

Title 7 – Domestic Relations
Chapter 7 – Recognition of Foreign Spousal Support, Child Support and
Child Custody Orders

Sec.

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Legislative History

Enacted:

Domestic Relations, Ord. 188 (11/10/03), BIA (11/25/03).

Repealed or Superseded:

Child Support, Ord. 129 (12/1/98), BIA (1/25/99) (amending Ord. 101).

Domestic Relations, Ord. 101 (4/6/93), BIA (5/3/93) (repealing any and all prior domestic relations ordinances).

Recognizing State Garnishment Orders, Res. 94-9-87 (9/13/94).

Subchapter I – Foreign Spousal Support and Child Support Orders

7-07.010 Foreign Spousal Support and Child Support Order – Defined.

As used in this Title “foreign spousal support and child support order” means any judgment, decree or order for spousal support or child support of any tribal or state court.

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93).

7-07.020 Foreign Spousal Support and Child Support Orders - When Recognized.

(A) The Tribal Court shall not recognize and enforce any foreign spousal support or child

support order unless the proponent of the foreign spousal support or child support order:

- (1) Complies with the procedure set forth in this Chapter;
 - (2) Submits proof that the person against whom the foreign spousal support or child support order has been rendered is subject to the jurisdiction of the Tribal Court;
 - (3) Submits proof that the foreign spousal support or child support order is based on valid subject matter and personal jurisdiction; and
 - (4) Submits proof that an attempt was made to enforce the judgment in the jurisdiction that the foreign spousal support or child support order was rendered and that such attempt was unsuccessful; or good cause exists why an attempt at enforcement of the foreign spousal support or child support order in the jurisdiction in which the foreign spousal support or child support order was rendered would be futile.
- (B) The Tribal Court need not recognize a foreign spousal support or child support order if:
- (1) The defendant in the proceeding in the foreign court did not receive notice of said proceedings in sufficient time to allow him or her to defend;
 - (2) The foreign judgment violated the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301 – 1341, the U.S. Constitution, or rights contained in the relevant state or tribal constitution;
 - (3) The foreign spousal support or child support order was obtained by fraud;
 - (4) The foreign spousal support or child support order would serve to violate any federal law, tribal law, custom or tradition, or the Treaties between the Swinomish Indian Tribal Community and the Federal Government; or
 - (5) The cause of action on which the order is based is contrary to the general welfare of the Swinomish Indian Tribal Community or its members.

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93).

7-07.030 Procedure for Recognition and Enforcement of Foreign Spousal Support and Child Support Orders.

- (A) Proper filing of a foreign spousal support or child support order with the Tribal

Court shall be accomplished when the proponent has paid all necessary filing fees and delivered to the Tribal Court a certified copy of the foreign judgment, along with a motion requesting that the Tribal Court recognize and enforce the foreign spousal support or child support order.

- (B) Upon proper filing of a foreign spousal support or child support order with the Tribal Court, the Tribal Court shall issue a summons directing the defendant to appear on a date not more than thirty (30) days from the date of service and respond to the motion requesting the Tribal Court to recognize and enforce the foreign spousal support or child support order. Such summons shall be served on the defendant in a manner consistent with the Rules of Civil Procedure.
- (C) Failure to appear as directed by the summons or failure to respond to the motion requesting the Tribal Court to recognize and enforce the foreign spousal support or child support order once personal jurisdiction over the defendant has been obtained shall not prevent the Tribal Court from ruling on the motion.

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93).

Subchapter II – Foreign Child Custody Orders

7-07.040 Purpose and Scope.

In accordance with the goals of the Parental Kidnapping Prevention Act, 28 USCA §1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act, the Senate intends to ensure that parents and children are able to move across state and tribal boundaries without losing the ability to enforce custody orders they have previously obtained.

[History] Ord. 188 (11/10/03).

7-07.050 Application.

As a matter of comity, the Tribal Court will recognize and enforce a foreign custody order that meets all requirements of this Chapter.

[History] Ord. 188 (11/10/03).

7-07.060 Registration of Child Custody Determinations.

- (A) A child custody determination issued by a court of another state or tribe may be registered with the Tribal Court, with or without a simultaneous request for enforcement, by sending to the clerk of the Tribal Court:

- (1) A letter or other documentation requesting registration and the appropriate

filing fee;

- (2) A certified copy of the determination sought to be registered and statement that to the best of the knowledge and belief of the person seeking registration, the determination has not been vacated, stayed or modified;
 - (3) A statement that to the best of the knowledge and belief of the person seeking registration, the issuing court had personal jurisdiction over the parties and/or the child and had subject matter jurisdiction over the cause of action;
 - (4) A statement that to the best of the knowledge and belief of the person seeking registration, the custody order was rendered under a system that provides impartial tribunals and procedures compatible with the requirements of due process of law;
 - (5) A statement that to the best of the knowledge and belief of the person seeking registration, the issuing jurisdiction would give reciprocity to a Swinomish Tribal Court order; and
 - (6) The name and address of the person seeking registration and any parent or person acting as parent who has been awarded custody or visitation in the child custody determination sought to be registered.
- (B) On receipt of the documents required under Subsection (A), the Tribal Court shall serve notice upon the persons named pursuant to Subsection (A)(6) and provide them with an opportunity to contest the registration.
- (C) A person seeking to contest the validity of a registered determination must request a hearing within twenty (20) days after service of the notice. At that hearing, the Tribal Court shall confirm the registered determination unless the person contesting registration establishes that:
- (1) The issuing state court did not have jurisdiction over the child under the Uniform Child Custody Jurisdiction and Enforcement Act or the issuing tribal court did not have personal jurisdiction over the parties and child in accordance with the issuing tribe's laws;
 - (2) In the case of jurisdiction over a party based on personal service, the issuing court was a seriously inconvenient forum for the trial of the action;
 - (3) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so;
 - (4) The person contesting registration was entitled to notice, but notice was not

given in the proceeding before the court that issued the determination for which registration is sought;

- (5) The cause of action on which the custody order is based is repugnant to the public policy of the tribe or would be contrary to the general welfare of the Tribe or its members; or
 - (6) The foreign custody determination would serve to violate any federal law, tribal law, custom or tradition, or the laws of the issuing jurisdiction violate Swinomish custom, tradition, or sense of justice.
- (D) If a request for a hearing to contest the validity of the registration is not made within twenty (20) days, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

[History] Ord. 188 (11/10/03).