IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity as the Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, in his official capacity of Director of the Alaska Child Support Services Division,

Appellants,

v.

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *parens patriae* on behalf of its members,

Appellee.

Trial Court Case No: **1JU-10-00376 CI**

Supreme Court No.: **S-14935**

EXCERPT OF RECORD
VOLUME 1 of 2

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Clerk of the Apellate Court

By: _____
Deputy Clerk

INDEX TO EXCERPT OF RECORD

State of Alaska v. CCTHITA
Case No. S-14935

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *parens patriae* on behalf of its members

Plaintiff,

v.

STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity of Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, in his official capacity of Director of the Alaska Child Support Services Division

Defendants.

FILED
STATE OF ALASKA
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CLERK, TRIAL COURTS
BY _____ DEPUTY

Case no. 1JU-10 - 376 CI

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. In this action the plaintiff (hereinafter "the Tribe") seeks declaratory and injunctive relief against the defendants for their refusal to follow Alaska's Uniform Interstate Family Support Act (UIFSA), AS 25.25, Alaska's administrative code implementing UIFSA, 15 AAC 125.700-800, and federal child support regulations on providing interstate services for Tribal child support orders.

2. The action also seeks to enforce the Tribe's and Tribal members' due process rights to have the defendants respond to requests for interstate services in a timely manner.

3. The plaintiff (hereinafter "Tribe") brings this case on its own behalf and as *parens patriae* on behalf of its members. The well-being and financial support of the Tribe's individual

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families and children is inextricably bound up with the Tribe's ability to maintain its integrity.

4. The Tribe seeks a declaratory judgment to establish that it possess inherent and concurrent jurisdiction to establish, modify, and enforce child support for children who are members of the Tribe or eligible for membership in the Tribe. The Tribe also seeks an order from the court requiring the defendants to follow state and federal law governing interstate support, including providing due process in the interstate recognition scheme.

JURISDICTION AND VENUE

5. This Court has jurisdiction under AS 22.10.020 (c) and (g).

6. Venue is proper under AS 22.10.030 and Civil Rule 3(c).

PARTIES

7. The Tribe is a federally recognized Indian Tribe pursuant to Section 8 of the Act of June 19, 1935, 49 Stat. 388, as amended by the Act of August 19, 1965, 79 Stat. 543, and the Tlingit and Haida Status Clarification Act, Title II of Pub. L. No. 103-454, 108 Stat. 4792 (1994), codified at 25 U.S.C. 1212 et seq.

8. Defendant Patrick Galvin is the Commissioner of the Alaska Department of Revenue, which contains the Child Support Services Division (CSSD). He is sued in his official capacity.

9. Defendant John Mallonee is the Director of the Alaska Child Support Services Division. He is sued in his official capacity.

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STATEMENT OF FACTS

General Allegations Regarding State and Tribal IV-D Programs

10. The national Child Support Enforcement Program was established in 1975 under title IV-D of the Social Security Act.

11. The federal government funds state IV-D programs, including the Alaska Child Support Services Division, to administer support activities mandated by state and federal law.

12. The federal government also funds Indian tribes, including the Tribe, to administer their own IV-D programs to meet the needs of their children and families.

13. Federal regulations require the Tribe to designate an agency to administer the Tribe's IV-D program; the Tribe designated its "Tribal Child Support Unit" (hereinafter "TCSU") as the Tribe's agency to administer the Tribe's IV-D program.

14. In accord with the Tribe's tribal code, the Tribe's tribal court has subject matter jurisdiction in child support cases when the child is a member of the Tribe or eligible for enrollment in the Tribe; the Tribe exercises personal jurisdiction over members and consenting non-members pursuant to a tribal code akin to AS 9.05.015 and AS 25.25.201.

General Allegations Regarding IV-D Program Requirements

15. As a condition of IV-D funding, the federal government requires states to adopt the Uniform Interstate Family Support Act (UIFSA).

16. UIFSA directs states to provide services to other states to enhance the collection of child support.

17. UIFSA defines a "state" as "a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the

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jurisdiction of the United States," and the term includes "an Indian tribe." UIFSA § 102 (21).

18. For twelve years, Alaska's version of UIFSA was noncompliant with the requirement of including "Indian tribe" in the definition of "state." But this was corrected as of July 1, 2009, pursuant to 45 SLA 2009 (amending AS 25.25.101(19)) (the "UIFSA amendment").

19. Under Alaska's UIFSA, when the state receives a request for assistance from another "state" to enforce or register a child support order, CSSD must follow the specific requirements for a "responding tribunal." AS 25.25 305; AS 25.25.507, AS 25.25.601-614.

20. Tribal-State cooperation in the national Child Support Enforcement Program is also required by federal regulations. *See* 45 CFR Parts 286, 302, 309, and 310.

21. States and Indian tribes must work together to provide the full range of services to families available under each program. See 45 CFR 302.36 (a) (2) and 45 CFR 309.120.

Allegations Regarding Coordination of Support Services By the Parties

22. In 2008 and 2009, the Tribe sent transmittals to CSSD to enforce Tribal court child support orders through garnishment of Permanent Fund Dividends.

23. In 2008, CSSD responded to the request by sending a letter to TCSU stating that CSSD would not provide the intercept service for child support cases where the underlying order was a Tribal court child support order.

24. For 2008, CSSD refused to provide PFD intercept services for custodial parents with Tribal child support orders.

25. The 2008 refusal to provide PFD intercept services resulted in financial damage to both the Tribe and families with Tribal children. As to the former, in cases where the custodial

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parents received Native Temporary Assistance to Needy Families (Tribal TANF), the Tribe would have received the PFD disbursement. As to the latter, custodial parents of Tribal children that were not receiving TANF benefits would have received the funds.

26. In 2009, CSSD initially returned the Tribe's requests for PFD intercept services with the notation that CSSD was denying services because the underlying orders were not state court or administrative orders.

27. In 2009, the Tribe and the state were able to reach a short-term agreement on a portion of these PFD requests but were unable to resolve the underlying issue that the state refuses to recognize the Tribe's tribal court orders.

28. The Tribe and the state have had ongoing discussions regarding coordination of their child support programs, with progress being halted over the same fundamental jurisdictional issue.

29. Following the passage of the UIFSA amendment in July 2009, the Tribe has requested that the state consider the amendment and explain how the amendment would impact the parties' jurisdictional impasse, but the state has not responded.

30. On November 19, 2009, the TCSU sent a UIFSA request to CSSD requesting services to enforce the child support order in tribal court case number 09-CS-0120. As of the date of the filing of this complaint, the CSSD has failed to respond.

31. Given the jurisdictional impasse between the Tribe and state, the defendants' failure to provide services and due process will continue until prohibited by the court.

32. Child support that is not collected deprives Tribal children of essential financial support. It also harms the Tribe, which is owed reimbursement for TANF payments made to families.

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FIRST CAUSE OF ACTION: UIFSA

33. Plaintiff incorporates by reference the foregoing paragraphs of this complaint as fully set forth herein.

34. This claim is brought by the Tribe on its own behalf and as *parens patriae*.

35. UIFSA requires defendants to recognize controlling support orders of other states, enforce orders from other states, communicate with other state tribunals and take other steps to promote interstate child support enforcement. AS 25.25.

36. Alaska's Administrative Code 15 AAC 125.700-800 provides more detailed guidelines on the services to be provided by the CSSD under UIFSA, including "complete child support services" to "a child support agency of another state."

37. Under the current version of UIFSA, Indian tribes are encompassed under the definition of a "state."

38. Defendants refuse to provide the enumerated services in UIFSA and its implementing regulations to the Tribe and families of Tribal children when the underlying order is a Tribal child support order.

39. Defendants' actions have damaged the Tribe, its members and its children.

SECOND CAUSE OF ACTION: FULL RANGE OF SERVICES

40. Plaintiff incorporates by reference the foregoing paragraphs of this complaint as fully set forth herein.

41. This claim is brought by the Tribe on its own behalf and as *parens patriae*.

42. 45 CFR 302.36(a)(2) requires every state to extend the "full range of services" available under its IV-D plan to all Tribal IV-D programs.

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43. In rejecting requests for interstate services by the Tribe, the defendants have failed to extend the full range of services to the Tribe and families of Tribal children.

44. Defendants' actions have damaged the Tribe, its members and its children.

THIRD CAUSE OF ACTION: INTERSTATE SERVICES

45. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as fully set forth herein.

46. This claim is brought by the Tribe on its own behalf and as *parens patriae*.

47. 45 CFR 303.7, subsections (c)(7)(iii) and (iv) instruct that a state IV-D agency must provide any necessary services in interstate cases as it would in intrastate IV-D cases by: processing and enforcing orders referred by another state, whether pursuant to the Uniform Interstate Family Support Act or other legal processes, using appropriate remedies applied in its own cases . . . and collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the IV-D agency in the initiating state.

48. Requests for services from the Tribe to the defendants should be honored pursuant to 45 CFR 303.7, but the defendants refuse to honor any request for services when the underlying order is a Tribal child support order.

49. The defendants fail to provide these services to the Tribe and its members in violation of federal regulations.

50. Defendants' actions have damaged the Tribe, its members and children.

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FOURTH CAUSE OF ACTION: DUE PROCESS

51. Plaintiff incorporates by reference the foregoing paragraphs of this complaint as fully set forth herein.

52. This claim is brought by the Tribe on its own behalf and as *parens patriae*.

53. The due process clauses of the federal and state constitutions require that states provide procedural due process with regard to constitutionally protected property interests.

54. Failing to timely respond to the Tribe's Nov. 19, 2009, request for interstate services to enforce Tribal court case 09-CS-0120 deprives the Tribe and the individual Tribal family of due process.

55. Defendants' actions have damaged the Tribe, its members and its children.

FIFTH CAUSE OF ACTION: 42 USC §1983

56. Plaintiff incorporates by reference the foregoing paragraphs of this complaint as fully set forth herein.

57. This claim is brought by the Tribe on its own behalf and as *parens patriae*.

58. This claim is brought by the plaintiff Tribe against the individual defendants, not against the State itself.

59. At all relevant times the individual defendants have been acting under color of state law.

60. At all relevant times the individual defendants have been violating federal law — specifically the Due Process Clause of the Fourteenth Amendment and the aforementioned federal child support regulations — in failing to provide interstate child support services and depriving the Tribe and its members of needed support.

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61. The Tribe has a right to vindicate those rights in this court under 42 USC §1983, as *parens patriae* or otherwise. The Tribe now seeks declaratory and injunctive relief from this court compelling the individual defendants to comply with the aforesaid federal laws.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for a judgment:

(1) providing the Tribe with the injunctive and declaratory relief as prayed for above;

(2) declaring that the Tribe possesses inherent rights of self-governance that includes jurisdiction to adjudicate child support for children who are members of the Tribe or eligible for membership in the Tribe;

(3) requiring CSSD to respond promptly to interstate requests for child support services from the Tribe in accordance with UIFSA and federal regulations;

(4) requiring CSSD to provide due process to the Tribe and its members as discussed above;

(5) granting the Tribe other equitable and legal relief to which it is entitled, including full attorney fees and reimbursement of litigation costs.

DATED: Jan, 19, 2010

ALASKA LEGAL SERVICES CORPORATION
Attorneys for Plaintiff

Holly Handler, AK Bar No. 0301006

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THIS CASE FORMALLY ASSIGNED TO
JUDGE PATRICIA COLLINS
BY ORDER OF THE PRESIDING JUDGE

0099

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *parens partriae* on behalf of its members,

Plaintiff,

v.

STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity of Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, in his official capacity of Director of the Alaska Child Support Services Division,

Defendants.

Case No. 1JU-10-376 CI

ANSWER

The State of Alaska, Patrick S. Galvin, in his official capacity as Commissioner of the State of Alaska, Department of Revenue, and John Mallonee, in his official capacity as Director of the State of Alaska Child Support Services Division (defendants), answer the plaintiff's Complaint for Injunctive and Declaratory Relief as follows:

INTRODUCTION

1. Defendants deny that they refused to follow Alaska's Uniform Interstate Family Support Act (UIFSA), AS 25.25, Alaska's administrative code implementing UIFSA, 15 AAC 125.700-.800, and federal child support regulations on providing

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interstate services for Tribal child support orders. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 1, and therefore they are denied.

2. Defendants deny that they failed to respond to requests for interstate services in a timely manner. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 2, and therefore they are denied. To the extent that paragraph 2 is a legal conclusion, no responsive pleading is required, and therefore it is deemed denied.

3. Defendants deny that the well-being and financial support of the Tribe's individual families and children is inextricably bound up with the Tribe's ability to maintain its integrity. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 3, and therefore they are denied.

4. To the extent that paragraph 4 states a legal conclusion, no response is required. To the extent that paragraph 4 does not state a legal conclusion, defendants specifically deny that the Tribe has inherent and concurrent jurisdiction to establish, modify, and enforce child support for children who are members of the Tribe or eligible for membership in the Tribe, and the defendants deny that they have not followed state and federal law governing interstate support, and deny that they have not provided due process in the interstate recognition scheme.

