

TITLE 05 - MARRIAGE, DIVORCE AND CUSTODY

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Chapter 01. Marriage

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Sec. 05.01.001 Purpose

To govern the process of permitting and conducting marriages, divorce and establishing custody arrangements by the Central Council of Tlingit and Haida Indian Tribes of Alaska.

Sec. 05.01.002 Jurisdiction

For the purposes of this Title the Tribe retains inherent sovereign authority over the family relations of its citizens.

Sec. 05.01.003 Definitions

When the words listed in this section appear in this chapter, they shall have the following meaning unless a different meaning is clearly intended.

- A. **Marriage:** is a civil and relational contract between two consenting persons.
- B. **Same clan relative:** if persons are of the same clan or moiety of the same Tribe, such as both are ravens or both are eagles.

Sec. 05.01.004 Persons Who May Marry

- A. Any person meeting the following qualifications may be married:
 - 1. Must be at least 18 years of age; or
 - 2. Must have attained the age of 16 years of age and can provide written consent filed with the licensing officer issuing the marriage license under 05.02.001 of a parent or guardian having actual care, custody and control.

- B. At least one of the persons to be married must be an enrolled citizen of the Central Council of Tlingit and Haida Indian Tribes of Alaska.
- C. Any person may enter into a marriage with another person, regardless of gender, unless the marriage is otherwise expressly prohibited in this Chapter.

Sec. 05.01.005 Marriages Not Permitted

Marriage shall not be granted under any of the following conditions:

- A. If the parties to the proposed marriage are close blood relatives; or
- B. If either party to the proposed marriage is incapable of making informed consent due to mental or legal incapacity; or
- C. If either party to the proposed marriage has a living spouse.

Sec. 05.01.006 Who May Perform Marriages

A marriage may be performed by any of the following:

- A. The CCTHITA President or his or her designee; or
- B. A Judge or Magistrate of the Tribal Court.

Sec. 05.01.007 Marriage Process

- A. A marriage license may not be issued unless both of the contracting parties are identified to the satisfaction of the licensing officer. If all requirements have been met and there is no legal objection to the contemplated marriage and neither party is under the influence of intoxicating substances or otherwise incapable of understanding the seriousness of the proceeding, the licensing officer shall issue a license.
- B. Public record of all marriage certificates will be maintained by the Tribal Court.

Sec. 05.01.008 Voidable Marriages

If either party to a marriage is incapable of consenting to it at the time of the marriage for want of marriageable age of consent or sufficient understanding, or if the consent of either party is obtained by force or fraud, or if either party fails to consummate the marriage, the marriage is voidable but only at the suit of the party under the disability or upon whom the force or fraud is imposed.

Sec. 05.01.009 Recognition of Marriages from Other Jurisdictions

Marriages performed by other jurisdictions will be recognized by the Tribe under the Doctrine of Comity if the marriage is valid in the jurisdiction where the marriage took place.

Chapter 02. Divorce, Dissolution and Separation

RESERVED

Chapter 03. Custody

Sec. 05.03.001	Findings and Purpose
Sec. 05.03.002	The Rights of Tribal Children & Responsibilities of Family Members
Sec. 05.03.003	Exemption from Certain Provisions of Title 04
Sec. 05.03.004	Child Custody Petition
Sec. 05.03.005	Initial Hearing
Sec. 05.03.006	Conduct of Family Conference
Sec. 05.03.007	Contest Custody Hearing
Sec. 05.03.008	Custody Order
Sec. 05.03.009	General Provisions for Custody Orders
Sec. 05.03.010	Change of Custody

