# TITLE 8 FAMILY LAW AND PROBATE

**LIST OF SECTIONS AFFECTED (WITH DATES)**
**SEPT. 1, 2007 – DEC. 31, 2010**
standard type: amended section; **bold** type: new or reenacted section;
~~strikeout~~ type: repealed section; underlined type: renumbered section; *italics* type: corrected section

| Title | § | PL/LL & Section # | | Eff'v Date |
|---|---|---|---|---|
| **8 CMC** | 1331(g) | PL 17-20 | 2 | 10/3/10 |
| | ~~1332~~ | | 3 | |
| | **1332** | | **3** | |
| | ~~1410(b)~~ | PL 17-1 | 8(A) | 3/22/10 |
| | ~~1420(C)~~ | | 8(B) | |
| | **1421** | **PL 15-100** | **2(1421)** | 10/23/07 |
| | **1981** | **PL 16-47** | **§ 35(a)** | 11/30/09 |
| | **1982** | | **§ 35(b)** | |
| | **1983** | | **§ 35(c)** | |
| | **1894** | | **§ 35(d)** | |
| | **1985** | | **§ 35(e)** | |
| | **1986** | | **§ 35(f)** | |
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| | **1989** | | **§ 35(i)** | |

# DIVISION 1: DOMESTIC RELATIONS

## CHAPTER 1. GENERAL PROVISIONS.

### § 1103. Proceedings in Adoption, Annulment, or Divorce: Appeal and Review.

**Case Annotations:** *Santos v. Santos*, 2000 MP 9, 6 N.M.I. 113 (2000).

### § 1106. Age of Majority.

**Case Annotations:** *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004).

## CHAPTER 2. MARRIAGE AND THE FAMILY.

### § 1221. Title and Purpose. [Repealed; text left for reference purposes.]

**Case Annotations:** *Olupomar v. Mahora*, 2001 MP 17, 6 N.M.I. 318 (2001); . . .

### § 1222. Definitions. [Repealed; text left for reference purposes.]

**Case Annotations:** . . .

**FAMILY LAW**

**Abuse**

– **Restraining Order**
Under the Family Protection Act of 1986, 8 CMC § 1221, *et seq. (*amended by PL 12-19, effective Sept. 20, 2000*),* in order for abuse to be the basis of a restraining order, it must occur between family members who reside together or who formerly resided together. 8 CMC § 1222(a) *(*amended by PL 12-19, effective Sept. 20, 2000*)*. *Olupomar v. Mahora*, 2001 MP 17 ¶ 16, 6 N.M.I. 318, 321 (2001).

Abuse that occurs between neighbors falls outside the protection of the Family Protection Act of 1986, 8 CMC § 1221, *et seq. (*amended by PL 12-19, effective Sept. 20, 2000) and a temporary restraining order may not properly be issued. 8 CMC § 1222(a) *(*amended by PL 12- 19, effective Sept. 20, 2000). *Olupomar v. Mahora*, 2001 MP 17 ¶ 17, 6 N.M.I. 318, 321 (2001).

Persons related by blood or custom are protected by the Family Protection Act of 1986, 8 CMC § 1221, *et seq. (*amended by PL 12-19, effective Sept. 20, 2000) only if the relationship is that of brother, sister, children or parents. Parties who are third cousin-in-laws are not subject to the Act. 8 CMC § 1222(a) *(*amended by PL 12- 19, effective Sept. 20, 2000). *Olupomar v. Mahora*, 2001 MP 17 ¶ 19, 6 N.M.I. 318, 321-2 (2001).

The only abuse, which is actionable under the Family Protection Act of 1986, 8 CMC § 1221, *et seq.* (amended by PL 12-19, effective Sept. 20, 2000), is abuse between family members who reside together or formerly resided together. Where there is no evidence of a familial relationship that meets the requirements of the Act, the lower court exceeds the scope of the Act in granting a temporary restraining order. 8 CMC § 1222 (amended by PL 12-19, effective Sept. 20, 2000). *Olupomar v. Mahora*, 2001 MP 17 ¶ 20, 6 N.M.I. 318, 322 (2001).

### § 1225. Commencement of Civil Proceeding. [Repealed; text left for reference purposes.]

**Case Annotations:** *Olupomar v. Mahora*, 2001 MP 17, 6 N.M.I. 318 (2001).

## CHAPTER 3. ANNULMENT AND DIVORCE.

## Article 3. General Provisions.

### § 1311. Orders for Custody, Support and Alimony.

**Case Annotations:** *Santos v. Santos*, 2000 MP 9, 6 N.M.I. 113 (2000); . . .

**CONSTITUTION**

**Equal Protection**

– **Marital Property**
By virtue of the prohibition on discrimination based on sex under Article I, § 6 of the NMI Constitution, the abolition of the common law principles under which married women have no interest in property acquired during marriage, and Chamorro

custom, both husband and wife have an ownership interest in any property acquired during marriage unless it is shown that such property belongs solely to one party. Upon divorce, this "marital property" is subject to equitable distribution under 8 CMC § 1311. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

**FAMILY LAW**

**Child Custody and Visitation Rights**
Since NMI child custody statute is carry-over from Trust Territory Code, interpretation of the provision by the Trust Territory High Court is helpful. 8 CMC § 1311. *Robinson v. Robinson,* 1 N.M.I. 81 (1990).

In issues concerning child custody and visitation rights, court should consider the interests of all concerned, but best interests of child control. 8 CMC § 1311. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

NMI statute grants trial court discretion in orders regarding child custody and visitation rights. 8 CMC § 1311. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

To determine that trial court has abused its discretion in establishing child visitation rights, record must be devoid of competent evidence to support the decision. In testing the sufficiency of the evidence it must be taken in the strongest manner in favor of the appellee and in support of the court's findings, and a judgment will not be disturbed when there is any reasonable evidence to support it. 8 CMC § 1311. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

Custody and visitation rights are always subject to the trial court's continuing jurisdiction. A party may petition the trial court to modify visitation times in view of changed circumstances. 8 CMC § 1311. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

**Marital Property**

– **Generally**
Section 1311 of Title 8 of the Commonwealth Code, by its terms, grants the court broad authority to dispose of either or both parties interest in any property in an annulment or divorce. 8 CMC § 1311. *Reyes v. Reyes*, 2001 MP 13 ¶ 13, 6 N.M.I. 299, 302 (2001).

The power of the court to afford protection to children in a divorce suit is limited to making provision for their support and education during their minority and a trust that attempts to give the children outright a part of their fathers property exceeds the scope of the courts authority granted pursuant to 8 CMC § 1311. 8 CMC § 1311. *Reyes v. Reyes*, 2001 MP 13 ¶ 14, 6 N.M.I. 299, 302-3 (2001).

– **Trust, Establishment of**
When a trust, established by the court under the authority of 8 CMC § 1311 ends, the property should revert to the original owners, but both spouses may agree that the property will be divided among the children and the right to manage and control marital property transferred to a trust is determined by the terms of the trust. 8 CMC § 1311. *Reyes v. Reyes*, 2001 MP 13 ¶ 16, 6 N.M.I. 299, 303 (2001).

