

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Amending 9 N.T.C., Chapter One, to Change the Laws of the Navajo Nation Respecting Marriage and the Validation of Marriage.

WHEREAS:

1. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.T.C. Section 102 (a); and

2. The provisions of Title Nine, Chapter One, Navajo Tribal Code, were adopted by the Navajo Tribal Council between 1954 and 1958, have not been revised since that time and are seriously out of date; and

3. The provisions of Title Nine, Chapter One, Navajo Tribal Code, incorporate provisions allowing state and foreign law to govern domestic relations within the Navajo Nation and incorporate principles of law which are alien to Navajo custom and are inconsistent with the practices of the Navajo people; and

4. The Navajo Nation Supreme Court stated, in the decision of In re: Validation of Marriage of Loretta Francisco (A-CV-15-88, August 2, 1989) Nav. R., that provisions of Title Nine have outlived their usefulness and recommended that

... the Navajo Nation Council amend Title Nine of the Navajo Tribal Code so that it reflects Navajo regulation and control of domestic relations within Navajo territorial jurisdiction.

; and

5. Many members of the Navajo Nation who are applicants for benefits under the Radiation Exposure Compensation Act, 42 U.S.C. Section 2210, have encountered serious difficulties in proving their eligibility for benefits as surviving spouses because Title Nine creates unnecessary complexities for proof of a valid marriage under Navajo law; and

6. The Judiciary Committee of the Navajo Nation Council passed Resolution JCAP-5-93 by a vote of 5 in favor, 0 opposed and 0 abstained on April 22, 1993, which recommended the amendment of 9 N.T.C., Chapter One. A copy of that resolution is attached as Exhibit "B" to this resolution.


7. The Navajo Nation Council should amend Title Nine to reflect the present intentions of the Navajo Nation Government regarding marriages and remove the impediments to expeditious proof of a valid marriage under Navajo law.

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Council hereby amends Title Nine, Chapter One, Navajo Tribal Code, by adoption of the amendments enumerated in Exhibit "A" attached to this resolution.

CERTIFICATION

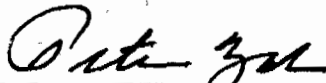
I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 56 in favor, 5 opposed and 0 abstained, this 23rd day of April 1993.


Speaker
Navajo Nation Council

April 27, 1993
Date Signed

ACTION BY THE EXECUTIVE BRANCH

1. Pursuant to 2 N.T.C. Section 1005 (c)(1), I hereby sign into law the foregoing legislation on this 28 day of April 1993:



Peterson Zah, President
Navajo Nation

* * * *

2. Pursuant to 2 N.T.C. Section 1005 (c)(10), I hereby veto the foregoing legislation this ___ day of ___ 1993 for the reason(s) expressed in the attached letter to the Speaker:

Peterson Zah, President
Navajo Nation

Exhibit A

§ 1. Validity generally

(a) ~~Marriages between Navajo Indians~~ contracted outside of Navajo Indian country are valid within Navajo Indian country if valid by the laws of the place where contracted.

(b) ~~Marriages between members of the Navajo Tribe~~ may be validly contracted within Navajo Indian country ~~either by following the law of the state in which such Indian country lies or by~~ meeting the requirements of 9 N.T.C. §§ 3 and 4.

~~§ 2. Mixed marriages~~

~~Marriages between Navajos and non-Navajos may be validly contracted only by the parties' complying with applicable state or foreign law.~~

~~§ 3. 2. Plural marriages void~~

All plural marriages contracted, whether or not in accordance with Tribal custom, shall be void.

§ 4. 3. Methods of contracting marriages

A marriage may be contracted within the Navajo Nation by any of the following procedures:

- (a) ~~Navajo Indians may contract marriage by signing in the presence of two witnesses, who shall also sign the marriage certificate printed on the face of their marriage license.~~ The parties may contract marriage by signing a Navajo Nation marriage license in the presence of two witnesses. The witnesses shall also sign the license to acknowledge that the license was signed by the parties. In such cases the marriage shall be valid regardless of whether or not a ceremony is held; or
- (b) The contracting parties may marry according to the rites of any church, in which case they, the officiating clergyman, and two witnesses shall sign in the places provided on the face of the marriage license. The authority to officiate at marriages of any person signing a Tribal Navajo Nation marriage license as a clergyman shall not be questioned; or
- (c) The contracting parties may be married by any judge of the Navajo Nation courts where the parties have first signed and completed a marriage license; or
- (d) The contracting parties engage in a traditional Navajo wedding ceremony which shall have substantially the following features:

