

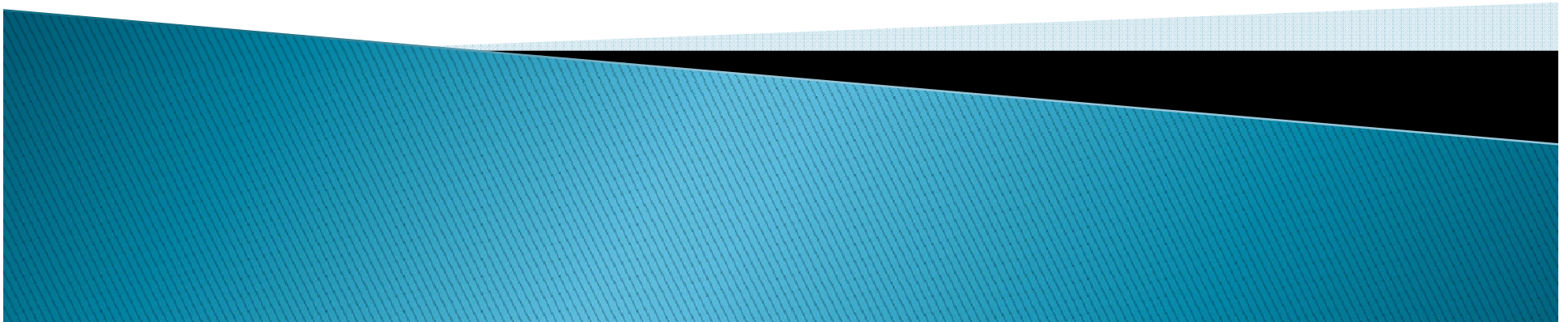
FAMILY LAW

NAVAJO NATION LAW 2013

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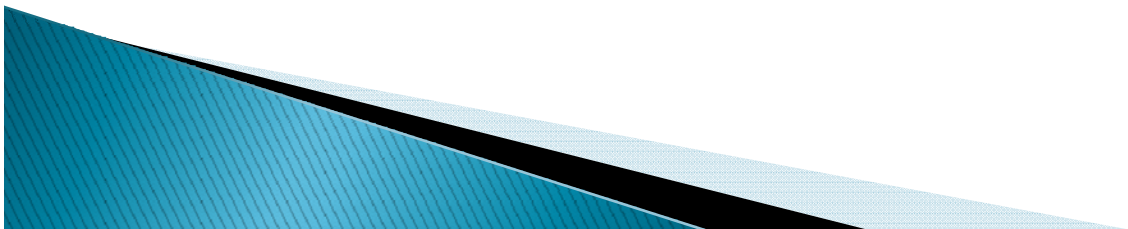
OCTOBER 25, 2013

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87420



TYPES OF MARRIAGES

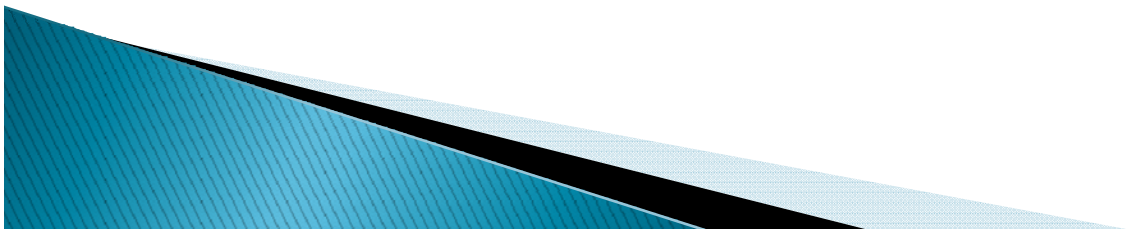
- ▶ 9 N.N.C. §1 Validity generally. A. Marriage contracted outside of the Navajo Nation are valid within the NN, if valid by the laws of the place where contracted.
- ▶ Signing A Navajo Nation Marriage license
- ▶ Getting married in Church by clergyman
- ▶ By a Judge (Tribal or State)
- ▶ Traditional Navajo basket wedding (obtain a marriage license)