**STATUTES**

**Interpretation and Construction**

– **Carry-Over from Trust Territory Code**
Since 8 CMC § 1311, relating to orders for custody, support and alimony is a carry-over from the Trust Territory Code, interpretation of the statute by the High Court of the Trust Territory of the Pacific Islands is instructive. 8 CMC § 1311. *Reyes v. Reyes*, 2001 MP 13 ¶ 14, 6 N.M.I. 299, 302-3 (2001).

## Article 3. Divorce.

### § 1331. Divorce: Grounds.

(a)-(f) [unchanged]

(g) Irreconcilable differences, which are persistent and irresolvable disagreements between spouses that result in the breakdown of the marriage. Irreconcilable differences may be cited generally without citation of specific differences, as grounds for dissolution of the marriage.

(h)-(i) [unchanged]

**Source:** 39 TTC § 201; (g) amended by PL 17-20 § 2 (October 3, 2010).

**Commission Comment:** Public Law 17-20 became law on October 3, 2010 without the Governor's signature pursuant to NMI Constitution Art. II § 7(b). PL 17-20 included severability and savings provisions and the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the Commonwealth Code, as it pertains to divorce or the dissolution of marriage, is antiquated and in need of revision. "Leprosy" also known as "Hansen's disease" is currently treatable by modern medicine, usually in the form of Multi-Drug Therapy (MDT). As Leprosy is treatable, it is not the societal problem it once was and should not serve as grounds for divorce.

The Commonwealth Legislature further finds that "irreconcilable differences" between spouses should be grounds for divorce. Currently, the code requires one spouse to be at "fault" by prohibiting a dissolution of marriage unless one spouse has committed one specifically enumerated act. This tends to prohibit divorce if both spouses are at fault or if neither spouse has committed "fault" but both spouses desire a divorce by mutual consent.

The requirement of fault leads to unintended consequences. First, in instances of true cruelty in a contested divorce, children may be forced to testify for one parent and against the other. This puts children in a difficult situation where the children may blame themselves for the disintegration of the family. This result should be avoided at all costs. Also, the evidentiary burden more often, in cases where the divorce is mutually desired or uncontested, takes the form of a sobbing spouse airing very personal family secrets. This requirement tends to result in "legal fictions" wherein exaggerations are made to prove "cruelty".

Accordingly, the Legislature finds that "irreconcilable differences" pled by one spouse should be sufficient for the granting of a divorce or dissolution of marriage. The Commonwealth Legislature finds and declares that this Act is necessary and is a proper use of the legislative authority granted by Article II of the Commonwealth Constitution.

**Case Annotations:** *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004); *Santos v. Santos*, 2001 MP 12, 6 N.M.I. 295 (2001); . . .

**§ 1332. Divorce: Residency Requirements.**

(a) A divorce or dissolution of marriage may be granted if one of the parties has been a resident of the CNMI for at least ninety days immediately preceding the filing of a complaint for divorce, or dissolution of marriage.

(1) For purposes of this section, a person shall be deemed a resident if that person has been assigned with the U.S. military to a unit in the CNMI or a ship home-ported in the CNMI for at least ninety days immediately preceding the filing of a complaint for divorce or dissolution of marriage or if that person is physically present in the Commonwealth for at least ninety days immediately preceding the filing of a complaint for divorce or dissolution of marriage. Physical presence by one of the parties in the CNMI for a period of ninety days prior to filing of the action for divorce or dissolution of marriage shall give rise to a conclusive presumption of compliance with this section.

(2) *Residence, no presumption of jurisdiction*. In actions for dissolution of marriage, neither the domicile nor residence of the husband shall be deemed to be the domicile or residence of the wife. For the purposes of such an action, each may have a separate domicile or residence depending upon proof of the fact and not upon legal presumptions. Physical presence in the CNMI for ninety days next preceding the commencement of the action shall give rise to a

conclusive presumption of residence in the Commonwealth as required by this section. Allegations and proof of residence or other compliance with the requirements of this section shall be pled or proved in any divorce or dissolution of marriage granted upon the consent of the defendant, and the court shall make findings as to residency of any party to a divorce or dissolution of marriage or as to compliance with the requirements of this section in any divorce or dissolution of marriage granted upon the consent of the defendant. Residency must be pled and proved in all divorces or other actions for dissolutions of marriage. Only the parties (i.e., the husband or wife) or the court can raise the issue of or object to the jurisdiction of the Superior Court in an action for divorce or dissolution of marriage, residence of the parties, or other compliance with this section in any case even where the defendant has consented to the divorce or dissolution of marriage. The Superior Court is not presumed to have jurisdiction over any action for divorce or dissolution of marriage which may be filed in the Superior Court because the defendant consents.

(b) Uncontested divorce or dissolution.

(1) If both parties consent in writing to a divorce or dissolution of their marriage, a divorce or dissolution may be granted if one of the parties has resided in the Commonwealth for at least seven days immediately preceding the filing of the complaint.

(2) All consents to a divorce or dissolution of marriage must be acknowledged or verified before a notary public or other officer authorized to administer oaths within the United States if signed in the United States, acknowledged or verified before a consular officer of the United States or other United States official authorized to take oaths if signed outside the United States, or have a notarized acknowledgement or verification by a foreign notary which is authenticated by a United States consular officer.

**Source:** . . . repealed and re-enacted by PL 17-20 § 3.

**Commission Comment:** The commission deleted figures that repeated written words and changed capitalization for conformity pursuant to 1 CMC § 3806(e) and (f).

## CHAPTER 4. ADOPTION AND GUARDIANSHIP. [Chapter Renamed]

### § 1401. Definitions.

**Case Annotations:** *Indalecio v. Yarofalir*, 2006 MP 18, 7 N.M.I. 341 (2006).

### § 1410. Notice of Petition, Hearing, and Investigation.

(a) [unchanged]

(b) ~~At least 20 days before the date of the hearing, in any adoption proceeding where either a petitioner or the person(s) to be adopted is an alien, the petitioner shall give notice to the office of the Attorney General of the filing of the petition and of the time and place of the hearing. The Attorney General shall have the right to intervene in any adoption; such intervention right shall be for the sole purpose of ensuring that the proceeding will not be used to circumvent or evade the immigration laws of the Commonwealth.~~

[*subsections (c)-(f) redesignated to (b)-(e)*]

**Source:** . . . (b) deleted by PL 17-1 § 8(A) (March 22, 2010)* and remaining subsections redesignated accordingly.

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 1420. Illegal Acts.

(c) [Deleted]

**Source:** . . . (c) deleted by PL 17-1 § 8(B) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 1421. Guardianships.

