

## CHAPTER 12

### STOCKBRIDGE-MUNSEE TRIBAL LAW PATERNITY

#### Section 12.1 Purpose

This law is intended to be construed and applied liberally to assist the Tribe, mothers and potential fathers in determining the paternity of all children subject to the Tribe's jurisdiction and the corresponding rights and responsibilities that a parent has to a child.

#### Section 12.2 Definitions

- (A) "Acknowledgment of Paternity" means the putative father of a child born out of wedlock may assume parental responsibility for the child and recognized such child as his biological child heir and offspring by executing a formal acknowledgment of paternity. The acknowledgement shall also be signed by the mother of the child.
- (B) "Child" means the natural or adopted child under the age of eighteen (18) years old.
- (C) "Court" means the Stockbridge-Munsee Tribal Court as established by the Stockbridge-Munsee Tribal Law.
- (D) "Court Order" means a Tribal Court Order or a valid Court Order of a competent jurisdiction.
- (E) "Custody" means the biological mother of a child born out wedlock has all the rights and responsibilities consistent with the rights and responsibilities of a parent of a biological child except where the court grants legal custody to another person or transfers legal custody to an agency
- (F) "Custodial Party" means an adult, other than the parent or guardian, who has been given temporary physical care, custody and control of a child, including the duty to provide food, clothing, shelter, medical care, education and supervision of the child.
- (G) "Guardian" means a person other than the child's parent who is by tribal law or custom responsible for that child.
- (H) "Judge" means a Stockbridge-Munsee Community Judge.
- (I) "Jurisdiction" means the Stockbridge-Munsee Tribal Court shall have jurisdiction in paternity matters when one or more of the following applies:
  - (1) One or more parties or the child is an enrolled member of the Stockbridge-Munsee Community, Band of Mohican Indians;

- (2) One or more of the parties or the child resides or is domiciled within Stockbridge-Munsee Territory.
  - a) This Ordinance shall apply to all lands which for purposes of enforcement of this Ordinance includes proclaimed reservation lands and tribal trust lands as well as individual trust lands under the jurisdiction of the Stockbridge-Munsee Community.
  - b) This Ordinance shall also apply in relation to lands that the Tribe owns in fee simple.

- (3) One or more of the parties has submitted to the jurisdiction of the Tribal Court by filing an answer, counter-claim or appearance in Tribal Court.

- (J) “Parent” means the biological or adopted person of a minor child.
- (K) “Tribal Child Support Agency” means the Stockbridge-Munsee Tribal Child Support Agency.
- (L) “Tribal Member” means enrolled member of the Stockbridge-Munsee Community, Band of Mohican Indians.

**Section 12.3 Petition to Determine Paternity.**

(A) Who May File: Any interested party, including the biological mother, the putative father, the child’s legal guardian and the Tribal Child Support Agency or Indian Child Welfare may petition the court for the determination of the paternity of a child.

(B) Petition Contents: The petition shall be entitled; “In the matter of the paternity of (child’s name)” and shall contain the following information

- (1) The name, birth date, and residence of the child. If there is evidence that the child or the parties may be in danger of physical or emotional harm by the disclosure of the address, this shall be redacted.
- (2) Information showing that the child is a tribal child, or a descendant of a Tribal member.
- (3) The name and address of the biological mother.

- (4) The name and address of the putative father.
  - (5) The name, address and relationship to the child of all the other interested parties.
  - (6) A statement from the moving party setting forth the reasonable possibility of the requisite sexual contact between the parties.
  - (7) The petitioner's interest in the matter.
- (C) Notice of Hearing: The Court Clerk shall cause the summons and a copy of the petition to be served personally or by verified or registered mail upon all interested parties pursuant to established court procedures for service. Service shall also be made on the Tribal Child Support Agency or Indian Child Welfare if they hold an interest in the action by ordinary mail. Proof of service shall be filed with the court on a form provided for that purpose by the Office of the Court Clerk. Service shall be made at least ten (10) days prior to the initial hearing.
- (D) A petition for determination of paternity must be filed within eighteen (18) years after the child's birth.

**Section 12.4 Initial Hearing.**

At the initial hearing the court shall determine whether any interested party wishes to contest the petition. Before doing so, the court shall inform the parties of the following:

- (A) The nature and possible consequences of the proceeding.
- (B) The right to confront and cross-examine witnesses.
- (C) The right to be represented by counsel at the party's own expense.
- (D) The right to request genetic tests.
- (E) That the party contesting the petition has the defenses that the putative father was sterile or impotent at the time of conception or did not have sexual intercourse with the mother during the period six (6) to ten (10) months prior to the birth of the child.