VALIDATION OF COMMON – LAW MARRIAGE

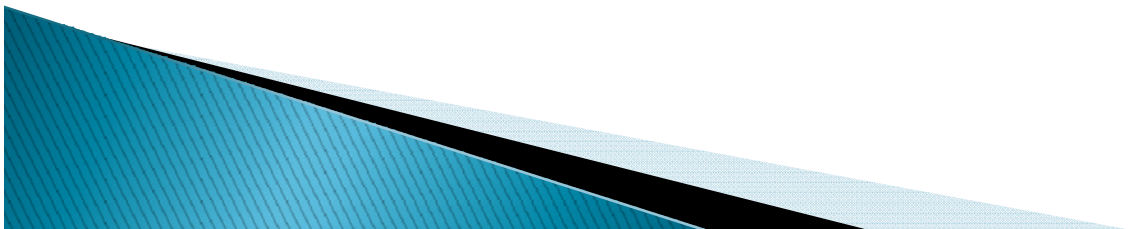
- ▶ Elements to establish a common-law marriage
9 N.N.C. §4 (E)1–4:

1. Intent to be husband and wife
2. Consent to be husband and wife
3. Actually cohabitate
4. Actual hold out to your community as husband and wife to be married



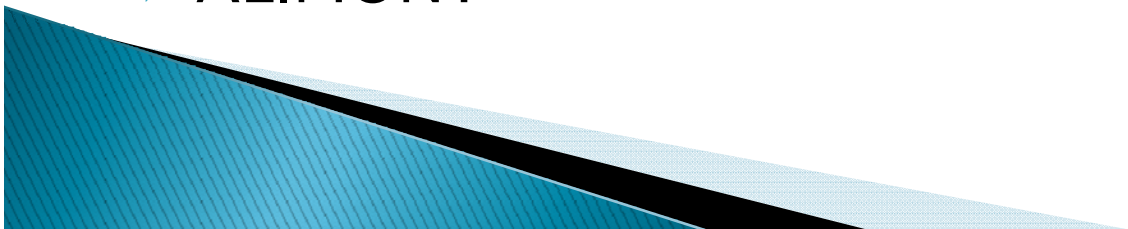
TERMINATION OF A MARRIAGE

- ▶ 9 N.N.C. §407 Remarriage. No person, married by tribal custom, who claims to have been divorced shall be free to remarry until a certificate of divorce has been issued by the Courts of the Navajo Nation.
- ▶ 9 N.N.C. §5 (A) Both parties must be unmarried. A prior marriage must be dissolved by a “*decree of divorce*”. *Begay v. Chief*, No. SC-CV-09-03, slip op. at 4 (Nav. Sup. Ct. May 12, 2005.).



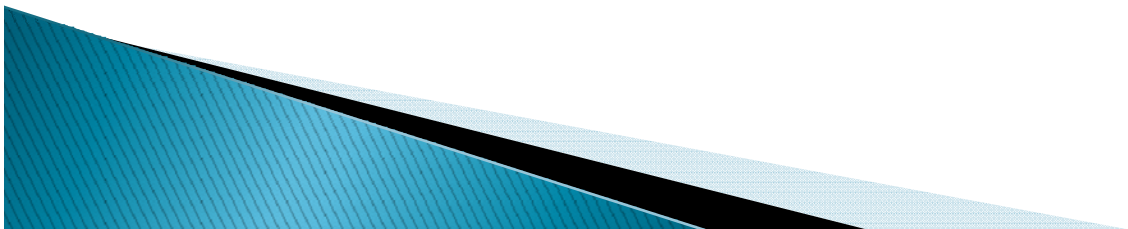
ISSUES OF DIVORCE

- ▶ JURISDICTION
- ▶ RESIDENCE
- ▶ GROUNDS FOR DIVORCE
- ▶ DATE OF MARRIAGE AND SEPARATION
- ▶ CHILD SUPPORT
- ▶ CHILD CUSTODY
- ▶ COMMUNITY PROPERTY
- ▶ COMMUNITY DEBTS
- ▶ VISITATION
- ▶ MAIDEN NAME
- ▶ ALIMONY