Sec. 05.03.001 Findings and Purpose

- A. This chapter outlines the procedures, standards and principles for families to make decisions regarding child custody. This chapter is not applicable to child in need of care cases in which the Tribe is a party.
- B. Tribal children should be given the chance to have their inter-family conflicts resolved peacefully, in accord with our tribal values. Ideally, a family dispute should be resolved by drawing on the authority of the child's mother's clan. In every case, families will be expected to make cooperative decisions about the care and custody of tribal children that are focused on the child, to ensure familial and family clan relationships are maintained.
- C. The Tlingit and Haida cultures shall be given due recognition in the application of this chapter by honoring and utilizing the natural support systems of our tribal and clan relationships, and the traditional ways of our people that include our culture, language, songs, dance, stories, respecting our elders, and tribal values. Tlingit and Haida clan ties incorporate our diverse languages and customs, kinship systems, historical ties to our land and resources, and many other characteristics that unite the tribal membership into common identities. While many aspects of our cultural practices and lifestyles have changed within our villages and communities of Southeast Alaska, the underlying authority of the Tlingit and Haida clan systems have endured and still exist today.
- D. Our children, viewed as the seeds of our future, are traditionally treated with care, shown their places in the world, and taught how they relate to the clan system and community. They are given life lessons by both the

mother's and father's family, and learn that they possess an identity that is based in their kinship.

- E.** Learning one's genealogy is vitally important for a child during their growing up years. Our relationship to one another has a purpose. We don't have cousins, we have brothers and sisters. Our mother's sister (Tlaak'w) is mother. Our father's brother is uncle (Sani or Eesh). Our father's sister (Aat) is auntie. Our children are brought up with a sense of belonging, starting before birth with family talking to and connecting with the child while still in the womb!
- F.** Our clan system is and remains a part of the child, even when the child is raised outside the clan. The child is still related. Traditionally, a child stayed within a clan house, first with Auntie (Tl'aak'w) then with Aat. We never had orphans; we took care of our own. If the child grows up with knowledge and experience of the clan system, he or she knows the importance of their place within the clan. The opposite clan was always available to take in a child, but only if there is no one available from the child's clan. This was the traditional placement preference.

Sec. 05.03.002 The Rights of Tribal Children & Responsibilities of Family Members

- A.** Every child is essential to the tribal community, clan and extended family.
- B.** Our clans are matrilineal. The child has a right to know and rely upon his or her Tlingit and Haida matrilineal heritage.
- C.** Children should be protected and cared for by adults who are willing and able to meet their spiritual, physical, mental, and emotional needs.
- D.** Children should have the opportunity to learn about their cultural heritage and clan identities, through time with elders and tradition-bearers, art, dance, music, stories, and subsistence activities.
- E.** Children deserve healthy relationships with parents, siblings, grandparents, aunts, uncles, and cousins on both sides of the family.
- F.** Children deserve to grow up free from violence and emotional abuse in their home.
- G.** Whenever possible, children should remain in the community where they can be around family, extended family, and clan members. The custodian of a child unable to remain in the community has a responsibility to ensure cultural continuity in the child's upbringing and the maintenance of the child's ethnic, cultural, spiritual, and linguistic education.
- H.** Children capable of forming their own views have the right to express those views and their views will be given due weight in accordance with their age and maturity.

- I. Each side of the family and extended family has a responsibility to respect the right of the child to have a relationship with the other side of the family. However, the value of maintaining those relationships may be outweighed by the necessity of protecting a child from family violence or abuse.
- J. Children should have and know their Tlingit or Haida names, be able to introduce themselves properly, and be enrolled as tribal members.

Sec. 05.03.003 Exemption from Certain Provisions of Title 04

CSC 04.01.005(C) Notice to other Tribes

CSC 04.01.007 Confidentiality of Records and Proceedings

CSC 04.01.008(G) Rights of parties to not be a witness against themselves.

CSC 04.01.009 Procedure for Hearings

Sec. 05.03.004 Child Custody Petition

- A. All child custody cases shall begin with a parent or other caretaker filing a petition for child custody. Forms shall be available at the tribal court. The petition shall be sworn under oath and provide the following information:
 - 1. The name and date of birth of the child;
 - 2. A statement that the child is an enrolled member of CCTHITA or eligible to be enrolled;
 - 3. The name of both parents and other extended family with significant ties to the child;
 - 4. Information about any type of custody, visitation, guardianship, or protection orders pending or already in place for the child;
 - 5. Whether domestic violence is a concern in the case; and
 - 6. Whether the family has already agreed on a custody plan or whether they are seeking assistance to develop a plan.
- B. The petitioner will also file a Confidential Information Form with the petitioner's tribal affiliation, mailing address, current residence, telephone number, current employment, and enrollment status, and the same

information (if known) for the other parent (or both parents, if a custodian is filing the petition) and extended family with significant ties to the child.

