



# **Sample Domestic Relations Code**

**Developed in the Tanana Chiefs Region**

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# **DOMESTIC RELATIONS, FAMILY LAW CODE OF THE ITSA TRIBE**

## **CHAPTER 1 GENERAL PROVISIONS FOR THIS DOMESTIC RELATIONS CODE**

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### **Section 1. Purpose**

The purpose of this Code is to provide policies and guidance for the Itsa Tribal Government to take an active role in providing for the health, safety, and welfare of the Itsa people, to preserve and strengthen family ties whenever possible, to protect and preserve tribal heritage and cultural identity of the persons within the Tribe's jurisdiction, and to promote cooperation with the Tribe by other courts and agencies in fulfilling the purposes of this Code.

The intention of this Code is to promote the health, safety, and welfare of the most valuable resource of the Tribe, the Itsa people. The welfare of the children is of the foremost importance. The children must receive the care and guidance necessary to allow them to become healthy, content and productive members of Itsa and society in general.

## **Section 2. Authority and Jurisdiction**

The Itsa Tribal Government regulates domestic relations matters under the authority of its inherent sovereign powers as a federally recognized Indian tribe, under any additional new powers so delegated by Congress, under unwritten tribal law, under the Constitution of the Itsa Tribe, and under written tribal ordinances. The Itsa Tribal Court shall have the authority to hear and decide all matters in this Code where one or more of the parties in a case are members or are eligible for membership in the Itsa Tribe, or where the health, safety, or welfare of the tribal members or other residents is effected.

### **JURISDICTION OVER CHILDRENS MATTERS:**

- A. Once the Itsa Tribal Court exercises its authority in any child's case under this Code, the Itsa Tribal Court gains exclusive authority over all stages of the case as a matter of Tribal law until the case is dismissed or concluded, or until the Tribal Court gives authority to another government or another court by Tribal Court Order.
- B. The Itsa Tribal Court shall have the authority to make decisions about child custody, adoption, and child protection if the children are members or are eligible for membership in the Itsa Tribe. The Itsa Court shall also have the authority to take temporary protective custody over all children in emergency circumstances, regardless of tribal membership, within the Village, until the matter can be transferred to the child's tribe or to the State of Alaska for action.
- C. If the child is a member of or eligible for membership in more than one tribe, the Itsa Tribe shall have the most significant contacts (as evaluated under the definition of 'most significant contacts' in Section 4 of this Chapter) with

the child in order to make decisions other than in emergencies, about the case without the consent of the other tribe.

- D. The Itsa Tribal Court has the authority to hear and decide childrens cases involving tribal members or children eligible for tribal membership even if the children do not live within the Village.

### **Section 3. Best Interest of the Child**

In all cases involving children, the Itsa Tribal Court shall hear all the facts and evidence brought before it and shall consider the rights of all parties in the case, however, those of the child shall be most important. The best interest of the child shall be more important than the rights of any other person or entity.

In determining what is in the best interest of the child, the Court shall consider the following factors:

1. The child's wishes if he or she is old enough and understands what the proceedings mean; and
2. The love and affection existing between the involved adults and the child; and
3. The needs of the child, including educational needs, physical and medical needs, emotional needs, mental needs, religious needs, cultural needs, and any other special needs of the child; and
4. The stability of the home environment likely to be offered by the involved adults; and

5. Whether the involved adults are likely to encourage a loving relationship between the child and the other persons with whom the child has emotional ties; and
6. Any evidence of violence determined by a criminal background check and/or by testimony of reliable sources, domestic violence, child abuse or child neglect in the involved adult's household(s); and
7. Any evidence of substance abuse by the involved adults or someone living with them that would or does directly affect the emotional or physical well being of the child; and
8. The locations of persons to whom the child has emotional ties, whether the child is enrolled in school near one of those persons and the desirability of the child remaining at that school; and
9. The advantages of keeping the child in the community where the child resides; and
10. Any other things the Court feels are relevant to the best interest of the child.

#### **Section 4. Child Placement Preferences**

The following placement preferences shall be applied in all cases where a child is placed out of the home, unless the Court finds that it would be in the child's best interest to vary the order of preference or place the child not according to these preferences:

1. A member of the child's extended family who resides closest to or in the city or village in which the child resides.
2. A member of the child's extended family who resides elsewhere.
3. A member of the Itsa Tribe.
4. A foster home, licensed, approved or specified by the Itsa Tribe.
5. A member of another tribe with whom the child is culturally related.
6. A resident of Itsa.

## **Section 5. Definitions**

The following words and phrases, whenever used in this Code, shall have the following meanings:

**"Adoptive placement"** means the permanent placement of a child for adoption.

**"Adult"** means a person who is eighteen 18 years of age or older.

**"Child"** means a person who is under eighteen years of age.

**"Child protection proceeding"** means a case where a child is found to be a "child in need of aid," a foster care placement case, a termination of parental rights case, a preadoptive or adoptive placement case, or an adoption case that is contested by a parent, custodian or guardian.

**"Corporal Punishment"** means the infliction of excessive bodily pain as a penalty for disapproved behavior. It includes actions such as shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling or action that seeks to induce pain.

**"Custodian"** means a person who has been given responsibility to care for a child either by a parent, or under tribal custom, court order, tribal law or State law.

**"Domestic violence"** Domestic violence means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, or a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator.

**"Extended family"** means the person's parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins, sisters, and brothers, or someone who is considered to be extended family under the traditional laws of the Itsa Tribe.

**"Foster care placement"** means any action removing a child from his/her parent or custodian for temporary placement in a foster home, a relative's home, an institution or the home of a guardian where the parent or custodian cannot have the child returned on demand.

**"Foster home"** means a home certified or licensed to provide foster care by the Itsa Tribe or another federally recognized tribe or a state licensed home.

