information:

- (1) The name and address of the person making the petition and his or her interest in the case.
- (2) The name of the person to be evaluated and, if known or readily discoverable, the address, age, marital status and occupation of the person, and the name and address of the person's nearest relative.
- (3) The facts which called the person to be evaluated to the attention of the petitioner.
- (4) The facts upon which the allegations are based, including statements by the petitioner of the specific nature of the danger or grave disability.
- (5) Other information that the court by rule or order may require.

(c) Where the recommendation made pursuant to the emergency or court-ordered evaluation of the person with a mental disorder is for commitment, such evaluation shall be filed immediately with the clerk of the court and within 72 hours of such filing the Community prosecutor shall file a petition for involuntary commitment of the mentally ill person.

(Code 1981, § 10-94; Code 2012, § 10-94; Ord. No. SRO-166-93, § 3, 2-3-1993; Ord. No. SRO-402-2012, § 10-94, 5-30-2012)

**Sec. 10-225. Detention for evaluation; hearing.**

(a) The court may order the apprehension, transportation and custodial detention of a person for the purpose of a mental health valuation if



from the petition for evaluation the court determines there is reasonable cause to believe that the person is likely to present a danger to self or others as a result of a mental disorder.

(b) A person detained under this section shall be informed of the reasons for his or her detention and that he or she must submit to a mental health evaluation.

(c) The court may order the custodial detention of a person until the date set for hearing on the petition for involuntary commitment of such person where a recommendation made pursuant to evaluation is for commitment.

(Code 1981, § 10-95; Code 2012, § 10-95; Ord. No. SRO-166-93, § 4, 2-3-1993; Ord. No. SRO-402-2012, § 10-95, 5-30-2012)

#### **Sec. 10-226. Hearing procedures.**

(a) *Time of hearing.* A hearing on the petition for involuntary commitment shall be held within 72 hours of the filing of such petition.

(b) *Right to attend and testify.* All persons to whom notice has been given may attend the hearing and testify. The judge may exclude from the hearing any person not necessary for the conduct of the proceedings.

(c) *Witnesses.* The proposed patient and his or her counsel and the petitioner may present and cross examine witnesses. Opinions of examiners shall not be admitted into evidence unless the examiner is present to testify and is subject to cross examination. The judge may sequester any witness or witnesses.

(d) *Conduct of hearing.* The hearing shall be governed by the rules of court and the rules of evidence as set forth in this Community Code of Ordinances, or alternatively in the federal rules of evidence. The judge shall admit all relevant evidence at the hearing. The court shall take and preserve an accurate tape recording of the hearing, which shall be subject to the provisions on confidentiality as set forth in section 10-228.

(e) *Standard of proof.* If the judge finds by clear and convincing evidence that the person, as a result of a mental disorder, is a danger to self, is a danger to others, is persistently or acutely

disabled or is gravely disabled and is in need of treatment, and is either unwilling or unable to accept voluntary treatment, the judge shall order such person to undergo inpatient treatment. The judge shall consider reasonable alternatives to commitment including, but not limited to, dismissal of the petition, voluntary outpatient care and informal admission to a treatment facility.

(f) *Order.* The judge shall direct the entry of judgment, and may find the facts specifically. The order shall be filed with the clerk of the court. Where the Community's court orders involuntary commitment for treatment, the order shall be filed with the clerk of the superior court of the State of Arizona. The maximum periods of inpatient treatment which the court may order are as follows:

- (1) 90 days for a person found to be a danger to self;
- (2) 180 days for a person found to be a danger to others;
- (3) 365 days for a person found to be gravely disabled.

(Code 1981, § 10-96; Code 2012, § 10-96; Ord. No. SRO-166-93, § 5, 2-3-1993; Ord. No. SRO-402-2012, § 10-96, 5-30-2012)

#### **Sec. 10-227. Patient's rights at hearings.**

(a) At all hearings conducted pursuant to this article, a person shall have the right to an analysis of his or her psychological condition by an independent evaluator who is either a licensed physician or certified psychologist selected by the patient or his or her legal counsel.

(b) Information, admissions, or confessions given by a person to a physician or mental health practitioner during the course of treatment or evaluation as ordered by the court cannot be used against the person at a trial where he or she is a criminal defendant charged with violating a tribal law.

(c) At all hearings conducted pursuant to this article, a person shall have the right to counsel. Where such person is indigent or cannot afford counsel, the court shall appoint an attorney to represent him or her.



(d) For purposes of transportation of persons to and from hearings, detention, and commitment under this article, the Community court shall be the temporary guardian of the person while in transit.

(Code 1981, § 10-97; Code 2012, § 10-97; Ord. No. SRO-166-93, § 6, 2-3-1993; Ord. No. SRO-402-2012, § 10-97, 5-30-2012)

**Sec. 10-228. Confidential records.**

All information and records obtained in the course of evaluation, examination or treatment shall be kept confidential and not as public records, except as the requirements of a hearing pursuant to this article may necessitate a different procedure. Information and records may only be disclosed to:

- (1) Physicians, health practitioners and providers of health, mental health or social and welfare services involved in caring for, treating or rehabilitating the person.
  - (2) Individuals to whom the person has given consent to have information disclosed.
  - (3) The judge to whom the case is assigned and the Community prosecutor.
  - (4) Individuals legally representing the person.
  - (5) Individuals authorized by a court order.
- (Code 1981, § 10-98; Code 2012, § 10-98; Ord. No. SRO-166-93, § 7, 2-3-1993; Ord. No. SRO-402-2012, § 10-98, 5-30-2012)

**Secs. 10-229—10-249. Reserved.**

**ARTICLE VII. DOMESTIC VIOLENCE**

**Sec. 10-250. Policy.**

(a) Domestic violence presents a clear and present danger to the mental and physical well-being of the members, residents, and others of the Community. This article will promote the healing of families and the prosecution of those who commit acts of domestic violence, while helping to protect victims of domestic violence through special procedures.

(b) It is the policy of the Community Council that violent behavior shall not be tolerated or excused, whether or not the abuser is intoxicated. The elders, adults and children of our Community are to be cherished and treated with respect.

(Code 1981, § 10-111; Code 2012, § 10-111; Ord. No. SRO-221-97, § A, 12-18-1996; Ord. No. SRO-402-2012, § 10-111, 5-30-2012; Ord. No. SRO-430-2014, § 10-250, 1-1-2014)

**Sec. 10-251. Jurisdiction.**

(a) The Community court shall exercise original jurisdiction over all persons within the territorial jurisdiction of the Community who are otherwise subject to the jurisdiction of the Community court. Nothing in this article shall be construed or read to diminish the jurisdiction of the Community.

(b) This Community hereby exercises special tribal criminal jurisdiction as a participating tribe to the fullest extent possible as defined within 25 USC § 1304 as presently constituted or hereafter amended. The Community's inherent authority to maintain law and order within its territory and jurisdiction includes the inherent power to exercise special tribal criminal jurisdiction.

(c) The Community court shall exercise special tribal criminal jurisdiction over any non-Indian who commits an offense of domestic violence, aggravated domestic violence or a violation of an order of protection pursuant to section 10-253 of this chapter.

(Code 1981, § 10-112; Code 2012, § 10-112; Ord. No. SRO-221-97, § B, 12-18-1996; Ord. No. SRO-402-2012, § 10-112, 5-30-2012; Ord. No. SRO-430-2014, § 10-251, 1-1-2014; Ord. No. SRO-571-2023, 9-20-2023)

**Sec. 10-252. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Counseling* means services provided by Social Services, Behavioral Health and other authorized

agencies that provide services for, but not limited to, alcohol and drug rehabilitation, marriage counseling, anger control, mental health and domestic violence.

*Court* means the Salt River Pima-Maricopa Indian Community Court.

*Dangerous instrument* means anything that under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing death or serious physical injury.

*Deadly weapon* means anything designed to cause lethal use, including a firearm.

*Domestic violence shelter* means a confidential location that provides emergency housing for victims of sexual assault, domestic violence or both.

*Dominant aggressor* means a person who initially has caused or has threatened to cause the most significant physical or emotional harm to another in his or her family or household, as compared to the other party involved, regardless of whether or not the other party was the first aggressor, depending on the past history with violent behavior, the relative ability to inflict harm and severity of injuries inflicted on each party.

*Family member* means a parent, child or person similarly situated to a parent or child.

*Firearm* means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, but does not include a firearm in permanently inoperable condition.

*Intensive Batterer Intervention Program* means any intensive counseling program that consists of an initial assessment, orientation, and at least 26 weeks of counseling sessions. The program shall address root causes of domestic violence and attempt to prevent participants from committing acts of domestic violence in the future.

*Law enforcement officer* means any police officer of the Salt River Pima-Maricopa Police

Department or other law enforcement officer having legal jurisdiction within the Community.

*Order of protection* means a court order granted for the protection of victims of domestic violence.

*Perpetrator* means a person who is alleged to have committed or has been convicted of committing an act of abuse or domestic violence on his or her family member or household member or intimate partner.

*Physical injury* means physical pain or the impairment of physical condition.

*Serious physical injury* means physical injury which involves substantial risk of death, extreme physical pain, protracted or obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

*Spouse or intimate partner* means adult or minor person related as any of the following:

- (1) A spouse or former spouse of the abuser;
- (2) A person who shares a child in common with the abuser;
- (3) A person who cohabits or has cohabitated as a spouse with the abuser;
- (4) A person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

*Strangling* means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

*Suffocating* means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

*Victim* means a person who has been subjected to domestic violence.

*Victim advocate* means a person, with specialized training, whose duties include, but are not necessarily limited to, assisting victims of crimes in understanding and working with the judicial system, providing support and assistance in obtaining related services that may be needed to ensure victims receive full benefits of the legal system for coping with issues of crime in their lives.

(Code 1981, § 10-113; Code 2012, § 10-113; Ord. No. SRO-221-97, § C, 12-18-1996; Ord. No. SRO-402-2012, § 10-113, 5-30-2012; Ord. No. SRO-430-2014, § 10-252, 1-1-2014)

### **Sec. 10-253. Offenses.**

(a) *Domestic violence.* A person commits domestic violence by:

- (1) Intentionally, knowingly, or recklessly causing any physical injury to a family member, spouse or intimate partner;
- (2) Intentionally placing a family member, spouse or intimate partner in reasonable apprehension of imminent physical injury; or
- (3) Knowingly touching a family member, spouse or intimate partner with the intent to injure, insult or provoke such person.

(b) *Aggravated domestic violence.* A person commits aggravated domestic violence if the person commits domestic violence defined in subsection (a) of this section under any of the following circumstances:

- (1) If the person causes serious physical injury to a victim;
- (2) If the person uses a deadly weapon or dangerous instrument against the victim;
- (3) If the victim is bound or otherwise physically restrained;
- (4) If the victim's capacity to resist is substantially impaired;
- (5) If the victim was pregnant at the time of the offense;

- (6) If a child was present at the time of the offense;
- (7) If the person commits the offense by strangling, suffocating, or attempting to strangle or suffocate the victim; or
- (8) If the person has two or more prior convictions for domestic violence or aggravated domestic violence within ten years.