(a) *Appointment*. The Court may appoint, for a term or indefinitely subject to review, an adult over the age of eighteen years to serve as a legal guardian of a minor child only after the following conditions are satisfied:

(1) A petition by the proposed guardian stating, under penalty of perjury, the names, dates of birth, and residences of the minor child and the proposed guardian, and the names and whereabouts of any surviving natural or legal parents, grandparents, or siblings of the minor child is filed with the Clerk of the Commonwealth Superior Court;

(2) A statement indicating who currently has custody of the minor child and describing the reasons a guardianship is necessary is affixed to the petition;

(3) Accompanying affidavits, sworn under penalty of perjury, of any surviving natural or legal parents indicating their consent to the guardianship arrangement are affixed to the petition;

(4) An affidavit by the petitioner sworn under penalty of perjury that the guardianship arrangement is not an attempt to avoid or circumvent CNMI immigration law is affixed to the petition;

(5) The minor child is not present in the Commonwealth pursuant to a Visitor's Entry Permit (VEP) issued by the Division of Immigration, or has any other immigration status the primary purpose of which is tourism;

(6) The petitioning adult has been a resident of the Commonwealth of the Northern Mariana Islands for the one year prior to the date of petition;

(7) A single petitioning guardian earns a salary of at least $25,000 per annum, or a married couple serving as joint guardians earns a combined salary of at least $35,000 per annum;

(8) The Court is satisfied that the living arrangement of the guardian and minor child are suitable. Factors the court may consider in evaluating whether a living arrangement is suitable include but are not limited to the size and number of bedrooms of the residence of the petitioner, and the number of other minor children or family members living in the residence. The Court may order a home study by the Department of Youth Services (DYS) or a Family Service Division prior to granting a petition under this section.

(9) The Court, after hearing on the petition, finds that the guardianship arrangement is in the best interests of the child and is not in violation of the law of the Commonwealth of the Northern Mariana Islands. The Division of Immigration may be heard on all matters relating to the immigration laws of the Commonwealth.

(10) *Notice Requirement*: Along with the petition, the petitioner shall file an order prescribing notice which shall set forth the time, place, and purpose of the hearing and require:

(i) Personal service or service by registered or certified mail return receipt requested of the notice of petition on all living parents, grandparents, and adult living siblings of the minor child as well as the person or persons having custody of the minor child, if they are not already included;

(ii) Posting of the notice of petition at the courthouse for a period of ten days;

(iii) Publication of the notice of petition once prior to hearing in a newspaper of general circulation in the Commonwealth.

(b) *Powers and Duties*. A legal guardian appointed by the Superior Court shall have all the rights and powers, duties, and obligations of a legal guardian of the minor child, and shall have a valid and effectual claim of custody of the minor child against every other person claiming custody of the minor child for the duration of the guardianship.

(c) *Review*. The Superior Court may, in its discretion, order that a guardianship be reviewed periodically on a schedule set by the Court.

(d) *Termination*. The Superior Court may terminate a guardianship if, upon review, it finds that the guardianship is no longer in the best interests of the minor child. A guardian who has had a guardianship terminated shall have all normal avenues of appeal.

(e) *Definitions*. For the purposes of this section "resident" means someone present in the CNMI with the intent to remain for a period of time in excess of one year for employment or social purposes. The term "minor child" shall mean any person under the age of eighteen years.

(f) This statute shall supplement the common law and supersede any regulation, rule, or common law practice to the contrary.

(g) *Guardians Not Present in the Commonwealth*. The Court may appoint a guardian who is not present in the Commonwealth but present in another jurisdiction of the United States provided that the minor child is present in the Commonwealth and the guardian satisfies all conditions listed in § 1421(a), except for § 1421(a)(6). A guardian not present in the Commonwealth must have been a resident of the jurisdiction in which they live for at least one year prior to appointment. Guardians not present in the Commonwealth shall have all powers and duties of guardians present in the Commonwealth.

**Source:** PL 15-100, § 2(1421), modified.

**Commission Comment:** The commission deleted figures that repeated written words in the section above pursuant to 1 CMC § 3806. PL 15-100, enacted on October 23, 2007, included severability and savings provisions and the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the current statutory provisions regarding the appointment of guardians for minor children are insufficient to ensure both that children are placed in safe and financially sound homes and that the guardianship process is not abused. The Legislature finds that in many cases guardianship arrangements are used for the purpose of keeping a child in the CNMI contrary to Commonwealth immigration laws and regulations. The Legislature finds that adding a new section to the Commonwealth Code concerning guardianships will assist the Courts in both ensuring the safe placement of minor children and rejecting guardianship petitions that are an attempt to circumvent CNMI

law. The Legislature further finds that there should be a provision for certain off-island petitioners to be appointed guardians of minor children present in the CNMI for familial and social reasons.

# CHAPTER 7. PARENTAGE AND BIRTH RECORDS.

## Article 1. Uniform Parentage Act.

### § 1700. Short Title.

**Case Annotations:** . . .

**FAMILY LAW**

**Child Custody and Visitation Rights**

– **Particular Cases**
Where party in divorce action moved for new trial based on alleged error of law by trial court in deciding child custody and visitation rights, denial of motion was within court's sound discretion; record showed that party was not prejudiced because court properly applied correct legal standard. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

**Parent-Child Relationship**

– **Abandonment of Child**

— **Particular Cases**
In appeal of adoption proceeding, issue of whether biological father had abandoned children was a legal conclusion, subject to de novo review. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

Trial court's conclusion that biological father had abandoned children was not supported by clear and convincing evidence where undisputed evidence indicated that children had resided with father for a time, father later attempted to visit children, and did visit children during their hospitalization, and father made several attempts to have the children visit him, succeeding once (despite opposition of mother and stepfather) five months before adoption hearing. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

– **Attorney's Fees**
In proceedings under the Uniform Parentage Act, 8 CMC § 1700, *et seq.*, the court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood and genetic tests, to be paid by the parties in proportions and at times determined by the court pursuant to 8 CMC § 1716, however, the availability of attorney fees should not be extended to other family proceedings outside the Act. *Pille v. Sanders*, 2000 MP 10 ¶ 25, 6 N.M.I. 119, 124 (2000).

– **Marital Status of Parents**
The marital status of the parents does not make any difference in determining the rights of parents in the parent and child relationship. 8 CMC §§ 1401(a), 1702. *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

– **Termination**
In lieu of NMI statute specifically dealing with proceedings to terminate parental rights, procedure under Uniform Parentage Act, 8 CMC § 1700 et seq., for termination of parental rights, including notice provisions, should be applied to situations in which biological parent does not wish to relinquish his or her child for adoption but merely wishes to consent to the adoption of child by his or her spouse, and parental rights of other biological parent would be terminated by granting of petition for adoption. This procedure provides the minimum procedural due process safeguards. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

8 CMC § 1725(e) requires notice to presumed father of child of proceeding to terminate parental rights. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

Because the parent-child relationship is natural and fundamental, the burden of proof necessary in a proceeding to terminate parental rights is clear and convincing evidence. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

The best interest of the child is the paramount criteria to consider in a proceeding to terminate the parental rights of a parent or parents. This standard requires consideration of: (1) the fundamental relationship between the child and the biological parent; (2) the interests of the adopting parent; (3) the child's age; (4) the extent of the bond, or potential bond, between biological parent and child; (5) the fitness of the biological parent, taking into account whether the child has been abandoned, neglected, subjected to cruelty, whether the parent is a habitual user of alcohol or drugs, and whether the parent has been convicted of a felony in which the nature of the crime is inconsistent with being a fit parent; (6) in an adoption proceeding, the extent of the bond, or potential bond, between the adoptive parent and the child; (7) the ability of the biological parent to provide the child with adequate and proper love, care, attention and guidance; and (8) in an adoption proceeding, the ability of the adoptive parent to provide the child with adequate and proper love, care, attention and guidance. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

In adoption proceeding in which biological father's parental rights were at stake, father's right to procedural due process was violated because he was not given meaningful opportunity to be heard where trial court denied continuance enabling him to file response to adoption petition and prepare defense. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

Since party was presumed to be the natural father of children under 8 CMC § 1704(a)(4), adoption proceeding in which mother and stepfather sought to adopt children could not proceed unless and until natural father's parental rights had been terminated pursuant to 8 CMC § 1725(a) in separate proceeding. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

**Paternity**

– **Generally**
Under the Commonwealth's Uniform Parentage Act, 8 CMC § 1700, *et seq*., a judgment establishing paternity may provide for child support. 8 CMC § 1700, *et seq*.; 8 CMC § 1715(c). *Francis v. Welly*, 1999 MP 26 ¶ 6, 6 N.M.I. 64, 66 (1999).