**"Guardian"** means a person who is not a parent and is appointed by a tribal or state court to have legal custody of a child. A "Guardian" is not the same thing as a "Guardian ad litem."

**"Guardian Ad Litem"** means a person appointed by the Itsa Tribal Court to look after the best interests of any child involved in a case under this Code. The guardian ad litem (or GAL) shall be a full party in all cases. The guardian ad litem's job is to investigate facts in the case and advise the Court what actions the Court should take that would be in the child's best interest. The Court may adopt the advice of the GAL in whole or in part, or for good cause, may act or order action that is different than the advice of the GAL.

**"Involved agency"** means an agency that is a party to the case due to the request of the Tribe or because of the jurisdiction of another government over the case. Examples of this might be the Tanana Chiefs Conference, State of Alaska DFYS, or the social services department of another tribe or county in another state.

**"Most significant contacts"** means, among other things, that the Itsa Tribal Court shall consider the following factors:

1. Length of time the child has lived in or near the Village of Itsa ; and
2. The child's participation in the activities of the Itsa Tribe; and
3. The child's fluency in the Native language of Itsa; and
4. Whether there has been a previous case with respect to the child by the Itsa Tribal Court; and



5. The tribal membership of the child's custodial parent or other custodian; and
6. The child's self identification with the Itsa Tribe; and
7. Any other information relevant to the child's contacts with the Itsa Tribe.

**"Parent"** means the biological parent of a child or any person who has lawfully adopted a child, whether in State or Tribal Court, or under tribal custom. It shall not mean the unwed father where the father has not admitted or acknowledged in writing or otherwise that he is the father, or where a Court Order establishing paternity has not been entered (i.e. "paternity" has not been established). It shall not mean any person as to whom the parent-child relationship has been lawfully terminated.

**"Parties"** means Petitioner(s) and Respondent(s) listed in the Petition to use the Tribal Court, the guardian ad litem and any other person or entity who is given the right by the Tribal Court to express and protect their interests in a case.

**"Preadoptive placement"** means the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in place of adoptive placement.

**"Probable cause"** for the purposes of a "child protection proceeding" means evidence from a reasonable, trustworthy source that would be a reasonable ground for belief that a child is a "child in need of aid" and that an investigation and hearing should be conducted to determine all the facts.

**"Termination of parental rights"** means any action resulting in the termination of the parent-child relationship.

**"Ward"** means a child who has been taken into custody by the Court making the Court the child's legal guardian.

**CHAPTER 2**  
**CHILD PROTECTION FOR CHILDREN IN NEED OF AID**

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**Section 1. Tribal Definition of ‘Child In Need Of Aid’**

Child protection cases involve a ‘child in need of aid’ as defined as a child who:

1. Refuses to live at home with significant reason, or refuses to accept available care; or
2. Has no parent, guardian, custodian or relative caring or willing to provide care; or
3. Is in need of medical treatment, needs help to relieve or prevent substantial physical harm or mental harm as shown by failure to thrive, severe anxiety, depression, withdrawal, or exaggerated, inappropriate or unusual aggressive behavior or hostility toward others and the child's parents are unwilling to provide the medical treatment; or
4. Suffered substantial physical harm or there is substantial and immediate risk that the child will suffer such harm as a result of the actions of or conditions created by the child's parents, guardian or custodian to adequately supervise the child; or
5. Has been sexually abused either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian or by the failure of the parent, guardian or custodian to adequately supervise the child; or
6. Has suffered substantial physical abuse or neglect as result of conditions created by the child's parent, guardian or custodian.

## **Section 2. Confidentiality of Child Protection Cases**

All child protection cases shall be considered and treated as confidential. All Tribal Court Judges, the Tribal court Clerk, tribal employees or other tribal officials who participate in a case, and involved agency personnel shall be sworn to

confidentiality under the oath of confidentiality provided in **[site the place in the tribal codes where this can be found.]**.

### **Section 3. Tribal Court Records of Child Protection Cases**

Court records in child protection cases shall not be released to anyone besides the parties to the case without the consent of the Itsa Tribal Court. Hard copies of such records shall be kept behind a two-lock system, and records stored on computer hard drives or in cyberspace shall be secured, and shall only be accessible by persons directly authorized by the Itsa Tribal Court. Brief Orders, letters, or memos may be given as needed to schools, hospitals, banks, or similar entities for the purpose of verification of who has custody, guardianship, or parental rights to a child.

### **Section 4. Legal Custody and Status as Ward of Itsa Court in Child in Need of Aid Cases**

A child becomes a ward and under the legal custody of the Itsa Tribal Court when the child is found to be a child in need of aid as defined in Section 1 of this Chapter. A child may be found to be a child in need of aid upon a hearing conducted under the procedures set forth in this Chapter. In emergency situations when there is no time to hold a hearing, a child may be taken into legal custody and made a ward of the Tribal Court until a hearing may be held. A child may also become a ward of the Itsa Tribal Court when a child in need of aid case is transferred from another court. A child remains a ward of the Itsa Tribal Court until the Court closes the case or transfers the case to another court.

### **Section 5. Urgency**

All child protection cases shall be considered urgent and shall be placed ahead of all other cases that the Itsa Tribal Court may have before it.

## **Section 6. Rights and Best Interest of the Child**

In all child protection cases, the Court shall hear all the facts and evidence brought before it and shall consider the rights of all parties in the case when deciding what is in the child's best interest. The best interest of the child, as defined in Chapter 1, Section 3 of this Code, shall be placed above the rights of any other person or entity.

## **Section 7. Starting a Child Protection Case**

A child protection case may be brought in front of the Itsa Tribal Court by any person who has reason to believe that a minor tribal member or child living in the Village is a "child in need of aid." A child protection case shall be started by filing a Petition to use the Tribal Court form. The Court may either hold a hearing immediately upon receipt of a Petition, or designate a person to investigate the issues stated in the Petition before deciding to hold a hearing.