- (i) The parties to the proposed marriage shall have met and agreed to marry.
 - (ii) The parents of the man shall ask the parents of the woman for her hand in marriage.
 - (iii) The bride and bridegroom then eat cornmeal mush out of the sacred basket.
 - (iv) Those assembled at the ceremony then give advice for a happy marriage to the bride and groom.
 - (v) Gifts may or may not be exchanged; or
 - (vi) The person officiating or conducting the traditional wedding ceremony shall be authorized to sign the marriage license.
- (e) The contracting parties establish a common-law marriage having the following features:
- (i) present intention of the parties to be husband and wife;
 - (ii) present consent between the parties to be husband and wife;
 - (iii) actual cohabitation;
 - (iv) actual holding out of the parties within their community to be married.

§ 5. 4. Requirements generally

In order to contract a Tribal Navajo Nation marriage, the following requirements must be fulfilled:

(1) Both parties must be unmarried. If either party has been previously married, the marriage must have been dissolved by death of the spouse or by a valid decree of divorce.

~~(2) Males must be at least 18 years old and females must be at least 16 years old; except where the female is pregnant, she and the father may marry regardless of their ages. Both parties must be at least eighteen years of age.~~

~~(3) Males between 18 and 21 years of age and females between 16 and 18 years of age must have written consent to marry. Such consent must be given by both parents if the minor is living with both parents. If the minor is living with only one parent, the consent of that parent shall be sufficient. If the minor is not living with either parent, the written consent of the nearest adult relative with whom the minor is living or of a guardian appointed by the Courts of the Navajo Tribe shall be required. In case any~~

~~person authorized to give consent to the marriage of a minor is incapable of giving such consent because of mental incapacity or otherwise, a guardian appointed by the Courts of the Navajo Tribe may give consent instead of such person.~~

In cases where the female is pregnant, the Courts of the Navajo Tribe Nation may authorize the marriage of minors without consent of any third party. the parents or legal guardian of the minors.

~~A person consenting to the marriage of a minor shall be liable for the support of any children born to that minor until the minor reaches the age of 21 if a male, or 18 if a female.~~

~~(4) The couple must obtain a marriage license, as provided in 9 N.T.C. § 6.~~

(4) Parties who are Navajo Tribal members, or who are eligible for enrollment, may not be of the same maternal clan or biological paternal clan. The provisions of this subsection shall not affect the validity of any marriage legally contracted and validated under prior law.

(5) Parties may not be related within the third degree of affinity. The provisions of this subsection shall not affect the validity of any marriage legally contracted and validated under prior law.

§ 6. 5. Marriage license -- Issuance

~~(a) Such persons as the Chairman of the Tribal Council may from time to time designate The Navajo Office of Vital Records shall issue Tribal Navajo Nation marriage licenses and shall keep a record of such. Until the Chairman otherwise designates, subject to concurrence of the General Superintendent, the Navajo Agency Census Clerk at Window Rock and each subagency superintendent shall issue marriage licenses. Licenses are not required in order to establish a marriage under the provisions of this part.~~

~~(b) Before issuing any marriage license, the person Navajo Office of Vital Records having authority to issue such license shall ascertain by questioning the applicants, by requiring them to fill out a form, or by any other means at his disposal, that they are sober, are mentally competent and meet all the requirements of 9 N.T.C. § 5. 4~~

~~(c) Any person authorized to issue Tribal Navajo Nation marriage licenses may issue such licenses to qualified applicants regardless of their places of residence.~~

~~(d) A fee of fifteen dollars (\$15) shall be paid upon the issuance of a license.~~

~~(e) No license shall be issued by the Navajo Office of Vital~~

Records until three days after the parties first apply for a license and only after the parties submit the results of a blood test.