A party seeking to enforce a judgment establishing paternity and setting child support engages in further proceedings under the Commonwealth's Uniform Parentage Act, 8 CMC § 1700, *et seq*., and is therefore entitled to appointment of counsel. 8 CMC § 1700, *et seq*. *Francis v. Welly*, 1999 MP 26 ¶ 14, 6 N.M.I. 64, 67 (1999).

The Commonwealth's Uniform Parentage Act, 8 CMC § 1700, *et seq*., authorizes a court to set child support at the same time it establishes paternity. 8 CMC § 1700, *et seq*. *Francis v. Welly*, 1999 MP 26 ¶ 14, 6 N.M.I. 64, 67 (1999).

While setting child support is not mandatory under the Commonwealth's Uniform Parentage Act, 8 CMC § 1700, *et seq*., it is an integral part of paternity proceedings instituted under the Act. 8 CMC § 1700, *et seq*. *Francis v. Welly*, 1999 MP 26 ¶ 14, 6 N.M.I. 64, 67 (1999).

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Use of the word shall in the Commonwealth's Uniform Parentage Act, 8 CMC § 1700, *et seq*., to describe the courts authority to appoint counsel, indicates such appointment is mandatory with respect to indigent parties. 8 CMC § 1700, *et seq*. *Francis v. Welly*, 1999 MP 26 ¶ 14, 6 N.M.I. 64, 67 (1999).

Uniform Parentage Act, 8 CMC § 1700 et seq., should not be used to circumvent the traditional disposition of land in the NMI. Unlike probate code, 8 CMC § 2101 et seq., traditions and bloodline are not considered by the paternity presumption

in the Uniform Parentage Act. 8 CMC § 1704. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

Uniform Parentage Act applies prospectively. 8 CMC § 1700 et seq. *In re Estate of Aldan*, 2 N.M.I. 288 (1991).

– **Actions**
Establishment of paternity after alleged father's death must be done within purview of probate code, 8 CMC § 2101 et seq., and not within purview of Uniform Parentage Act, 8 CMC § 1700 et seq., as well. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

Uniform Parentage Act, 8 CMC § 1700 et seq., contemplates that the alleged father is still alive and will be made a party to the action or given notice of the action, allowing him opportunity to rebut presumption of paternity under 8 CMC § 1704. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

– **Presumption**
In heirship claim in probate proceeding, presumption that other man (not decedent) was father of claimant was clearly rebutted by evidence that for at least six years prior to claimant's birth, other man had left locale and had not been seen or heard from. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Party was presumed father of children in adoption proceeding under statute providing that a man is presumed to be the father of a child if, while the child is under the age of majority, the man receives the child into his home and openly holds out the child as his natural child. Under uncontradicted evidence, party received minor children into his home from the date of their birth, listed himself as father on children's birth certificates and openly held himself out as their father. 8 CMC § 1704(a)(4). *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

– **Particular Cases**
To apply Uniform Parentage Act retrospectively, effectively barring illegitimate son's heirship claim in probate proceeding, would work a deprivation of a property right, adversely affecting son's right to due process of law because son was thirty-one years old when Act was enacted and Act limits the filing of paternity actions once a child has reached age of twenty-one. 8 CMC § 1700 et seq. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Because Uniform Parentage Act, 8 CMC § 1700 et seq., became effective in 1985, at least twenty-five years after birth of illegitimate children who claimed part of father's estate, fourteen years after father died, and thirty-seven years after mother's husband left her and was never heard from again, illegitimate children were not required to file an action under 8 CMC § 1706(a)(2) within five years of adoption of Act to declare nonexistence of paternity by vanished husband who had been gone for thirty-seven years and who was not presumed to be the father under both common law and the Uniform Parentage Act. *In re Estate of Aldan*, 2 N.M.I. 288 (1991).

8 CMC § 1707 of Uniform Parentage Act, providing that action to determine existence of father and child relationship may not be brought more than three years after child reaches age of majority (eighteen years), did not bar claims of illegitimate children to father's estate simply because children had reached age of twenty-one when the Act became effective in 1985. Because: (1) father of illegitimate children died in 1971, when no requirement existed for children to file paternity action within certain period; (2) when children reached age of twenty-one years in 1977 and 1981, respectively, no such requirement existed; and (3) action to probate father's estate—triggering illegitimate children's claims—was not filed until 1990, over three years after Act became effective, it would be violation of due process to preclude by statute children's rights as illegitimate children to claim their inheritance. N.M.I. Const. art. I, § 5. *In re Estate of Aldan*, 2 N.M.I. 288 (1991).

## § 1701. Parent and Child Relationship Defined.

**Case Annotations:** . . .

**FAMILY LAW**

**Child Support**

The Commonwealth's statutory scheme, strongly suggests the Commonwealth Legislature intended that a parents duty should begin at birth, not at the date a court determines paternity. This is consistent with the Commonwealth's interest in protecting children. Additionally, allowing a parent to escape responsibility for supporting his children improperly places the financial burden on the Commonwealth and its taxpayers. 8 CMC § 1702. *Pille v. Sanders*, 2000 MP 10 ¶ 22, 6 N.M.I. 119, 123-4 (2000).

## § 1707. Statute of Limitations.

**Case Annotations:** . . .

**FAMILY LAW**

**Paternity**

– **Statute of Limitations**
The statute of limitations for bringing a paternity action is three years after the child reaches the age of majority. 8 CMC § 1707. *Pille v. Sanders*, 2000 MP 10 ¶ 22, 6 N.M.I. 119, 123-4 (2000).

— **Particular Cases**
. . .

## § 1715. Judgment or Order.

**Case Annotations:** *Santos v. Santos*, 2000 MP 9, 6 N.M.I. 113; *Kaainoa v. Cabrera*, 2003 MP 18, 6 N.M.I. 634 (2003); . . .

**FAMILY LAW**

**Parent-Child Relationship**

– **Child Custody and Visitation Rights**
Ensuring the safety and well being of the parties' children is of the utmost importance in divorce proceedings. When assessing a parent's obligation to support minor children, the court reviews all relevant facts, including the relative financial means and earning capacity of each parent. 8 CMC § 1715(e). *Reyes v. Reyes*, 2004 MP 1 ¶ 22, 7 N.M.I. 1, 8 (2004).