- C.** The Court shall charge a filing fee of \$100.00. The Court may waive this fee if the petitioner can document financial hardship.
- D.** Once a petition is filed, the person filing the petition has the burden of serving the other parent (or both parents, if a custodian is filing the petition) and extended family members identified in the petition. Such service shall be made via US mail, certified and return receipt requested, process server, or personal service by a person not a party to the litigation. If the petitioner is a parent, the petitioner shall not personally serve the other parent.
- E.** Once the petitioner has filed proof of service with the Court, the clerk will set a hearing at least twenty (20) days from the date of service and provide written notice of the hearing to the petitioner, the parents, and other extended family members identified in the petition.
- F.** The Court will provide a response form to all individuals served with notice of the hearing, other than the petitioner. A response to the custody petition may be made by filing a written response or by appearing in court. If a party files a written response, that party shall provide a copy to the petitioner and to the other family members identified in the petition, provided that mailing addresses are available for the other family members.
- G.** If a parent or other family member has been served, and proof of service has been properly filed, the Court can proceed to make a custody decision without the participation of that parent or family member. A petition for default is not necessary.
- H.** The parents and any extended family members that participate in the court case are parties to the case.

Sec. 05.03.005 Initial Hearing

- A.** The purpose of the initial hearing will be to determine whether and how the case will go forward in tribal court.
- B.** The Court will make an initial determination of jurisdiction. Parties have the right to raise objections regarding jurisdiction. The court will respond to all objections to jurisdiction in writing.
- C.** If the Court determines that it has jurisdiction over the case, the Court will verify that notice of the hearing has been provided to all parents,

custodians, and extended relatives with significant ties identified by the parents, provided there is contact information for those extended relatives.

- D.** If notice has not been provided as required, the hearing shall be continued. The hearing may be continued if a party who has received notice has not appeared in court.
- E.** Parties that have agreed on a custody plan for their child or children may present that plan to the Court for approval and final order. The Court has discretion to approve or decline a plan.
- F.** Pending an outcome of the custody determination, the Court may issue a temporary child support order according to CSC 10.01 *et seq.*
- G.** If the parties have not reached an agreement on a custody plan, the Court will consider whether the case is appropriate for referral to a family conference or set a contested court hearing.
- H.** The Court will discuss with the parties what records and other evidence will be helpful to make an informed decision about child custody, and the best way to obtain this information.
- I.** In any case where a parent or custodian of the child is afraid of another parent or custodian of the child, he or she may opt out of the family conference by informing the court at the hearing or by filing an opt out form within ten (10) days of the initial hearing. The Court would then set the case for a contested hearing. In any case where a parent is afraid of a relative that is not a parent, that parent may ask the Tribal Court to exclude that relative from the family conference.
- J.** In advance of the contested hearing, the court will explain the hearing process, and the responsibility of all parties to present relevant evidence and focus their case on the needs of the child, rather than grievances against the other parent or family that do not affect the child.

Sec. 05.03.006 Conduct of Family Conference

- A.** The Tribal Court may refer a case to a Family Conferencing to resolve private custody disputes. The family will set procedures for the conference, with the assistance of a facilitator and in consultation with the Tribal Court. All parties must agree that family conferencing discussions are confidential and must agree to sign a confidentiality agreement.
- B.** If the family conference ends in agreement about custody and visitation arrangements, those arrangements shall be documented in a Custody Order form provided by the Court. All parties shall review and sign the Custody Order before leaving the family conference. Cases unable to be resolved

through a family conference shall be referred back to the court for a contested hearing.

Sec. 05.03.007 Contest Custody Hearing

If referral to the family conference is not appropriate, or if the family conference does not lead to agreement and the facilitator and the parties agree that further attempts at a family conference are unlikely to be successful, the case will be referred to the tribal court for a contested hearing.