(c) *Violation of an order of protection.* A person is in violation of an order of protection if the person knowingly:

- (1) Violates any provision of an order of protection; or
- (2) Causes any protected person under an order of protection to enter or leave the Community because of any act.

(d) *Failure to report or false reporting of domestic violence.*

- (1) A person commits failure to report domestic violence if that person is a mandatory reporter pursuant to section 10-257(a) and knowingly, intentionally or with malice fails to make a report of domestic violence.
- (2) A person commits false reporting of domestic violence if that person knowingly, intentionally or with malice makes a false report of domestic violence.

(e) *Disclosure of domestic violence shelter.* A person commits disclosure of a domestic violence shelter if said person knowingly, without the authorization of that domestic violence shelter, publishes, disseminates or otherwise discloses the location of any domestic violence shelter, or any place designated as a domestic violence shelter as defined in section 10-252.

(f) *Mandatory detention.* Any person arrested for a violation of section 10-253(a), 10-253(b) or 10-253(c) shall be detained in the custody of the Salt River Department of Corrections for a period not less than 24 hours regardless of when the initial appearance is held.  
(Ord. No. SRO-430-2014, § 10-253, 1-1-2014)

**Sec. 10-254. Sentencing and penalties.**

(a) Domestic violence first offense is a Class B offense and shall be punished by no less than a minimum sentence of 60 days imprisonment and a fine no less than \$500.00. The court may suspend any term of imprisonment and fines for the successful completion of a term of probation no less than one year. Pursuant to section 8-6(c) the court may impose a term of probation up to five years. The court shall order that the offender participate in counseling services pursuant to section 10-255(b). The court may also order that the offender participate in any other counseling services necessary to assist the offender in addressing any issues that may have contributed to the offense pursuant to section 8-6(b).

(b) Domestic violence second offense within ten years is a Class B offense and shall be punished by no less than a minimum sentence of 120 days imprisonment and a fine of not less than \$1,000.00 which shall not be deferred, suspended or eligible for parole. The court may suspend additional imprisonment for the successful completion of a term of probation no less than one year. Pursuant to section 8-6(c) the court may impose a term of probation up to five years. The court shall order that the offender participate in counseling services pursuant to section 10-255(b). The court may also order that the offender participate in any other counseling services necessary to assist the offender in addressing any issues that may have contributed to the offense pursuant to section 8-6(b).

(c) Aggravated domestic violence is a Class A offense and shall be punished by no less than a minimum sentence of one year imprisonment and a fine of not less than \$2,000.00 which shall not be deferred, suspended or eligible for parole. The court may suspend additional imprisonment for the successful completion of a term of probation no less than one year. Pursuant to section 8-6(c) the court may impose a term of probation up to five years. The court shall order that the offender participate in counseling services pursuant to section 10-255(b). The court may also order that the offender participate in any other counseling services necessary to assist the offender

in addressing any issues that may have contributed to the offense pursuant to section 8-6(b).

(d) Violation of order of protection is a Class C offense and shall be punished by no less than a minimum sentence of 30 days imprisonment which shall not be deferred, suspended, or eligible for parole.

(e) Failure to report or false reporting of domestic violence is a Class D offense.

(f) Disclosure of domestic violence shelter is a Class D offense.

(g) In order to determine the sentence of a person convicted of domestic violence or aggravated domestic violence, the court shall take judicial notice of prior certified convictions arising out of the Community Court as presented by the prosecutor or the probation department. The court shall also consider prior convictions from other jurisdictions.

(h) The court may not consider requests for parole or early release unless the offender is actively participating in an available batterer intervention program, as evidenced by written reports of the treatment provider and/or the program services coordinator of the Salt River Department of Corrections, and presented to the court by the offender.

(Code 1981, § 10-114; Code 2012, § 10-114; Ord. No. SRO-221-97, § D, 12-18-1996; Ord. No. SRO-402-2012, § 10-114, 5-30-2012; Ord. No. SRO-430-2014, § 10-254, 1-1-2014)

**Sec. 10-255. Treatment and counseling.**

(a) *Substance abuse treatment.* If the court finds that alcohol, drugs or other substance abuse was a contributing factor to the domestic violence offense of which a person is convicted, a mandatory chemical dependency evaluation shall be conducted. The court may require that the offender comply with any recommendations that arise from that evaluation.

(b) *Domestic violence counseling.* A person convicted of domestic violence and or aggravated domestic violence shall be ordered to participate in an intensive batterer intervention program.



(c) *Religious consideration.* Persons who practice a traditional Indian religion or any other religion may obtain additional counseling or ceremonies at their own expense, as appropriate to their sentence.

(d) *Cost for counseling or other treatment.* The court may order the person convicted of domestic violence to pay any cost for counseling or other treatment ordered pursuant to this section. (Code 1981, § 10-115; Code 2012, § 10-115; Ord. No. SRO-221-97, § E, 12-18-1996; Ord. No. SRO-402-2012, § 10-115, 5-30-2012; Ord. No. SRO-430-2014, § 10-255, 1-1-2014)

### **Sec. 10-256. Orders of protection.**

(a) Any person may seek relief by filing a petition, as a civil action, with the court alleging that the person has been a victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor(s) for which the person is the parent, guardian or legal custodian. Additionally with the consent of a victim, the victim advocate or Community prosecutor may apply for an order of protection on behalf of the victim. A victim advocate or Community prosecutor may accompany the petitioner when filing for an order of protection as well as attend any hearings pertaining to the order of protection. The petitioner may request an order of protection for the purpose of restraining a person from committing an act of domestic violence, without specifying irreparable harm as a causal factor.

(b) *Petition for order of protection.*

- (1) A petition for an order of protection shall contain a brief description of the incident(s) of domestic violence supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
- (2) A petition may be filed regardless of the existence or nonexistence of any other civil or criminal proceeding related to the allegations in the petition.
- (3) A petition for relief may be requested and granted regardless of whether or not

there is a pending lawsuit, complaint, petition, or other action by the Community, by another jurisdiction, or between the parties.

- (4) No filing fee shall be required for the filing of a petition under this section.
- (5) The petitioner, or the victim on whose behalf a petition has been filed, is not required to file an annulment, separation, or divorce as a prerequisite to obtaining an order of protection; but the petition shall state whether any other action is pending between the petitioner and the respondent.
- (6) Standard, simplified petition forms with instructions for completion shall be available upon request from the court clerk.
- (7) An emergency order of protection shall be available to petitioner or victim up to 72 hours from date of incident

(c) *Mandatory contents of orders of protection.* Orders of protection shall include the following:

- (1) Name of the victim. The victim's address shall be disclosed to the court for purposes of service but the address shall not be provided to anyone except to law enforcement or prosecutorial personnel as necessary for criminal prosecution. The court shall maintain a separate confidential register of names and addresses of petitioners;
- (2) Name, current address, and last known address of the defendant and all possible locations where he or she may be contacted for service, if known;
- (3) Specific statement made under oath, including descriptions and details of the domestic violence alleged;
- (4) The relationship between the parties pursuant to sections 10-252 (family member), 10-252 (perpetrator), and 10-252 (spouse) and whether there is a pending action between the parties for annulment, legal separation or dissolution of marriage;



- (5) The desired relief and other relief, as the court deems appropriate;
- (6) Restraining the respondent from committing any acts of domestic violence;
- (7) Restraining the respondent from harassing, stalking, threatening, annoying, telephoning, otherwise contacting the petitioner, directly or indirectly, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;
- (8) A finding that respondent represents a credible threat to the physical safety of petitioner or any named family or household members and explicitly prohibits the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury;
- (9) Restraining respondent from receiving, possessing or transporting a firearm or ammunition within the Community;
- (10) Restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, altering or damaging of joint or marital property except as authorized by the court, and requiring that an accounting shall be made to the court for all authorized transfers, encumbrances, disposition, and expenditures;
- (11) Information of all prior orders given by the court relating to the current domestic matter that may be affected by the order of protection; and
- (12) The following statement: "Warning: This is an official court order. If you disobey this court Order, the Court may find you in contempt of court. You may also be arrested and prosecuted for the willful disobedience of an order lawfully issued by the Court and any other crime you may have committed in disobeying this order. Nothing the petitioner does invalidates this order. Only a judge of the Court can quash or modify this order;"

(13) Any other condition or information as the court deems necessary or proper.  
(Code 1981, § 10-119; Code 2012, § 10-119; Ord. No. SRO-221-97, § I, 12-18-1996; Ord. No. SRO-402-2012, § 10-119, 5-30-2012; Ord. No. SRO-430-2014, § 10-256, 1-1-2014)

#### **Sec. 10-257. Reporting domestic violence.**

(a) *Mandatory reporting requirements.* Any physician, resident on a hospital staff, physician assistant, pharmacist, dentist, nurse or emergency medical technician shall report or cause a report to be made to the local police department of each person who is treated or who requests treatment when the reporting person has a reasonable belief that the person receiving or requesting treatment is a victim of domestic violence.

(b) *Report to law enforcement.* Such report shall be made as soon as practicable after the treatment is rendered and shall contain the name and address of the injured person, if known, the nature and extent of the injury and the circumstances under which treatment is rendered.

(c) *Immunity for reporting.* Any individual who makes a report pursuant to this section is immune from liability for the report, provided that the person or other individual acted in good faith and without gross or wanton negligence.  
(Ord. No. SRO-430-2014, § 10-257, 1-1-2014)

#### **Sec. 10-258. Reserved.**

**Editor's note**—Ord. No. SRO-571-2023, adopted Sep. 20, 2023, repealed § 10-258, which pertained to special domestic violence criminal jurisdiction and derived from Ord. No. SRO-543-2022, adopted Feb. 23, 2022.

#### **Secs. 10-259—10-263. Reserved.**

### **ARTICLE VIII. GRANDPARENTS' RIGHTS\***

#### **Sec. 10-264. Purpose; definitions.**

(a) The purpose of this article is to preserve the opportunity of children who are enrolled members of the Community, or eligible for

**\*Editor's note**—Ord. No. SRO-464-2015, adopted May 27, 2015, set out new provisions numbered as Art. VIII. The former Art. VIII, §§ 10-300—10-307, has been renumbered as Art. IX at the discretion of the editor.

membership in the Community, and who are within the jurisdiction of the Community Court, to form and maintain meaningful relationships with grandparents who play an important role in their care, development, education and nurturance. The goal is also to promote and encourage children to have ties to their grandparents, not just in their interest but in the Community's interest as well. The tie or connection is more than just a relationship with the grandparent, for some children it may be their only connection to their heritage and culture.