JURISDICTION

- ▶ 7 N.N.C. §253 (B) Family Court
- ▶ Yazzie vs. Yazzie, 5 Nav. R. 66, 70 (Nav. Sup. Ct. 1985) “under the foregoing the Court holds that dissolution of Marriage is an action affecting the status of marriage and that the Navajo Tribal Courts ...to grant a dissolution of marriage when one of the spouses is domiciled within the territorial jurisdiction of NN.
- ▶ 9 N.N.C. § 402 Residence

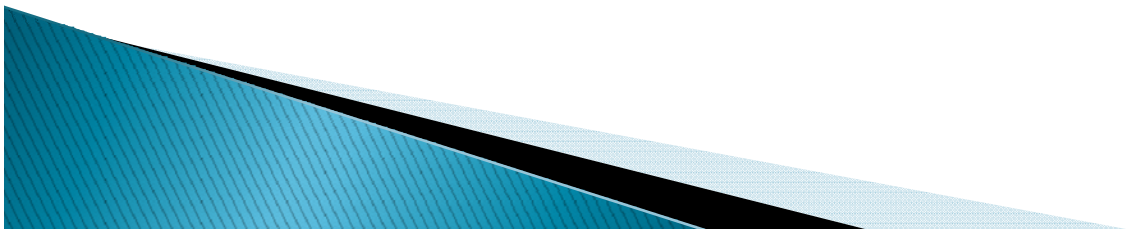


CHILD CUSTODY

Lente vs. Notah, 3 Nav. R. 72(1982)

Lente is a landmark case that establishes guidelines for child custody and modifications.

- Due Process, Best interest of the child, Modification and Substantial change of circumstances guidelines. 34 factors to consider. Barber v. Barber, 5 Nav. R. 9 (1984), Arviso v. Dahozy, 3 Nav. R. 84, 85 (1982), Pavenyouma v. Goldtooth, 5 Nav. R. 17 (1984),



CHILD CUSTODY

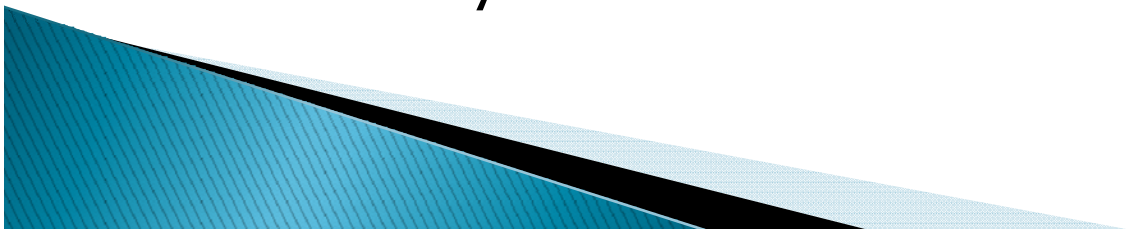
Lente vs. Notah, 3 Nav. R. 72(1982) (cont'd)

- Equal Rights of Parents and Tender Years Doctrine does not apply. Help vs. Silver 4 Nav. R. 46 (1983)

Navajo common law grants child a right to be heard, considering his or her maturity in case involving that child's custody. *In the Matter of the Custody OM.*, 8 Nav. R. 78 (Nav. Sup. Ct. 2001)

There is a lot of child custody cases.