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JURISDICTION AND VENUE

5. Paragraph 5 is a legal conclusion to which no responsive pleading is required.

6. Paragraph 6 is a legal conclusion to which no responsive pleading is required.

PARTIES

7. Admit.

8. Admit.

9. Admit.

STATEMENT OF FACTS

General Allegations Regarding State and Tribal IV-D Programs

10. Admit.

11. The defendants admit that the federal government funds, at least partially, state IV-D programs, including the Alaska Child Support Services Division's program, and that if the State wants to continue to receive that money it must do certain things. The purpose of the federal funding is inaccurate in its representation and is therefore denied.

12. The defendants admit that the federal government also funds, at least partially, Indian tribes, including the Tribe, to administer their own IV-D programs. The purpose of the federal funding is incomplete in its representation, and therefore inaccurate, and therefore is denied.

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13. The first clause of paragraph 13 states a legal conclusion for which no response is required. To the extent that the first clause does not state a legal conclusion and is setting out what is contained in the federal regulations, the regulations speak for themselves. The defendants admit that the Tribe designated its "Tribal Child Support Unit" as the Tribe's agency to administer the Tribe's IV-D program.

14. Paragraph 14 states a legal conclusion for which no response is required. To the extent that paragraph 14 does not state a legal conclusion and is setting out what is contained in the Tribe's tribal code, the code speaks for itself and no response is required. The defendants deny any inference that the Tribe has subject matter jurisdiction over child support cases, and deny any inference that the Tribe has personal jurisdiction over members or nonmembers as a matter of course or without consideration of the facts and law in each case.

General Allegations Regarding IV-D Program Requirements

15. The defendants admit that in order to qualify as a IV-D child support agency and receive IV-D federal matching funds, under 42 U.S.C. § 666(f) "on and after January 1, 1998, each state must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws."

16. Deny.

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17. UIFSA speaks for itself and therefore requires no response. UIFSA, however, does not determine the underlying subject matter jurisdiction of a tribe to issue a child support order.

18. The defendants admit that Alaska's version of UIFSA, which was promulgated in 1995 (effective date January 1, 1996), did not initially include "Indian tribe" in the definition of "state." The defendants admit that Alaska's version of UIFSA was amended by 45 SLA 2009 (effective date July 1, 2009) to include "Indian tribe" in the definition of "state" in AS 25.25.101(19). The defendants deny the other averments of paragraph 18.

19. Paragraph 19 states a legal conclusion for which no response is required. To the extent paragraph 19 is setting out what is contained in Alaska's UIFSA, the statutes speak for themselves and no response is required.

20. Paragraph 20 states a legal conclusion for which no response is required. To the extent paragraph 20 is setting out what is contained in the federal regulations, the regulations speak for themselves and no response is required.

21. Paragraph 21 states a legal conclusion for which no response is required. To the extent that paragraph 21 is setting out what is contained in the federal regulations, the regulations speak for themselves and no response is required.

Allegations Regarding Coordination of Support Services by the Parties

22. Admit.

23. The defendants admit that the State responded by letter in 2008 to the Tribe's request for PFD garnishment in tribal child support cases and stated that CSSD

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could garnish the PFD based on an Alaska child support order or based on state orders entitled to full faith and credit, but that the Tribe's support orders were not entitled to CSSD administrative enforcement because the Tribe's orders were not entitled to full faith and credit under the federal Full Faith and Credit for Child Support Orders Act, and the Tribe's orders would have to be registered with and be judicially recognized by an Alaska superior court under comity principles before CSSD could enforce the order and garnish the obligor's PFD. The defendants deny the remaining averments of paragraph 23.

24. The defendants deny the averments of paragraph 24. The defendants deny any implication that CSSD could administratively enforce the Tribe's orders because the Tribe's orders were not entitled to full faith and credit under the federal Full Faith and Credit for Child Support Orders Act, because the Tribe's orders were not covered by the Alaska Uniform Interstate Family Support Act in effect in 2008, because the Tribe's orders would require judicial recognition and enforcement by an Alaska superior court under comity principles, and because there were unresolved legal issues concerning the Tribe's subject matter jurisdiction and personal jurisdiction to issue, modify or enforce child support orders.

25. Deny.

26. Defendants admit that CSSD in 2009 initially returned the Tribe's requests for PFD intercept services because of unresolved jurisdictional issues since the Tribe's orders are not entitled to full faith and credit under the federal Full Faith and Credit for Child Support Orders Act and Alaska's UIFSA (2009) does not determine

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the underlying authority of an Indian tribe to enter, modify, or enforce a child support order, but that in January 2009, far before the PFD garnishment deadline, CSSD offered to issue a state child support order to ensure that the Tribe and tribal families received the support, but the Tribe rejected this option. The defendants deny the remaining averments of paragraph 26.

27. The defendants admit that the Tribe and State reached a short-term agreement on certain PFD requests without waiving any jurisdiction issues and admit that the Tribe and State did not reach a long-term agreement on the Tribe's authority to issue a child support order. The defendants deny the remaining averments of paragraph 27.

28. The defendants admit that discussions between the Tribe and the State have occurred, including discussions regarding tribal jurisdiction to issue child support orders under various sets of facts – members, nonmembers, consenting parties, non-consenting parties, for example. The defendants deny that progress was ever halted, and further deny that jurisdictional disputes act as a necessary bar to further discussions.

29. The defendants admit that the Tribe requested that the State consider the amendment (effective date July 1, 2009) to UIFSA (as that term is defined in paragraph 1 of the complaint (Alaska's version of UIFSA, AS 25.25), but not as that term is defined in paragraph 15 of the complaint (the Uniform Interstate Family Support Act)) and that the State explain how the amendment might impact the jurisdictional dispute.

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The defendants deny that the State did not respond, deny that the parties were at an impasse, and deny that the UIFSA amendment was passed in July 2009.

30. The defendants admit that TCSU sent a request for services (dated November 19, 2009) to CSSD requesting enforcement of a child support order that had been issued in tribal court case 09-CS-0120. The defendants admit that CSSD had not responded to TCSU as of the date of the filing of the complaint in this action. The defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 30, and therefore they are denied.

31. Deny.

32. Deny.

FIRST CAUSE OF ACTION: UIFSA

33. The preceding paragraphs of this answer are incorporated by reference.

34. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 34, and therefore they are denied.

35. Paragraph 35 states a legal conclusion for which no response is required. However, Alaska's UIFSA (2009) does not determine the underlying authority of an Indian tribe to enter, modify, or enforce a child support order and the Tribe's orders are not entitled to full faith and credit under the federal Full Faith and Credit for Child Support Orders Act.

36. The regulations speak for themselves and therefore require no response. However, the regulations do not set the underlying authority of a tribe to issue a child support order and specifically recognize that support orders are judgments, decrees, or

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orders issued by a court or administrative agency of competent jurisdiction. The Tribe's orders are not entitled to full faith and credit under the federal Full Faith and Credit for Child Support Orders Act and Alaska's UIFSA (2009) does not determine the underlying authority of the Tribe to enter, modify, or enforce a child support order.

37. The statute speaks for itself and therefore no response is required, but the inclusion of tribe in the definition of state in the statute does not determine the underlying subject matter jurisdiction of the Tribe to enter, modify, or enforce a child support order.

38. The defendants deny the averments of paragraph 38 and deny any inference that the Tribe has jurisdiction to enter, modify or enforce a child support order.

39. Deny.

SECOND CAUSE OF ACTION: FULL RANGE OF SERVICES

40. The preceding paragraphs of this answer are incorporated by reference.

41. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 41, and therefore they are denied.

42. The federal regulation governing federal child support funding speaks for itself. The federal regulations to do not confer child support jurisdiction on a IV-D child support agency and the federal regulations, federal law and UIFSA do not require enforcement of a child support order entered by a tribunal without subject matter and personal jurisdiction.

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43. Paragraph 43 states a legal conclusion for which no response is required. To the extent that Paragraph 43 does not state a legal conclusion, the defendants deny the averments of this paragraph.

44. Deny.

THIRD CAUSE OF ACTION: INTERSTATE SERVICES

45. The preceding paragraphs of this answer are incorporated by reference.

46. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 46, and therefore they are denied.

47. The federal regulation governing federal child support funding speaks for itself. The federal regulations do not confer child support jurisdiction on a IV-D child support agency, and the federal regulations, federal law and UIFSA do not require enforcement of a child support order entered by a tribunal without subject matter and personal jurisdiction.

48. The first clause of paragraph 48 states a legal conclusion for which no response is required. To the extent that the first clause of paragraph 48 does not state a legal conclusion, defendants specifically deny any violation of 45 C.F.R. § 303.7. The remainder of paragraph 48 is denied. The federal regulations do not confer child support jurisdiction on a IV-D child support agency and the federal regulations, federal law and UIFSA do not require enforcement of a child support order entered by a tribunal without subject matter and personal jurisdiction.

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49. Paragraph 49 states a legal conclusion for which no response is required. To the extent that paragraph 49 does not state a legal conclusion, defendants deny the averments of this paragraph.

50. Deny.

FOURTH CAUSE OF ACTION: DUE PROCESS

51. The preceding paragraphs of this answer are incorporated by reference.

52. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 52, and therefore they are denied.

53. Paragraph 53 states a legal conclusion for which no response is required.

54. Paragraph 54 states a legal conclusion for which no response is required. To the extent that paragraph 54 does not state a legal conclusion, defendants deny the averments of paragraph 54.

55. Deny.

FIFTH CAUSE OF ACTION: 42 U.S.C. § 1983

56. The preceding paragraphs of this answer are incorporated by reference.

57. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 57, and therefore they are denied.

58. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 58, but note that the individual defendants have been sued only in their official capacities.

59. Paragraph 59 states a legal conclusion for which no response is required.

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60. Paragraph 60 states a legal conclusion for which no response is required. To the extent that paragraph 60 does not state a legal conclusion, defendants deny the averments of paragraph 60.

61. Paragraph 61 states a legal conclusion for which no response is required. To the extent that paragraph 61 does not state a legal conclusion, defendants deny the averments of paragraph 61.

AFFIRMATIVE AND OTHER DEFENSES

The State alleges and preserves the following affirmative and other defenses:

1. Defendants are entitled to absolute or qualified immunity.

2. Plaintiff failed to exhaust administrative remedies.

3. The statutes and regulations relied upon do not create a private right of action.

4. Plaintiff lacks capacity to bring a section 1983 action in its own name.

5. Insufficiency of service of process to the extent that the Fifth Cause of Action was intended to be brought against Patrick Galvin and John Mallonee in their individual capacities.

6. The State of Alaska is not a proper party to a section 1983 action.

7. The Tribe has not alleged violation of a federal right cognizable in section 1983 actions.

8. Plaintiff's claims fail to state a claim upon which relief may be granted.

Defendants reserve the right to add further affirmative and other defenses as investigation and discovery continue in this matter.

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PRAYER FOR RELIEF

Therefore, the defendants seek the following relief:

1. A judgment in defendants' favor on all claims;

2. A judgment that plaintiff takes nothing by reason of its complaint;

3. Dismissal of plaintiff's complaint with prejudice;

4. An award to the defendants of their costs and fees related to defense of plaintiff's claims;

5. Such other and further legal and equitable relief as this Court considers proper.

DATED: March 24, 2010

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BY ___ DEPUTY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *parens patriae* on behalf of its members

Plaintiff,

v.

STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity of Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, in his official capacity of Director of the Alaska Child Support Services Division

Defendants.

Case no. 1JU-10-376 CI

MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

Pursuant to Civil Rule 56, plaintiff ("the Tribe") moves for summary judgment against the state for failing to process and enforce the Tribe's child support orders as required by the Uniform Interstate Family Support Act (UIFSA) and Title IV-D of the Social Security Act. Plaintiff asks this court to enter an injunction requiring the state to follow UIFSA procedures to process and enforce the Tribe's child support orders. Plaintiff also seeks a declaratory judgment that the Tribe has subject matter jurisdiction over child support matters for children who are members of or eligible for membership in the Tribe.

As set forth below, there is no genuine dispute as to any material fact. Plaintiffs are entitled to summary judgment as a matter of law.

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FACTUAL BACKGROUND

All federally-funded child support agencies in the United States operate under Title IV-D of the Social Security Act and are overseen by the federal Office of Child Support Enforcement (OCSE).[1] Initially, only states received federal funding to operate IV-D child support programs. However, in 2000, the federal government extended this funding to all federally-recognized tribes that meet program requirements.[2] In 2004, the OCSE awarded the Tribe a two-year startup grant to begin developing a tribal IV-D program.[3] On March 28, 2007, the OCSE approved the Tribe's IV-D plan and granted its

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[1] 42 U.S.C. § 651.

[2] *See* Interim Rule 45 CFR 310; 45 CFR 309.65(a): "A Tribe or Tribal organization demonstrates capacity to operate a Tribal IV–D program meeting the objectives of title IV–D of the Act and these regulations by submission of a Tribal IV–D plan which contains the required elements listed in paragraphs (a)(1) through (14) of this section:
(1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under §309.70;
(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for IV–D services and promptly providing IV–D services required by law and regulation;
(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal IV–D program, including establishment of paternity, and establishment, modification, and enforcement of support orders;
(4) Administrative and management procedures as specified under § 309.75;
(5) Safeguarding procedures as specified under § 309.80;
(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;
(7) Copies of all applicable Tribal laws and regulations as specified under §309.90;
(8) Procedures for the location of noncustodial parents as specified under §309.95;
(9) Procedures for the establishment of paternity as specified under §309.100;
(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;
(11) Procedures for income withholding as specified under §309.110;
(12) Procedures for the distribution of child support collections as specified under § 309.115;
(13) Procedures for intergovernmental case processing as specified under § 309.120; and
(14) Tribally-determined performance targets for paternity establishment, support order establishment, amount of current support to be collected, amount of past due support to be collected, and any other performance measures a Tribe or Tribal organization may want to submit."