## **Section 8. Contents of Child Protection Petition**

The Petition for child protection cases shall provide the following information, provided that such information is available to the Petitioner:

1. The name, address and age of the child; and
2. The names and addresses of the child's parents and any custodians of the child; and
3. The names and addresses of any other person or tribe with an interest in the child; and

4. The reason why the petitioner believes that a child needs protection;  
and
5. Any available written evidence of injuries, abuse or neglect (doctor report, public health nurse report, health aid report, teacher's report, report of witness to injury, abuse or neglect, etc.), and/or any other information that may be helpful in identifying the cause of the child's injuries or neglect; and
6. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership. This statement should include facts that indicate that the Itsa Tribe is the tribe with the most significant contacts with the child.

### **Section 9. Emergency Custody**

After receiving a Petition, the Itsa Tribal Court may take a child into custody and make a temporary placement without notification and full hearing if the Court has reason to believe that immediate removal is necessary to prevent imminent physical damage or harm to the child. The Court shall issue an emergency Order describing the Court's action. As soon as possible, the Court shall serve the parents or guardians with a copy of the emergency Order. If the child is not a tribal member or eligible for tribal membership, the Court shall notify the child's tribe or the appropriate state officials. Emergency custody arrangements shall be for no more than 30 days.

### **Section 10. Temporary Custody Hearing after Emergency Custody Has Been Taken**

- A. **Notification and Hearing within 30 days:** After the Court has taken a child into tribal custody under emergency circumstances, the Court shall hold a temporary custody hearing within 30 days. The Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian, and/or guardian of the child, within a reasonable length of time before the hearing.
  
- B. **Failure to Appear in Court:** After reasonable notification has been given, the Court may proceed with the hearing even if parents, custodians, and/or guardians fail to appear in Court.
  
- C. **Witnesses:** At the temporary custody hearing, the parent(s), custodian, and/or guardian shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.
  
- D. **Decision of the Court:** After determining jurisdiction, reviewing the Petition, and hearing the case, the Court shall issue an Order based on the child's best interest as defined in Chapter 1, Section 3 of this Code.

The Court may decide to return legal custody to the parent(s), custodian, and/or guardian and dismiss the case, or the Court may decide to continue to have legal custody of the child for a period not to exceed one year if the Court makes a determination that the child is a "child in need of aid." The Court may make keep legal custody of the child, and place the physical custody of the child with the parents, custodians, or guardian with specific directives, or, place the child in an appropriate foster placement based on the preferences of Chapter 1, Section 4 of this Code. Specific directives may include but are not limited to directing that the child, parent(s), custodian, or guardian take educational classes, alcohol or drug assessments and follow the recommendations of the assessments,



psychological or psychiatric assessments and treatment, or such other treatment or programs as it feels are appropriate and are likely to result in the best interest of the child and reunification of the child with the family.

The Court may designate specific persons or entities to oversee the execution of the Itsa Tribal Court Order and monitor the family's progress and report such progress to the Court.

### **Section 11. Temporary Custody Hearing in Non-Emergency Situations**

When the Itsa Tribal Court receives a Petition to take a child into tribal custody in non-emergency circumstances and determines that the Tribal Court has jurisdiction and chooses to hear the case, the Court shall hold a Temporary Custody Hearing within 30 days to determine whether or not to take a child into tribal custody. A Notice to Appear in Tribal Court shall be issued to the parent(s), custodian, and/or guardian of the child, within a reasonable length of time before the hearing. The Court shall follow the same procedures and have the same options as it has for temporary custody hearings in emergency cases.

### **Section 12. Temporary Custody Orders**

- A. Written Orders:** The Court shall issue written Orders for all temporary custody cases that shall be given to parties in those cases and kept in the permanent records of the Itsa Tribal Court.
  
- B. Short Versions of Orders:** The Court shall also issue to custodians a short version of temporary custody Orders for the use of verification of custody for schools, hospitals, banks and similar entities when necessary.

- C. **Extension of Temporary Custody Orders:** Extensions of Temporary Custody Orders may not exceed 30 days.

### **Section 13. Review Hearing**

- A. **Review Hearing:** The Itsa Tribal Court may conduct review hearings periodically while a child is in their legal custody, and shall conduct at least one review hearing before the Tribe's legal custody expires.
- B. **Request for Review Hearings by Parties:** While the child is in the legal custody of the Tribal Court, any party may request in writing that a review hearing be held. The request must include the reason(s) why the Tribal Court should hold a hearing and the Court may grant or deny the request.
- C. **Purpose of Review Hearings:** The purpose of review hearings is to determine whether the child should continue to remain a ward of the Court, or if any conditions of the legal or physical custody should be modified or added. After making a decision based upon the child's best interests, the Court shall state any new decisions made in review hearings in a new Order.

### **Section 14. Interference with a Custody Order**

Anyone who interferes with a Court ordered placement of a child shall be guilty of harassment and subject to an appropriate penalty by the Itsa Tribal Court.

**CHAPTER 3**  
**CHILD CUSTODY INVOLVING DISPUTES BETWEEN**  
**PARENTS AND/OR CUSTODIANS**

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**Section 5. Custody Order** .....

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**Section 1. Beginning a Child Custody Case**

If there is a dispute between parents and/or custodians over custody of a child, the matter may be brought in front of the Itsa Tribal Court. A child custody case shall be started by filing a Petition to use the Tribal Court.

**Section 2. Contents of Child Custody Petition**

The Petition shall provide the following information:

1. The name, address and age of the child; and

2. The names and addresses of the child's parents and any custodians of the child; and
3. The names and addresses of any other person or tribe with a specific interest in the child; and
4. The reason the Petitioner is requesting custody of the child; and
5. The facts that make the Petitioner believe that the best interest of the child require that a custody Order be issued by the Court; and
6. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership. This statement should include facts that indicate that the Itsa Tribe is the tribe with the most significant contacts with the child.