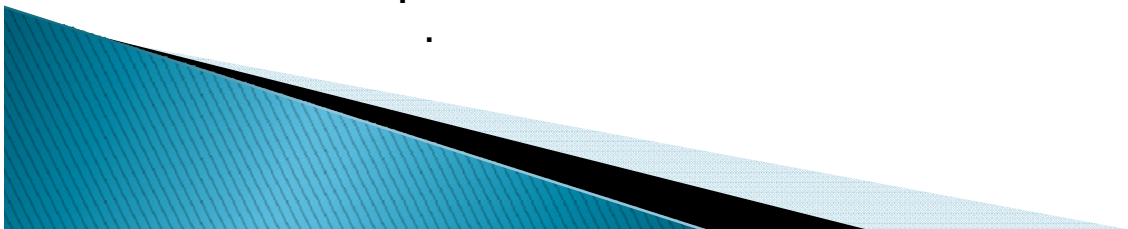
- 9 N.N.C. §404 Settlement of property rights; custody and care of children



CHILD SUPPORT

Navajo Nation Child Support Enforcement Act (1994)

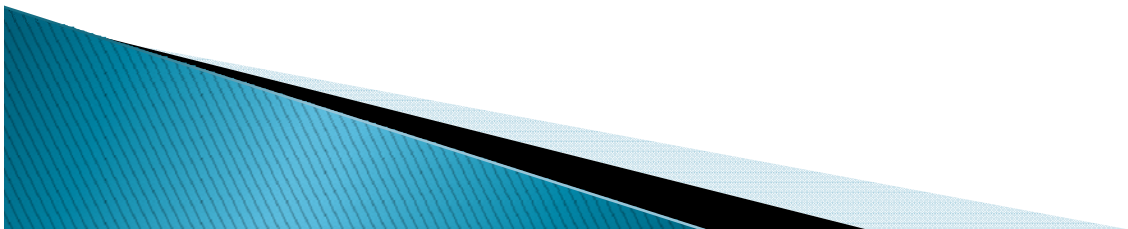
- 9 N.N.C. §1702(B) *Children shall be maintained, as completely as possible, from the resources of the parents.....this act establishes medical, parentage, modification enforcement of child support.*
- 9 N.N.C. §1706 NNCS Guidelines. Must consider gross income, schedule A & B, provide health care, modification based on hardship/ Blof C, review/revision every 4 years
- 9 N.N.C. §1707(A) Adjustments to Gross Income. When calculating the gross income of a parent for purposes of the Act, deduct:
 - a. Court order alimony & child support actually paid
 - b. Amounts necessary cost of food, shelter, clothing and transportation in maintenance of the parent.
 - c. Mandatory taxes & SS deductions.
 - d.the needs of the child (ren) shall take precedence over the needs of the absent parent.



CHILD SUPPORT

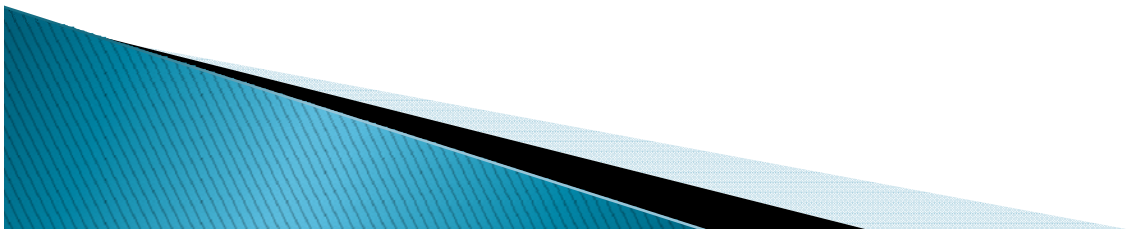
Navajo Nation Child Support Enforcement Act
(1994)

Notah v. Franics, 5 Nav.R. 147 (1987) the court held that the “absolute obligation established by Navajo Tradition to provide for the support of the one’s children, and public policy that , in such case the child’s welfare must take precedence over a technical analysis of the extend of the parents legal rights and duty”



COMMUNITY PROPERTY

- ▶ 9 N.N.C. §205. Definition; All Property acquired by either husband or wife during the marriage, except that which is acquired by gift, devised or descent, or earned by the wife and her minor while she lives separate and apart from there husband is the community of property of the husband and wife.
- ▶ 9 N.N.C. §404. Settlement of property...fair and just.
- ▶ Distribution of property rights between the parties was a fair and just settlement ...*Johnson v. Johnson* 3 Nav. R 5 (1980).