**Paternity**

– **Generally**
In the Northern Mariana Islands, the judgment or order determining paternity and awarding child support may also direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. 8 CMC § 1715(c). *Pille v. Sanders*, 2000 MP 10 ¶ 22, 6 N.M.I. 119, 123-4 (2000).

Under the Commonwealth's Uniform Parentage Act, 8 CMC § 1700, *et seq*., a judgment establishing paternity may provide for child support. 8 CMC § 1700, *et seq*.; 8 CMC § 1715(c). *Francis v. Welly*, 1999 MP 26 ¶ 6, 6 N.M.I. 64, 66 (1999).

## § 1716. Costs.

**Case Annotations:** *Pille v. Sanders*, 2000 MP 10, 6 N.M.I. 119 (2000); *Francis v. Welly*, 1999 MP 26, 6 N.M.I. 64 (1999).

## § 1717. Enforcement of Judgment or Order.

**Case Annotations:** *Francis v. Welly*, 1999 MP 26, 6 N.M.I. 64 (1999).

### § 1719. Right to Counsel; Free Transcript on Appeal.

**Case Annotations:** *Francis v. Welly*, 1999 MP 26, 6 N.M.I. 64 (1999).

## CHAPTER 8. MARITAL PROPERTY ACT.

## Article 1. General.

### § 1811. Short Title.

**Case Annotations:** *Sattler v. Mathis*, 2006 MP 6, 7 N.M.I. 270 (2006); *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004).

### § 1813. Definitions.

**Case Annotations:** *Sattler v. Mathis*, 2006 MP 6, 7 N.M.I. 270 (2006).

**FAMILY LAW**

**Marital Property**

**– Generally**
Pursuant to the Commonwealth Marital Property Act of 1990, 8 CMC §§ 1811, et seq., the date of separation for purposes of divorce is determined when the parties are living separately and apart with no intent to resume the marriage relationship. To determine if there has been a complete and final end to the marriage, the court looks at the parties' conduct, including relevant evidence such as joint vacations or visits, efforts at reconciliation, and the filing of taxes. 8 CMC § 1813(h). *Reyes v. Reyes*, 2004 MP 1 ¶ 12, 7 N.M.I. 1, 7 (2004).

**– Homesteads**

**— Particular Cases**

. . .

### § 1814. Responsibility Between Spouses.

**Case Annotations:** *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004).

## Article 2. Classification and Control of Property.

### § 1820. Classification of Property of Spouses.

**Case Annotations:** *Reyes v. Reyes*, 2001 MP 13, 6 N.M.I. 299 (2001).

**FAMILY LAW**

**Marital Property**

**– Generally**

Each spouse is entitled to an undivided one half interest in all income generated during the marriage. 8 CMC § 1820(d). *Reyes v. Reyes*, 2004 MP 1 ¶ 31, 7 N.M.I. 1, 10 (2004).

Property obtained through a quitclaim deed that is not a gift or inheritance and received during the course of a marriage is marital property subject to equal division on divorce. 8 CMC § 1820(b). *Reyes v. Reyes*, 2004 MP 1 ¶ 66, 7 N.M.I. 1, 15 (2004).

All property of spouses is considered marital property, subject to specific statutory exceptions. 8 CMC § 1820. *Santos v. Santos*, 2000 MP 9 ¶ 17, 6 N.M.I. 113, 117 (2000).

One exception to the marital property rule of 8 CMC § 1820(a) is that property owned by a spouse before the marriage is individual property pursuant to 8 CMC § 1820(f). 8 CMC § 1820(a), (f). *Santos v. Santos*, 2000 MP 9 ¶ 17, 6 N.M.I. 113, 117 (2000).

An exception to the marital property rule of 8 CMC § 1820(a) is that property acquired by a spouse during the marriage is individual property, pursuant to 8 CMC § 1820(g)(1)-(2), if acquired by gift or disposition at death from a third party, or if acquired in exchange for or with the proceeds of other individual property. 8 CMC § 1820(a); 8 CMC § 1820(g)(1)-(2). *Santos v. Santos*, 2000 MP 9 ¶ 17, 6 N.M.I. 113, 117 (2000).

## § 1821. Management and Control of Property of Spouses.

**Case Annotations:** *Reyes v. Reyes*, 2001 MP 13, 6 N.M.I. 299 (2001).

## § 1822. Gifts of Marital Property to Third Persons.

**Case Annotations:**

**FAMILY LAW**

**Marital Property**

– **Generally**
An action by a spouse to recover a marital gift made by the other spouse must be commenced within one year after the spouse has notice of the gift or three years after the gift was made, whichever is earlier. 8 CMC § 1822(b). *Reyes v. Reyes*, 2004 MP 1 ¶ 69, 7 N.M.I. 1, 16 (2004).

## § 1827. Classification of Life Insurance Policies and Proceeds.

**Case Annotations:** *Sattler v. Mathis*, 2006 MP 6, 7 N.M.I. 270 (2006).

## § 1828. Classification of Deferred Employment Benefits.

**Case Annotations:**

**FAMILY LAW**

**Marital Property**

– **Generally**
When the trial court determines that a retirement benefit is mixed property, it *must* utilize the 8 CMC § 1828(b) statutory fraction in allocating the benefit between marital and separate property shares. *Sattler v. Mathis*, 2006 MP 6 ¶ 33, 7 N.M.I. 270, 279 (2006).

The marital share of a retirement benefit is that amount resulting when the entire benefit is multiplied by the 8 CMC § 1828(b) statutory fraction; the numerator of which is that length of time between the last to occur of the determination date, the employment date, or the marriage date and the date of separation; and the denominator of which is the total length of employment. *Sattler v. Mathis*, 2006 MP 6 ¶ 33, 7 N.M.I. 270, 279 (2006).

### § 1829. Mixed Property.

**Case Annotations:** *Sattler v. Mathis*, 2006 MP 6, 7 N.M.I. 270 (2006); *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004).

**FAMILY LAW**

**Marital Property**

– **Generally**
A combination of marital and other property is presumed marital property unless the component of the mixed property which is not marital property can be traced. 8 CMC § 1829(a). *Santos v. Santos*, 2000 MP 9 ¶ 17, 6 N.M.I. 113, 117 (2000).

## Article 3. Agreements, Remedies, and Treatment of Property at Death or Dissolution.

### § 1831. Interspousal Remedies.

**Case Annotations:** *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004).

## CHAPTER 10. GUARDIAN AD LITEM. [new chapter]

§ 1981. Findings and Intent.
§ 1982. Definition.
§ 1983. Appointment of Guardian Ad Litem.
§ 1984. Responsibilities and Duties of Guardian Ad Litem.
§ 1985. Persons Prohibited from Appointment as Guardian Ad Litem.
§ 1986. Guardian to Represent Best Interests of Juvenile, Other Minor or Other Legally Incompetent Individual; Guardian to Receive Notice of All Proceedings; Obligation of Guardian Continuing One; Authority of Guardian.
§ 1987. Guardian's Right to See All Reports, Information and Records Concerning Juvenile Being Represented.
§ 1988. Confidentiality of Records and Information.
§ 1989. Immunity from Liability for Guardian Ad Litem.