§ 7. 6. -- Form

The form of ~~Tribal~~ Navajo Nation marriage licenses shall be substantially as follows:

NAVAJO ~~TRIBE~~-NATION

MARRIAGE LICENSE

Authority is hereby given for the marriage of the following named ~~members of the Navajo Tribe~~ persons:

Man	Name	Woman
_____	_____	_____
_____	Census number _____	_____
_____	Residence _____	_____
_____	Age _____	_____
_____	Mother's Clan _____	_____
_____	Father's Clan _____	_____

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 19 _____

Title

MARRIAGE CERTIFICATE

I, the man named above, hereby take the woman named above for my lawful wife; and I, the woman named above, hereby take the man named above for my lawful husband.

I, a ~~clergyman~~, hereby certify that the man and woman named above were married this day in a ceremony at which I officiated. (This paragraph may be crossed out if the parties are not married before a clergyman, medicineman, or traditionalist.)

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 19 _____, in the presence of the witnesses whose names appear below.

Witness

Contracting party

Address of Witness

Witness

Address of Witness

Contracting party

Clergyman (~~signature optional~~)
Medicineman/Traditionalist

Address of Clergyman

RETURNED AND FILED FOR RECORD this _____ day of _____, 19, _____, and recorded in Book _____ of Marriage Licenses and Certificates on page _____, Number _____

Navajo Agency Census Clerk

§ 8. 7. Return

(a) Persons obtaining a ~~Tribal Navajo Nation~~ marriage license must return the same to the the Navajo Office of Vital Records ~~person who issued it or his successor in office or to the Agency Census office at Window Rock~~ within 30 days, whether or not they go through with the contemplated marriage.

~~(b) In case of failure to return the marriage license, the person who issued it or his successor shall notify each party personally or by registered mail of his or her duty to return the license, and if the notified party thereafter neglects to return the license for more than 10 days, the person who sent the notice may recover in any Courts of the Navajo Tribe, on behalf of the Navajo Tribe, a civil penalty of \$25 from such party. Failure to return the license shall not, however, affect the validity of any marriage.~~

~~(c) After being returned to the person who issued them, all completed marriage licenses shall be forwarded to the Agency Census Clerk at Window Rock, who, unless he has reason to believe the marriage is invalid, shall, subject to concurrence of the General Superintendent, record the marriage, sign the license, and return it to the contracting parties.~~

**§ 61. 8. ~~Not contracted by church, state or Tribal custom ceremony~~
Generally -- Validation of Marriage.**

All purported marriages of members of the Navajo Tribe, ~~not contracted by church, state or Tribal custom ceremony as defined by the resolutions of the Tribal Council, contracted within the territorial jurisdiction of the Navajo Nation, wherein such members~~

the parties were or are recognized as man and wife in their community, are may be validated and recognized as valid Tribal custom marriages from the date of their inception. The Family Courts of the Navajo Nation shall have subject matter jurisdiction pursuant to this section to make a judicial determination that a marriage meets the requirements of sections 3 and 4 for contracting of a marriage, and to cure any defect in a ceremony which does not exactly conform to the requirements for a ceremony set forth in section 3. The Peacemaker Courts may also make this determination upon referral from the Family Court. Marriages need not be solemnized by church, state, or tribal custom ceremony to be recognized as valid under section 3(d) of this part.

§ 62. 9. Procedure for judgement of validity

(a) Any Navajo Indian, person, claiming that his or her marriage was may be validated by pursuant to 9 N.T.C. § 61, 8, may file a petition in any the Family Court or Peacemaker Court of the Navajo Tribe Nation for a judgment declaring that such marriage was so be validated. If the petitioner's spouse in such alleged marriage is known to the petitioner to be living, such spouse must also sign the petition, or be named as defendant and notified of the suit. as provided in 25 CFR 161.22[11.22]. If the petitioner's spouse in such alleged marriage is not known to the petitioner to be living, the petitioner must prove to the satisfaction of the court that such spouse is dead or has been absent for five successive years, without being known to the petitioners within that time to be living, or the petition shall be dismissed.

(b) If the petitioner, having complied with subsection (a) of this section, proves to the satisfaction of the court that he or she and his or her alleged spouse were recognized as man and wife in their community, the court shall issue a judgment that such petitioner and spouse were validly married. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment.

(c) Any judgment of validity of marriage issued by a Court of the Navajo Tribe Nation in accordance with subsection (b) of this section may be forwarded to the General Superintendent of the Navajo Agency, who Navajo Office of Vital Records which may then cause the marriage to be recorded in the Tribal census rolls and a certificate of marriage to be issued to the petitioner.