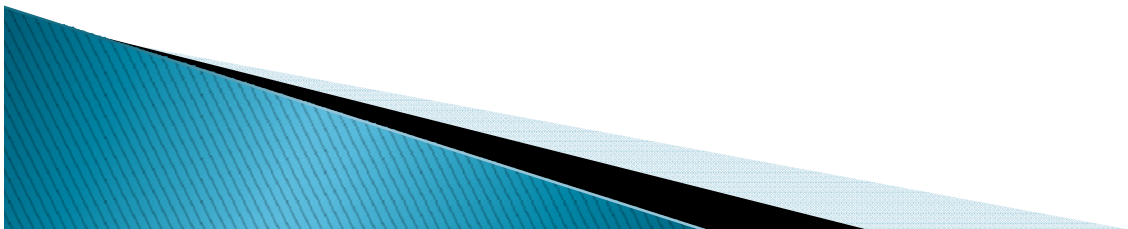


ALIMONY/SPOUSAL SUPPORT

- The Navajo Nation have the authority to award Alimony, Johnson v. Johnson, 3 Nav. R. 9 (1980).
- Navajo have no statute for alimony... *Charley v. Charley* 3 Nav. R. 30 (1980). Charley sets guideline:

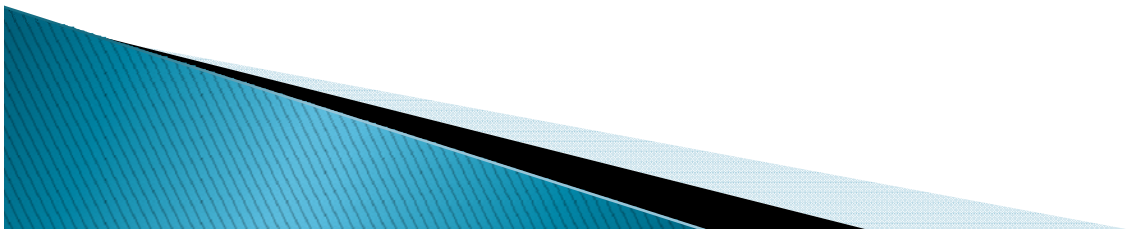
1. The needs of the spouse seeking alimony
2. Age of the spouse requesting alimony;
3. Means of support;
4. The duration of the marriage
5. The amount of property owned by parties
6. The earning capacity, including future earnings of *the parties*;

In 1986 the NNSC adopted additional guidelines in Sells v. Sells, 5 Nav. R 104 (1986)



ALIMONY/SPOUSAL SUPPORT

1. Consider reasonable market value of the marital property & its division
2. The economic circumstance of each party including:
 - a. Health
 - b. Station in Life
 - c. Vocational Skills or need for retraining or to acquire new skills
 - d. Employability
 - e. Opportunities to acquire capital assets.
3. Liabilities of ea party, contribution to the home, applicable Nav traditional/customary law, other relevant facts.
Watson v. Watson Nav R. (2007) enforcement, length of time,