### § 1981. Findings and Intent.

The Legislature finds that the only Commonwealth statute specifically concerning the appointment and conduct of guardians ad litem are in the context of wardships for the protection of abused or neglected children, at 6 CMC §§ 5323(c) and 5325(a)(3). The Legislature further finds that it is necessary to devise a coherent and consistent system for the appointment, conduct, powers and obligations of guardians ad litem when necessary for the protection of juveniles subject to the provisions of this Act, for other minor children who are subject to the provisions of Title 6, Division 5, Chapter 3 [6 CMC §§ 5311-5325] of the Commonwealth Code, and for other legally incompetent individuals who are in need of such guardians ad litem. This chapter is intended to apply to the appointment of guardians ad litem in matters where the welfare of the subject juvenile, other minor or other legally incompetent individual is a matter of concern to the court, and is not intended to change the process of appointment or the duties and obligations of a guardian ad litem appointed pursuant to actions brought under the Probate Code, 8 CMC § 2101 et seq, or appointed pursuant to the court's probate rules, including Probate Rule 26, or to modify any of the duties and obligations of a guardian

ad litem appointed pursuant to the Uniform Parentage Act, 8 CMC § 1700 et seq.

**Source:** PL 16-47, § 35(a), modified.

**Commission Comment:** The commission replaced "this Section 35" with "this chapter" and "Division 5, Article of" with "Division 5, chapter 3 [6 CMC §§ 5311-5325] of" pursuant to 1 CMC § 3806(d) and (g). Public Law 16-47, effective November 30, 2009, contained amendments to Titles 6 and 8 of the Commonwealth Code, severability and savings provisions and the following:

Section 1. Short Title. This Act shall be referred to as the "Juvenile Justice Act of 2008."

Section 2. Finding, Policy, Purpose. The Legislature finds that the Commonwealth needs a comprehensive juvenile justice system that will be based on the following principles: accountability; community protection; and competency development. Where a juvenile has been found to be within the purview of the Juvenile Justice Act, the court shall impose a disposition that will protect the community, hold the juvenile accountable for his or her actions, and assist the juvenile in developing skills to become a contributing member of a diverse community. It is the policy of the Commonwealth that the parents or other legal guardians of the juvenile offender participate in the accomplishment of these goals through participation in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile's behavior. The Legislature finds that the parents or legal guardians of the juvenile offender must be held accountable, where appropriate, through monetary reimbursement for supervision and confinement of the juvenile offender, and restitution to victims of the juvenile's delinquent acts. In enacting this legislation, the Legislature intends that the juvenile justice system shall encompass the following aspects: day treatment, education, community programs, probation services, observation and assessment of juveniles in residential settings, secure facilities for detained juveniles, and after-care and assistance for juveniles before they exit the juvenile justice system. The primary purpose of this Act is to provide a continuum of programs which emphasize the juvenile offender's accountability for his or her actions while assisting the juvenile offender in the development of skills necessary to function effectively and positively in the community in a manner consistent with public safety. These services and programs will individualize treatment and control of the juvenile offender for the benefit of the juvenile and the protection of society. Parents or other legal guardians are a vital part of the process. Where appropriate, parents or other legal guardians of the juvenile offender shall participate in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile's behavior.

. . .

Section 36. Construction. Construction - This Act shall be interpreted under the laws of the Commonwealth of the Northern Mariana Islands.

### § 1982. Definition.

"Guardian ad litem" means a person appointed by the court to determine, monitor and advance the best interests of a juvenile, other minor child or other incompetent individual, including a juvenile within the jurisdiction of the Juvenile Justice Act of 2008 or a child subject to proceedings pursuant to Title 6, Chapter 3 of the Commonwealth Code, 6 CMC § 5311 et seq., during the course of legal proceedings. "Guardian ad litem" does not mean the attorney for the juvenile, other minor child or other incompetent individual. Rather, the guardian ad litem is an officer of the court who reports directly to the court, and who provides independent advice to the court (as compared to the attorneys advocating for one side or the other in the action) to bring balance to the decision-making process.

**Source:** PL 16-47, § 35(b).

**§ 1983. Appointment of Guardian Ad Litem.**

Because minor children cannot make legal decisions for themselves, nor bind themselves legally to any contractual obligations, therefore in any legal proceeding where the legal interests of a juvenile, other minor or other legally incompetent individual and the legal interests of the parents or other legal guardians of the juvenile, other minor or other legally incompetent individual are considered to be adverse or in conflict with each other, a guardian ad litem will be appointed for the juvenile, other minor or other legally incompetent individual by the court to provide an independent adult to act on behalf of the juvenile, other minor or other legally incompetent individual in the legal proceeding, and to make certain that the interests and legal rights of the juvenile, other minor or other legally incompetent individual are given adequate consideration and are adequately protected in that process. The legal protective status of a guardian ad litem will exist only within the confines of the particular court case in which the appointment was made.

(a) The Superior Court may, and in wardship cases shall, appoint a guardian ad litem for a juvenile, other minor or other legally incompetent individual, to serve until discharged by the court.

(b) A guardian ad litem appointed pursuant to this section is an advocate for a juvenile, other minor or other legally incompetent individual whose welfare is a matter of concern for the court and shall be distinguished from a guardian ad litem appointed pursuant to actions brought under the Probate Code, 8 CMC § 2101 et seq., or appointed pursuant to the court's probate rules. Nothing in this section shall be interpreted to modify any of the duties and obligations of a guardian ad litem appointed pursuant to the Uniform Parentage Act, 8 CMC § 1700 et seq.

(c) The Superior Court may, at its discretion, establish a Guardian Ad Litem Program within the family court, to serve as a system to provide training and supervision to volunteers who serve as court-appointed special advocates for juveniles, other minors or other legally incompetent individuals during proceedings pursuant to this chapter and for children in abuse and neglect proceedings within the family court, and in any other matters in which appointment of a protective guardian ad litem is appropriate.

**Source:** PL 16-47, § 35(c), modified.

**Commission Comment:** The commission replaced "this act" with "this chapter" pursuant to 1 CMC § 3806(d). The commission corrected manifest errors by inserting "a" before juvenile, where appropriate, and deleting an extra comma in subsection (c) pursuant to 1 CMC § 3806(g).

**§ 1984. Responsibilities and Duties of Guardian Ad Litem.**

The responsibilities and duties of a guardian ad litem are to:

(a) Represent the best interests of the juvenile, other minor or other legally incompetent individual;

(b) Advocate for the welfare and rights of a juvenile, other minor or other legally incompetent individual alleged to be a victim in an abuse or neglect proceeding;

(c) Conduct an independent assessment of the facts, the needs of the child, and the available resources within the family and community to meet those needs;

(d) Provide the court with a written report or reports, which include without limitation evaluation and assessment of the issues brought before the court, and recommendations for disposition of the case, and, if appropriate, the wishes of the juvenile, other minor or other legally incompetent individual;

(e) Monitor compliance with the orders of the family court during the pendency of the court case. The guardian ad litem may, but shall not be required to do so, make such motions as may be necessary to enforce the orders of the court, or to seek judicial review; and

(f) Protect and promote the best interests of the juvenile until formally relieved of the

responsibility by the court.