[3] *See* Affidavit of Counsel for the Tribal Child Support Unit in Support of Plaintiffs' Motion for

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application for full IV-D funding.[4] On the same day, the Tribe officially opened its tribal IV-D agency — the Tribal Child Support Unit (TCSU) — the first tribal IV-D agency in Alaska.[5]

Pursuant to the terms of the Tribe's IV-D plan, the Tribe provides direct child support services to families, including paternity establishment, location of absent parents, establishment, enforcement, and modification of child support orders, and referral of cases to other agencies as appropriate.[6] The TCSU opens a child support case when a custodial parent applies for child support services or for tribal Temporary Assistance for Needy Families (TANF).[7] This latter process is parallel to the process the state uses when it issues benefits through its Temporary Assistance Program (ATAP).[8] When the TCSU collects child support on behalf of a TANF family, the support reimburses the tribal government.[9]

Tribal child support orders are issued by the tribal court pursuant to the Tribe's Constitution, tribal codes, and the TCSU Schedule, which is similar to Rule 90.3 and provides a quantitative method for calculating child support.[10] The Tribe employs a magistrate and child support clerk to handle child support and paternity cases at the tribal

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Summary Judgment (hereinafter "Archibald Aff."), filed and served herewith, at ¶ 5.

[4] *See* Certificate of Holly Handler in Support of Plaintiff's Motion for Summary Judgment (hereinafter "Handler Cert."), filed and served herewith, at Exhibit 1, containing the Tribe's IV-D child support plan (including an updated Tribal Child Support Schedule), and Exhibit 2, containing the IV-D award letter dated March 28, 2007.

[5] *See* Archibald Aff. at ¶ 7.

[6] *See* Archibald Aff. at ¶ 8; Handler Cert. at Exhibit 1; and 45 C.F.R. § 310.15(a)(2) (primary federal mandates for IV-D programs).

[7] *See* Archibald Aff. at ¶ 12.

[8] *See* Archibald Aff. at ¶ 13 and AS 47.27.040.

[9] *See* Archibald Aff. at ¶ 13.

court.[11] The TCSU staff includes a full-time manager, an administrative office leader, a full-time staff attorney, and four full-time case specialists, including one outreach case specialist in Ketchikan.[12] When the Tribe issues a support order, it sends a copy to the Alaska Child Support Services Division (CSSD) to include in its state case registry to put CSSD on notice of all tribal child support orders.[13]

Every state the TCSU has worked with, including Washington, Louisiana, and California, has cooperated fully to recognize and enforce the Tribe's child support orders.[14] Alaska stands alone in its refusal to process and enforce tribal child support orders as required by the Uniform Interstate Family Support Act because — without even a hearing — these officials have unilaterally pre-determined all such orders to be invalid.[15] When CSSD receives a request for enforcement of a tribal child support order from the TCSU, CSSD does nothing: TCSU sent requests for UIFSA enforcement of tribal child support orders on Nov. 19, 2009, Jan. 13, 2010, and March 8, 2010, and CSSD did not acknowledge the requests or otherwise respond.[16] CSSD took no action prior to this lawsuit and then put all of these requests "on hold" pending resolution of this case.[17] While CSSD has offered some limited cooperation with inter-agency communication, recoupment of tribal TANF debt, enforcement of transferred state

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[10] *See* Archibald Aff. at ¶ 9.
[11] *See* Archibald Aff. at ¶ 10.
[12] *See* Archibald Aff. at ¶ 11.
[13] *See* Archibald Aff. at ¶ 19.
[14] *See* Archibald Aff. at ¶ 51.
[15] *See id.*
[16] *See* Handler Cert. at Exhibits 5-7; Archibald Aff. at ¶¶ 26-32.
[17] *See* Handler Cert. at Exhibit 3, page 4, lines 2-11.

support orders, and a one-time PFD agreement, CSSD will not cooperate on any matter that would recognize tribal jurisdiction.[18]

This has harmed the Tribe because certain support services — including PFD garnishments, unemployment benefit garnishments, and license revocations — can only be obtained with CSSD cooperation; the Tribe cannot obtain these services on its own.[19]

In 2008, the TCSU requested that CSSD garnish Permanent Fund Dividends of non-custodial parents who owed significant child support arrears pursuant to tribal child support orders and CSSD refused this request.[20] CSSD did provide the PFD intercept service for all TCSU requests where the underlying order was a state administrative or court order.[21] The refusal of services in 2008 harmed both custodial families and the Tribal government, for TANF debt owed to the Tribe.[22] There was a short-term agreement on certain PFD's reached in 2009, but no agreement exists for 2010.[23]

For federal tax refund garnishments, only the 50 states can intercept this money to enforce child support orders.[24] To receive this intercept service, tribes are required to enter into written agreements with states.[25] CSSD has not been willing to agree to provide IRS intercept services to enforce tribal child support orders.[26]

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[18] See Archibald Aff. at ¶¶ 33-39.
[19] *See* Archibald Aff. at ¶ 40.
[20] *See* Archibald Aff. at ¶¶ 33-34.
[21] *See* Archibald Aff. at ¶ 34.
[22] *See* Archibald Aff. at ¶ 35.
[23] *See* Archibald Aff. at ¶¶ 36-37.
[24] *See* Archibald Aff. at ¶ 38.
[25] *See* Archibald Aff. at ¶ 38.
[26] *See* Archibald Aff. at ¶¶ 38-39.

Some families have already abandoned the Tribe's IV-D program when it became apparent that the state will not provide services to families when the request for services is based on a tribal child support order.[27] CSSD's refusal to process tribal child support orders under UIFSA has also led to such problems as duplicative orders, as described in the TCSU affidavit.[28] Other communications from TCSU to CSSD about critical case issues from TCSU have gone unanswered.[29] This treatment undermines the Tribe's entire IV-D program, the overall inter-governmental support system, and deprives tribal families of needed services.

LEGAL ARGUMENT

Summary judgment is appropriate if "there are no genuine issues of material fact and if the moving party is entitled to judgment as a matter of law."[30] There is no dispute that the Tribe operates a tribal IV-D program, that the tribal court issues child support orders for tribal families, and that the state refuses to apply UIFSA procedures to process and enforce those orders. Whether the state can refuse to apply UIFSA procedures to the tribal court's child support orders and refuse to provide the full range of IV-D services to the Tribe's IV-D child support agency are questions of law.

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[27] *See* Archibald Aff. at ¶ 42.
[28] *See* Archibald Aff. at ¶¶ 47-49.
[29] *See* Archibald Aff. at ¶¶ 45-46.
[30] *See, e.g., Olivit v. City and Borough of Juneau*, 171 P.3d 1137, 1142 (Alaska 2007) (footnote omitted).

A. UIFSA Fosters a Nationwide Network of Child Support Enforcement Services

1. The History of UIFSA Nationally and in Alaska

Federal child support statutes require every state participant in the national IV-D program — including the State of Alaska — to adopt certain laws and procedures to increase the effectiveness of the program.[31] The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 specifically mandated state IV-D agencies to adopt the model UIFSA.[32] UIFSA was promulgated in 1992 by the National Conference of Commissioners on Uniform State Laws to provide universal and uniform rules for the enforcement of family support orders.[33] Its goal is to limit support orders to a single jurisdiction, eliminate inter-governmental jurisdictional disputes, and enhance inter-governmental collection efforts.[34] The Act offers solutions to many of the long-standing problems that have plagued inter-governmental child support collections, especially non-custodial parents evading orders by crossing state lines.[35] It also encourages cooperation between different IV-D agencies by having states provide services, such as locating and enforcement services, to other states.[36]

The model UIFSA defines a "state" as "a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States," and the term includes "an

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[31] 42 U.S.C. § 666 (a).

[32] P.L. 104-193; 42 U.S.C. § 454(20)(A) (42 U.S.C. § 654(20)(A) on and after January 1, 1998).

[33] *See* Child Support Enforcement Program; Intergovernmental Child Support, 75 Fed. Reg. 38,612, 38,612-13 (2010).

[34] *See id.*

[35] *See id.*

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Indian tribe."[37] Alaska adopted UIFSA in 1997, in Chapter 25 of Title 25 of the Alaska Statutes. However, Alaska's version of UIFSA excluded Indian tribes from its definition of "state."[38] No other state excludes Indian tribes.[39]

The State of Alaska petitioned the OCSE twice in 2008 for an exemption allowing it to exclude tribes from Alaska's version of UIFSA.[40] The OCSE rejected these petitions, stating that Alaska's exclusion of tribes, contrary to the intent of UIFSA, required additional court proceedings for the recognition and enforcement of child support orders issued by tribal courts.[41] The state then inquired about the penalties for refusing to enact the required UIFSA change, to which OCSE responded that failing to comply with the federal statute would render the state's IV-D plan subject to disapproval and could result in immediate suspension of all IV-D payments as well as the block grant

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[36] *See id.*

[37] Unif. Interstate Family Support Act § 102 (21) (1996), 9 U.L.A. 159 (2005); Unif. Interstate Family Support Act § 102 (21) (amended 2001), 9 U.L.A. 281 (2005).

[38] AS 25.25 (1997).

[39] *See* Code of Ala. § 30-3A-101(20); 34 Ariz. Rev. Stat. § 25-1202(22); Ark. Code Ann. § 9-17-101(19); Cal. Fam. Code § 4901(s); Colo. Rev. Stat. § 14-5-102(21); Conn. Gen. Stat. § 46b-212a(22); 13 Del. C. § 6-102(21); D.C. Code § 46-301.01(22); Fla. Stat. § 88.1011(19); Ga. Code Ann. § 19-11-101(19); Haw. Rev. Stat. § 576B-101; Idaho Code § 7-1002(21); 750 Ill. Comp. Stat. 22/102; Ind. Code § 31-18-1-21; Iowa Code § 252K.101(19); Kan. Stat. Ann. § 23-9,101(s); Ky. Rev. Stat. Ann. § 407.5101(19); La. Ch.C. Art. 1301.3(22); 19-A Me. Rev. Stat. § 2802(19); Md. Code Ann. Fam. Law § 10-301 (v); Mass. Gen. Laws ch. 209D, § 1-101(19); Mich. Comp. Laws § 552.1104(f); Minn. Stat. § 518C.101(s); Miss. Code Ann. § 93-25-3(u); Mo. Rev. Stat. § 454.850(19); Mont. Code Anno. § 40-5-103(20); Neb. Rev. Stat. § 42-702(21); Nev. Rev. Stat. Ann. § 130.10179; N.H. Rev. State. Ann. 546-B:1(XIX); N.J. Stat. § 2A:4-30.65; N.M. Stat. Ann. § 40-6A-102(21); NY Family Ct. Act § 580-101(19); N.C. Gen. Stat. § 52C-1-101(19); N.D. Cent. Code § 14-12.2-01(19); Ohio Rev. Code Ann. 3115.01(U); 43 Okla. Stat. § 601-101(21); Or. Rev. Stat. § 110.303(19); 23 Pa. Cons. Stat. § 7101(b); R.I. Gen. Laws § 15-23.1-101(21); S.C. Code Ann. § 63-17-2910(21); S.D. Codified Laws § 25-9B-101(18); Tenn. Code Ann. § 36-5-2101(19); Tex. Fam. Code Ann. § 159.102(21); Utah Code Ann. § 78B-14-102(21); Vt. Stat. Ann. Title 15B § 101(19); Va. Code Ann. § 20-88.32; Wash. Rev. Code § 26.21A.010(21); W. Va. Code § 48-16-102(21); Wis. Stat. Ann.§ 769.101(19); Wyo. Stat. § 20-4-140(a)(xviii)

[40] *See* Handler Cert. at Exhibit 4, pages 1-28, 31-37.

[41] *See* Handler Cert. at Exhibit 4, pages 29-30,38-39.

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for Temporary Assistance to Needy Families — more than $17 million in federal dollars.[42]

On March 3, 2009, the Alaska Senate Health and Social Services Committee, with support from the Governor, introduced a Committee Substitute to Senate Bill 96, which among other changes to the child support statutes, added "Indian tribes" to the definition of "state" under UIFSA.[43] The Dept. of Revenue sought to include legislative intent language in the bill stating that: "In Alaska, the scope of tribal authority to enter, modify or enforce child support orders is an unsettled legal question, due in part to the lack of Indian country in most of the state."[44] In the final bill, the legislature instead adopted language stating that the intent of the bill is to "remain neutral on the issue of the underlying child support jurisdiction, if any, for the entities listed in the amended definition of 'state'" and to not expand or restrict jurisdiction, and to not express any opinion about jurisdiction.[45] The new law became effective on July 1, 2009.[46]

CSSD's ongoing refusal to process tribal child support orders according to UIFSA after July 1, 2009, undermines the legislative intent language described above. Instead of leaving jurisdictional issues to the parties as it is supposed to do under UIFSA, the Administration has taken a hostile stance on jurisdiction contrary to legislative intent.

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[42] *See* Handler Cert. at Exhibit 4, pages 40-47.

[43] *See* http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=SB0096B&session=26 (visited July 5, 2010).