- A. Timely Hearing. After a referral for a contested hearing, the Court shall set a contested hearing within ninety (90) days. Parties can request additional time when there are extenuating circumstances.
- B. Purpose of the Contested Custody Hearing. The purpose of the contested custody hearing is to make a decision about who should have physical and legal custody of the child(ren), what visitation, if any, should be awarded for those persons who do not have custody and financial support for the children.
- C. Witnesses. At the hearing, all parties shall have the opportunity to present evidence and question witnesses. If more time is needed for the parties to present additional evidence and witnesses after the hearing, the Court may schedule a second hearing as soon as is reasonably possible.
- D. Deciding Custody and Visitation. After the hearing is completed, the Court shall make a decision regarding who shall have custody and what, if any, visitation should be awarded.

Sec. 05.03.008 Custody Order

The court shall issue a written order providing that:

- A. A party or parties be given legal and physical custody of a child; or
- B. That a party not given physical custody be given specified visitation with the child; or
- C. That a party not be given custody of a child.
- D. Child support will be determined according to the CSC 10.01 *et seq.*, unless there is already a child support order in place for the child.

Sec. 05.03.009 General Provisions for Custody Orders

- A. PARTICIPATION OF CLAN. The parties may invite the child's clan leader or clan mother to serve as an advisor in a family conference or contested hearing. Parties may request assistance from the Tribal Court to identify clan leaders and clan mothers.
- B. PARTICIPATION OF CHILDREN. Children may be invited to some or all of a family conference if the participants agree that it is appropriate. If

a child can clearly express his or her views it is valuable for the parties to hear the child state his or her feelings.

- C.** The Tribal Court may, in its discretion, also invite a child to appear at a portion of contested custody hearing to hear the child state his or her feelings. No other part of the contested hearing may be conducted in the presence of the child. The child shall not be questioned by any party or attorney. No child will be required to appear that does not wish to appear. Any child that wishes to speak to the Tribal Court judge in private may do so.
- D.** **ROLE OF EXTENDED FAMILY.** Grandparents, aunties, uncles, and other important caretakers help teach us who we are and where we come from. They should be a part of custody decisions. However, another relative cannot override the wishes of the parents, except when the parents are unable to take care of their child(ren).
- E.** **OTHER ADVOCATES.** The parties may invite advocates to participate in the custody process. In addition, the court may appoint a Court Appointed Special Advocate (CASA), or a Guardian Ad Litem (GAL), if available, to assist in cases where a CASA or GAL would decrease family conflict or assist the family in meeting a child's needs.
- F.** **CONSIDERATION OF DOMESTIC VIOLENCE.** It is the policy of the Tribe to entrust custody of a child to parents who are safe and refrain from abuse in all its forms. In every proceeding where child custody is disputed, the Court must give extremely serious consideration to the impact of domestic violence on the child and the child's development, even if the domestic violence did not occur in the presence of the child.

 - 1.** The Court may impose the following conditions on any custodian who has committed domestic violence:
 - 2.** Custody or visitation time supervised by third party;
 - 3.** Exchanges of the child to occur in a protected setting;
 - 4.** Require the completion a domestic violence intervention program as a condition of custody or visitation;
 - 5.** Require participation in substance abuse counseling as a condition of custody or visitation;
 - 6.** Prohibit overnight visits; or
 - 7.** Any other condition deemed necessary to provide for the safety of the child, the victim of domestic violence, or other family or household members

Sec. 05.03.010 Change of Custody

- A.** Any parent or custodian may request that an award of custody of a child or visitation with a child be modified by filing a petition for change of custody and properly serving all the parties from the original case according to CSC 06.21 et seq. The other parties shall have thirty (30) days from the date of service to file a response with the Court and provide copies to the other parties.
- B.** The Court may, in its discretion, deny a request to change custody where there has been no significant change in circumstances from the date of the original custody order.
- C.** If there has been a significant change in circumstances, the court may invite the parties to resolve the dispute through a family group conference. If that is not appropriate or successful, the Court will hold a hearing with advance notice to the parties, any new decisions of the Court shall be made through a new Custody Order.

ADOPTED this 21st day of April, 2017, by the Tribal Assembly of the Central Council of Tlingit and Haida Indian Tribes of Alaska, by a vote of 96 yeas, 0 nays, 0 abstentions and 0 absence.

Amended: April 21, 2017

CERTIFY



President Richard J. Peterson

ATTEST



Tribal Secretary Ralph Wolfe