**Source:** PL 16-47, § 35(d), modified.

**Commission Comment:** The commission changed capitalization for conformity pursuant to 1 CMC § 3806(f).

**§ 1985. Persons Prohibited from Appointment as Guardian Ad Litem.**

No person may be appointed as a guardian ad litem for a juvenile, other minor or other legally incompetent individual in any proceeding if that person has a criminal history that poses a risk to children; these include but are not limited to:

(a) Violent felonies in which an individual threatens to cause, attempts to cause or causes serious bodily injury;

(b) Violent sexual offenses as defined by CNMI law, or similar offenses in other jurisdictions:

(c) Criminal sex offense against a minor as defined by CNMI law or other similar offenses in other jurisdictions;

(d) Child abuse or neglect as defined by CNMI law or similar offenses in other jurisdictions;

(e) Violations of the CNMI Minor Children Firearms Control Act or similar offenses in other jurisdictions;

(f) Distribution of a controlled substance to persons under 18 as defined by CNMI law or similar offenses in other jurisdictions.

All other criminal histories will be evaluated based on the nature and severity of the incident; the identity of the victim; the length of time since the incident; whether any specific pattern of criminal behavior exists; and specific efforts the individual has made towards rehabilitation.

**Source:** PL 16-47, § 35(e), modified.

**Commission Comment:** The commission changed capitalization for conformity pursuant to 1 CMC § 3806(f).

**§ 1986. Guardian to Represent Best Interests of Juvenile, Other Minor or Other Legally Incompetent Individual; Guardian to Receive Notice of All Proceedings; Obligation of Guardian Continuing One; Authority of Guardian.**

(a) The guardian ad litem is charged in general with the duty of representation of the juvenile, other minor or other legally incompetent individual's best interests. After appointment by the court to a case involving an abused or neglected juvenile, other minor or other legally incompetent individual, the guardian ad litem shall receive appropriate notice of all court hearings and proceedings regarding the juvenile, other minor or other legally incompetent individual. The obligation of the guardian ad litem to the court continues until the guardian ad litem is formally relieved by the court.

(b) The guardian ad litem is authorized to:

(1) conduct an independent assessment of the facts;

(2) confer with and observe the juvenile, other minor or other legally incompetent individual involved;

(3) interview persons involved in the case;

(4) participate in any evaluation team for the case on which the guardian ad litem has been appointed;

(5) make recommendations to the court concerning the child's welfare; and

(6) make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the child.

(7) exercise additional powers ordered by the court that may be appropriate in the circumstances of each case.

(c) The guardian ad litem is authorized, through counsel if appropriate, to introduce, examine, and cross-examine witnesses in any proceeding involving the juvenile, other minor or other legally incompetent individual and participate in the proceedings to any degree necessary to represent the juvenile, other minor or other legally incompetent individual adequately.

**Source:** PL 16-47, § 35(f), modified.

**Commission Comment:** The commission changed capitalization for conformity and inserted the semi-colon in subsection (b)(4) pursuant to 1 CMC § 3806(f) and (g).

**§ 1987. Guardian's Right to See All Reports, Information and Records Concerning Juvenile Being Represented.**

All reports made and information collected by DYS must be made available to the guardian ad litem by DYS. Upon proof of appointment as guardian ad litem and upon the guardian ad litem's request, access to information must be made available to the guardian ad litem by the appropriate medical and dental authorities and service providers, psychologists, psychiatrists, psychotherapists, social workers, counselors, schools, and any agency providing services to the juvenile, other minor or other legally incompetent individual to the extent authorized by Commonwealth and federal law.

**Source:** PL 16-47, § 35(g), modified.

**§ 1988. Confidentiality of Records and Information.**

All reports and information collected pursuant to this section are confidential except as otherwise provided for in 6 CMC § 5325.

**Source:** PL 16-47, § 35(h), modified.

**§ 1989. Immunity from Liability for Guardian Ad Litem.**

A person who is appointed to serve as guardian ad litem is not liable for any civil damages for any personal injury or property damages as a result of any act or omission by the guardian ad litem in the discharge of his or her responsibilities as guardian ad litem, if the person acts in good faith and is not guilty of gross negligence.

**Source:** PL 16-47, § 35(i), modified.

# DIVISION 2 PROBATE LAW AND PROCEDURE

## CHAPTER 1. GENERAL PROVISIONS.

### § 2101. Short Title.

**Case Annotations:** *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1, 6 N.M.I. 67 (2000); . . .

**FIDUCIARIES**

**Duties**

– **Generally**
The administrator of an estate has an obligation to see that the estate is distributed in a manner consistent with the statutorily defined rights of the heirs at the time of the decedent's death. 8 CMC § 2101, *et seq*. *Piteg v. Piteg*, 2000 MP 3 ¶ 15, 6 N.M.I. 74, 78 (2000).

**PROBATE**

**Chamorro Custom**

– **Poksai/Pineksai**
Pursuant to Northern Mariana Islands Probate Law, 8 CMC § 2101, *et seq*., children who are adopted pursuant to custom inherit from their adoptive parents' estate as would the parents' natural child or issue. Customary adopted children are the children of their adoptive parent for purposes of intestate succession. 8 CMC § 2101, *et seq*., 8 CMC § 2918(a). *In re Macaranas*, 2003 MP 11 ¶ 7, 6 N.M.I. 571, 572-3. (2003).

### § 2107. General Definitions.

**Case Annotations:** *In re Macaranas*, 2003 MP 11, 6 N.M.I. 571. (2003).

## CHAPTER 2. SCOPE, JURISDICTION, COURT.

### § 2201. Application.

**Case Annotations:** . . .

**PROBATE**

**Descent and Distribution**

– **Heirs**
The Northern Mariana Islands Probate Law, 8 CMC § 2201, *et seq.,* expressly allows an heir proceeding to determine the legal heirs or successors of a decedent. 8 CMC § 2201, *et seq*. *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 17, 6 N.M.I. 67, 70 (2000).

### § 2202. Jurisdiction.

**Case Annotations:** . . .

**PROBATE**

**Descent and Distribution**

– **Heirs**

Under 8 CMC § 2202, the Commonwealth Superior Court, sitting as a probate court has wide discretion in probate proceedings to entertain any relevant matters that may come before it in a probate matter. Section 2202 specifically grants the court the authority to determine the heirs and successors of decedents. 8 CMC § 2202. *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 17, 6 N.M.I. 67, 70 (2000).

**Rules**

– **Generally**
Further evidence of the probate court's broad mandate is found at 8 CMC § 2202(a), which grants the probate court jurisdiction to the full extent permitted by the N.M.I. Constitution and the Schedule on Transitional Matters over all subject matter relating to estates of decedents. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 30, 7 N.M.I. 407, 415 (2007).

## § 2203. Rules of Practice.

**Case Annotations:** . . .

**PROBATE**

**Rules**

– **Generally**
The Rules of Probate Procedure of the Commonwealth Trial Court shall govern all proceedings under the probate law. 8 CMC § 2203. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 27, 7 N.M.I. 407, 414 (2007).