### **Section 3. Temporary Custody Hearing and Order**

- A. Temporary Custody Hearing:** After the Court determines that it has jurisdiction to hear and decide the case, the Court may hold a temporary custody hearing in cases where it will take considerable time to hold a custody hearing. Before holding the temporary custody hearing, the Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian, or guardian of the child, within a reasonable length of time before the hearing.
- B. Temporary Custody Order:** At the temporary custody hearing, all parties shall have an opportunity to present evidence and question witnesses. After the hearing is completed, the Court may issue a temporary custody Order giving a particular person or persons temporary physical custody of the child until a custody hearing is held.

- C. Equal Access When not Harmful to Child:** Unless it is shown to be harmful to the child, the child shall have reasonable equal access to both parents and/or custodians during the duration of the temporary custody Order. The temporary custody Order may also set out a reasonable visitation schedule for a person or persons.
  
- D. Monitoring and Investigating:** The temporary custody Order may be monitored as directed by the Tribal Court. The Court may also direct a designated person to investigate the facts contained in a Petition, or for any other purpose required by this Code.

#### **Section 4. Custody Hearing**

- A. Custody Hearing Within 30 Days:** After a temporary custody Order is issued by the Court, the Court shall set a custody hearing within 30 days of the temporary custody hearing, or as soon as is reasonable and agreeable to the Parties in the case.
  
- B. Purpose of the Custody Hearing:** The purpose of the custody hearing is to make a decision about who should have custody of the child, and what visitation, if any, should be awarded for those persons who do not have custody.
  
- C. Witnesses:** At the hearing, all parties shall have the opportunity to present evidence and question witnesses.
  
- D. Deciding Custody and Visitation:** After the hearing is completed, the Court shall make a decision as to who shall have custody and what, if any, visitation should be awarded. In making this decision, the Court shall consider all factors defining the best interest of the child in Chapter 1,

Section 3 of this Code. The best interest of the child shall be considered above all else.

## **Section 5. Custody Order**

**A. Court Orders:** After the custody hearing, the Court may Order that:

1. A party or parties be given legal and physical custody of a child; or
2. That a party not given physical custody be given specified visitation with the child; or
3. That a party not be given custody of a child.

**B. Child Support Orders:** The Court may also order a parent to pay child support to the child's custodian, and may take into account the parent's ability to contribute in cash or in goods, and also the child's needs.

## **Section 6. Change of Custody Order**

Any person may request that an award of custody of a child or visitation with a child be modified by filing a Petition to use the Tribal Court form. It is up to the discretion of the Court to hold a hearing to consider the request in the Petition. If the Court decides to hold a hearing based on the Petition, reasonable notice shall be provided to all parties, and any new decisions of the Court shall be made through a new custody Order.

# CHAPTER 4

## TERMINATION OF PARENTAL RIGHTS

**Section 1. Cases Where Parental Rights May be Terminated .....**

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**Section 5. Withdrawal of Voluntary Consent.....**

**Section 6. Effect of Termination of Parental Rights .....**

**Section 7. Tribal Membership Status.....**

### **Section 1. Cases Where Parental Rights May be Terminated**

Parental rights may be terminated in whole or in part in any case involving custody of a child, child protection, where a parent voluntarily consents to relinquish their parental rights, or in the case of an adoption.

### **Section 2. Findings Necessary for Termination of Parental Rights**

The Court may terminate parental rights to a child only if it finds that:

1. If the parental rights are not terminated, the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child; or
2. The child has been subjected by his or her parent(s) to sexual abuse; or
3. The child has been abandoned; or
4. Where a parent voluntarily consents to the relinquishment of parental rights.

### **Section 3. Procedure for Involuntary Termination of Parental Rights**

Persons or entities may file a Petition to use the Tribal Court form requesting that parental rights of a person to that child be terminated. The Petition shall contain the name, address and age of the child; the names and addresses of parents, any custodians of the child, and any other person or tribe with an interest in the child; the reason why the Petitioner believes that parental rights should be terminated; and, any available written evidence to support termination of parental rights. If after reviewing the Petition and scheduling and holding a hearing the Court finds that the conditions necessary to terminate the parental rights exist, it shall issue an Order terminating parental rights in whole or in part depending on what is in the best interest of the child. If the Court finds that the conditions necessary to terminate parental rights do not exist, it shall dismiss the case.

### **Section 4. Voluntary Consent to Termination of Parental Rights**

Any parent may voluntarily consent to the termination of his or her parental rights to any minor child. However, no voluntary consent will be valid unless:

1. The consent is given more than ten (10) days after the birth of the child; and
2. It is given in the presence of the Tribal Court or to a designated representative of the Tribal Court, and
3. The person or Court that the consent is given in front of signs a sworn statement that the consenting parent understood what they were doing and knowingly and voluntarily relinquished their parental rights; and



4. The person is informed that they have the right to be provided with an interpreter to explain the voluntary consent, its consequences, and their right to withdraw the voluntary consent, the time limit to do so and the procedure for doing so.

#### **Section 5. Withdrawal of Voluntary Consent**

A voluntary consent to the termination of parental rights may be withdrawn anytime within 10 days of giving voluntary consent. After 10 days, withdrawal may only be done with the Court's permission. The Court shall give permission only if it finds that it is in the best interest of the child to do so.

#### **Section 6. Effect of Termination of Parental Rights**

If a parent's rights are terminated, they no longer have any right to the child or any responsibility for that child and parental rights are completely severed, unless otherwise provided by Tribal Court Order. If the Court provides for anything less than completely terminated parental rights, the Court shall be very specific. For example, the Court may specifically allow parental participation in specific tribal ceremonies in relation to the child.