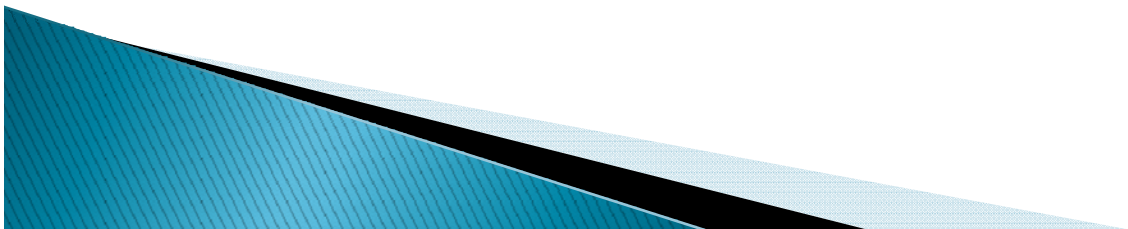
ATTORNEY'S FEES

Hall v. Arthur 3 Nav. R. 35 (Ct App 1980) each party must bear its own attorney's fees in the absence of a special set of circumstances such as contempt proceeding or contractual dispute, prevailing party.

John v. Herrick 5 Nav. R. 129 (1989) three exceptions:

- 1) Attorney fees provided by statute
- 2) Case is special set of circumstances
- 3) If a pleading or documents submitted not submitted in good faith, or contains material misstatements of fact or law, or it is not made upon adequate investigation or research.

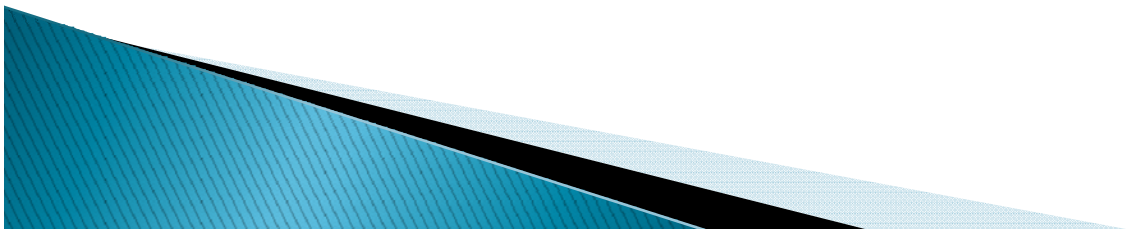
Morgan v. Morgan 5 Nav. R. 64 (1985). Case says "divorce" is special circumstances



ATTORNEY'S FEES

Morgan v. Morgan 5 Nav. R. 64 (1985). Case says “divorce” is special circumstances

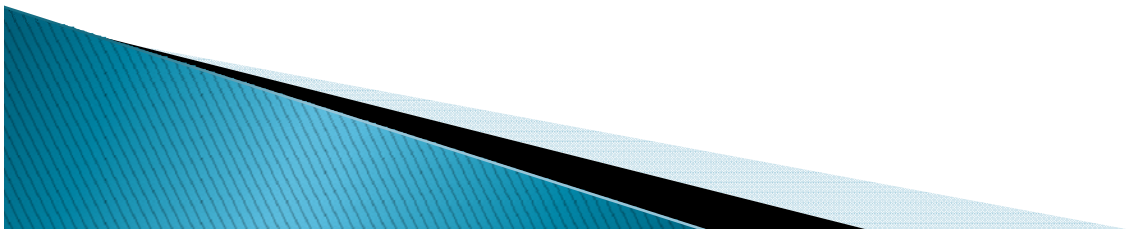
7 N.N.C. Assessment of costs. Court may assess cost of case against the party or parties against whom judgment is given. Proper frame of reference is hourly rates in area where dispute arose. *Manygoats v. Cameron Trading Post*, 8 Nav. R. 10 (Nav. Sup. Ct. 2000)



MODIFICATION OF CHILD CUSTODY/SUPPORT

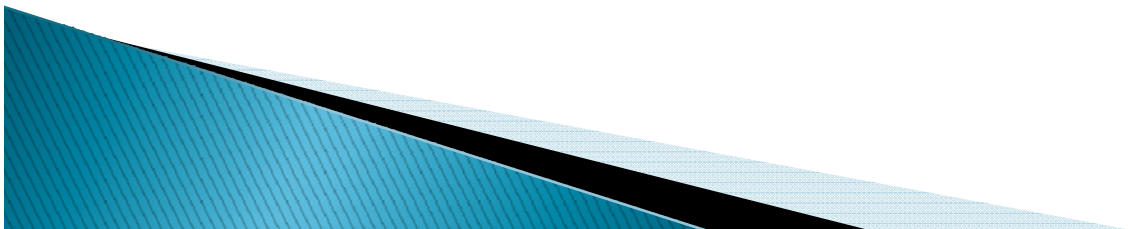
Lente vs. Notah, 3 Nav. R. 72(1982)