(b) Pursuant to this article, a grandparent may file a petition for paternity and/or visitation.

(c) *Grandparent* means an adult family member who is recognized according to the customs and traditions of the Salt River Pima-Maricopa Indian Community as being of sufficient relation to provide the nature of care common in a grandparent-grandchild relationship for a child who is within the jurisdiction of the Community Court. These family members include, but are not limited to, a biological grandparent, aunt, uncle, cousin, or step-grandparent. A grandparent relationship may be recognized even if the child's biological father has not established paternity.

(d) *Personal jurisdiction* refers to a court's authority over the parties to a case, which allows the court to make rulings on the case and to enforce its decision upon a party to the suit.

(e) *Visitation plan* refers to a grandparent's physical access to a child at specified days and times.  
(Ord. No. SRO-464-2015, 5-27-2015)

**Sec. 10-265. Jurisdiction; notice; service.**

(a) Personal jurisdiction over an individual under this article may be established pursuant to section 10-3.

(b) Notice to persons outside this Community shall be made pursuant to section 10-3.

(c) Service of subsequent documents shall be made pursuant to section 10-3.

(d) Service and summons shall be made pursuant to the Community's Rules of Civil Procedure. (Ord. No. SRO-464-2015, 5-27-2015)

**Sec. 10-266. General provisions; confidentiality.**

(a) *Generally.* The general public shall be excluded from the proceedings under this article. Only the parties and their counsel may attend the hearing. However, other persons determined to be appropriate by the court shall be admitted or the parties may consent to the interested person's attendance. Witnesses are to remain outside the courtroom until they are called to testify. After a witness has testified, he or she will be excluded and/or excused from the courtroom unless the parties have no objections to that person's presence in the courtroom.

(b) If the child is a dependent ward of the court, the grandparent shall provide evidence in the petition that the grandparent has attempted to resolve visitation with the Community's Social Services Department. The court shall not proceed with the petition for grandparents' rights until such evidence has been provided.

(c) If the grandparents' rights proceeding has been joined with a dependency action, the grandparent shall be allowed to intervene in the dependency action only for the limited purpose of addressing their petition for grandparents' rights.

(d) If the grandparents' rights proceeding has been joined with a dependency action, the court shall excuse the grandparent from the courtroom until such time as the petition for grandparents' rights is being heard or allow the grandparents to remain in the courtroom pursuant to subsection (a) above.

(e) *Confidentiality.* The records filed under this article shall be confidential. Only parties to the case may obtain copies pursuant to section 11-28.

(f) Any party may use petitions or court documents other than those that may be provided pursuant to this article if the documents are substantially similar and contain the information required under this article.  
(Ord. No. SRO-464-2015, 5-27-2015)

**Sec. 10-267. Petition for grandparents' rights.**

(a) A grandparents' rights proceeding shall be governed by the Community's Rules of Civil Procedure unless otherwise stated within this article.

(b) A grandparent seeking to obtain visitation rights under this article may petition for these rights in any of the following types of court cases:

- (1) The same action/case number in which the parents had their marriage dissolved or in which the court determined paternity; or
- (2) The same action in which the court found the child to be a dependent ward of the Community Court; or
- (3) File a separate civil case, if the child resides within the Salt River Pima-Maricopa Indian Community and no previous action has been filed or the court entering the decree of dissolution or determination of paternity no longer has authority over the matter.

(c) *Contents of petition.* A petition for establishment of grandparents' rights shall contain the following, and if unknown, the petition should identify what information is unknown:

- (1) For each parent, child, legal guardian and grandparent, provide the name, date of birth, address and whether such address is within the geographical boundaries of the Community, and tribal affiliations if applicable;
- (2) The basis for the Court's authority to hear the case pursuant to section 10-3;
- (3) The grandparents' relationship to the child and what the grandparent is requesting the court to order;
- (4) Any previous requests for visitation by the grandparent to the child's parent(s) or legal guardian and the result of those requests;
- (5) If the child is a dependent ward of the court, any efforts made by the grandparent to establish visitation through the

SRPMIC Social Services Department and any visits that social services established;

- (6) The current or proposed visitation plan; and
- (7) A statement of whether any of the following types of proceedings involving the parents or the child are pending or have taken place in any court or administrative agency and, if so, the date, case number, and name and location of the court or agency:
  - a. Child custody proceeding, including those in a divorce proceeding;
  - b. Paternity establishment or disestablishment of paternity proceeding, including those in a divorce proceeding;
  - c. Juvenile dependency, incorrigibility, or delinquency proceeding;
  - d. Proceeding requesting a domestic violence protective order or no contact order; or
  - e. Proceeding requesting a restraining order involving the child or a parent or legal guardian.

(Ord. No. SRO-464-2015, 5-27-2015)

**Sec. 10-268. Grandparents' rights hearing; standards; order.**

(a) *Procedure.* The court shall schedule a hearing on the petition. The hearing shall be held within 60 days of the petition being filed but may be extended for good cause shown. A copy of the petition filed under this article shall be served on each of the child's parents, and any legal guardian(s), together with a notice of hearing that specifies that evidence and testimony will be taken at the hearing and that the court may make a visitation order at the close of the hearing.

(b) The court may order visitation rights if it finds that visitation would be in the best interest of the child. In making this determination, the court shall take into account the following factors:

- (1) The length and quality of the relationship between the grandparent and the child;

- (2) The length and quality of the relationship between the grandparent and each of the child's parents and/or legal guardian;
- (3) The length and quality of each of the parent's and/or legal guardian's relationship with the child, and the parent's and/or guardian's ability to provide appropriate care to the child without visitation by the grandparent;
- (4) The length and quality of relationship between the child's parents;
- (5) If the court determines the child is of sufficient age and maturity to express his or her opinions, the court may take into account the child's wishes. The child's wishes may be reported by the social worker and/or guardian ad litem if the minor child has a social worker or guardian ad litem or other means such as an in camera interview with a minor child age 14 years or above. On motion of any party, the court may, in its discretion, conduct an in camera interview with a minor child who is younger than 14. An in camera interview shall be conducted pursuant to section 11-176(c).
- (6) The benefit or harm to the child if the court granted visitation rights to the grandparent, including the child's physical and mental state and his or her ability to develop a positive relationship with the grandparent.
- (7) Any safety concerns that would be harmful to the child's well-being.
- (8) The amount of visitation time requested and the potential negative impact that visitation would have on the child's regular activities.
- (9) The reason and motivation of the grandparent in seeking visitation.
- (10) The reason and motivation of the person denying visitation.
- (11) The benefit of maintaining an extended family relationship if one or both of the child's parents or legal guardian is

deceased or one or both of the child's parent or legal guardian has been missing for at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location cannot be determined and the parent has been reported as missing to a law enforcement agency.

- (12) Any other facts the court deems appropriate.

(c) If possible and appropriate, the court shall order visitation by the grandparent to occur when the child is residing or spending time with the parent through whom the grandparent claims a right of access to the child. If a parent is unable to have the child reside or spend time with that parent, the court shall order visitation by the grandparent to occur when that parent would have had that opportunity.

(d) The grandparent shall have rights of reasonable visitation unless the Court finds that the visitation would reasonably endanger the child or significantly impair his or her emotional development.

- (1) The court may order restrictions on the visitations, such as requiring that the visits to be supervised.

(e) Order. Within 30 days of the hearing, the court shall issue an order. All orders shall be in writing and shall specify to the greatest extent possible the rights, if any, that are awarded. (Ord. No. SRO-464-2015, 5-27-2015)

**Sec. 10-269. Parental rights previously terminated; remarriage of surviving parent; cost of visitation.**

(a) *Parental rights previously terminated.* If the parental rights of one or both parents have been terminated, a grandparent may be given reasonable visitation rights if the court determines it would be in the best interest of the child.

- (1) If the child was born out of wedlock and the parental rights of the father have been terminated, the parents of the father



shall not have a right of visitation authorized by this article unless all of the following are true:

- a. The court determines that a previous relationship existed between the grandparent and the child, unless there is good cause for why a relationship could not have existed.
  - b. The court determines that visitation rights would be in the best interest of the child.
- (2) If the child is born out of wedlock and the parental rights of the mother have been terminated, the parents of the mother shall not have a right of visitation authorized by this article unless all of the following are true:
- a. The court determines that a previous relationship existed between the grandparent and the child, unless there is good cause for why a relationship could not have existed.
  - b. The court determines that visitation rights would be in the best interest of the child.

(b) *Remarriage of surviving parent.* If one natural parent is deceased and the surviving natural parent remarries, any subsequent adoption proceedings shall not terminate any court-granted grandparents' rights belonging to the parents of the deceased natural parent unless said termination of grandparents' rights is ordered by the court after opportunity to be heard, and the court determines termination to be in the best interest of the child.

(c) *Costs of visitation.* Any transportation costs or other costs arising from visitation ordered pursuant to this article shall be paid by the grandparent requesting the visitation.  
(Ord. No. SRO-464-2015, 5-27-2015)

#### **Sec. 10-270. Establishment of paternity; full faith and credit.**

(a) A grandparent may file a petition for paternity by standing in loco parentis (in the place of a parent) to the child even if the parent's

rights have been terminated. The grandparent may establish paternity pursuant to chapter 10.

(b) *Full faith and credit.* Orders of state courts and other tribal courts involving grandparent visitation rights to children over whom the court could assume jurisdiction shall be recognized and given full faith and credit if:

- (1) The issuing court had jurisdiction over the parties and the subject matter;
- (2) The procedures specified in the Indian Child Welfare Act, if applicable, were properly followed; and
- (3) Due process and other rights provided by the Indian Civil Rights Act were accorded all interested parties.

(Ord. No. SRO-464-2015, 5-27-2015)

#### **Secs. 10-271—10-299. Reserved.**

### **ARTICLE IX. OFFICE OF PUBLIC FIDUCIARY\***

#### **Sec. 10-300. Purpose.**

(a) *Establishment of office.* The purpose of this article is to establish the office of the public fiduciary ("office") to manage the financial and/or welfare of certain Community members determined by order of the Community court to be minor wards or incapacitated adults in need of a guardian or conservator.

(b) *Conservatorship division.* The office's conservatorship division will be a division of the Community's finance department and will serve as conservator upon appointment by the Community court to protect the real property and financial assets of certain Community members, and to act in these individuals' best interest when there is no other person or entity willing or able to act in that capacity.

(c) *Guardianship division.* The office's guardianship division will be a division of the Community's health and human services department and will serve as guardian upon appointment by the Community court to protect the

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\***Editor's note**—See the editor's note to Art. VIII.



health, welfare, and educational needs of certain adult Community members, and to act in these individuals' best interest when there is no other person or entity willing or able to act in that capacity.