[44] *See* Handler Cert. Exhibit 3, page SOA 0108 (Letter from Dept. of Revenue to Rep. John Coghill, March 27, 2009), page SOA 0106 (Letter from Dept. of Revenue to Rep. Jay Ramras, April 11, 2009). Per *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), ANSCA lands are not "Indian country," and Plaintiff asserts jurisdiction in child support cases through the tribal membership of its children, not through authority over Indian country.

[45] 45 SLA 2009, Sec. 3 (amending AS 25.25.101(19)).

[46] *Id.*

2. What UIFSA Requires

The goal of having only one support order per child is accomplished through Article 2 of UIFSA, which allows only one tribunal to issue a controlling child support order, and provides guidance in sorting out competing orders. When addressing the support of a child, Alaska state tribunals "shall recognize the continuing, exclusive jurisdiction of a tribunal of another state [or Indian Tribe] that has issued a child support order under a law substantially similar to this chapter."[47] The Tribe, like all federally funded IV-D agencies, has adopted a code substantially similar to the UIFSA and therefore would fall under this statute. However, because CSSD does not follow UIFSA with respect to tribal child support orders, there have been at least two instances where the state has issued a child support order despite knowledge of an existing order with the Tribe.[48]

UIFSA's provisions for inter-governmental enforcement allow a support order in one jurisdiction to be enforced anywhere in the country. The ordinary process for another IV-D agency to request services from the Alaska CSSD is to send CSSD a copy of the child support order together with a transmittal form, a sworn statement of arrears, and party information.[49] CSSD will initiate administrative enforcement if the documents are complete, or take timely steps to complete documentation.[50] Administrative enforcement can include general enforcement services or single-action services like

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[47] AS 25.25.205(d).
[48] *See* Archibald Aff. at ¶¶ 47-49.
[49] 15 AAC 125.700(a); AS 25.25.602(a).
[50] 15 AAC 125.700(a) and (b).

garnishment of Alaska Permanent Fund Dividends.[51] Through this process, a state can issue a support order and retain controlling jurisdiction over the order while other states can help collect payments on the order.

Should a party object to administrative enforcement on jurisdictional or any other grounds, CSSD must register the order in superior court pursuant to sections 605-607 of the Act.[52] An objecting party can request a hearing, may seek to vacate the registration, to assert a defense to an allegation of noncompliance with the registered order, or to contest the remedies sought or the amount of alleged debt.[53] The registering tribunal can then proceed with enforcement, stay enforcement, continue the proceeding to permit production of additional evidence, or issue other appropriate orders.[54] Upon completion of registration, the registered order becomes "enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state."[55] CSSD also registers orders in the superior court to pursue particular types of enforcement such as license revocations.[56]

To help this inter-governmental process work smoothly, Section 317 encourages day-to-day communications between tribunals: "A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A

[51] AS 25.25.507(b).
[52] AS 25.25.507(b); 15 AAC 125.700(c). *See also* AS 25.25.607 (listing defenses to registration).
[53] AS 25.25.606(a).
[54] AS 25.25.607(b).
[55] AS 25.25.603(b).

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tribunal of this state may furnish similar information by similar means to a tribunal of another state." Requests for services can be made through standardized forms or less formal methods of communication.[57]

In its Answer, defendants claim that, despite UIFSA, the Tribe's child support orders would have to be judicially recognized by an Alaska superior court under comity principles before CSSD could enforce the orders.[58] However, with respect to tribal court orders, UIFSA requires more of the state than the ordinary comity process. Comity is the common law principle of recognizing foreign judgments in the absence of a constitutional or statutory law requiring a different form of recognition.[59] Because UIFSA spells out procedures for intergovernmental recognition of child support orders — including procedures for agency recognition and mechanisms for parties to raise and litigate jurisdictional objections in individual cases — these UIFSA rules supersede the traditional comity processes. If a party has an objection to the due process provided in tribal court, or believes the tribal court did not have personal jurisdiction over him or her — concerns that would ordinarily be the basis for a comity objection — these objections can be raised and resolved through the UIFSA registration process.

The State of Alaska Dept. of Revenue itself has agreed with the fact that UIFSA supersedes traditional comity procedures with respect to child support orders. In a letter supporting the UIFSA amendment, the Department drafted letters of support noting that

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[56] AS 25.27.246.
[57] *See* Archibald Aff. at ¶ 25.
[58] *See* Answer at ¶ 23.
[59] See *John v. Baker*, 982 P.2d 738, 762-63 (Alaska 1999), *cert. denied* 528 U.S. 1182 (2000).

the amendment would affect the process for state recognition of tribal orders. According to these letters:

> A tribal child support order would be registered in the Alaska state courts under the UIFSA procedures instead of a comity process. These changes are consistent with the purpose of UIFSA. The purpose of UIFSA is to unify state laws relating to child support orders, to provide efficient procedures for collecting child support in interstate cases, and to eliminate multiple support orders that were permitted under prior child support laws.[60]

Opposing counsel also issued a similar opinion to Representative Coghill on February 19, 2009, namely that the proposed UIFSA amendment "will also result in a procedural change for recognition of tribal support orders in the Alaska state courts. Instead of a comity process, tribal support orders would be registered in Alaska state courts under the UIFSA procedures."[61] This opinion harmonizes with that of the OCSE, which found that Alaska's comity recognition process does not meet the intent of section 466(f) of the Social Security Act, which mandates UIFSA procedures.[62]

B. The State Should Process the Tribe's Child Support Orders Under UIFSA

Section 603(c) of Alaska's UIFSA provides that a state asked to enforce another state's child support order "shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction." The state asserts in its Answer that it need not follow UIFSA when it comes to the Tribe's child support orders because CSSD has

[60] *See* Handler Cert. Exhibit 3, page SOA 0113 (Letter from Dept. of Revenue to Sen. Hollis French, March 16, 2009), page SOA 0109 (Letter from Dept. of Revenue to Sen. Bert Stedman, March 20, 2009).

[61] *See* Handler Cert. Exhibit 3, page SOA 0115-0116 (Letter from Stacy K. Steinberg, Dept. of Law to Rep. John Coghill, Feb. 19, 2009).

[62] *See* Handler Cert. Exhibit 4, pages 29 and 38.

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pre-determined that the Tribe lacks jurisdiction to issue child support orders. The state observes that UIFSA is not an act that grants jurisdiction to tribes to issue child support orders. This is true. Tribes enjoy inherent subject matter jurisdiction over domestic relations cases that exists absent specific divestment by Congress.[63]

Federal law recognizes the sovereignty of Native Alaskan tribes, including Central Council, and among the "core set of sovereign powers" intact among Native Alaskan tribes are "internal functions involving tribal membership and domestic affairs."[64] Native Alaskan tribes' jurisdiction over domestic relations is concurrent with the State of Alaska's, as is the case with jurisdiction over tribal children off-reservation in the lower 48.[65]

Strong policy reasons support this shared jurisdiction: "Recognizing the ability and power of tribes to resolve internal disputes in their own forums, while preserving the right of access to state courts, can only help in the administration of justice for all."[66] The Tribe's adjudication of child support for children who are members of the Tribe or eligible for membership in the Tribe qualify as matters related to internal domestic relations, over which the Tribe shares concurrent jurisdiction with the state. The limits of jurisdiction are ultimately matters of federal law, which both state and tribal courts are competent to apply.[67]

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[63] *See, e.g. United States v. Wheeler*, 436 U.S. 313, 322 n. 18 (1978); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978); *Fisher v. District Court*, 424 U.S. 382, 386 (1976).
[64] *See John v. Baker*, 982 P.2d at 749-751 (discussing deference to Congressional findings regarding sovereignty of Alaska Native tribes under federal law).
[65] *See id.* at 759-60.
[66] *Id.* at 760 (citation omitted).
[67] *See National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 852-57 (1985).

1. "Domestic Relations" Includes Child Support

John v. Baker refers to domestic relations broadly, often referring to the general category of "family law" cases. The court references ICWA as proof of Congressional intent to maintain tribal court jurisdiction over "family law matters."[68] In reviewing U.S Supreme Court precedent, the court highlights the unique concern of "the tribal self-governance concerns raised by a family law matter integral to tribal self-governance."[69] The court summarized the relevant U.S. Supreme Court precedent thusly: "Indian law jurisprudence stresses the central importance of membership and the fundamental powers of tribes to adjudicate internal family law affairs like child custody disputes."[70] Finally, in discussing the application of tribal law to tribal court cases, the court held that "tribal sovereignty over issues like family relations includes the right to enforce tribal law in resolving disputes."[71]

Federal law has long recognized and supported broad tribal jurisdiction in the area of domestic relations. "If an Indian tribe has power to regulate the marriage relationships of its members, it necessarily has power to adjudicate, through tribunals established by itself, controversies involving such relationships."[72] As such, in addition to tribal

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[68] *Id.* at 753.
[69] *Id.* at 758, *discussing Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995).
[70] *Id.* at 759.
[71] *Id.* at 761.
[72] *Powers of Indian Tribes*, 55 Interior Dec. 14, 56 (1934). *See also, Fisher v. District Court*, 424 U.S. 382 (1976); *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989); *Sanders v. Robinson*, 864 F.2d 630 (9th Cir. 1988).

sovereignty over marriage and divorce, courts have recognized tribal sovereignty over custody,[73] child protection,[74] and adoption.[75]

The state does not dispute the fact that tribes with Indian county can adjudicate child support, but argues that the lack of Indian country somehow divests Alaska tribes of this authority. The state's reference to Indian county appears to be a vestige of the state's now-abandoned argument that the existence of Indian country is the critical factor in determining the existence or extent of tribal authority in Alaska.[76] However, what qualifies as domestic relations does not change depending on whether a tribe has a reservation or not. The only significance of Indian country with respect to a children's case is a tribe's *exclusive* jurisdiction over children on the reservation. The Alaska Supreme Court explicitly recognized this fact in the portion of *John v. Baker* entitled, "*Tribes without Indian Country Can Adjudicate Internal Child Custody Disputes.*"[77]

While no Alaska court has squarely held that internal domestic relations includes child support, there is no question that a parent's failure to provide adequate financial support to an Indian child has a direct effect on the political integrity, the economic security, and the health and welfare of the Tribe. In fact, the entire premise of ICWA is that the well-being of a tribe's children is necessary for the continued survival of the tribe

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[73] *See, e.g., John v. Baker*, 982 P.2d at 748.
[74] *See, e.g., In re C.R.H.*, 29 P.3d 849, 852 (Alaska 2001) (recognizing authority codified in the Indian Child Welfare Act).
[75] *See, e.g. Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 561-62 (9th Cir. 1991).
[76] *See, e.g., John v. Baker*, 982 P.2d at 755.
[77] 982 P.2d at 748.

itself.[78] It would be absurd that the Alaska courts, having recognized the jurisdiction of tribal courts to rule in matters of child custody involving tribal children, to deny to those tribal courts the ancillary authority to afford the litigants the full range of remedies customary in such cases, including child support. A contrary ruling would require a party in tribal court, having gone to the time, trouble and expense of obtaining custody in a tribal court, to file a second lawsuit in state court to obtain the remedy of child support.

In ordinary family law practice, child support is a necessary element of child custody proceedings. Determining parents' duties to support their children is an integral part of regulating domestic relations: "It seems incredible that a legal system calling itself civilized should not impose a legal duty upon parents to support their children."[79] A parent's obligation to support a child "is not merely related to the status determination; it is an inevitable concomitant of custody decisions."[80] State laws in fact require that child support be ordered whenever the superior court makes a custody order.[81] Indeed, the Alaska Supreme Court, interpreting the phrase "care and custody of minor children" in former AS 09.55.210(1), explained that "'care' includes provisions made by the court for the children's support."[82]

Thus, child support cannot be deemed optional or waived, and Alaskan courts will not proceed with a custody matter without the parents' submission of child support

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[78] *See* 25 U.S.C. 1901(3).
[79] Homer H. Clark, Jr., The Law of Domestic Relations 488 (1968).
[80] Monica J. Allen, "Child-State Jurisdiction: A Due Process Invitation to Reconsider Some Basic Family Law Assumptions," 26 Fam. L.Q. 293, 305-07 (1992).
[81] *See* Civil Rule 90.3, AS 25.20.030; AS 25.24.160(a)(1).
[82] *Houger v. Houger*, 449 P.2d 766, 770 (Alaska 1969).

affidavits.[83] Civil Rule 90.3 sets forth mandatory rules concerning calculation of support in different custody situations that may only be varied "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."[84] Given the intertwined nature of child support and child custody under federal and state law, a tribal court's jurisdiction over child custody must necessarily include jurisdiction over child support.

Indeed, across the United States it is common for tribes to adjudicate support for the benefit of tribal children as part of their authority over domestic relations. Of South Dakota's nine tribes, each one has a tribal court system having jurisdiction over tribal members and hearing matters pertaining to paternity and child support.[85] In 1988, the U.S. District Court in South Dakota considered a public benefits case in which it had to decide whether Indian tribes have retained sovereignty to decide whether its members who are stepparents have a legal obligation to support their stepchildren.[86] The District Court analysis began with the recognition that Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute or by implication.[87] Despite the state's citation of various public benefits statutes, the District court found no federal statutes that "expressly" abrogate the Tribe's authority to decide for itself whether stepparents should

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[83] *See* Civil Rule 90.3(e).