#### **Section 7. Tribal Membership Status**

Termination of parental rights shall not effect the minor's tribal membership status, nor the child's rights or privileges as an Alaska Native whether written or unwritten, nor shall it effect the jurisdiction of the Itsa Tribal Court over the child.

# CHAPTER 5

## TRIBAL ADOPTIONS

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### **Section 1. Beginning a Case**

Any person who desires to adopt a child may request that the Itsa Tribal Court consider the matter by filing a Petition to use the Tribal Court. The Court shall consider what is in the best interest of the child in all cases, but shall hold the general policy that Native children be adopted by Native parents.

### **Section 2. Contents of Adoption Petition**

The Petition to use the Tribal Court shall provide the following information:

1. The name, address and age of the person to be adopted; and
2. The names and addresses, if known, of the person's biological parents and any custodians of the person; and
3. The names and addresses of any other person or Tribe with an interest in the adoption proceeding or in the person to be adopted; and

4. Whether the Petitioner has reason to believe that the biological parents of the person to be adopted oppose the adoption; and
5. If the person to be adopted is a minor child, the facts which make the petitioner believe that the best interest of the child to be adopted require that an adoption Order be issued by the Court; and
6. A statement of which tribe(s) the person to be adopted is a member or with which tribe(s) the person to be adopted is eligible for membership. If the person to be adopted is a minor child, this statement should include facts that indicate that the Itsa Tribe is the tribe with the most significant contacts with the child; and
7. The name the Petitioner(s) intends to give the child after the adoption; and
8. Whether the child has any property and if so, what that property is; and
9. Any relationship between the Petitioner(s) and the child; and
10. Where the Petitioner(s) was born and their present age and occupation.

### **Section 3. Homestudy**

The Court may Order a homestudy completed for the proposed adoptive home. The Petitioner(s) may be required to pay costs involved in the homestudy. The homestudy shall include an evaluation of the home for all of the factors for determining the best interest of the child and anything else the Court requires. If the Court has appointed a guardian ad litem to look after the best interest of the

child, the homestudy shall state what recommendation the guardian ad litem makes regarding the granting of the Adoption Order.

#### **Section 4. Adoption Hearing and Adoption Order**

The Court shall set a hearing date within a reasonable length of time after a Petition is filed. After reasonable notification and hearing according to procedures set forth in **[site the place in the tribal codes where this can be found]**, the Court may issue an adoption Order. The Court shall award the adoption Order if it finds the following things:

1. The biological parents have consented to the adoption or have had their parental rights terminated in Tribal Court or the Court of any other jurisdiction or are unavailable to consent to the adoption; and
2. If the person to be adopted is over the age of 14 years and he or she consents to the adoption; and
3. If the person to be adopted is a minor child, the Court finds that it is in the child's best interest as defined in Chapter 1, Section 3 of this Code, to be adopted by the Petitioner(s).

#### **Section 5. Visitation**

The Court may require that persons with whom the child has emotional or blood ties shall have visitation with the child. Specific information concerning such visitation shall be incorporated into the adoption Order.

#### **Section 6. Effect of Adoption Order**

The Itsa Tribal Court adoption Order creates the relationship of parent and child between the Petitioner(s) and the adopted person.

# CHAPTER 6

## DOMESTIC VIOLENCE

**Section 1. Definitions** .....

**Section 2. Cooperative Enforcement of Protective Orders**.....

**Section 3. Beginning a Case** .....

**Section 4. Contents of the Petition to Use the Tribal Court**.....

**Section 5. Emergency Hearings for Temporary Protective Orders** .....

**Section 6. Hearing for Final Protective Orders** .....

**Section 7. Contents of Protective Orders** .....

**Section 8. Dissolving or Modifying Temporary or Final Protective Orders**.....

**Section 9. Violation of a Protective Order** .....

**Section 10. Rights of Victims of Domestic Violence** .....

### **Section 1. Definitions**

“**Domestic Violence**” means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, or a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator.

“**Petitioner**” shall be the person who actually files a petition to the tribal court requesting a Protection Order.

“**Respondent**” shall be the perpetrator of domestic violence.

“**Parties**” shall be the Petitioner, the victim if other than the Petitioner, and the Respondent.

## **Section 2. Cooperative Enforcement of Protective Orders**

In accordance with the full faith and credit provision of the Violence Against Women Act, 18 U.S.C. Section 2265, the Itsa Tribal Court shall recognize protective orders issued by states or other tribal governments. The Itsa Court shall forward a certified copy of any active tribal protective orders to the Alaska State Court system for registration in the statewide protection order registry. Any valid protective order issued by the State of Alaska, another state, or another tribe shall be accorded full faith and credit by the Itsa Tribal Court.

## **Section 3. Beginning a Case**

A person who has been subjected to domestic violence as defined in Section 1 of this Chapter, or any person who has knowledge of domestic violence committed against a person who is unable or unwilling to petition the Court, may request a domestic violence protection order from the Tribal Court. The person shall make the request by filing a Petition to use the Tribal Court form. The person who files such a petition shall be called the petitioner.

## **Section 4. Contents of the Petition to Use the Tribal Court**

In domestic violence cases, the Petition to Use the Tribal Court shall contain the following information:

1. The name, address and age of the person to be protected; and
2. The names and addresses if known of the person's custodians, if any; and
3. The names and addresses of any other person or tribe with an interest in the domestic violence proceeding; and

4. Whether the Petitioner is the victim or whether some other person is the victim, and if so, the Petitioner's relationship to the person to be protected; and
5. The facts that make it necessary for the person to be protected; and
6. The relief requested by the Petitioner.