(Ord. No. SRO-444-2014, § 10-300, 7-2-2014, eff. 5-1-2014)

#### **Sec. 10-301. Scope.**

(a) *The office.* This article establishes the office and governs its activities, including other necessary Community departments and staff that provide assistance and guidance to the office, when necessary.

(b) *Effective date.* This article shall be effective as of May 1, 2014. Nothing in this article shall nullify or affect any previous judicial or administrative actions pertaining to the appointment of a conservator or guardian.

(Ord. No. SRO-444-2014, § 10-301, 7-2-2014, eff. 5-1-2014)

#### **Sec. 10-302. Definitions.**

*Agent* means a person or entity authorized to act on behalf of another, typically pursuant to a power of attorney or other written legal instrument.

*Community court* means the Court of the Salt River Pima-Maricopa Indian Community.

*Conservator* means an appointment of the office's conservatorship division by the Community court, assigned by the Finance director, to manage financial assets, money and/or property for a ward.

*Guardian* means an appointment of the office's guardianship division by the Community court, assigned by the health and human services director, to manage the person's health, welfare and educational needs.

*Incapacitated* means any adult person who by order of the Community court is determined to be impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent

that the adult person lacks sufficient understanding or capacity to make or communicate responsible decisions for themselves.

*Office* means the office of the public fiduciary.

*Routine health care* means any medical, dental or behavioral health care, including the prescribing of medication recommended by a licensed medical provider to improve or maintain the health, welfare, or personal comfort of an adult ward.

*Trustee* means a person who holds property in a trust.

*Ward* means a protected person for whom a guardian or conservator has been appointed.

(Ord. No. SRO-444-2014, § 10-302, 7-2-2014, eff. 5-1-2014)

#### **Sec. 10-303. The office of the public fiduciary.**

(a) *Delegation of appointment.* The finance director and the health and human services director may appoint employees to conduct the affairs of the office as necessary within their respective areas of responsibility. Any appointment or change in appointment made by the finance director or by the health and human services director shall be in writing in the form of a letter of appointment, with notice to the Community court.

(b) *Conservatorship responsibilities.* The finance director shall oversee and be responsible for the conservatorship division of the office, and will organize the office in a manner that allows the staff to effectively and efficiently conduct the affairs of the office while acting in the best interest of the ward.

(c) *Guardianship responsibilities.* The health and human services director shall oversee and be responsible for the guardianship division of the office, and will organize the office in a manner that allows the staff to effectively and efficiently conduct the affairs of the office while acting in the best interest of the adult ward.

(d) *Immunity.* Persons who serve in an advisory capacity to the fiduciary program and employees of the office, and employees of the Community

court or other Community employees who participate in the fiduciary program are immune from civil liability for actions taken in good faith while acting within the scope of their authority. (Ord. No. SRO-444-2014, § 10-303, 7-2-2014, eff. 5-1-2014)

#### **Sec. 10-304. Duties and standards.**

(a) *Order of the court.* The office shall only act as a conservator or guardian upon written appointment by the Community court.

- (1) *Adult wards.* In regards to an adult, the Community court must, in writing based on clear and convincing evidence, determine that an adult meets the definition of incapacitated and therefore unable to take care of themselves and/or their property before appointing the office as conservator or guardian.
- (2) *Minor wards.* In regard to minors, the office shall only serve in the role of a conservator, and not as guardian for a minor. The office shall serve in the role of conservator when the Community court in writing makes a determination based upon clear and convincing evidence that the minor's best interest will be served by appointing a conservator and that the minor's parents or guardians are not able to manage the minor's financial resources in a reasonable and prudent manner.

(b) *Standard of care.* The office shall administer as a prudent person would, and in satisfying this standard, the fiduciary shall exercise reasonable care, skill and caution to make decisions that are in the best interest of the ward.

(c) *Responsibilities of department directors.* The finance director and health and human services director for their respective divisions shall ensure the following:

- (1) That there is a written code of conduct to guide all staff who are employed within the office;
- (2) That written information to the ward and all persons entitled to notice regard-

ing the status of office being appointed conservator and/or guardian is provided;

- (3) That all employees of the office receive annual training regarding their responsibilities and duties as conservator or guardian;
  - (4) That all persons employed by the office acting in the capacity of a public fiduciary or guardian are bonded or appropriately covered under the Community's insurance policy;
  - (5) That no employee of the office has ever been convicted of a crime that involves violence, a felony; or found civilly liable for any action that involved fraud, misrepresentation, material omission, misappropriation, theft or conversion; and
  - (6) That each employee is suitable to serve in the role of a conservator or guardian.
- (Ord. No. SRO-444-2014, § 10-304, 7-2-2014, eff. 5-1-2014)

#### **Sec. 10-305. Office as conservator.**

(a) *Minor and adult wards.* The office may serve as a conservator for both minors and adults.

(b) *Trustee for property.* The appointment of the office as a conservator for a person vests in the conservator, title as trustee to all property or to the property specified in the order of appointment, presently held or thereafter acquired, including title to any property previously held for the ward by custodians or agents.

(c) *Limited conservatorship.* An order specifying that only part of the property of the ward vests in the conservator creates a limited conservatorship, and a Community court order declaring a limited conservatorship must expressly declare the specific responsibility of the conservator under a limited conservatorship.

(d) *Retention of rights.* The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal, Community or other statute or rule, regulation, insurance policy, pension plan, contract, will or

trust instrument, imposing restrictions upon or penalties for transfer or alienation by the ward of the person's rights or interest.

(e) *Property as nontransferable.* Unless the Community court order states otherwise, the interest of the ward in property vested in a conservator is not transferable or assignable by the ward.

(f) *Not subject to garnishment.* Property vested in a conservator by this section and the interest of the ward in that property is generally not subject to levy, garnishment or similar process.

(g) *Court-appointed powers.* A conservator has all the powers conferred herein and any additional powers conferred by law or the Community court.

(h) *Authority in routine matters.* On appointment by the Community court as conservator, the conservatorship division of the office will act reasonably in efforts to accomplish the purpose of the appointment, without additional Community court authorization or confirmation for these routine matters:

- (1) Collect, hold, manage and retain assets of an estate including land, until, in the conservator's judgment, disposition of the assets should be made;
- (2) Receive additions to the estate;
- (3) Invest and reinvest estate assets;
- (4) Deposit estate funds in a federally insured financial institution;
- (5) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements and raze existing or erect new party walls or buildings;
- (6) Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
- (7) Pay or contest any claim, settle a claim by or against the estate or the ward by compromise, arbitration, or otherwise;

- (8) Pay taxes, assessments, fees and other expenses incurred in the collection, care, administration and protection of the estate;
- (9) Pay any sum necessary to the ward or dependent of the ward;
- (10) Employ persons, including attorneys, auditors, investment advisors or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of administrative duties, act upon their recommendation without independent investigation and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- (11) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties;
- (12) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator;
- (13) Keep detail records of the wards assets and expenses; and
- (14) Initiate and complete the probate process on behalf of a deceased ward for whom they were appointed conservator if such a proceeding has not been initiated by an heir within one year of the ward's death.

(i) *Accounting to the Community court.*

- (1) *Initial accounting.* Within 90 days of being appointed conservator, the office shall prepare and file with the Community court a complete inventory of the assets of the ward. This initial accounting shall be examined and approved by the Community court.
- (2) *Final accounting.* Upon resignation or removal of a conservator or the death of the ward, the office must provide a final accounting report to the Community court that includes a complete inventory of the assets of the ward, and all information

that would be in the annual accounting to the Community court. This final accounting shall be examined and approved by the Community court.

- (3) *Annual accounting to the Community court.* From the date of appointment, the office is required to provide an annual financial accounting to the Community court of the following: 1) a statement of assets at the beginning and ending of the reporting year, 2) income received during the year, 3) disbursements for the support of the ward, and 4) any other expenses incurred. This annual accounting shall be examined and approved by the Community court.

(j) *Establishment of trust, court approval.* When the conservatorship division of the office determines that establishment of a trust, created pursuant to Section 1917(d)(4)(A) or (B) of the Social Security Act, on behalf of a ward is in the best interests of the ward, the office may file a petition with the community court. The petition shall set forth necessary facts and shall state why establishment of the trust is in the best interests of the ward. The petition shall attach a copy of the trust to be executed. After a hearing and upon determining that the establishment of a trust is in the best interests of the ward, the court shall sign a written order authorizing the conservatorship division of the office to execute the trust on behalf of the ward. (Ord. No. SRO-444-2014, § 10-305, 7-2-2014, eff. 5-1-2014; Ord. No. SRO-474-2015, 9-9-2015)

#### **Sec. 10-306. Office as guardian.**

(a) *Authority in routine matters.* On appointment by the Community court as guardian, the guardianship division within the office will act reasonably in efforts to accomplish the purpose of the appointment, without additional Community court authorization or confirmation for these routine matters:

- (1) Make provision for the care, comfort and maintenance of the ward, including the providing of food, clothing, shelter, educa-

tion, and routine health care when needed including both medical and behavioral health care at an in-patient facility;

- a. Consent to medical treatment to enable a ward to receive routine reproductive health examinations and non-permanent prescription contraceptive medication as well as dialysis treatment including invasive procedures;
- b. Consent to medical or behavioral health care treatment that may be necessary in emergency situations, that is not routine, to preserve the life or well-being of the ward (in these situations, the guardian will notify the Community court as soon as possible but not later than the following business day of the action taken pursuant to this section);

- (2) Take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of the ward is in need of protection; and
- (3) Provide notice to the court within five business days of any in-patient medical or behavioral health treatment.

(b) *Least restrictive setting.* A guardian shall find the most appropriate and least restrictive setting for the ward consistent with the ward's needs, capabilities and financial ability.

(c) *Ward's desires.* When appropriate, the office will make decisions concerning the ward based on the ward's values and wishes.

(d) *Reserved powers of the Community court.* The office is not authorized to do the following on behalf of the ward except upon order of the court:

- (1) Make any end of life decision;
- (2) With the exception of dialysis treatment, consent or give approval for any non-emergency invasive or surgical procedure;
- (3) Consent to invasive or permanent contraception or termination of a pregnancy;



- (4) Consent to a marriage; or
- (5) Consent to the adoption of a child.

(e) *Court-appointed powers.* A guardian has all the powers conferred herein and any additional powers conferred by the Community court.

(f) *Extraordinary event.* The guardian will notify the Community court as soon as possible regarding any extraordinary situation or event that impacts the ward's health or welfare (for example, if the ward is incarcerated or charged with a crime).