[84] Civil Rule 90.3(c).

[85] *See Howe v. Ellenbecker*, 8 F.3d 1258, 1261 (8th Cir. 1993) (affirming right of tribal members to maintain a section 1983 class action against state officials for failing to reach a cooperative agreement concerning enforcement of child support obligations under Title IV-D).

[86] *See Iron Heart v. Ellenbecker*, 689 F. Supp. 988, 993 (C.D.S.D. 1988).

[87] *See id., citing Wheeler*, 435 U.S. at 323.

support their stepchildren.[88] The District Court further found that applying the state's support law to tribal children would interfere with the Tribe's power of self-government.[89] Significantly, the decision turned not on Indian country or the Tribe's reservation status, but the Tribe's long history of sovereignty over domestic relations.[90]

Likewise in Arizona, a state appeals court found that the state's attempt to establish a non-Native's paternity of a Navajo child and obtain back child support infringed on the Navajo Nation's authority over domestic relations.[91] The court reasoned that if the U.S. Supreme Court recognized tribal jurisdiction over a contract matter with a reservation general store, there must also be jurisdiction over "a more intimate domestic-relations matter."[92] Again, although the case involved exclusive jurisdiction for a land-based tribe instead of concurrent jurisdiction for a membership-based tribe, the significant part of the holding is the clear statement that child support falls within the realm of a tribe's authority over domestic relations. Similar holdings have been issued by the Montana Supreme Court[93] and the North Carolina Supreme Court.[94]

Child support being squarely within the realm of "domestic relations," the next question to consider is which child support cases are truly "internal."

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[88] *Id.*
[89] *See id.* at 994.
[90] *See id.*
[91] *See State of Arizona v. Zaman*, 927 P.2d 347, 352 (Ariz. App. 1996).
[92] *Id.* at 351, citing *Williams v. Lee*, 358 U.S. 217, 223 (1959).
[93] *See Montana v. Three Irons*, 621 P.2d 476, 477 (Mont. 1980); *State ex rel. Flammond v. Flammond*, 621 P.2d 471, 474 (Mont. 1980); *Sanders v. State of Montana Dept. of Public Health and Human Serv., Child Support Enforcement Div.*, 2005 MT 230N (Mt. 2005)(unpublished).
[94] *See Jackson County ex rel Smoker v. Smoker*, 459 S.E.2d 789 (N.C. 1995).

2. Subject Matter Jurisdiction Turns on the Membership of the Child

The issue of whether a domestic relations case is "internal" turns on whether the child in the case is a member or eligible for membership in the tribe. As stated in *John v. Baker*, "[s]uch a focus on the tribal affiliation of the children is consistent with federal statutes such as ICWA, which focuses on the child's tribal membership as a determining factor in allotting jurisdiction."[95] This is because among various interests deemed essential to tribes, such as taxing natural resources[96] and zoning,[97] "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."[98]

The notion of the child's membership being the determinative factor in tribal court subject matter jurisdiction is reinforced by the facts of *John v. Baker*. The plaintiff in the case, John Baker, was a member of Northway Village, a federally recognized tribe.[99] Anita John, the defendant, was not a member of the tribe.[100] However, she consented to Northway's jurisdiction.[101] The fact that Mrs. John was not a tribal member in no way deprived the tribal court of subject matter jurisdiction. Indeed, the Court explicitly addressed Ms. John's status as a non-member:

> Although Ms. John is not a member of Northway Village, she argues that the children themselves are eligible for tribal membership. This is a critical fact that must be

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[95] *John v. Baker*, 982 P.2d at 759.
[96] *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982).
[97] *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).
[98] 25 U.S.C. § 1901(3).
[99] 982 P.2d at 743.
[100] *Id.*
[101] *Id.*

> determined by the superior court on remand. . . A tribe's inherent sovereignty to adjudicate internal domestic custody matters depends on the membership or eligibility for membership of the child. Such a focus on the tribal affiliation of the children is consistent with federal statutes such as ICWA, which focuses on the child's tribal membership as a determining factor in allotting jurisdiction.[102]

Because of the tribal membership of the child, the dispute still lied "at the core of sovereignty," i.e. the Tribe's "inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members."[103] The Court thus interpreted U.S. Supreme Court precedent to recognize Northway's jurisdiction "because the right to determine custody of Indian children . . . 'infringes on tribal self-governance.'"[104]

Other parts of the opinion reaffirm the child's membership as the determining factor in tribal subject matter jurisdiction. In framing the primary question on appeal, the Court stated that the issue before it was whether the village had jurisdiction to adjudicate "a custody dispute involving children who are tribal members."[105] The Court answered this inquiry by finding that because a federally recognized tribe's "adjudication of child custody disputes over *member children* is necessary 'to protect tribal self-government or to control internal relations,' its tribal courts require no express congressional delegation of the right to determine custody of *tribal children*."[106] Later, the Court again affirmed that federal case law supports the proposition that tribal jurisdiction exists to determine

[102] *Id.* at 759.
[103] *Id.* at 758.
[104] *Id.*
[105] *Id.* at 744.

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custody "of Indian children."[107] Discussing policy considerations, the Court stated that "[t]ribal jurisdiction over child custody cases *involving member children* will further the goal under both federal and state law of best serving the needs of Native American children."[108] In guiding the remand to Superior Court for findings on comity, the Court added that a tribe's subject matter jurisdiction in a custody case will depend on the child's tribe, as defined under tribal law.[109]

The federal district court in Anchorage and the Ninth Circuit recently reaffirmed in *Kaltag v. Jackson* that the membership of the child is the critical factor in determining tribal jurisdiction.[110] In *Kaltag*, the State of Alaska challenged tribal jurisdiction in child protection and adoption proceedings involving a tribal-member child, tribal-member mother and other non-member parties.[111] The federal district court denied the challenge, citing long-standing case law that "it is the membership of the child that is controlling, not the membership of the individual parents."[112] The Ninth Circuit affirmed the district court in a three-paragraph memorandum, finding that the case was directly controlled by

[106] *Id.* at 752 (emphasis added).
[107] *Id.* at 758.
[108] *Id.* at 760 (emphasis added).
[109] *Id.* at 764.
[110] Order, *Kaltag Tribal Council v. Jackson*, Case No. 3:06-cv-211 TMB, at 10 (D. Alaska, February 22, 2008) (attached as Handler Cert., Exhibit 11), *aff'd* 344 Fed. Appx. 324 (9th Cir 2009), *petition for cert. filed and brief from Solicitor General invited* by 130 S. Ct. 2397 (April 26, 2010). *See also* Mack T. Jones, Note, *Indian Child Welfare: A Jurisdictional Approach*, 21 Ariz. L. Rev. 1123, 1139 (1979) ("[J]urisdiction hinges upon the ethnic identity and tribal membership of the child, rather than the geographical location of the child's domicile. This reflects Congress' recognition of the fact that tribal ties extend beyond the boundaries of the reservation.").
[111] Order, *Kaltag Tribal Council v. Jackson*, Case No. 3:06-cv-211 TMB, at 10.
[112] *Id.*, *referencing Venetie*, 944 F.2d at 559 n. 2 and *John v. Baker*, 982 P.2d at 759-60.

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Native Village of Venetie I.R.A Council v. Alaska.[113] In fact, both the *Venetie* case and the *Kaltag* case involved consenting non-member parents — in *Venetie* the adoptive parent who belonged to a neighboring tribe consented to jurisdiction by the Venetie tribal court,[114] and in *Kaltag*, non-tribal members pursued their adoption of a child who is a Kaltag tribal member in the Kaltag tribal court.[115]

The Supreme Court of Montana has come to the same conclusion. In a divorce and custody case between a Native mother living on the reservation and a non-Native father living off the reservation, the Montana Supreme Court held that the Tribe and the state shared concurrent jurisdiction, based on the child's tribal membership.[116] Even through the case was not an ICWA case, the court took guidance from the Congressional intent of ICWA to recognize the unique experience and ability of tribal courts to work in the best interests of tribal children, and to demonstrate confidence in tribal forums to serve the interests of all parties, including the state.[117] Ultimately, while the court found concurrent jurisdiction to be more appropriate than exclusive tribal jurisdiction, it voiced a preference for the tribal forum and cautioned the trial court to conduct a careful policy evaluation to avoid undermining tribal authority.[118]

Certainly, issues may arise in particular cases over personal jurisdiction, i.e. in cases involving non-members, whether the non-member party has consented to tribal jurisdiction. However, the court could not and need not rule on such issues today, as

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[113] *See* 344 Fed. Appx. 324, pages 1-3.
[114] *See* 944 F.2d at 551.
[115] *See* Order, *Kaltag Tribal Council v. Jackson*, Case No. 3:06-cv-211 TMB, at 2.
[116] *See In re Marriage of Skillen*, 956 P.2d 1, 18 (Mt. 1998).
[117] *Id.* at 11-12.

UIFSA provides a process for *parties* to raise such objections in individual cases. The Tribe instead is asking the court to rule that the state cannot willfully violate UIFSA because it has independently prejudged all tribal child support orders to be invalid. The state should not usurp the role that UIFSA has given individual parties to raise and litigate jurisdictional questions in particular tribal court cases.

3. Inapplicability of FFCCSOA

In its Answer, the state seeks to excuse its violation of UIFSA on the grounds that the Tribe's support orders are not encompassed by the federal Full Faith and Credit for Child Support Orders Act ("FFCCSOA").[119] FFCSOA states that orders from Indian country are entitled to full faith and credit and does not use the broader term "Indian tribes" like UIFSA. However, FFCSOA has no bearing on the state's obligations under UIFSA.

UIFSA contains no reference to full faith and credit as a necessary prerequisite to inter-governmental recognition of support orders. Instead, UIFSA requires state tribunals to "recognize the continuing, exclusive jurisdiction of a tribunal of another state" — including an Indian tribe — "that has issued a child support order under law substantially similar to [AS 25.25]."[120] Given the Tribe's enactment of laws and procedures for child support that are substantially similar to Alaska's — a necessary requirement of IV-D funding — the state of Alaska should have been applying UIFSA to the Tribe's orders even before the 2009 UIFSA amendment. Now that Indian tribes are explicitly included

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[118] *Id.* at 12, 18.
[119] Answer at ¶ 24.
[120] AS 25.25.205(d).

under Alaska's UIFSA, there is absolutely no ambiguity about the state's responsibility to follow UIFSA with respect to tribal child support orders.

CSSD has tried to use this FFCSOA argument before without success. When CSSD first sought an exemption from the federal statute requiring adoption of the model UIFSA definition of "state," its Director John Mallonee argued that it should be allowed to use the definition of "state" from FFCCSOA, which includes only the 50 states, the District of Columbia, Puerto Rico, territories and possession, and Indian country."[121] The OCSE rejected this exemption request given the absence of any evidence that the state has an existing law or other legal authority for procedures under which it is operating in compliance with the intent of the Federal mandatory procedure.[122] The OCSE found that Alaska does not have a procedure in compliance with or meeting the intent of 42 U.S.C. 466(f).[123] The OCSE also found that there is no provision in FFCCSOA that prevents States from recognizing orders from outside Indian country.[124] "As such," the OCSE concluded, "FFCCSOA does not trump UIFSA, instead, both Acts work in tandem with each other."[125]

In fact, were FFCCSOA to trump UIFSA, the entire UIFSA amendment would have been a meaningless gesture, contrary to basic statutory interpretation principles.[126] The OCSE also found that Alaska's exclusion of Indian tribes from its version of UIFSA

[121] *See* Handler Cert. at Exhibit 4, pages 4-6.
[122] *See* Handler Cert. at Exhibit 4, page 29.
[123] *See id.*
[124] *See id.*
[125] *See id.*

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contravened the intent of UIFSA by requiring additional court proceedings for the recognition and enforcement of child support orders issued by Alaskan tribal courts.[127]

In its second attempt at an exemption, Mr. Mallonee argued again that FFCCSOA denies Alaska tribes from issuing child support orders outside Indian country.[128] Mr. Mallonee claimed that Alaska already has procedures and authority comparable to UIFSA to recognize and enforce tribal child support orders, namely comity proceedings[129] — in which the state would consistently object to recognition. OCSE again rejected Mr. Mallonee's arguments, reiterating that FFCSOA is distinct from UFISA, and that UIFSA provides necessary and additional procedures, not included in FFCCSOA, for the orderly and efficient recognition and enforcement of inter-governmental child support orders.[130]

The OCSE's analysis correctly acknowledges that the FFCCSOA's definition of orders subject to full faith and credit has nothing to do with Congress' determination that all states should adopt and follow the procedures in UIFSA. The state's argument seeks to thwart the federal scheme of inter-governmental cooperation in Alaska and undermine the very purposes of the federal IV-D program, as further described below.

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[126] *See Municipality of Anchorage v. Repasky*, 34 P.3d 302, 312 (Alaska 2001) ("We assume that the legislature would not enact a statute which would be superfluous and we interpret statutory language to avoid superfluity.")

[127] *See* Handler Cert. at Exhibit 4, page 29.

[128] *See* Handler Cert. at Exhibit 4, page 34.

[129] *See* Handler Cert. at Exhibit 4, pages 35-36.

[130] *See* Handler Cert. at Exhibit 4, pages 40-41.