## § 2206. Appealable Orders.

**Case Annotations:** . . .

**PROBATE**

**Appeals**
An order relating to an issue which is disputed or objected to by the aggrieved party or parties puts the parties on notice that the disputed issue may likely be the subject of an appeal. So long as party did not agree to, but rather timely contested an order in the proceedings below, party has properly preserved its right to appeal the order and may decide if and when to bring its appeal therefrom. 8 CMC § 2206. *In re Estate of Tudela*, 3 N.M.I. 316 (1992).

8 CMC § 2206, concerning orders in probate proceedings which may be appealed, is permissive, not mandatory. A party who has contested an appealable order may appeal either within thirty days of the issuance of the order or within thirty days after the conclusion of the probate case. *In re Estate of Tudela*, 3 N.M.I. 316 (1992).

**Jurisdiction**

– **Appeals**
The N.M.I. Supreme Court has jurisdiction over a consolidated appeal and cross-appeal of the probate court's decision involving a dispute among heirs regarding their respective ownership interests in the decedents property, under Section 2206 of Title 8 of the Commonwealth Code. 8 CMC § 2206. *Del Rosario v. Camacho*, 2001 MP 3 ¶ 4, 6 N.M.I. 213, 219 (2001).

The N.M.I. Supreme Court has jurisdiction, under Title 8, Section 2206 of the Commonwealth Code, over an appeal from a Superior Court order denying a woman the opportunity to re-litigate paternity issues within a probate proceeding. 8 CMC § 2206. *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 1, 6 N.M.I. 67, 68 (2000).

**Probate Code, Generally**

– **Applicability**
8 CMC § 2206 is only implicated if the subject debt, claim or attorney's fee was paid with funds which were part of an estate under the jurisdiction of the probate court. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 22, 7 N.M.I. 407, 413 (2007).

## CHAPTER 3. WILLS.

### § 2305. Oral Will.

**PROBATE**

**Wills**
An oral will in the Commonwealth is valid only when validated by testimony of two disinterested witnesses, among other things. 8 CMC § 2305(a)(1). *In re Estate of Roberto*, 2003 MP 16 ¶ 48, 6 N.M.I. 618, 627 (2003).

## CHAPTER 9. INTESTATE SUCCESSION.

### § 2901. Intestate Estate.

**Case Annotations:** . . .

**PROBATE**

**Chamorro Custom**

**– Poksai/Pineksai**
Pineksai who are raised as natural and legitimate children are customary adopted children for purposes of inheriting under the intestacy statutes, 8 CMC § 2901, *et seq.; 8* CMC § 2901, *et seq*. *In re Macaranas*, 2003 MP 11 ¶ 6, 6 N.M.I. 571, 572. (2003).

### § 2902. Chamorro Custom: Ancestors' Land.

**Case Annotations:** *In re Macaranas*, 2003 MP 11, 6 N.M.I. 571. (2003); . . .

### § 2904. Carolinian Custom: Family Land.

**Case Annotations:** *In re Estate of Lairopi*, 2002 MP 10, 6 N.M.I. 417. (2002); . . .

### § 2918. Meaning of Child.

**Case Annotations:** . . .

**PROBATE**

**Chamorro Custom**

**– Poksai/Pineksai**
Pursuant to Northern Mariana Islands Probate Law, 8 CMC § 2101, *et seq.*, children who are adopted pursuant to custom inherit from their adoptive parents' estate as would the parents' natural child or issue. Customary adopted children are the children of their adoptive parent for purposes of intestate succession. 8 CMC § 2101, *et seq.*, 8 CMC § 2918(a). *In re Macaranas*, 2003 MP 11 ¶ 7, 6 N.M.I. 571, 572-3. (2003).

Pineksai who are raised as natural and legitimate children are customary adopted children and the Chamorro custom for such pineksai to receive property from their adoptive parents is embodied in the statutory language of 8 CMC § 2918(a). 8 CMC § 2918(a). *In re Macaranas*, 2003 MP 11 ¶ 17, 6 N.M.I. 571, 574-5. (2003).

## § 2922. Devolution of Estate at Death.

**Case Annotations:** . . .

**PROBATE**

**Probate Code, Generally**

– **Statute of Limitations**
Although the non-claim provisions of 8 CMC § 2924(a)(1) appear in Chapter 9 of the Probate Law, a chapter relating to intestate succession, its wording and that of the other five final provisions, 8 CMC §§ 2922- 2927, clearly pertain to all estates. 8 CMC § 2924(a)(1); 8 CMC §§ 2922-2927. *In re Estate of Roberto*, 2002 MP 23 ¶ 27, 6 N.M.I. 508, 515 (2002).

## § 2924. Limitations on Presentation of Claims.

**Case Annotations:** . . .

**PROBATE**

**Probate Code, Generally**

– **Statute of Limitations**
The plain language of 8 CMC § 2924(a), read in conjunction with Commonwealth Rules of Probate Procedure 6 and 11, clearly conditions entitlement to the shortened, sixty-day statute of limitation on probate claims, upon publication, at least five days prior to the probate hearing, of sufficient notice to creditors. 8 CMC § 2924(a); Com. R. Prob. P. 6; Com. R. Prob. P. 11. *In re Estate of Roberto*, 2002 MP 23 ¶ 24, 6 N.M.I. 508, 514-15 (2002).

Where notice required under 8 CMC § 2924(a)(1) has not been published in full accordance with the Rules of Probate Procedure, then logically, the three-year statute of limitations provided under 8 CMC § 2924(a)(2) must apply. 8 CMC § 2924(a)(1); 8 CMC § 2924(a)(2). *In re Estate of Roberto*, 2002 MP 23 ¶ 24, 6 N.M.I. 508, 514-15 (2002).

To merit a grant of summary judgment on the basis of the sixty-day non-claim provision contained in 8 CMC § 2924(a)(1), a defendant must demonstrate compliance with the constructive notice scheme of the Commonwealth Rules of Probate Procedure 6 and 11. 8 CMC § 2924(a)(1); Com. R. Prob. P. 6; Com. R. Prob. P. 11. *In re Estate of Roberto*, 2002 MP 23 ¶ 25, 6 N.M.I. 508, 515 (2002).

Although the non-claim provisions of 8 CMC § 2924(a)(1) appear in Chapter 9 of the Probate Law, a chapter relating to intestate succession, its wording and that of the other five final provisions, 8 CMC §§ 2922- 2927, clearly pertain to all estates. 8 CMC § 2924(a)(1); 8 CMC §§ 2922-2927. *In re Estate of Roberto*, 2002 MP 23 ¶ 27, 6 N.M.I. 508, 515 (2002).

## § 2926. Attorney's Fees.

**Case Annotations:** . . .

**PROBATE**

**Rules**

– **Generally**
The policy of favoring a strong regulatory role for probate court is implicated by our probate law and procedure. Rule 10's requirement that the payment of all estate debts be approved by the probate court is evidence of this policy, as is the language found at 8 CMC § 2926(c), which states that in establishing reasonable attorney's fees the personal representative and the court shall account for the services rendered during probate. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 30, 7 N.M.I. 407, 415 (2007).