(g) *Report to the Community court.*

- (1) *Initial report.* Within 90 days of being appointed guardian, the office shall prepare and file a report informing the Community court of the physical and mental condition of the ward, the condition of the ward's physical residence, and any unmet needs that the ward may have. This initial report shall be examined and approved by the Community court.
- (2) *Final report.* Upon resignation or removal of a guardian or the death of the ward, the office must provide a final report to the Community court that includes the physical and mental condition of the ward prior to death, and the conditions of the ward's physical residence. This final report shall be examined and approved by the Community court.
- (3) *Annual report.* From the date of appointment, the office is required to provide an annual report informing the Community court about the following:
  - a. Ward's physical and mental condition;
  - b. The condition of the ward's physical residence; and
  - c. Whether there is a continuing need for the ward to have a guardian.

(Ord. No. SRO-444-2014, § 10-306, 7-2-2014, eff. 5-1-2014)

### **Sec. 10-307. Annual audit.**

On an annual basis, an independent auditor will review the office for compliance in regard to court orders, Community and other applicable laws, policies and standards. In the conservator setting, the annual audit will ensure financial accountability and responsible management of the ward's assets by the conservator. In the guardian setting, the audit will ensure that the guardian has acted reasonable and appropriate in managing the ward's health and welfare. The audit shall be provided to the court of the Community court, the Community manager and council.

(Ord. No. SRO-444-2014, § 10-307, 7-2-2014, eff. 5-1-2014; Ord. No. SRO-516-2020, 3-4-2020)

### **Secs. 10-308—10-349. Reserved.**

## **ARTICLE X. CHILD CUSTODY**

### **Sec. 10-350. Purpose.**

The purpose of this chapter is to enumerate guidelines governing the establishment of child legal decision-making authority and parenting time to protect the best interest of all children under the jurisdiction of the Salt River Pima-Maricopa Indian Community Court. The Community has a compelling interest in promoting and maintaining the health and well-being of children and families by establishing a child legal decision-making authority and parenting time arrangement that are in the best interest of the children.

(Ord. No. SRO-562-2023, 8-16-2023)

### **Sec. 10-351. Definitions.**

*Administrative agency* means an agency, board, commission or department authorized by law to exercise rule-making powers or to adjudicate contested cases, whether created by constitutional provision or Council enactment.

*Court* means Salt River Pima-Maricopa Indian Community Court.



*Ex parte communication* means a communication between counsel or party and the court when opposing counsel or party is not present regarding a pending issue before the court.

*Equal parenting time* means that each parent has responsibility for the child for 50 percent of the time during the scheduled time as court ordered. Each parent during their scheduled parenting time is responsible for providing the child with food, clothing and shelter and may make routine decisions concerning the child's care.

*In loco parentis* means a person who has been treated as a parent by a child and who has formed a meaningful parental relationship with a child for a substantial period of time.

*Joint legal decision-making* means both parents share decision-making and neither parent's rights or responsibilities are superior except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.

*Legal decision-making* means the legal right and responsibility to make all nonemergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions. For the purposes of interpreting or applying any international treaty, federal law, a uniform code or the statutes of other jurisdictions of the United States, legal decision-making means legal custody.

*Legal parent* means a biological or adoptive parent whose parental rights have not been terminated or suspended. Legal parent does not include a person whose paternity has not been established pursuant to section 10-9.

*Mediator* means a person trained in negotiations to help opposing parties reach an agreement. For the purposes of this article, a mediator is an individual who has experience or significant training in conducting mediation and does not work for the Community court.

*Parenting time* means the schedule of time during which each parent has access to a child at specified times. Each parent during their scheduled parenting time is responsible for provid-

ing the child with food, clothing and shelter and may make routine decisions concerning the child's care.

*Rebuttable presumption* means an assumption of fact is accepted by the court until disproved. All presumptions can be characterized as rebuttable. It is an assumption that is made in the law that will stand as a fact unless someone comes forward to contest it and prove otherwise. For example, in adoption law, it is most commonly used to "presume" that if a woman is married when she gives birth to a child, that her husband is its father. This "presumption" will stand as a legal fact unless it is contested and proven to be wrong.

*Sole legal decision-making* means one parent has the legal right and responsibility to make major decisions for a child.

*Substantial change in circumstance* means when a change occurs that is significant enough to warrant intervention by the court. It is not simply when a change occurred.

*Substantial risk* means the risk was so great that it was almost certain to materialize if nothing was done.

*Temporary* means that the act or actions are for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration.

*Visitation* means a schedule of time that occurs with a child by someone other than a legal parent.  
(Ord. No. SRO-562-2023, 8-16-2023)

## **Sec. 10-352. General provisions; jurisdiction.**

(a) Any party may use petitions or court documents other than those that may be provided pursuant to this article if the documents are substantially similar and contain the required information as set forth in this article.

(b) Grandparents' rights is outlined pursuant to article VIII of this chapter.

(c) Any child legal decision-making authority or parenting time action shall be governed by the Community Civil Rules of Procedure unless otherwise provided.

(d) Before it conducts a proceeding concerning legal decision-making or parenting time, including a proceeding to determine the legal decision-making or visitation of a nonparent, the court first must confirm its authority to do so to the exclusion of any other state, Indian tribe or foreign nation.

(e) Personal jurisdiction over an individual under this article may be established where the parties, including the subject minor child, are any of the following:

- (1) A member of the Community;
- (2) Domiciled or residing within the Community;
- (3) An individual who consents to the jurisdiction of the court by one of the following:
  - a. Filing an action with the court;
  - b. Knowingly and voluntarily giving written consent to the jurisdiction of the court;
  - c. Entering notice of appearance before the court in an action without concurrently preserving the defense of lack of personal jurisdiction;
  - d. Entering notice of appearance before the court in an action without filing a motion to dismiss for lack of personal jurisdiction within 30 calendar days of entering the notice of appearance; or
  - e. Appearing in an action before the court without asserting the defense of lack of personal jurisdiction.
- (4) Jurisdiction may also be established pursuant to section 4-1(d) if the following are true:
  - a. No other court outside of the SRPMIC has jurisdiction or when otherwise available jurisdiction has

declined to exercise jurisdiction on the ground that the Community is the more appropriate forum;

- b. At least one of the parties resides in the Community; and
- c. It is in the child's best interest that the court assume jurisdiction.

(f) The fact that the petitioner, child, or both, have never been residents of the Community shall not bar the proceedings.

(g) After the finding of jurisdiction, the court shall retain jurisdiction over the matter for the purpose of entering such order and any further orders as changing circumstances of the parties may in fairness require.

(h) Basis for jurisdiction over nonresident. In a proceeding to establish legal decision-making or parenting time under this article, the court may exercise personal jurisdiction over a nonresident individual if any of the following is true:

- (1) The individual is personally served within this Community;
  - (2) The individual submits to the jurisdiction of this Community by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - (3) The individual previously resided in the Community; or
  - (4) There is any other basis consistent with the constitutions of this Community and the United States for the exercise of personal jurisdiction.
- (i) Notice to persons outside this Community.
- (1) Notice required for the exercise of jurisdiction, if a person is outside this Community, shall be given in a manner prescribed by the law of this Community for service of process. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective. If notice is done by publication,

publication must be done in the county that the respondent last resided in and in the Community.

- (2) Proof of service shall be made in the manner prescribed by this Community.

(j) Notice to respondent(s). Notice is not required if the respondent submits to the jurisdiction of the court. A respondent submits to the jurisdiction of the court:

- (1) By filing a responsive pleading; or
  - (2) Appearing at any hearing.
- (Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-353. Petition for child legal decision-making authority and/or parenting time.**

(a) *Generally.* A child legal decision-making authority or parenting time proceeding may stand alone as a separate proceeding or it may be joined with an action to determine divorce, annulment, paternity, child support, or any other civil action in which child legal decision-making authority or parenting time is an issue.

(b) *Requestors.* The following persons may request legal decision-making or parenting time under the following circumstances:

- (1) A parent in any proceeding for marital dissolution, legal separation, annulment, paternity or modification of an earlier decree or judgment;
- (2) A person other than a parent, by filing a petition for third party rights under section 10-369; or
- (3) Any court appointed guardian ad litem with an interest in determining child legal decision-making authority or parenting time.

(c) *Contents of petition.* A petition for establishment of child legal decision-making authority or parenting time shall contain:

- (1) The identifying information of the parties, child(ren), and other relevant individuals:
  - a. Regarding parents, child(ren), petitioner, and all others who have

established legal rights to legal decision-making authority, visitation, or support of the child(ren), such information shall include at a minimum:

1. Name;
2. Date of birth;
3. Address;
4. Whether the address is within the exterior boundaries of the Community; and
5. Tribal affiliation.

- b. Regarding only petitioner, respondent, and child(ren):

1. Last four digits of his or her social security number.

- c. If any of the identifying information is unknown, the petition should state each specific category of information that is unknown.

- d. Any information that is considered sensitive data should be set forth in a separate "sensitive data form."

- (2) The basis for the court's jurisdiction;
- (3) The legal decision-making authority arrangement that is being requested or that the parties have agreed upon;
- (4) A proposed parenting time plan, if any, or the percentage of each year that is proposed for each parent to have legal decision-making authority of the child(ren);
- (5) A statement explaining whether any of the following proceedings involving the parents or the child(ren) are pending or have ever taken place in any court or administrative agency, and if so, the date, name, and place of the court or agency. Such statement applies to any proceeding involving:
  - a. Legal decision-making authority or parenting time;
  - b. Child support;
  - c. Paternity establishment or disestablishment;

- d. Any request for a domestic violence protective order or no contact order;
  - e. Any petition for an order of protection or order against harassment involving the child(ren) or any of the parties;
  - f. Guardianship action;
  - g. Termination of parental rights or adoption proceeding.
- (6) A statement that the parent(s) may enter into an agreed legal decision-making authority order or parenting time arrangement as allowed in this article.
- (Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-354. Legal decision-making authority and/or parenting time hearing.**

(a) Initial legal decision-making authority and/or parenting time hearing:

- (1) The court shall set an initial legal decision-making authority or parenting time hearing 30 calendar days after the respondent(s) have been served with the original petition and summons.
- (2) At the initial child legal decision-making authority or parenting time hearing, the court shall:
  - a. Schedule an evidentiary hearing;
  - b. Set any discovery and disclosure deadlines; and
  - c. Make any other orders the court deems appropriate.
- (3) The juvenile court shall have exclusive jurisdiction to determine legal decision-making authority or parenting time of all dependent minor wards of the Salt River Pima-Maricopa Indian Community Court. The juvenile court may make any custodial determination in conjunction with the dependency matter as deemed necessary by the court. Juvenile court's exclusive jurisdiction terminates once the dependency matter has been closed.

- (4) The court shall issue a written order within five business days after the initial hearing.
- (5) If the parties both agree, the court may combine the initial legal decision-making authority or parenting time hearing with the evidentiary legal decision-making authority or parenting time hearing.