### **Section 5. Emergency Hearing for Temporary Protective Orders**

In immediate emergency circumstances, the Court may hold an emergency hearing to consider the issuing of a temporary protective order. If the Court finds that the Petitioner, or victim if other than the Petitioner, has been subjected to domestic violence, it may grant a temporary protective order under this Section without written or oral notice to the Respondent so long as it appears that there is a substantial likelihood of immediate danger from the Respondent to the health, safety, or welfare of the victim or a member of his or her household from the Respondent and a reasonable attempt has been made by the Itsa Tribal Court to notify the Respondent of the hearing to issue a Temporary Protective Order. This Temporary Protective Order shall remain in effect for 20 days after it is issued unless dissolved earlier by the Court, after a hearing is held and notice provided to the Parties of the hearing to consider the dissolution of a temporary protective order. To replace this temporary protective order with a final protective order, the court shall notify the Parties at least 10 days before a hearing is held to consider the matter, and give those persons the right to respond and appear at the hearing either in person or telephonically.

### **Section 6. Hearing for Final Protective Orders**

A hearing shall be held within 20 days of the granting of a temporary protective order to consider the issuing of a final protective order. The Court shall provide notice to the Parties at least 10 days prior to the hearing. The hearing may proceed regardless of whether or not the Respondent participates. The Court may order a



final protective order if the Court finds a preponderance of evidence that the Respondent has committed an act involving domestic violence against a victim. A final protective order granted at a hearing shall be in effect for up to 6 months from the date of the hearing, unless the Court determines that for safety reasons, it is in the best interest of the Tribe to grant the protective order for a longer period including up to life of the person/s being protected.

The order may be extended for up to another 6 months upon request of the Petitioner or victim if other than the Petitioner, and after another hearing is held indicating that it is necessary to extend the order to protect the victim or a person residing with the victim. Notification of such a hearing shall be given to the Parties at least 20 days in advance.

#### **Section 7. Contents of Protective Orders**

At either an emergency hearing for a temporary protective order or at a hearing for a final protective order, the Court may decide that a temporary or final protective order contain any of the following:

1. Banishment of the Respondent from the Village;
2. That the Respondent be restrained from threatening to commit or committing domestic violence, stalking, or harassment;
3. That the Respondent move out of the home of the victim, regardless of the ownership of the residence;
4. That the Respondent not communicate directly or indirectly with the victim (this may include no telephone calls, letters, or in-person contact, depending upon the Court's Order);
5. That the respondent not enter any propelled vehicle in the possession of or occupied by the petitioner;

6. That a peace officer accompany the victim to the victim's residence to obtain property or children if the victim has custody of the children;
7. An award of temporary custody of the minor child(ren), with a possible visitation provision with a minor child if the safety of the child and the victim can be protected;
8. If visitation is allowed, the Court may order visitation under specific conditions;
9. That the victim have possession and use of vehicles and other essential personal items, regardless of ownership of the items;
10. That a Respondent pay support to a victim or for a minor child in the care of the victim if the Respondent has a legal obligation to support the child;
11. That the Respondent pay medical or other expenses of the victim that resulted from domestic violence by the Respondent;
12. That the Respondent engage in personal or family counseling; substance-abuse counseling or treatment, or a program for the rehabilitation of perpetrators of domestic violence, or a combination of these;
13. That the Respondent be prohibited from consuming controlled substances;
14. That the Respondent stay away from a victim who is boarding a boat, aircraft, or any other motor vehicle.

### **Section 8. Dissolving or Modifying Temporary or Final Protective Orders**

If any of the Parties wishes to dismiss or change an existing temporary or final protective order in any way, he or she must file a Petition to use the Tribal Court form specifically requesting the change. The Tribal Court shall then schedule a hearing only the Court finds that the request has merit. If the Court chooses to hold a hearing to consider the dissolution or modification, it shall do so within 3 days for

temporary protective orders and within 20 days for a final protective order, with reasonable notification of the parties.

### **Section 9. Violation of a Protective Order**

If the Respondent violates any part of a temporary or final protective order, he or she shall be charged with contempt of court and subject to appropriate penalties available to the Court.

### **Section 10. Rights of Victims of Domestic Violence**

A victim of domestic violence is entitled to but not limited to the right to:

1. Be informed of all hearing dates
2. Be present at all hearings of the Tribal Court on the matter
3. Advise the Court on conditions required to ensure his or her safety
4. Receive restitution for losses sustained as the direct result of the domestic violence

# CHAPTER 7

## MARRIAGES

**Section 1. Tribal Policy**.....

**Section 2. Procedure for Tribal Marriages**.....

### **Section 1. Tribal Policy**

It is the policy of the Itsa Tribe to uphold the validity of marriages whenever possible. The Tribal Court shall recognize the validity of any marriage performed under the law of the jurisdiction where it was performed.

### **Section 2. Procedure for Tribal Marriages**

Persons wishing to be married by the Itsa Tribal Court shall file a Petition to use the Tribal Court form. Marriages performed by the Itsa Tribal Court are subject to the following requirements:

- A. Both parties must be at least 18 years of age, or provide evidence of written consent by their parents or legal guardians. If there are two parents or legal guardians, both must consent if their child is under 18.
  
- B. A filing fee of \$50 shall be paid to the Itsa Tribal Court, or the Court may waive the fee upon a finding that both parties are destitute.
  
- C. Both parties must attest that they are not currently married.
  
- D. Marriages conducted by the Itsa Tribal Court are a privilege and not a right. The Court shall have discretion to decline to perform a marriage for any reason, including if the Tribal Court finds that the marriage is inconsistent with the custom law of the Itsa Tribe.
  
- E. Following the marriage, the Court shall issue a marriage license.

**CHAPTER 8**  
**DIVORCES AND ANNULMENTS**

**Section 1. Divorces** .....

**Section 2. Annulments** .....

**Section 1. Divorces**

Divorce proceedings shall begin with a filing of a Petition to use the Tribal Court. The Court may hear the case or dismiss a Petition where it finds that it lacks necessary personal or subject matter jurisdiction, or where it finds that the action is otherwise inconsistent with Itsa Tribal law. The Court shall have the option to issue any Order that it finds appropriate, including, but not limited to the following:

- A. Where the Court finds that it has jurisdiction to dissolve a marriage, but lacks jurisdiction to adjudicate property rights, it may issue such an Order and proceed accordingly.
  