- ▶ Person
- ▶ Change of custody/support from previous order
- ▶ Must show substantial change in circumstances
- ▶ Best Interest of child
- ▶ Whether the Child Welfare of child will be promoted by the change
- ▶ Based on the child's needs
- ▶ Must effect current custody arrangements
- ▶ Conform to requirements of a complaint
 - Person
 - Why the change
 - Demonstrate Substantial Change of Circumstances
 - 1-34 factors to consider in modification and custody



CHILD SUPPORT MODIFICATION (con't)

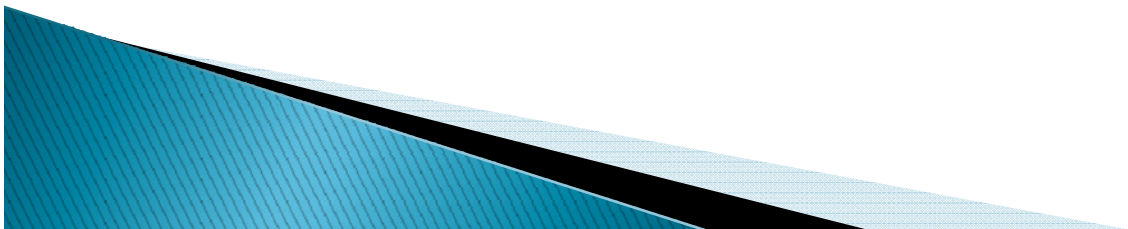
- ▶ Under *Yazzie v. Yazzie*, 7 Nav. R. 205 (1996) The Supreme Court set proper procedure for applying for modification of child support. “Court ordered child support payments become vested in the payee as they become due”. The courts should not permit retroactive modification of a child support order, absent a party’s showing a compelling circumstances. Court asserts interest and set formula. ($\text{principle} \times 10\% \div 365 = \text{daily interest}$).
- ▶ A party who wants to reduce his or her child support payments always has access to the courtroom. Upon proper application, the court has the discretion to decide whether its previous child support order should be changed to meet current conditions. Any modification should be prospective only and applicable from the date of the written modification order itself.” *Burbank vs. Clark* 7 Nav R at 373 (1999)



CHILD SUPPORT MODIFICATION (con't)

► Case Problem:

Mother and Father divorced. Father ordered to pay child support of \$500pm. Mother becomes unemployed and on welfare. Father worked and became disabled. The mother wants to modify her child support, father is not current on child support. The problem is the child support is calculated for three children instead of two for the past 5 years. Arrears is at \$5,000 Can you use the above case to modify previous order ? Are there any compelling circumstances? what do you have to show?



How to calculate month income

▶ Mother's Income:

- ▶ Gross Income: \$1256.66
- ▶ (Fed. Min. wage \$7.25)
- ▶ Combined Income: \$2513.00
- ▶ Number of Children: ONE
- ▶ Navajo Nation Child Support Guidelines– Obligated Amount: \$447

▶ Formula for the Mother:

- ▶ $\$1257 \div \$2513 = 0.5$
 - ▶ $0.5 \times \$447 = \223.50
 - ▶ Mother's Obligated Amount: \$223.50
-

▶ Formula for the Father:

- ▶ $\$1257 \div \$2513 = 0.5$
- ▶ $0.5 \times 447 = \$223.50$
- ▶ Father's Obligated Amount: \$223.50

▶ Apply numbers on to Worksheet "A"