(b) *Evidentiary child legal decision-making authority hearings.* The court shall determine legal decision-making authority in accordance with the best interests of the child(ren). The court in determining legal decision-making authority shall not prefer a parent as custodian because of that parent's gender or sexual orientation. There is a presumption that joint legal decision-making authority is in the best interests of the child(ren). To rebut this presumption, the parent seeking sole legal decision-making authority must prove by a preponderance of the evidence that joint legal decision-making authority is not in the child(ren)'s best interests. The best interest of the child(ren) shall be the primary determining factor in making a decision that joint legal decision-making authority is not in the child(ren)'s best interests. As to the determination of best interest of a child, the court shall consider the following:

- (1) Whether either party engaged in violence against the other party.
- (2) Whether either party engaged in abuse and/or neglect against the minor child or any other child in the care of the parent.
- (3) Whether either party has substance abuse issues that negatively impacts the minor child's best interest.
- (4) Whether either party has mental health or physical health issues that are a substantial risk to the child that negatively impacts the minor child's best interest.
- (5) Whether either party engaged in criminal activity that imposes a substantial risk that negatively impacts the minor child's emotional and physical well-being in this case.

- (6) Any recommendations from the child's treating mental health professional or other expert witness that has training in bonding, best interest evaluations, and custodial disputes regarding custodial recommendations.
- (7) The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.
- (8) Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation, or to persuade the court to give a legal decision-making or a parenting time preference to that parent.
- (9) Any other evidence the court finds relevant to determine parent's custodial rights.

(c) *Rights of noncustodial parent; parenting time.* A parent who is not granted legal decision-making authority of the child is entitled to reasonable parenting time rights to ensure that the minor child has frequent and continuing contact with the noncustodial parent unless the court finds, after a hearing, that parenting time would not be in the child's best interest. The court shall determine parenting time in accordance with the best interests of the child, and consider all factors relevant to the child's physical and emotional welfare, including:

- (1) The historical, current, and potential relationship between the parent and the child.
- (2) The mental and physical health of all individuals involved.
- (3) The child's adjustment to home, school, and Community.
- (4) The interaction and relationship between the child and the child's siblings and any other person who may significantly affect the child's best interest.
- (5) The child's own viewpoint and wishes, if possessed of suitable age and maturity, along with the basis of those wishes. The court shall consider the wishes of the

child if the child is at least 12 years of age and wishes to address the court. The court may consider the wishes of any child under the age of 12 if the court finds it to be appropriate. A minor wishing to address the court may submit written documentation or appear in open court to provide the court with their wishes.

- (6) Whether one parent is more likely to support and encourage the child's relationship and contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing or suffering an act of violence or child abuse.
- (7) The feasibility of each plan taking into account the distance between the parents' homes, the parents' and/or child's work, school, daycare, or other schedules, and the child's age.
- (8) Whether a parent has complied with the educational program offered in the Community or outside the Community as required.
- (9) Any factors to determine the best interest of a child as listed in section 10-354(b). (Ord. No. SRO-562-2023, 8-16-2023)

#### **Sec. 10-355. Mediation.**

(a) Any party can make a request for mediation or other alternative dispute resolution process for legal decision-making and/or parenting time with minor children.

(b) If the court grants the motion, the parties shall be required to attend mediation. Although the court may order a party to appear for a mediation conference, participation in mediation is voluntary.

(c) The parties may use any mediator mutually agreed upon by the parties. Mediation is a confidential process in which parties confer with a neutral mediator to help them resolve the dispute.



(d) The court may decline to refer a matter to mediation if it appears that mediation is inappropriate because of parental unfitness, substance abuse, mental incapacity, domestic violence, or other good cause, or because mediation will cause undue delay.

(e) In a case concerning legal decision-making or parenting time, if an order of protection is in effect involving the parties or if the court finds that a party's conduct would justify the entry of a protective order, the court may only order or refer the parties to mediation if policies and procedures are in place that protect the victim from harm, harassment, or intimidation.

(f) The mediator may require each party to submit a mediation statement that includes a general description of the issues in dispute, the party's position on each issue, and the evidence that will be presented to support the party's position on each issue.

(g) If the parties reach a partial agreement or no agreement during mediation, the mediator must file a brief report with the court stating that the parties met and attempted to resolve their differences but that the mediation was unsuccessful. The report also must state any agreements the parties reached and the remaining unresolved issues. The mediator must not report the parties' respective positions and must not comment on or offer any opinion about a party's position. The mediator may advise the court if the parties or the mediator believes that further mediation would be helpful for resolving the remaining issues.

(h) If the parties resolve all of their issues or reach a full agreement, the agreement must be put in writing and must be signed by the parties confirming the agreement. Any agreement between the parties during the mediation must contain their acknowledgement that:

- (1) Each party entered the agreement voluntarily, without threat or undue influence, and after full disclosure of all relevant facts and information;
- (2) Each party intends the agreement to be final and binding;
- (3) The agreement is fair and equitable; and

(4) The agreement is in the best interests of the children.

(Ord. No. SRO-562-2023, 8-16-2023)

### **Sec. 10-356. Temporary orders.**

(a) A party to a legal decision-making authority or parenting time proceeding may move for a temporary legal decision-making authority and parenting time order.

- (1) If the child legal decision-making authority proceeding or parenting time has been joined with an action other than a dependency action, the court may:
  - a. Enter temporary orders in accordance with the stipulations of the parties.
  - b. If not stipulated by the parties, the court may award temporary legal decision-making authority or parenting time under the standards of section 10-354 after a hearing, or, if there is no objection, solely on the basis of the pleading if the court finds that there appears to be imminent danger that the physical, emotional or mental health or safety of the child may be seriously impaired.
  - c. Order evaluations, assessments, appointments, or other special procedures needed to properly manage the case and resolve the disputed issues.
  - d. The petitioner shall also petition for legal decision-making authority or parenting time pursuant to section 10-353 at the time of filing for an emergency temporary orders.
  - e. If a proceeding for dissolution of marriage or legal separation or petition for legal decision-making authority or parenting time is dismissed, any temporary legal decision-making authority or parenting time order is vacated unless a parent or the child's custodian moves that the proceeding continue as a legal deci-

sion-making authority or parenting time proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a legal decision-making authority or parenting time order be issued.

- (2) The court shall set any emergency hearings within five business days. The court may issue temporary orders within two business days from the filing of the petition.

(Ord. No. SRO-562-2023, 8-16-2023)

**Note**—The court may amend any previously issued temporary order at the emergency hearing if needed.

### **Sec. 10-357. Parenting time plans.**

(a) Consistent with the child's physical and emotional well-being, the court shall adopt a parenting plan that provides the parents their respective parenting time. The court shall not prefer one parent over the other due to gender or sexual orientation.

(b) If child(ren)'s parents cannot agree to a plan for parenting time, each shall submit to the court a detailed, proposed parenting plan.

(c) Parenting time plans shall include at least the following:

- (1) A designation of the legal decision-making authority plan as joint or sole, as defined in section 10-351.
- (2) Each parent's rights and responsibilities for making decisions concerning child(ren) in areas like education, health care, religion, extracurricular activities, and personal care.
- (3) A plan for communicating with each other about the child(ren), including methods and frequency.
- (4) A detailed parenting time schedule, including holidays and school vacations.
- (5) A plan for child exchanges, including location and responsibility for transportation.
- (6) A statement that each party has read, understands, and will abide by the

notification requirements of section 10-364(f) pertaining to access of sex offenders to a child.

- (7) A statement that the parties understand that joint decision-making does not necessarily mean equal parenting time or parental rights.

(d) Parenting time plans may also include any of the following:

- (1) In shared joint legal decision-making authority plans, a procedure by which the parents can resolve disputes over proposed changes or alleged violations, which may include the use of conciliation services or private mediation.
- (2) A mechanism for periodic review of the plan.

(e) The parties may agree to any level of joint or sole legal decision-making authority without regard to the distribution of parenting time. Similarly, the degree of parenting time exercised by each parent has no effect on who exercises parental decision-making.

(Ord. No. SRO-562-2023, 8-16-2023)

### **Sec. 10-358. Relocation of child; exception; enforcement.**

(a) If by written agreement or court order both parents are entitled to legal decision-making authority or parenting time and both parents reside in the state, at least 60 calendar days advance written notice shall be provided to the other parent before a parent may do either of the following:

- (1) Relocate the child outside the state.
- (2) Relocate the child more than 100 miles outside the Community or outside of the county, whichever is farthest.

(b) The court shall set an immediate status hearing upon the filing of a petition based on this section if the parent's relocation is set to occur in less than 30 calendar days. The hearing shall be prior to the parent's relocation date.

(c) The notice required by this section shall be made by certified mail, return receipt requested, or pursuant to section 10-3. The court shall sanction a parent who, without good cause, does not comply with the notification requirements of this subsection. The court may impose a sanction that will affect legal decision-making authority or parenting time only in accordance with the child's best interests.

(d) Within 30 calendar days after notice is made, the nonmoving parent may petition the court to prevent relocation of the child. After expiration of this time, any petition or other application to prevent relocation of the child may be granted only on a showing of good cause. This subsection does not prohibit a parent who is seeking to relocate the child from petitioning the court for a hearing, on notice to the other parent, to determine the appropriateness of a relocation that may adversely affect the other parent's legal decision-making authority or parenting time rights.

(e) Subsection (a) of this section does not apply if a provision for relocation of a child has been made in a court order or a written agreement of the parties that is dated within one year of the proposed relocation of the child.

(f) Pending the determination by the court of a petition or application to prevent relocation of the child:

- (1) A parent with sole legal decision-making authority or a parent with joint legal decision-making authority and primary parenting time who is required by circumstances of health, safety or employment of that parent or that parent's spouse to relocate in less than 60 calendar days after written notice has been given to the other parent may temporarily relocate with the child.
- (2) A parent who shares joint legal decision-making authority and substantially equal parenting time who is required by circumstances of health, safety or employment of that parent or that parent's spouse to relocate in less than 60 calendar days after written notice has been given to the other parent may temporarily

relocate with the child only if both parents execute a written agreement to permit relocation of the child.

(g) The court shall determine whether to allow the parent to relocate the child in accordance with the child's best interests. The burden of proving what is in the child's best interests is on the parent who is seeking to relocate the child. To the extent practicable the court shall also make appropriate arrangements to ensure the continuation of a meaningful relationship between the child and both parents.

(h) The court shall not deviate from a provision of any parenting plan or other written agreement by which the parents specifically have agreed to allow or prohibit relocation of the child unless the court finds that the provision is no longer in the child's best interests. There is a rebuttable presumption that a provision from any parenting plan or other written agreement is in the child's best interests.

(i) In determining whether the absence or relocation of a parent shall be weighed against that parent in determining legal decision-making authority or parenting time, the court may consider whether the absence or relocation was caused by an act of domestic violence against the other parent.