C. Tribal Members Have a Right to Services Pursuant to Title IV-D of the Social Security Act and Its Implementing Regulations Enforceable Under § 1983

42 U.S.C. § 1983 creates a cause of action for violations of federal rights by persons acting under color of state law. The Tribe asserts under section 1983 that the Commissioner of Alaska's Dept. of Revenue and the Director of Alaska's CSSD have deprived the Tribe's members of their right to services under Title IV-D of the Social Security Act and its implementing regulations.

1. Proper parties

The Tribe asserts its section 1983 claim on behalf of its members as *parens patriae*.[131] The claim is asserted against John Mallonee and Patrick Galvin in their official capacity. As state officials acting in their official capacity, defendants Mallonee and Galvin may be sued for violations of federal statutory or constitutional rights because the claims against them seek only prospective declaratory or injunctive relief.[132] Because, under *Ex parte Young*, a state officer who violates federal law or the federal constitution is presumed to be acting without the authority of the state, such suits are deemed not to be suits against the state, so they do not implicate a state's sovereign immunity.[133] Defendants Mallonee and Galvin do not enjoy either absolute or qualified immunity in connection with claims for declaratory or injunctive relief.[134]

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[131] *See State of Alaska Dept. of Health and Soc. Serv. v. Native Village of Curyung*, 151 P.3d 388, 404 (Alaska 2006) (Native Village, as *parens patriae*, raising members' rights under federal law).
[132] *Id.* citing 209 U.S. 123 (1908).
[133] *Id.*

2. Violations of Rights Enforceable under Section 1983

Plaintiffs may bring private causes of action under section 1983 for violations of federal rights.[135] A section 1983 action is created where Congress intends a statute to benefit persons like the plaintiffs through the imposition of mandatory and direct obligations on the state, and where no comprehensive enforcement mechanism exists under which plaintiffs may find relief.[136]

To address a IV-D violation through section 1983, a plaintiff must cite a particular provision of Title IV-D that gives rise to individual rights.[137] In this case, plaintiffs assert rights granted to them under 42 U.S.C. 654, which governs state IV-D plans.[138]

The IV-D Act at 42 U.S.C. 654(9) requires that every state plan for child support services must:

> provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—
>
> (A) in establishing paternity, if necessary,
>
> (B) in locating a noncustodial parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,
>
> (C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) with an

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[134] *See Mathis v. Sauser*, 942 P.2d 1117, 1125 n. 16 (Alaska 1997).

[135] *See Howe* at 1261, *citing Maine v. Thiboutot*, 448 U.S. 1, 8 (1980) (plaintiffs could recover payments wrongfully withheld by a state agency in violation of the Social Security Act).

[136] *See id.*, *citing Suter v. Artist M*, 112 S. Ct. 1360, 1366-68 (1992).

[137] *See Blessing v. Freestone*, 520 U.S. 329, 345-346 (1997) (remanding to district court to consider individual IV-D claims instead of considering broad claim of IV-D violation).

[138] *See Curyung*, 151 P.3d at 406-08 (recognizing section 1983 claim on behalf of tribal members to enforce state program plan requirements under the federal Adoption Act).

> order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State;
>
> (D) in carrying out other functions required under a plan approved under this part;
>
> (E) not later than March 1, 1997, in using the forms promulgated pursuant to section 452(a)(11) for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

When the federal government issued final regulations to implement direct IV-D funding to Indian tribes and tribal organizations in 2004, the Secretary added to the list of State IV-D plan requirements a requirement — in 45 C.F.R. § 302.36(a)(2) — that each state plan must "extend the full range of services available under its IV-D plan to all tribal IV-D programs, including promptly opening a case where appropriate." Services available under a IV-D plan are described in Section 303.7, and they include "[p]rocessing and enforcing orders referred by another State, whether pursuant to the Uniform Interstate Family Support Act or other legal processes. . . "[139] Commentary on Section 302.36 states that its intent is to require states to cooperate with other states in inter-governmental IV-D cases, including cooperation with tribes.[140] The OCSE has also just promulgated a revised version of Section 302.36 to "clarify that a State must provide services in all intergovernmental IV-D cases."[141] The new regulations also substitute the term "intergovernmental" for "interstate" throughout the rules to clarify the application of

[139] 45 C.F.R. § 303.7(c)(7)(iii).

[140] *See* Tribal Child Support Enforcement Programs, 69 Fed. Reg. 16,638, 16,641, 16,666 (2008) (codified at 45 C.F.R. pts. 303-303, 305, 308).

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IV-D rules to cases between states and tribal IV-D programs and between states and foreign countries.[142]

The State of Alaska Plan for Support Collection and Establishment of Paternity Under Title IV-D of the Social Security Act includes a section on providing services in interstate IV-D cases.[143] It provides, in part, that the State of Alaska "[c]ooperates with any other State in . . . securing compliance with an order for support, and carry out other functions, in accordance with §454(9) of the Act and standards prescribed by the Secretary."[144] This section lists an effective date of Oct. 1, 1997, and an approval date of July 30, 1999.[145] CSSD has no provision in its State Plan for extending the full range of services available under its IV-D plan to all tribal IV-D programs as required by Section 302.36(a)(2).[146]

Congress' intent behind these provisions was to benefit children and families like the tribal children and families bringing suit here. As noted by the OCSE, "[c]hild support is no longer primarily a welfare reimbursement, revenue-producing device for the Federal and State governments; it is a family-first program, intended to ensure families' self-sufficiency by making child support a more reliable source of income."[147] These provisions are clear and unambiguous as to what services state IV-D programs are

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[141] 75 Fed. Reg. at 38,615.
[142] *Id.* at 38,614.
[143] *See* Handler Cert. Exhibit 3, page SOA 0015 (Section 2.6).
[144] *Id.* Section 454(9) is now located at section 654(9).
[145] *Id.*
[146] *Id.* at pages SOA 0001- SOA 0099 (entire state IV-D plan).
[147] Child Support Enforcement Program; Intergovernmental Child Support, 73 Fed. Reg. 74,408, 74,408-09 (to be codified at 45 CFR Parts 301, 302, 303, 305 and 308) (proposed Dec. 8, 2008).

required to provide to other IV-D programs. The terms are also mandatory, rather than prefatory, in their language.[148]

As described in *Howe v. Ellenbecker*, a private right of action exists to enforce IV-D regulations through section 1983 litigation on behalf of those whom the statute is meant to benefit, when the plaintiff seeks to enforce a specific statutory right.[149] In that case, a class of South Dakotan tribal members sued to enforce claims for child support enforcement services that the state would not provide because of difficulties locating non-custodial parents on reservations.[150] The Eighth Circuit found that the wholesale denial of services to a group of tribal members deprived them of rights under Title IV-D.[151] Specifically, the Court found that the tribal members could enforce their rights to specific IV-D services such as a $50 pass-through payment to families receiving public benefits per 42 U.S.C. 657(b) and — most notably here —services mandated by the state plan requirements statute at 42 U.S.C. 654.[152]

Although other 1983 claims by individual families seeking redress for single instances of agency non-compliance under other parts of the IV-D act have not succeeded,[153] here, like in *Howe*, there is a wholesale refusal of services to a group of people: an entire population of children and families being denied services.

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[148] *See* 520 U.S. 329 at 340-341.
[149] 8 F.3d 1258, 1262 (8th Cir. 1993).
[150] *See id.* at 1260-61.
[151] *See id.*
[152] *See id.*
[153] *See, e.g., Walters v. Weiss*, 392 F.3d 306, 313 (8th Cir. 2004) (findings that section 657 does not confer a private right to support distribution by a single individual); *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006) (same).

We are also faced with a state agency refusing to recognize the fundamental validity of a federally-funded tribal program and actively thwarting its operation. The state's policy of denying services to tribal families seeking to have their child support orders recognized and enforced by CSSD violates a clear Congressional policy of inter-governmental cooperation.

According to the OCSE, federal funding of tribal IV-D programs is intended to "provide Tribes with an opportunity to administer their own IV-D programs to meet the needs of children and their families."[154] Congress wanted to provide direct federal funding for tribal child support programs because, according to a House committee, "Congress is in favor of tribes conducting their own child support enforcement programs if they can do so effectively."[155] This meant allowing "direct funding of any tribe that can demonstrate to the Secretary that it has the capacity to operate a child support program meeting the major objectives of the [federal child support] statute including establishment of paternity; establishment, modification, and enforcement of support orders; and location of absent parents."[156] The United States government has funded the Tribe to engage in these activities that the state is refusing to recognize.

The state's non-recognition policy also undermines the heart of Title IV-D's intergovernmental scheme: eliminating multiple child support orders through UIFSA.[157] CSSD enters all of the Tribe's child support orders into its state case registry, and claims that it stays issuance and service of a child support order when it learns that the Tribe has

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[154] Office of Child Support Enforcement, Tribal Child Support Enforcement Programs, 69 Federal Register 16638, 16639 (March 30, 2004).
[155] H. R. Rep. No. 105-78 at 85, 105th Cong, 1st Sess. (1997).
[156] *Id.*

already issued a support order for the same child.[158] However, the Tribe has documented two instances where CSSD issued its own support order for a family after being notified of an existing tribal child support order for the same family.[159] In another instance, the Tribe requested CSSD to help facilitate the forwarding of a TANF payment made under a tribal child support order to a Southcentral Tribe; the only service CSSD will provide is establishing its own (conflicting) administrative order for the same debt.[160] CSSD's actions in these cases undermine the heart of the UIFSA scheme.

Finally, and most importantly, the state's non-recognition policy undermines the overall goal of getting support to children. As articulated in the "Principles Governing Regulatory Development" in the tribal-IV-D regulations: "Essential to the Federal-State-Tribal effort to ensure that noncustodial parents support their children is coordination and partnership, especially in the processing of inter-jurisdictional cases."[161] Ultimately, the administrative problems the state is creating harms children and families depending on enforcement of support orders.

Although this case does not present a strict Supremacy Clause claim because the state's policy is an informal one not codified in state law — in fact, it violates state law — it is analogous to *Townsend v. Swank*, a Supremacy Clause Case.[162] In *Townsend*, college students and their mothers challenged Illinois laws that rendered them ineligible

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[157] *See* 75 Fed. Reg. at 38,613.
[158] *See* Handler Cert. at Exhibit 3, page 5, lines 5-25; page 6, lines 14-15; page 8, lines 2-6.
[159] *See* Archibald Aff. at ¶¶ 48-49; Handler Cert. at Exhibits 8-9.
[160] *See* Archibald Aff. at ¶ 50; Handler Cert. at Exhibit 10.
[161] 69 Fed. Reg. at 16,639.
[162] 404 U.S. 282 (1971).

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for benefits under the Aid to Families with Dependent Children program.[163] These eligibility standards excluded children eligible for benefits under applicable federal standards, violating the portion of the Social Security Act governing state AFDC plans.[164] The Supreme Court rejected the state's arguments for flexibility, in part given the legislative history strongly supporting the principle of ensuring that families with public assistance can send their children to school and college.[165]

Here, the federal government — through statute and regulation — has articulated a strong policy toward streamlining support orders under UIFSA and fostering cooperation among state and tribal IV-D programs. The State of Alaska has violated this policy through its unilateral decision to not apply UIFSA to the Tribe's support orders, and non-cooperation with the Tribe's IV-D program. Plaintiff's section 1983 claim seeks to realign the state with that clear federal policy through injunctive and declaratory relief.

D. The State Must Provide Due Process to Tribal Children and Families In Processing UIFSA Requests from the Tribe

Due process under the federal and state Constitutions requires the basic elements of notice of proceedings and a meaningful right to be heard.[166] Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.[167] Under the state constitution, procedural due process requires

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[163] *See id.* at 283.
[164] *See id.* at 286.
[165] *See id.* at 290.
[166] *See Evans v. Native Village of Selawik IRA Council*, 65 P.3d 58, 60 (Alaska 2003).
[167] *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

"notice and opportunity for hearing appropriate to the nature of the case."[168] The state in this case has denied tribal children and families the right to procedural protections afforded by the registration and enforcement provisions of UIFSA, which in turn has deprived them of critical support payments.

Since November 2009, the TCSU has sent CSSD three UIFSA requests for enforcement of tribal child support orders, and CSSD has yet to acknowledge or respond to any of these requests.[169] The Tribe, on behalf of its members, asserts the rights of its families and children to be afforded the most basic of procedural rights — timely action from a state agency. The state provides this due process to beneficiaries of other IV-D programs, but denies these rights to the Tribe's members. Instead, when it comes to registration and enforcement requests from the Tribe, the state has chosen a path of inaction.

Administrative inaction deprives individuals of due process rights as much as an affirmative denial of rights. By holding onto the requests for inter-agency services from the Tribe, CSSD has denied the child and family who are the subject of the request their property interest in child support payments and an efficient method of appealing the denial of services to obtain those payments. The families are provided no notice as to the denial of services because the denial is through indecision. And without a decision from the agency, they are deprived of their right to appeal and their right to be heard.

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[168] *Copeland v. Ballard*, 210 P.3d 1197, 1201 (Alaska 2009) (citations omitted).
[169] *See* Archibald Aff. at ¶¶ 26-32.