- B. Where the Court finds that as a matter of comity to another jurisdiction, it should refrain from ruling on all or a part of the requested relief in a Petition for divorce, it may issue an Order setting forth its decision, and proceed accordingly.

**Section 2. Annulments**

Persons wishing to have a marriage annulled may bring the matter before the Tribal Court by filing a Petition to use the Tribal Court. A marriage performed by the Tribal Court may be annulled where the Tribal Court finds any of the following grounds:

- A. The marriage was the result of fraud or duress.

- B. One of the parties was of unsound mind at the time of the marriage.
- C. There was failure to consummate the marriage.
- D. The marriage violated any applicable written law or any unwritten custom law of the Itsa Tribe.

**CHAPTER 9**  
**NAME CHANGES**

**Section 1. Order of Name Change.....**

**Section 1. Order of Name Change**

The Itsa Tribal Court shall have authority to issue an Order changing the legal name of a party or the child of a party. Persons wishing a name change shall begin the proceeding by filing a Petition to use the Tribal Court. It is up to the discretion of the Court to proceed with the name change or not. The Court may charge a fee for the Petitioner to use the Court for name change purposes, and for costs associated with filing the name change with the Alaska Division of Vital Statistics.

**Chapter 10**  
**Protection for the Elders and Vulnerable Adults of the**  
**Itsa Tribe**

**Section 1. Policy, Purpose and Enforcement**.....

**A. Policy**.....

**B. Purpose**.....

**C. Enforcement** .....

**Section 2. Application of this Ordinance** .....

**Section 3. Definitions** .....

**Section 4. Duty to Report Abuse of an Elder**.....

**Section 5. Immunity for Reporting and Confidentiality** .....

**Section 6. Failure to Report , Bad Faith Reports, and Penalty for Retaliation**.....

**Section 7. Procedures for Petition, Investigation, Notice, and Hearing** .....

**A. Petition** .....

**B. Investigation** .....

**C. Notice and Hearing** .....

**Section 8. Elder Protective Services and Placements**.....

**A. Funding of Protective Placements and Services**.....

**B. Voluntary Placements and Protective Services**.....

**C. Involuntary Protective Placement and Services**.....

**Section 9. Emergencies** .....

**A. Emergency Action** .....

**B. Maximum Length of Time for Emergency Order** .....

**C. Forcible Entry** .....

**Section 10. Rights of Elders, Their Families, and Caretakers** .....

**Section 1. Policy, Purpose, and Enforcement**

- A. **Policy:** It is the traditional way of the Itsa Tribe to honor and respect the Tribal Elders. The Elders of the Itsa Tribe are valuable resources as they are our custodians of tribal history, culture and tradition. Thus, it is in the



best interest of and serves the welfare of the Itsa Tribe to protect tribal Elders. It is also in the best interest of the Tribe to protect vulnerable tribal members.

B. **Purpose:** The purpose of this Ordinance is to protect Elders and vulnerable adults within the jurisdiction of the Itsa Tribe from abuse as defined in this Ordinance. This Ordinance shall be liberally interpreted in order to achieve its purpose. This Ordinance provides for:

1. Reporting abuse or neglect to the Tribal Court;
2. Receiving reports of and investigating suspected abuse or neglect;
3. Delivering Elder protection services and protection services to any other vulnerable adult.

C. **Enforcement:** The Itsa Tribal Court shall be the primary enforcer of this Ordinance, provided that the Itsa Tribal Court may enter into agreements with other courts of competent jurisdiction for enforcement when circumstances warrant such cooperation.

## **Section 2. Application of this Ordinance**

This Ordinance is civil in nature. This Ordinance applies to Tribal Elders and to any adult tribal member of the Itsa Tribe should circumstances as defined by this Ordinance warrant. Any section or portion thereof containing the word “Elder” shall be liberally construed to include and mean or other “vulnerable adult” as defined by Section 3 of this Ordinance.

### **Section 3. Definitions**

In this Ordinance the following words shall have these meanings:

**“Abuse”** is intentional or negligent infliction of bodily injury, sexual or emotional abuse, unauthorized and/or improper use of funds, property or other resources of an Elder, neglect, unreasonable confinement, intimidation or cruel punishment of an Elder resulting in physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the Elder such as a spouse, a child, or other relative recognized by the Tribal Council as a caretaker. Abuse is also interfering with delivery of necessary services and resources, failing to report abuse or neglect of an Elder by any person, and failing to provide services or resources essential to the Elder’s practice of his customs, traditions, or religion.

**“Elder”** Is a senior citizen of the Itsa Tribe who is recognized as such by the Itsa Tribe

**“Incapacity”** is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

**“Protective Placement”** is the placement of an Elder in a hospital, nursing home, residential care facility, or with a different Native family or person in the Village, or transfer of the Elder from one such institution to another with the Elder’s consent or appropriate legal authority.

**“Protective Services”** are services provided to an Elder with the Elder’s consent or with appropriate legal authority and include, but are not limited to, social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other services consistent with this Ordinance. It does not include protective placement.

**“Reporter”** is someone who notifies the Itsa Tribal Court of a suspected abuse of an Elder or vulnerable adult.

**“Retaliation”** is threatening a reporter of Elder abuse or the reporter’s family in any way, causing bodily harm to the reporter or the reporter’s family, causing the reporter or any of the reporter’s family to be reprimanded by an employer, terminated from a job, suspended from general assistance, or damaging the reporter’s or the reporter’s family’s real or personal property in any way.

**“Vulnerable adults”** are those persons over 18 who are mentally or physically incapacitated by physical conditions or by drug or alcohol induced conditions.