(j) To determine the child's best interests the court shall consider all relevant factors including:

- (1) The factors prescribed under section 10-354.
- (2) Whether the relocation is being made or opposed in good faith and does not interfere with or frustrate the relationship between the child and the other parent or the other parent's right of access to the child.
- (3) The prospective advantage of the move for improving the general quality of life for the custodial parent or for the child.
- (4) The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders.

- (5) Whether the relocation will allow a realistic opportunity for parenting time with each parent.
- (6) The extent to which moving or not moving will affect the emotional, physical, or developmental needs of the child.
- (7) The motives of the parents and the validity of the reasons given for moving or opposing the move including the extent to which either parent may intend to gain a financial advantage regarding continuing child support obligations.
- (8) The potential effect of relocation on the child's stability.

(k) The court shall assess attorney fees and court costs against either parent if the court finds that the parent has unreasonably denied, restricted, or interfered, in bad faith with court-ordered parenting time.

(l) The court may assess travel costs to include the cost of gas, air fare, rental or hotel costs against the parent who relocated if the court finds that the parent has unreasonably denied, restricted or interfered, in bad faith with court-ordered parenting time.

(m) The court may increase or decrease a parent's child support based on the other parent's travel expenses if the expense is unduly burdensome to the other parent and will be continuous. (Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-359. Identification of a primary caretaker and public assistance; child support.**

(a) The court may specify one parent as the primary caretaker of the child and one home as the primary home of the child for the purposes of defining eligibility for public assistance. This finding does not diminish the rights of either parent and does not create a presumption for or against either parent in a proceeding for the modification of a legal decision-making authority order.

*(b) Child support.*

- (1) For any legal decision-making authority or parenting time order entered under

this article, if a parent also petitions for child support, the court shall determine an amount of child support in accordance with section 10-51 and guidelines established pursuant to that section.

- (2) An award of joint legal decision-making authority does not diminish the responsibility of either parent to provide for the support of the child.

(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-360. Order; default.**

*(a) Child legal decision-making authority or parenting time order.* The court shall issue a written order within five business days after the hearing.

*(b) Content.* A child legal decision-making authority or parenting time order shall include:

- (1) The determination of sole or joint legal decision-making authority obligations of the petitioner and respondent;
- (2) The determination of visitation/parenting time rights, if any, to the child(ren);
- (3) The amount of child support, if requested, to be paid to the other party; and
- (4) A statement that the child legal decision-making authority or parenting time order is final for purposes of appeal.

*(c) Default.*

- (1) When the respondent fails to appear or otherwise defend, without cause, upon the request of the petitioner, the court shall enter a default child legal decision-making authority or parenting time order. If the respondent fails to appear, without cause, there is a presumption that joint legal decision-making authority is in the best interests of the child. To rebut this presumption, the parent seeking sole legal decision-making authority must prove by a preponderance of the evidence that joint legal decision-making authority is not in the child's best interests per section 10-354.

(2) Prior to the evidentiary hearing, the court shall make a finding of the following:

- a. If service of the petition and summons is complete and respondent party has failed to appear absent good cause showing at the initial or evidentiary hearing or otherwise answer.
- b. If paternity was also at issue, the court must make a finding of paternity prior to entering a default order of child legal decision-making authority or parenting time pursuant to section 10-5.
- c. If child support is also at issue, the court shall make a finding of child support pursuant to chapter 10, article II, division 2.

(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-361. Modification of legal decision-making authority or parenting time order; affidavit; contents; military families.**

(a) A person shall not make a motion to modify a legal decision-making authority or parenting time order earlier than one year after its date, unless the court permits it to be made on the basis of a petition to modify that demonstrates a reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health; there has been a substantial change in circumstance; or, there is joint agreement to modify.

- (1) At any time after a joint legal decision-making authority or parenting time order is entered, a parent may petition the court for modification of the order on the basis of evidence that violence involving a violation of sections 6-51(b), 6-134, spousal abuse, or child abuse occurred since the entry of the joint legal decision-making authority or parenting time order.
- (2) Six months after a joint legal decision-making authority or parenting time order is entered, a parent may petition the

court for modification of the order based on the failure of the other parent to comply with the provisions of the order.

- (3) A motion or petition to modify a legal decision-making authority or parenting time order shall meet the requirements of this section.
- (4) Except as otherwise provided in subsection (b) of this section, if a custodial parent is a member of the United States armed forces, the court shall consider the terms of that parent's military family care plan to determine what is in the child's best interest during the custodial parent's military deployment.

(b) For the purposes of a motion to modify a legal decision-making authority or parenting time order, the military deployment of a custodial parent who is a member of the United States armed forces is not a change in circumstances that materially affects the welfare of the child if the custodial parent has filed a military family care plan with the court at a previous legal decision-making authority or parenting time proceeding and if the military deployment is less than six months, unless there is agreement for a modification between the parties.

(c) A legal decision-making authority or parenting time order that a court enters in contemplation of or during the military deployment of a custodial parent outside of the continental United States shall specifically reference the deployment and include provisions governing the legal decision-making authority of the minor child after the deployment ends. Either parent may file a petition with the court after the deployment ends to modify the order, in compliance with subsection (f) of this section. The court shall hold a hearing on the petition within 30 calendar days after the petition is filed.

(d) The court may modify an order granting or denying parenting time rights whenever modification would serve the best interest of the child, but the court shall not restrict a parent's parenting time rights unless it finds that the parenting time would seriously endanger the child's physical, mental, moral or emotional health.



(e) If, after a legal decision-making authority or parenting time order is in effect, one of the parents is charged for a crime against a child(ren), or an act of violence in which the victim is a minor, the other parent may petition the court for an expedited hearing. The hearing should occur within two business days of filing the petition. Pending the expedited hearing, the court may suspend parenting time or change legal decision-making authority ex parte. The hearing should be conducted pursuant to section 10-354.

(f) To modify any type of legal decision-making authority, a person shall submit an affidavit or verified petition setting forth detailed facts supporting the requested modification. This subsection does not apply if the requested relief is for the modification or clarification of parenting time.

(g) The court shall assess attorney/advocate fees and costs against a party seeking modification if the court finds that the modification action constitutes harassment.

(h) Motion for modification. A motion for a modification of child legal decision-making authority or parenting time shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested.

(i) Modification hearing. Grounds for modification of child legal decision-making authority or parenting time order include:

- (1) All parties agree to the modification;
- (2) The parent under the current legal decision-making authority or parenting time order has let the child live with the other parent for a substantial period of time;
- (3) The parent under the current legal decision-making authority or parenting time order has engaged in egregious conduct that poses a risk to the child's well-being;
- (4) The parent under the current legal decision-making authority or parenting time order cannot adequately support the child financially, or is otherwise incapable of meeting the child's needs for care and supervision; or

- (5) Other substantial change in circumstance that justifies a modification.  
(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-362. Violation of parenting time rights; penalties.**

(a) If the court, based on a verified petition and after giving the alleged violating parent reasonable notice and opportunity to be heard, finds that a parent has refused without good cause to comply with a parenting time order, the court may:

- (1) Find the violating parent in contempt of court.
- (2) Order parenting time to make up for the missed visitation sessions.
- (3) Order parent education at the violating parent's expense.
- (4) Order family counseling at the violating parent's expense.
- (5) Order both parents to participate in mediation or some other appropriate form of alternative dispute resolution at the violating parent's expense.
- (6) Make any other order that may promote the best interests of the child(ren) involved.

(b) Within 30 calendar days of service of the petition the court shall hold a hearing to review noncompliance with a parenting time order.

(c) The court may order further hearings to monitor compliance with all child legal decision-making authority or parenting time orders.

(d) The court may order court costs and/or fees incurred by the non-violating parent associated with the review of noncompliance with a visitation or parenting time order be paid by the violating parent.

(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-363. Determination of controlling child legal decision-making authority and/or parenting time order.**

(a) If a proceeding is brought under this article and another jurisdiction has previously issued a child legal decision-making authority or

parenting time order, the previously issued order of that jurisdiction controls and must be so recognized.

(b) If more than one jurisdiction has continuing, exclusive jurisdiction:

- (1) An order issued by the jurisdiction in which the child has resided for the last six months controls;
- (2) If an order has not been previously issued in the jurisdiction where the child has resided for the last six months, the order most recently issued by any jurisdiction controls.

(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-364. Sexual offenders; murderers; domestic violence; legal decision-making and parenting time; notification of risk to child.**

(a) Unless the court finds that there is no significant risk to the child and states its reasons in writing, the court shall not grant a person sole or joint legal decision-making of a child or unsupervised parenting time with a child if the person:

- (1) Is a registered sex offender.
- (2) Has been convicted of murder and the victim of the murder was the other parent of the child who is the subject of the order. In making its finding, the court may consider, among other factors, the following:
  - a. Credible evidence that the convicted parent was a victim of domestic violence, as defined in section 10-253, committed by the murdered parent.
  - b. Testimony of an expert witness that the convicted parent suffered trauma from abuse committed by the murdered parent.

(b) The court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of

primary importance. The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person. To determine if a person has committed an act of domestic violence the court shall consider all relevant factors, including the following:

- (1) Findings from another court of competent jurisdiction;
- (2) Police or medical reports;
- (3) Records from the department of child safety or Community social services;
- (4) Domestic violence shelter records;
- (5) School records; or
- (6) Witness testimony.

(c) If the court determines that a parent who is seeking sole or joint legal decision-making has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of sole or joint legal decision-making to the parent who committed the act of domestic violence is contrary to the child's best interests. This presumption does not apply if both parents have committed an act of domestic violence. For the purposes of this subsection, a person commits an act of domestic violence if that person does any of the following:

- (1) Intentionally, knowingly or recklessly causes or attempts to cause sexual assault or physical injury;
- (2) Places a person in reasonable apprehension of imminent physical injury to any person;
- (3) Engages in a pattern of behavior for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings; or
- (4) Any act that satisfies section 10-253.

(d) To determine if the parent has rebutted the presumption the court shall consider all of the following:

- (1) Whether the parent has demonstrated that being awarded sole or joint legal

decision- making or substantially equal parenting time is in the child's best interests;

- (2) Whether the parent has successfully completed a batterer's prevention program;
- (3) Whether the parent has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate;
- (4) Whether the parent has successfully completed a parenting class, if the court determines that a parenting class is appropriate;
- (5) If the parent is on probation, parole or Community supervision, whether the parent is restrained by a protective order that was granted after a hearing; and,
- (6) Whether the parent has committed any further acts of domestic violence.