Alaska has adopted the three-part balancing test outlined in *Mathews v. Eldridge* to determine whether administrative proceedings satisfy due process.[170] This test takes into account:

> first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[171]

Based on *Federal Deposit Insurance Corp. v. Mallen*, there are three similar factors to consider in cases involving extended delay.[172] These factors include "the importance of the private interest and the harm to this interest occasioned by delay[,] the justification offered by the Government for delay and its relation to the underlying governmental interest[,] and the likelihood that the interim decision may have been mistaken."[173]

The private interest in families receiving child support cannot be overstated. For the majority of families in the Tribe's IV-D program, the support goes to pay basic necessities like food and shelter.[174] The state has no legitimate interest in blocking the provision of support to families who are either all members of the Tribe or who have consented to tribal jurisdiction. If issues arise in particular cases over jurisdiction, UIFSA and its implementing regulations provide an entire host of procedures for parties to litigate objections to registration and enforcement in a fair, neutral forum. This is not

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[170] *Brandal v. State*, 128 P.3d 732, 738 (Alaska 2006) (delayed final agency determination of a commercial fishing license appeal).
[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] *See* Archibald Aff. at ¶41.

delay without prejudice because no "provisional" support is afforded tribal families while their requests for services languish at CSSD.

Federal guidelines on inter-governmental communication and the state's own guidelines suggest that the policy of delay and inaction regarding tribal support orders violates basic procedural due process. Regulations implementing the IV-D program require state IV-D agencies to respond to referrals within 20 days,[175] while CSSD holds itself to a 10-day deadline for acknowledging receipt of referrals and a 5-day deadline for replying to status requests.[176] The state has not offered a justification for holding requests from the tribal IV-D agency to a lower standard.

CONCLUSION

Although UIFSA provides a mechanism for parties to resolve jurisdictional objections in individual cases, the defendants have usurped this process by refusing to apply UIFSA to any of the Tribe's child support orders. The defendants have taken this action based on the faulty premise that all Alaska tribal child support orders issued outside Indian Country are presumed invalid. This policy undermines the inter-governmental child support scheme mandated by the federal government. Plaintiff asks the court to rectify this problem by issuing a declaratory judgment that the Tribe has subject matter jurisdiction to issue valid child support for children who are members of the Tribe or eligible for membership in the Tribe. Plaintiff also asks the court to issue an

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[175] *See* 45 CFR 303.7 and 302.

[176] *See* State of Alaska Dept. of Revenue Child Support Services Div. Self-Assessment Review FF 2009, at 14, 30 (March 30, 2010), available at http://www.childsupport.alaska.gov/Resources/OtherStates.asp (visited July 13, 2010).

injunction to compel the defendants to process and enforce the Tribe's child support orders according to UIFSA and relevant federal statutes and regulations.

DATED: July 16, 2010

ALASKA LEGAL SERVICES CORPORATION
Attorneys for Plaintiff

Holly Handler, AK Bar No. 0301006

Certificate of Service

The undersigned certifies that on the 16th day of July, 2010, a true copy of this Motion, together with the Affidavit of Counsel for the Tribal Child Support Unit in Support of Plaintiff's Motion for Summary Judgment, the Certificate of Holly Handler in Support of Plaintiffs' Motion for Summary Judgment, and Exhibits 1-11 attached thereto, were served on Stacy Steinberg and Mary Lundquist via US Mail, by: HLH

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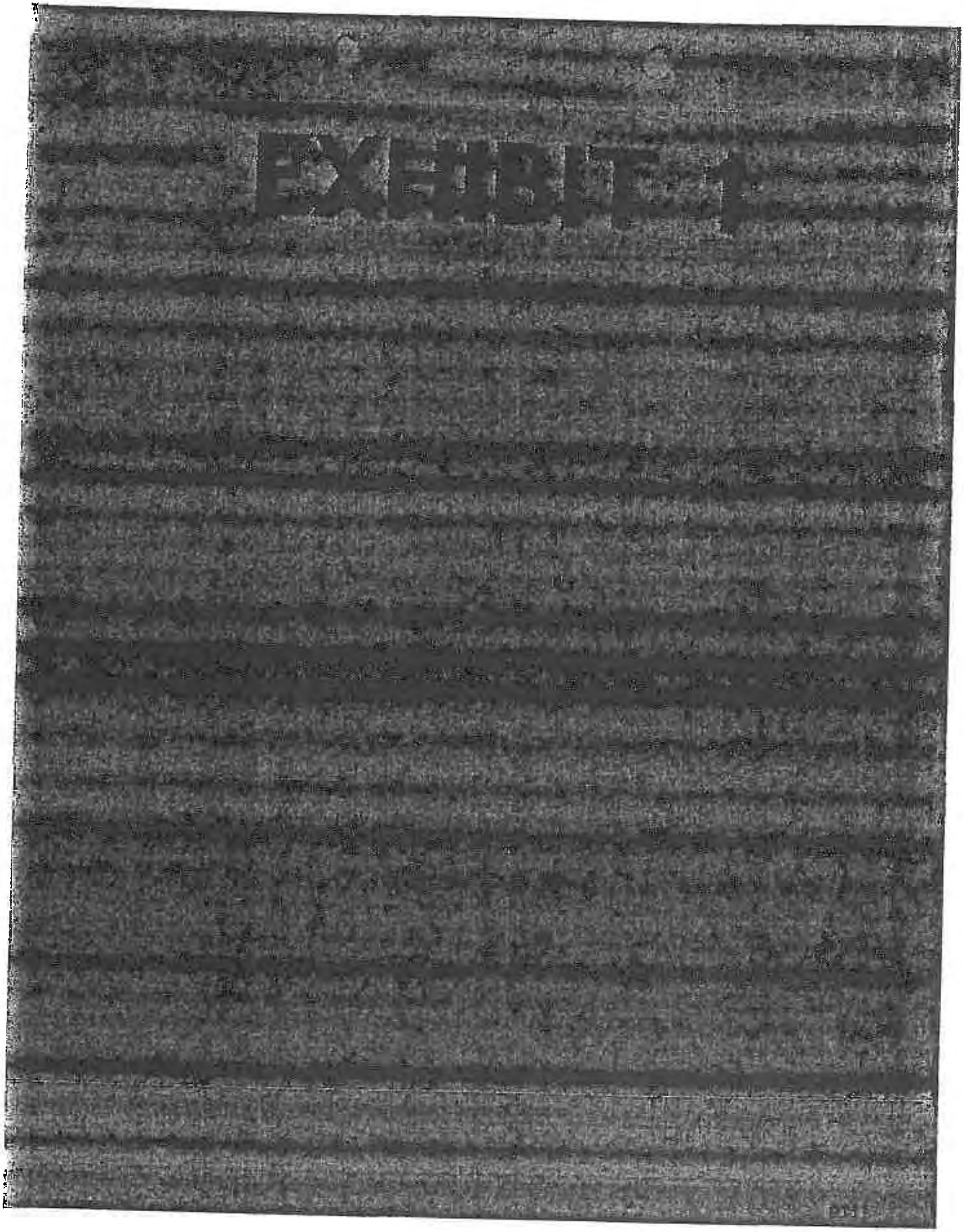


EXHIBIT 1

APPLICATION FOR COMPREHENSIVE FUNDING
FOR A TRIBAL IV-D PROGRAM

TLINGIT & HAIDA INDIAN TRIBES OF ALASKA

NARRATIVE:

The Central Council Tlingit and Haida Indian Tribes of Alaska (herein the "Tribe") is a federally recognized regional tribal organization for the Alaska's Tlingit and Haida population. CCTHITA serves 20 villages and communities that are spread over 43,000 square miles within the Alaska Panhandle. The region encompasses a 525-mile strip of coastline and interior waterways, bordered by Canada on the north, south, and east, with the Gulf of Alaska on the west (see Attachment 1: Area Map). The area of Southeast Alaska known as the "panhandle" or the "Alexander Archipelago" is one of the few temperate rain forests in the world, and consists of the group of thousands of islands known as the Alexander Archipelago and the thin strip of mainland, running from Dixon Entrance to Icy Bay. Southeast Alaska stretches from approximately 54 degrees Latitude at the southern tip of Prince of Wales Island to 60 degrees Latitude near Yakutat. The many sounds, channels, straights, fjords, narrows, bays, coves and natural harbors create a maze of waterways between the islands and the mainland. There is no road system linking Southeast Alaska communities therefore communities can only be reached by airplane, boat or ferry.

CCTHITA was created by the Jurisdictional Act of 1935, when it sought federal recognition for the purpose of pursuing Tlingit and Haida land claims in Federal court. The Act was amended in 1965, to formally recognize CCTHITA as the federally recognized governing body of the Tribes. In 1966, the U.S. Court of Claims awarded the Tribe 7.5 million dollars for lands the government withdrew to create the Tongass National Forest and Glacier Bay National Monument. These funds have been prudently managed by the Tribe under a long-term plan approved by Congress.

The administrative structure and methods of CCTHITA are well developed and sufficient for managing numerous and diverse programs. The line of authority is clearly established and the levels of policy-making and program management are defined. CCTHITA has a solid record of accomplishment of political stability and self-governance.

Over the past several years, S.E. Alaska communities faced more challenges. There was a huge shift in economics. Fishing, which has been a subsistence form of living for CCTHITA communities for all of modern-man's history, began showing catastrophic declines in the resource pool in combination with unprecedented and substantial rising fuel costs. Depletion of fishing has also affected all the major supporting industries in these areas, such as commercial boating and fishing, canneries, processing and shipping. Federal budgets, particularly the BIA, have been cut or less funding is available to address poverty and the needs of families that live in impoverished areas. The people across the CCTHITA region need services that support the emotional support of families, with limited financial means, more than ever.

The Tribe is extremely pleased of its efforts and the impact it has made to provide basic support services to families in need, such as education, social, employment, training, and cultural heritage. Under a Self-Governance Compact (477) the Tribe's Employment & Training Department administers the Child Care, Employment Assistance, TANF, Workforce Investment Act, Adult Basic Education, Tribal Employment Rights Office (TERO), Tribal Veterans Services, Youth Services, and Fatherhood Initiative. Additionally, the Tribe provides Indian Child Welfare and Foster care services in partnership with the State.

Despite the hardships that tribal members face, and the economic challenges for the Tribe and its administration, the Tribe has a deep commitment to helping others and believes that it is important to share the expertise and knowledge with the community. The Tribe regularly hosts trainings conferences on community services, health, employment and training, and social service issues.

These trainings are open to all tribes, the State, and any individual that feels that they may benefit from it. The Tribe has always recognized the benefit of working with the State to maximize the resources of both sovereignties in providing support services to people in need. The Tribe hopes to work with the State on IV-D Program issues to identify shared-goals, avoid duplicative services, maximize resources and expand necessary and needed services.

Key representatives of the Tribe have been participating in tribal child support workshops at the national, regional and local level for the past couple years. Additionally, the Tribe has performed extensive research, consulted with other Tribes that have comprehensive IV-D Programs, and intra-tribal outreach.

Through these internal tribal efforts, the Tribe has gained a comprehensive understanding of the IV-D program and how the Tribe can provide beneficial services that reflect the needs of its communities and tribal members.

The Tribe strongly believes that adding IV-D Program services to its existing structure and network of support services will enable the Tribe to approach the issue of emotional and financial support for children with a more holistic view. The Tribe will be able to determine what appropriate support is given the widespread economical hardships of its communities, identify and intensively address personal barriers to providing support, and effectively enforce support obligations across its wide and diverse communities.

STATEMENT OF CAPACITY:

The Tribe has the capacity to operate a comprehensive IV-D program. The Tribe has a solid and progressive Tribal government and a long history of successfully managing complex Tribal and local economies, developing and building Tribal infrastructure, and providing services that support children and families. A Tribal Court has existed for the last 10 years by the Constitution and By Laws and has jurisdiction over CCTHITA members as well as non-members who subject themselves to the jurisdiction by residing in the CCTHITA service area.

The Tribe provides community services, including economic development, public safety, natural resource and environmental management. The Tribe also provides community wellness programs, and programs for the elderly. The Tribe's Administrative Department provides Self-Governance Management, Accounting, Personnel, and Information Technology services in support of $17,745,928 budgets for 99 different grants for a total '06 operating budget of $23,264,835.

The Tribe envisions that it will process the majority of the IV-D Program activities through the Tlingit & Haida Tribal Court. The importance of the judicial process and the expertise and experience of local community courts is invaluable. The IV-D Program will work closely with the Judicial Committee and Tribal Courts as the Program enforces laws specific to the needs of the IV-D Program.

The Tribe is confident that it has the capacity to administer a comprehensive and successful IV-D program.

ELIGIBILITY TO APPLY (§309.10):

As of January 1, 2006 there are 25,949 enrolled members. Over 16,000 members of this population reside in Southeast Alaska, with the remainder residing outside of Southeast Alaska.. Over 20% (3,200 individuals) of this total service population lives in the Juneau area, with the remaining 80% (12,800 individuals) residing within villages throughout the region. Currently there are 12,091 children, under the age of 18, enrolled in the Tribe and an undetermined amount of children that are either eligible for enrollment or descendants (see Attachment 2: Enrollment Certification & Letter from the State of Alaska)

ADMINISTRATION OF THE PROGRAM (§309.60):

The Tribe has designated the administration of the IV-D Program to the Employment & Training Department (E &T). The designated IV-D Program Manager is Eddie Brakes, who will be responsible for interaction between the Tribe and OCSE and over-site of the Program. The Program Manager, and their support staff, will be under the supervision of the E & T Director-Sharon Olsen. The IV-D Program office will be located at 320 W. Willoughby Ave. Suite 300, Juneau, AK. The Tribe understands that it is responsible and accountable, at all times and in all circumstances, for the operation and activities of the Tribal IV-D program. (see Attachment 9: Job Descriptions & Staff Resumes)

The Tribe may utilize state, tribal or private contractors in a consultation capacity. Estimated amounts that will be spent on such contracts are included in the budget proposal (see Section III. Budget (F) Contractual). The Tribe does not intend to delegate any functions of the IV-D program to another state or tribal entity.