(d) In cases where a child whose parents are deceased contends that such parents's marriage was may be validated by 9 N.T.C. § 61 8, such child may file a petition in any the Family Court or Peacemaker Court of the Navajo Tribe Nation for a judgment that such marriage was be so validated. If such petitioner proves to the satisfaction of the court that his parents are deceased and that they were recognized as man and wife in their community, the court shall issue a judgment that such parents were validly married. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the

judgment. Such judgment may be forwarded to the General Superintendent Navajo Office of Vital Records for recording and issuance of a certificate of marriage.

~~§ 63. Defect in ceremony~~

~~All marriages of Navajo Indians which have been recorded in the Agency Census Office in Window Rock are recognized as valid from their inception despite any defect in the ceremony by which they were contracted. The purpose of this section is to cure defects in ceremony and not to validate marriage which may be invalid for any reason other than defect in ceremony.~~

§ 10 Governmental determinations

All marriages recorded on any official document of the Navajo Office of Vital Records or any Navajo Nation Tribal Enrollment Office shall be deemed to be valid marriages under Navajo law, whether these marriages are contracted by Navajo custom, or pursuant to a Navajo Nation or state license. These documents shall be deemed to constitute a governmental determination of the Navajo Nation as to the existence and validity of the marriage noted in the record. This section shall apply retroactively and prospectively to all marriages recorded in official documents of the Navajo Nation.

SCB/fnp.H0287

RESOLUTION OF THE
JUDICIARY COMMITTEE OF THE
NAVAJO NATION COUNCIL

Recommending Amendment of 9 N.T.C., Chapter One,
To Change the Laws of the Navajo Nation Respecting
Marriage and the Validation of Marriage

WHEREAS:

1. Pursuant to 2 N.T.C., Section 571, as amended, the Judiciary Committee is established and continues as a standing committee of the Navajo Nation Council for the purpose of exercising oversight responsibilities for operation of the Judicial Branch of the Navajo Nation; and

2. Pursuant to 2 N.T.C., Section 574 (e) (1), the Judiciary Committee is empowered to initiate, recommend, support and sponsor functions of implementing the laws of the Navajo Nation; and

3. Pursuant to 2 N.T.C., Section 574 (e) (2), the Judiciary Committee is empowered to review legislation and make recommendations regarding any proposed or current laws, procedures, and regulations affecting or creating any impact on the Judiciary Branch; and

4. The provisions of Title Nine, Chapter One, Navajo Tribal Code, were adopted by the Navajo Tribal Council between 1954 and 1958, have not been revised since that time and are seriously out of date; and

5. The provisions of Title Nine, Chapter One, Navajo Tribal Code, incorporate provisions allowing state and foreign law to govern domestic relations within the Navajo Nation, and incorporate principles of law which are alien to Navajo custom and are inconsistent with the practices of the Navajo people; and

6. The Navajo Nation Supreme Court stated, in decision of In re: Validation of Marriage of Loretta Francisco (A-CV-15-88, August 2, 1989) Nav. R. _____, that provisions of Title Nine have outlived their usefulness and recommended that

...the Navajo Tribal Council amend Title Nine of the Navajo Tribal Code so that it reflects Navajo regulation and control of domestic relations within Navajo Territorial Jurisdiction

7. Many members of the Navajo Nation who are applicants for benefits under the Radiation Exposure Compensation Act, 42 U.S.C., Section 2210, have encountered serious difficulties in proving their eligibility for benefits as surviving spouses because Title Nine creates unnecessary complexities for proof of a valid marriage under Navajo law; and

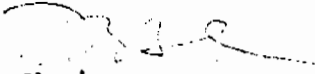
8. The Navajo Nation Council should amend Title Nine to reflect the present intentions of the Navajo Nation government regarding marriages and remove the impediments to expeditious proof of a valid marriage under Navajo law.

NOW THEREFORE BE IT RESOLVED THAT:

The Judiciary Committee of the Navajo Nation Council recommends that the Navajo Nation Council amend Title Nine, Chapter One, Navajo Tribal Code, by adoption of the amendments enumerated in Exhibit A, attached to this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Judiciary Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 22nd day of April, 1993.


Chairman
Judiciary Committee

Motion: Lee B. Roy
Second: Benjamin Curtis