### **Section 12.5 Genetic Tests.**

- (A) Should the Respondent fail appear at the initial hearing and the Petitioner provides credible evidence that there was requisite sexual contact during the conceptive period, the Tribal Court shall order genetic testing be conducted. A copy of the Order for Genetic Testing shall be sent to the Petitioner and Respondent by the Tribal Clerk of Court. The Order shall indicate the date, time and place that the parties must appear at to provide a genetic testing sample.
- (B) The Court may upon its own discretion and shall upon request of any party or the Tribal Child Support Agency, require the child, putative father, mother, or direct descendant of the mother or putative father if one of the parties is deceased, to submit to genetic tests.
- (C) Genetic tests shall be performed by a person certified to collect genetic samples and be analyzed by an accredited genetic testing laboratory.
- (D) The Court may order such tests by additional experts at the request and expense of a party as the Court deems necessary.
- (E) If genetic tests show that the putative father is the biological father by a percentage of 96.1% or higher, paternity is presumed and he shall be adjudicated the legal father at the final paternity hearing.
- (F) Whenever the results of the genetic tests exclude the putative father as the biological father of the child, this evidence shall be conclusive evidence of non-paternity and the Court shall dismiss the action.
- (G) If any party refuses to submit to the genetic tests this fact shall be taken into account as evidence and, a default judgment may be entered by the Court and such refusal shall be deemed in Contempt of the Court in accordance with Stockbridge-Munsee Tribal Law Chapter 1.14-1.20.
- (H) If the action was brought by the child's biological mother but she refuses to submit herself or the child to the genetic tests, the action shall be dismissed.

### **Section 12.6 Paternity Hearing.**

If the matter remains contested following the genetic test, and the percentage of probability is 96.0% or lower, the Court shall expeditiously and fairly conduct a hearing to determine paternity. The hearing may be conducted in an informal manner, but the decision shall be based solely upon the evidence produced at the hearing. The hearing

shall be closed to the public, and the proceedings shall remain confidential except upon order of the Court for good cause shown.

### **Section 12.7 Special Circumstances**

There are special circumstances in which the establishment of paternity may not be in the best interests of the child. They include:

- (A) If the child subject to the action was conceived as a result of rape or incest and the mother has requested that paternity establishment not move forward, then the Tribal Court will dismiss the paternity action.
- (B) If there is a pending adoption of the child and the establishment of paternity is not in the best interests of the child, then the Tribal Court will dismiss the paternity action.

If either of these circumstances exists, the Tribal Court will make a determination as to whether it is in the best interests of the child to establish paternity.

### **Section 12.8 Judgment.**

- (A) If the paternity of the putative father is established at the hearing by the preponderance of evidence, a judgment establishing paternity and declaring the putative father to be the biological father shall be entered. If paternity is not so established, the petition shall be dismissed.
- (B) If paternity is established, the judgment may make provision for custody and visitation pursuant to Section 62.8 of the Stockbridge Tribal Codes as if the parents had been married.
- (C) If paternity is established, the judgment may make provisions for child support and medical support pursuant to Stockbridge-Munsee Tribal Law Chapter 28 Child Support Order if requested by either parent or if the custodial party and/or child is receiving IV-A or IV-E benefits.
- (D) One or both parties shall be ordered to repay the costs of genetic tests, unless one or more of the parties have income that falls 175% or more below federal poverty levels.
- (E) Establishment of paternity shall have no effect on enrollment with the Stockbridge-Munsee Tribal Community, Band of Mohican Indians, but may be utilized by a party when making application for enrollment.

### **Section 12.9 Effect of Marriage by Biological Mother and Putative Father.**

In any case where the alleged father and biological mother of any child born out of wedlock shall lawfully marry, such child shall be considered the biological child of the mother and father, unless the parental rights of either parent were terminated prior to the marriage. This presumption will only be effective if the parties complete and file with the WI Department of Vital Records an Acknowledgment of Marital Child and the husband's name is added to the official birth record. If the birth record does not contain the name of the father, a paternity action may be brought forward to the Tribal Court.

### **LEGISLATIVE HISTORY**

1. Stockbridge-Munsee Children's Code approved by Tribal Council, August 8, 1981, by Resolution No. 0764.
2. Ordinance Committee revised as Stockbridge-Munsee Youth Code, Submitted to Tribal Council for review May 3, 1988.
3. Tribal Council adopted Youth Code by motion August 16, 1988.
4. Resolution No. 1104 dated August 29, 1988 officially adopted Youth Code, at a Council meeting on September 20, 1988.
5. BIA recommended changes that were approved by Tribal Council by Resolution No. 1161, July 18, 1989.
6. Amended on March 21, 2000, Resolution No. 08-2000 deleting references to blood tests, inserting genetic tests, and removing references to illegitimate children.
7. Amendments approved by BIA on March 31, 2000.
8. Repealed and re-adopted with whole-scale changes, including adding new sections and re-numbering, re-organizing and revising existing sections, and re-naming it as the Paternity Ordinance so as to meet the requirements of 45 C.F.R. § 309 permitting parties to sign acknowledgments of paternity without genetic testing, clarifying jurisdiction to include parties who reside, are domiciled or whom consent to the jurisdiction of the Stockbridge-Munsee Community, enhancing genetic testing procedures, enabling the Tribal Court to make a

determination of custody, visitation, and placement at the time of paternity adjudication and clarifying numerous sections in order to fulfill the requirements for establishing a Title IV-D Tribal Child Support Agency by Tribal Council on October 3, 2012, Resolution No. 0003-13. Approved by BIA on October 22, 2012.

9. Amended by Tribal Council on November 20, 2012, Resolution No. 011-13 in 12.2 (F) changing “parent” to “party” and in 12.7 by adding “If either of these circumstances exists, the Tribal Court will make a determination as to whether it is in the best interests of the child to establish paternity.”