(e) If the court finds that a parent has committed an act of domestic violence, that parent has the burden of proving to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development. If the parent meets this burden to the court's satisfaction, the court shall place conditions on parenting time that best protect the child and the other parent from further harm. The court may order that:

- (1) An exchange of the child must occur in a protected setting as specified by the court.
- (2) An agency specified by the court must supervise parenting time. If the court allows a family or household member to supervise parenting time, the court shall establish conditions that this person must follow during parenting time.
- (3) The parent who committed the act of domestic violence to attend and complete, to the court's satisfaction, a program of intervention for perpetrators of domestic violence and any other counseling the court orders.
- (4) The parent who committed the act of domestic violence to abstain from possess-

ing or consuming alcohol or controlled substances during parenting time and for 24 hours before parenting time.

- (5) The parent who committed the act of domestic violence to pay a fee for the costs of supervised parenting time.
- (6) Prohibit overnight parenting time.
- (7) A bond from the parent who committed the act of domestic violence for the child's safe return.
- (8) The address of the child and the other parent remain confidential.
- (9) Impose any other condition that the court determines is necessary to protect the child, the other parent and any other family or household member.

(f) A child's parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a crime against children may have access to the child. The parent or custodian must provide notice by first class mail, return receipt requested, by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes, or by other communication accepted by the court. (Ord. No. SRO-562-2023, 8-16-2023)

#### **Sec. 10-365. Parental access to the child's records.**

(a) Unless otherwise provided by court order or law, on reasonable request both parents are entitled to have equal access to prescription medication, documents and other information concerning the child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent.

(b) A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this section.

(c) A parent with joint legal decision-making authority shall not designate one pharmacy in a single location as the only source of the child's prescription medication without agreement of the other parent.

(d) A parent who attempts to restrict the release of documents or information by the custodian or attempts to withhold prescription medication without a prior court order is subject to appropriate legal sanctions.

(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-366. In camera interview; professional assistance.**

(a) On a party's motion or on its own, the court may conduct an in camera interview with a minor child who is the subject of a legal decision-making or parenting time dispute to ascertain the child's preferences as to both.

- (1) *Definition of "court."* As used in this rule, "court" includes any agency, or other third-party professional ordered by the assigned judge to conduct a child interview.
- (2) *Record of the interview.* Unless the parties stipulate otherwise on the record or in writing, the court must record the interview, either by having a court reporter transcribe it or by recording it through another retrievable and perceivable electronic medium. However, any interview conducted by a judicial officer must be recorded.
- (3) *Sealing.* For good cause and after considering the child's best interests, the court may seal from the public all or part of the record of the interview.
- (4) *Availability to the parties.* The parties may stipulate that the court not provide them with a record of the interview. If a party makes a request for recording, the court must make the record available to the parties not later than 14 calendar days before the hearing at which the court will consider the interview, unless the court finds good cause for a different deadline.

(5) *Disclosures.* The court must inform the child in an age-appropriate manner:

- a. About the process by which the court will make a decision;
- b. About the limitations on the confidentiality of the child's communications with the court;
- c. That information the child provides to the court may be on the record;
- d. That information the child provides to the court will be provided to the parties in the case unless the parties have stipulated otherwise; and,
- e. That whatever the child says will be considered but will not alone be determinative of the issues of legal decision-making and parenting time.

(6) *Child's preference.* In the process of listening to and inviting the child's input, the court must allow, but may not require, the child to state a preference regarding legal decision-making and parenting time.

(b) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and shall be made available by the court to counsel, on request, under such terms as the court determines. Counsel may examine as a witness any professional personnel consulted by the court, unless that right is waived. Any professional personnel utilized shall meet the minimum standards as outlined in section 10-367.

(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-367. Investigations and reports.**

(a) In contested legal decision-making and parenting time proceedings, and in other legal decision-making authority proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning legal decision-making or parenting time arrangements for the child. The investigation and report may be made by the Community's social service agency, a guardian ad litem, the probation department or a private person. The

report must include a written affirmation by the person completing the report that the person has met the training requirements prescribed in subsection (c) of this section. The court should only appoint the Community's social service agency or probation department if they have been previously involved with the family. Any report made pursuant to this subsection will become confidential in the event that it become a child protective services case.

(b) If an investigation and report are ordered pursuant to this section or if the court appoints a family court advisor, the court shall allocate cost based on the financial circumstances of both parties.

(c) The court shall require a court appointed attorney for a child, a court appointed advisor, guardian ad litem or any person who conducts an investigation or prepares a report pursuant to this section to receive training that meets the following minimum standards:

- (1) Six initial hours of training on domestic violence.
- (2) Six initial hours of child abuse training.
- (3) Four subsequent hours of training every two years on domestic violence and child abuse.

(d) A person who has completed professional training to become licensed or certified may use that training to completely or partially fulfill the requirements in subsection (c) of this section if the training included at least six hours each on domestic violence and child abuse and meets the minimum standards. Subsequent professional training in these subject matters may be used to partially or completely fulfill the training requirements prescribed in subsection (c) of this section if the training meets the minimum standards.

(e) A physician who is licensed is exempt from the training requirements prescribed in subsection (c) of this section.

(f) In preparing a report concerning a child, the investigator may consult any person who may have information about the child or the child's potential legal decision-making and parenting time arrangements.

(g) The court shall mail the investigator's report to counsel at least ten business days before the hearing. The investigator shall make available to counsel the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call for examination of the investigator and any person consulted by the investigator.

(Ord. No. SRO-562-2023, 8-16-2023)

**Sec. 10-368. Legal decision-making and parenting time hearings; priority; costs; record.**

(a) Legal decision-making and parenting time proceedings shall receive priority in being set for hearing. If a party to a legal decision-making or parenting time action files a motion for temporary orders in any pre-order matter, the court shall hold an evidentiary hearing within 60 calendar days after the party files the motion unless:

- (1) The filing party waives the requirement for a hearing to be conducted within 60 calendar days after the party files the motion.
- (2) Temporary orders are established through a separate conference or hearing within 60 calendar days after the party files the motion.
- (3) Extraordinary circumstances exist and the court is not able to schedule the hearing. If the court is not able to schedule the hearing within 60 calendar days after the motion is filed, it must make a written finding on the record as to the cause of the delay.

(b) Subsection (a) of this section does not preclude any other conference or hearing.

(c) The court may charge as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(d) 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 interest, the court may exclude the public from a legal decision-making authority hearing, but may



admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(e) If the court finds that to protect the child's welfare, the record of any interview, report, investigation or testimony in a legal decision-making or parenting time proceeding should be kept private, the court may then make an appropriate order sealing the record.  
(Ord. No. SRO-562-2023, 8-16-2023)

### **Sec. 10-369. Third party rights.**

(a) Pursuant to section 10-353, a person other than a legal parent may petition the court for legal decision-making authority or placement of the child. The court shall summarily deny a petition unless it finds that the petitioner's initial pleading establishes that all of the following are true:

- (1) The person filing the petition stands in loco parentis to the child;
- (2) It would be significantly detrimental to the child to remain or be placed in the care of either legal parent who wishes to keep or acquire legal decision-making;
- (3) A court of competent jurisdiction has not entered or approved an order concerning legal decision-making or parenting time within one year before the person filed a petition pursuant to this section, unless there is reason to believe child's present environment may seriously endanger the child's physical, mental, moral or emotional health; and
- (4) One of the following applies:
  - a. One of the legal parents is deceased.
  - b. The child's legal parents are not married to each other at the time petition is filed.
  - c. A proceeding for dissolution of marriage or for legal separation of the legal parents is pending at the time the petition is filed.

(b) Notwithstanding subsection (a) of this section, it is a rebuttable presumption that awarding legal decision-making to a legal parent serves the child's best interests because of the physical, psychological and emotional needs of the child to be reared by a legal parent. A third party may rebut this presumption only with proof showing by clear and convincing evidence that awarding legal decision-making to a legal parent is not consistent with the child's best interests.

(c) Pursuant to section 10-353, a person other than a legal parent may petition the court for visitation with a child. The court may grant visitation rights during the child's minority on a finding that visitation is in the child's best interests and that any of the following is true:

- (1) One of the legal parents is deceased or has been missing at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.
- (2) The child was born out of wedlock and the child's legal parents are not married to each other at the time the petition is filed.
- (3) For in loco parentis visitation, a proceeding for dissolution of marriage or for legal separation of the legal parents is pending at the time the petition is filed.

(d) A petition filed under subsection (a) or (c) of this section must be verified or supported by affidavit and must include detailed facts supporting the petitioner's claim. The petitioner must also provide notice of this proceeding, including a copy of the petition and any affidavits or other attachments, and serve the notice pursuant to the Community Rules of Civil Procedure to all of the following:

- (1) The child's legal parents.
- (2) A third party who possesses legal decision-making authority over the child or visitation rights.
- (3) The child's guardian or guardian ad litem.

- (4) A person or agency that possesses physical legal decision-making authority of the child or claims legal decision-making authority or visitation rights concerning the child.
- (5) Any other person or agency that has previously appeared in the action.

(e) In deciding whether to grant visitation to a third party, the court shall give special weight to the legal parents' opinion of what serves their child's best interests and consider all relevant factors including:

- (1) The historical relationship, if any, between the child and the person seeking visitation.
- (2) The motivation of the requesting party seeking visitation.
- (3) The motivation of the person objecting to visitation.
- (4) The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.
- (5) If one or both of the child's parents are deceased, the benefit in maintaining an extended family relationship.

(f) All visitation rights granted under this section automatically terminate if the child is adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply if the child is adopted by the spouse of a natural parent after the natural parent remarries.

(Ord. No. SRO-562-2023, 8-16-2023)

#### **Sec. 10-370. Sexual assault conviction; effect on rights.**

If a person has been convicted of sexual assault and the sexual assault led to the birth of a child, the convicted person has none of the rights prescribed in this chapter related to legal decision-making or parenting time in regard to the child.

(Ord. No. SRO-562-2023, 8-16-2023)

#### **Sec. 10-371. Family law services and resources.**

(a) *Private mental health services.* The court may order parties to engage in private mental health services, including, but not limited to, counseling, custody evaluations, mental health evaluations, parenting coordinator services, therapeutic supervision of parenting time, and other therapeutic interventions.

(b) *Substance abuse screening and testing in cases where custody or parenting time are at issue.* Upon an allegation or showing that a party has abused drugs or alcohol, including prescription medication, the court may order substance abuse screening and random testing of that party. The court shall designate the frequency of testing and apportion responsibility for payment of screening and testing.

(c) *Parent education.* The court shall order the parties to engage in parent education as required by Community law. The court may also order supplemental or additional education in appropriate cases, such as parenting skills classes and parental conflict resolution classes.

(d) *Supervised exchange; supervised parenting time; therapeutic supervision.* The court shall take reasonable measures to protect the parties and their children from harm, including, but not limited to, supervised exchanges of parenting time, supervised parenting time, and therapeutic supervised parenting time.

(e) *Family violence prevention services.* If the court finds evidence of domestic violence in cases, the court may refer parties to services that the court deems appropriate for victims and batterers.

(Ord. No. SRO-562-2023, 8-16-2023)