#### **Section 4. Duty to Report Abuse of an Elder**

Failure to report cases of suspected abuse or neglect of an Elder or vulnerable adult is a violation against the Itsa Tribe and subject to fine under Section 6 of this Ordinance. The following people are required to report cases of suspected abuse or neglect of an Elder to the Itsa Tribal Court.

1. The Elder’s family or caretaker,
2. Any tribal employee including the Tribal Administrator and Tribal Family Youth Specialist and Village Public Safety Officer,

3. Any tribal elected official,
4. Any employee of a tribally owned business, even if not managed by the Tribe,
5. The Village Health Aide,
6. Any medical doctor or dentist, nurse, physicians assistant, human services worker, or Elder service provider,
7. Any person or agency or employee of such agency with a fiduciary duty to the Elder such as a lawyer, accountant, financial institution, property manager, or conservator,
8. Any person who has good reason to suspect that an Elder had been or is being abused or neglected.

#### **Section 5. Immunity for Reporting and Confidentiality**

A person who in good faith reports suspected abuse or neglect of an Elder is immune from any civil or criminal suit based on that person's report. The name of a reporter who reports abuse as required by this Ordinance is confidential and shall not be released to any person unless the reporter consents to the release because it would necessary to protect the Elder. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected Elder abuse or for testifying as required by this Ordinance.

#### **Section 6. Failure to Report, Bad Faith Reports, and Penalty for Retaliation**

Any person who is required by this Ordinance to report suspected Elder abuse and fails to do so is subject to a fine of up to \$500.00 if found guilty by the Itsa Tribal Court. Any person who makes a report of suspected Elder abuse knowing it to be false is subject to a fine of up to \$500.00 if found guilty by the Itsa Tribal Court. If a person retaliates for the reporting of a suspected case of Elder

abuse, the Itsa Tribal Court may utilize the full range of sentencing options at its discretion.

## **Section 7. Procedures for Petition, Investigation, Notice and Hearing**

The Itsa Tribal Court shall determine whether Elder abuse has occurred. The determination shall be made only after petition of suspected abuse is filed, an investigation takes place, notice of a hearing is given to all parties, a Itsa Tribal Court hearing is held, and the Court finds proof that is clear and convincing. However, the Court may act in emergency situations to protect the Elder without a petition, investigation, notice, and hearing when it receives clear and convincing evidence that an Elder is in immediate danger either in writing or orally.

**A. Petition:** The Itsa Tribal Court shall receive reports of Elder abuse by the filing of a petition and shall assign investigators to work with the reporter within 24 hours. Reporters shall file a petition to the Itsa Tribal Court containing the following information:

1. The name of the reporter,
2. The name and location of the Elder,
3. The suspected conditions of abuse, and
4. Any other facts the petitioner believes will assist the Court.

**B. Investigation:** Investigators, who are appointed the Itsa Tribal Court, shall gather information and file a report with the Court containing the following information:

1. The Elder's name, address or location, telephone number;

2. The name, address or location, telephone number of the person(s) who is suspected of abusing the Elder;
3. The nature and degree of incapacity of the Elder;
4. The name, address or location, telephone number of witnesses;
5. The name, address or location, telephone number of the Elder's caretaker;
6. A description of the acts which are complained of as abusive; and
7. Any other information that the investigators believe might be helpful in establishing abuse.

**C. Notice and hearing:** Notice and hearing procedures shall be the same for suspected Elder abuse cases as they are for other Itsa Tribal Court Cases.

## **Section 8. Elder Protective Services and Placements**

**A. Funding of Protective Placements and Services:** Protective services or protective placements shall be provided on either a voluntary or involuntary basis. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the Itsa Tribal Court. The Elder, and where appropriate the Elder's family, if able to do so, shall pay for all or part of the costs of services or placement provided to them.

**B. Voluntary Placements and Protective Services:** Protective services or placements may be provided on a voluntary basis by the Itsa Tribal Court when requested by any abused Elder and the Court finds the Elder to be in need of such services or placement. The Court shall act on such petitions within 10 days. These services or placements shall be provided in the manner least restrictive to the Elder's liberty and rights consistent with the Elder's welfare and needs. Such services and placements shall

be provided, subject to available funding and resources, and only as determined necessary by the Itsa Tribal Council. The Council shall develop a written plan for the delivery of Elder protection services.

**C. Involuntary Protective Placement and Services:** Upon an Order of the Itsa Tribal Court, involuntary protective services or placement shall be provided to any Elder who is incapacitated or who is abused.

## **Section 9. Emergencies**

**A. Emergency Action:** The Itsa Tribal Court may act without going through the process outlined in Section 7 when emergency circumstances exist. The Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon receiving clear and convincing evidence that an Elder:

1. is at risk of immediate physical harm,
2. is incapacitated and cannot consent to protective services, or
3. an emergency exists

**B. Maximum length of time for emergency order:** The emergency protection order shall be issued for a maximum of 30 days and shall specify the emergency services to be provided, by whom the services shall be provided, and any other relevant information to the existing emergency.

**C. Forcible entry:** The Itsa Tribal Court may authorize a forcible entry to enforce the emergency protection order after attempts to gain voluntary access to the Elder have failed.

## **Section 10. Rights of Elders, Their Families and Caretakers**

Elders and family of Elders have the following rights:

1. An Elder, the Elder's family, and caretakers shall be informed about an Elder abuse investigation before it begins unless an emergency exists.
2. An Elder, the Elder's family, or caretaker may refuse to allow an investigator into their home. In this situation, the investigator may seek a warrant for forcible entry before entering the home.
3. The Elder, Elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the Elder's situation.
4. The Elder, Elder's family and caretaker have the right, at their own expense, to seek independent medical, psychological, or psychiatric evaluation of the Elder. These records shall be released to the Itsa Tribal Court if the Elder or caretaker wants the Court to consider such evaluations.