Comprehensive IV-D Program Plan

309.65(a)(1) and 309.70 Description of the population subject to the jurisdiction of the Tribal Court for child support purposes.

A Tribal Court has existed for the last 10 years in Constitution and By Laws. Article XI of the Constitution provides the authorization for the Tribal Court. Section 1 provides for the establishment of statutes that prescribe the functions of the Tribal Court, empowers the Court to exercise jurisdiction and established the structure and positions of the Court (see Attachment 3: Constitution - Article XI Tribal Court).

Title 06 is the authorizing statute for the Tribal Courts and defines the Tribal Courts subject matter and personal jurisdiction. (see Attachment 3: Tribal Courts Sec. 06.01.010 and .011) There are a number of criteria that the Court can rely on to exert its jurisdiction, which include sexual conduct which results in the paternity of a CCTHITA child and the corresponding obligation to provide for the child. The Tribal Court exercises long-arm provisions, jurisdiction over persons who are employed by or contract with the Tribe and Native Alaskans and other Indians that engage in substantial activities with the Tribe (see Attachment 6: Courts & Procedures Sec. 06.21.004). The Tribal Court exercises its jurisdiction to the full extent allowed by Tribal and Federal law.

CCTHITA serves 20 villages and communities that are spread over 43,000 square miles within the Alaska Panhandle. As of January 1, 2006, there are 25,949 enrolled members. Currently there are 12,091 children, under the age of 18 who are subject to the jurisdiction of the Court (see Attachment 2: Enrollment Certification).

309.65(a)(2) Evidence that the Tribe has in place procedures for accepting all applications for IV-D services and promptly providing IV-D services required by law and regulation.

The CCTHITA Tribal Child Support Unit (TCSU) is eager to provide services to its tribal members and any other persons who are in need of IV-D services. The TCSU has a comprehensive plan to inform the public of its services and the process through which they can obtain services, which includes obtaining and completing an application.

TCSU Policy and Procedures (P & P) requires the TCSU to maintain an ample supply of application forms for child support services and provide them to anyone requesting services. Upon completing an application, if there is not a need for additional information, the TCSU Administrative Office Leader shall identified any services that are needed and assign the client a case number, and assign the case to a Specialist within 5 days of receiving the file (see Attachment 5: P & P- Sec. III., A & B. (1)).

309.65(a)(3). Assurances that due process rights of the individuals involved will be protected in all activities of the IV-D Program, including establishment of paternity, and establishment, modification, and enforcement of support orders.

The CCTHITA assures the Office of Child Support Enforcement that the due process rights of the individuals are protected in all activities brought in front of the Court. Title 06, Chapter 20, the Civil Procedures Act sets out the due process for all civil actions heard by the Tribal Court. During the start up funding period the IV-D Program worked extensively with the Judicial Committee and the Court to make amendments to the Civil Procedures Act to ensure that the needs of the IV-D Program, and its various legal actions, were incorporated into the Civil Procedures Act (see Attachment 6: Tribal Statutes – Subchapter 20. Courts and Procedures).

The CCTHITA assures the Office of Child Support Enforcement that the due process rights of the individuals are protected in all activities of the Tribal Child Support Unit. CCTHITA has a long-standing policy that provides all clients that receive services from the Tribe an avenue for filing complaints against a Tribal Department or an employee of a Tribal Department. This process will also be utilized by the TCSU, as well as any other applicable E & T processes, and is incorporated in its' TCSU P & P. (see Attachment 5: P & P –Sec. II., E. & Attachment 7: Client Appeal Procedure)

309.65(a)(4) and 309.75 Administrative and Management procedures.

(a) Description of the structure of the IV-D Program and distribution of responsibilities. The IV-D Program will be a Unit under the umbrella of the Employment and Training Department (E & T). The E & T Director answers directly to the President of the Tribe. The E & T Director shall also supervise the Tribal Child Support Unit (TCSU) through its' Program Manager.

The TCSU Manager shall be responsible for the oversight of all TCSU staff and the day-to-day operations and activities of the IV-D program. CCTHITA believes a cooperative approach toward establishing family obligations will be most successful for the Tribe. To support this approach, the TCSU will assign a single Specialist for the life of a case. There are some IV-D activities that are more complex, such as comprehensive intake, paternity establishment, and financial matters. For these activities, the TCSU will have Specialists. This will ensure quick and efficient service for all clients. Please see the attached organizational chart and job descriptions for more detail (see Attachment 8: Organizational Chart and Attachment 9: Job Descriptions).

(b) Protection against loss. The Tribe has an insurance that covers all employees for the loss of funds. During the start-up funding period, the TCSU ensured that this insurance policy includes TCSU staff (staff that handles grant funds were already covered).

Under comprehensive funding the Tribe will continue to provide insurance against loss for the financial personnel that handles Federal money and TCSU staff that handles program or client funds (see Attachment 10: Insurance Policy).

(c) Notice of support collections. TCSU P & P require staff to maintain financial records, which includes the requirement to provide to families notice annually. The notice must be itemized by month. This policy also requires staff to provide the history of any account to any authorized party upon request.

(d) Single Audit Act (SAA) and OMB Circular A-133. The Tribe complies with the Single Audit Act and OMB Circular A-133. The Tribe has an audit performed every year by the independent firm of Elgee Refeld Mertz, LLC. The Tribe will continue to comply with the SAA and the principles of OMB Circular A-133 during every year that it receives funding for the IV-D Program (see Attachment 11: Fiscal Management Policies and Attachment: 12 CCTHITA Audit).

(e) Application fee. The TCSU may charge an application fee. Any application fees collected will be applied consistently and does not exceed $25.00. Pursuant to TCSU policy, an application fee will not be charge for intergovernmental cases, or for individuals who are receiving services under titles IV-A, IV-E or XXI of he Act (see Attachment 5: P & P – Sec. IV., A., (3)).

309.65(a)(5) and 309.80 Safeguarding Provisions

(a) Limited purposes. TCSU Policy and Procedures have strict requirements for the use and disclosure of personal information received and maintained by the TCSU. (see Attachment 5: P & P – Sec. II., B.) This Policy limits and protects the use IV-D Program information to only those purposes that are allowed by Federal law and regulation.

TCSU has entered into a memorandum of understanding with its TANF (IV-A) Program to ensure that they also comply with the use and disclosure of IV-D Program information. (see Attachment 13: Intra-tribal IV-D/IV-A MOU). Both the Tribe and the State do not find it necessary to enter into a written agreement to work cooperatively together at this time. However, as part of on-going Tribal/State efforts, the Tribe and State have developed informal protocol for the exchange of information, as allowed by Federal law and regulation, between the IV-D programs.

(b) Safeguarding confidential information and privacy rights.

(1) Unauthorized use or Disclosure. The Tribe has strict confidentiality requirements for all employees of the Tribe, as well as sanctions for violation of confidentiality (see Attachment 5: P & P – Sec. II., B). Additionally, the TCSU, as part of the E & T

Department must abide by all confidentiality and client protections of the E & T Department. Child support files are maintained in a secure location in secured file cabinets with access to records available to authorized child support personnel only. Staff is prohibited from conducting client interviews or discussing cases in open areas and must confine all case discussions to their private office or a designated, secure conference area.

(2) and (3) Domestic violence and abuse and alleged abuse. The IV-D Program has policy and procedures for identifying and flagging cases that involve abuse and violence (see Attachment 5: P & P – Sec. IV., C & F). The Tribe believes that these procedures and processes not only meet the requirements of this regulation, they also assist with identifying and addressing violence and abuse in the family and will help to ensure that clients and families needing protection and services receive the help they need.

(4) Regulation Promulgated by the Secretary. CCTHITA agrees to comply with regulations yet to be proposed by the Secretary, provided the Secretary complies with the requirements of Executive Order 11375 and other Federal laws and mandates that require consultation with tribes, and provides a comment period; CCTHITA believes that it will be able to comply with OCSE regulation that is promulgated by the Secretary.

(c) Sanctions. The TCSU Policy and Procedures identifies specific violations for staff that have access to IV-D information. (see Attachment 5: P & P – Sec. II., B.) TCSU staff is also subject to sanctions as provided for all staff of the E & T Department, which includes warnings, immediate termination of employment and referral for civil prosecution. Under the TCSU P & P, the TCSU has an affirmative duty to ensure that staff is trained and knowledgeable on what information is protected and the limitations of the release of information.

309.65(a)(6) and 309.85 Record Maintenance.

(a) (1) – (4) Case records. TCSU Policy and Procedures require staff to maintain records that include, but are not limited to efforts to locate custodial and non-custodial parents, and their assets, actions taken to establish paternity, and actions taken to obtain and enforce support orders. TCSU Specialist are required to keep records including, but not limited to, amounts owed, arrearages, amounts and sources of support collections and the distribution of such collections. (see Attachment 5: P & P – Sec. III., E)

(5) and (6) Expenditures and Income. It is part of the Tribe's general accounting principles to require every division, department or other tribal entity to account for all of its expenditures and any form of income, such as fees, to the Finance Department. The TCSU will continue to meet these reporting requirements through its established protocol with the Finance Department under comprehensive IV-D program funding.

(7) Statistical and Narrative. During the start-up funding period, CCTHITA's TCSU and Finance Department worked closely with key staff from OCSE and the Division of Mandatory Grants (DMG) to educate itself on reporting requirements, the type of information necessary to make reports, and preferred reporting formats. CCTHITA made all reports as required (269, quarterly, and annual narrative) and will continue to make as reports as required under comprehensive funding.

(b) Retention of records. The Tribe certifies that it has complied with 45 CFR 74.53, maintaining records for a minimum 3 years, and will continue to comply with this requirement comprehensive IV-D program funding (see Attachment 14: File Retention Policy).

309.65(a)(7) and 309.90 Tribal law and Regulations.

(a) Copies of tribal laws and regulations. The CCTHITA has included copies of tribal law and regulation that address:

(1) Paternity establishment for any child up to and including at least 18 years of age;
(2) Establishment and modification of child support orders;
(3) Enforcement of child support orders including requirements that Tribal employers comply with income withholding as required under 309.110; and
(4) Location of custodial and noncustodial parents.

Please refer to sections 309.95, 309.100, 309.105, and 309.110 for more details. (see Attachment: 4 – Tribal Statutes- Family Responsibility)

(b) CCTHITA has accounted for tribal traditions and customs in its law or regulations and a further description is not necessary.

309.65(a)(8) and 309.95 Location. CCTHITA has policy and procedures for the location of custodial and noncustodial parents and their assets.

(a) Attempt to locate. Section V sets out extensive locate requirements for TCSU staff. Staff is required to locate custodial and noncustodial parents, income sources, place of employment and assets. TCSU Policy and Procedure requires prompt activity, and requires consistent review when locate has not been or is unable to be completed. (see Attachment 5: P & P-Sec. V.)

(b) Reasonable resources. In addition to specific steps and activities, TCSU P & P sets out numerous resources and prioritizes the use of those resources. Staff is also encouraged to "think outside the box" on difficult or unique cases. (see Attachment 5: P & P – Sec. V., B.)

309.65(a)(9) and 309.100 Paternity Establishment. CCTHITA has policy and procedures for paternity establishment as required by this section.

(a) Procedures for the establishment of paternity. CCTHITA has law, supporting regulation, and policy and procedures that meet the paternity establishment requirements of this section as described below.

(1) Attempt to establish paternity. Title 10, the Family Responsibility Act (herein "the Act"), at Chapter 02, Paternity, sets out the legal processes through which paternity must be established or recognized by the Court. Sec. 10.02.005 including voluntary acknowledgement of paternity, marital presumptions, genetic testing and judicial recognition of traditional paternity establishment customs and practices (see Attachment 4: Tribal Law – Title 10.02, Paternity). Additionally, TCSU P & P requires staff to "attempt to establish in all circumstances in compliance with applicable tribal law and policy". (see Attachment 5: P & P-Sec. VI.)

(2) Opportunity for the alleged father to voluntarily acknowledge paternity. Section 10.02.008 of the Act provides an alleged father an opportunity to voluntarily acknowledge paternity and requires the Court to inform an alleged father of his right to voluntarily acknowledge paternity (see Attachment 4: Tribal Statutes – Title 10.02, Paternity). Additionally, TCSU policy requires staff to inform and alleged father of his right to acknowledge paternity through verbal and written notice. (see Attachment 5: P & P – Sec. VI., A.)

(3) Contested cases. Pursuant to TCSU P & P, genetic testing is available to any party upon request, including a contested paternity action. When a paternity action is contested by a party, TCSU staff is required to obtain a sworn statement from the mother that alleges reasonable facts for the possibility of requisite sexual contact or a statement from the father establishing a reasonable possibility of the nonexistence of sexual contact between the parties. (see Attachment 5: P & P- Sec. VI., C.)

(b) Need not establish paternity. Title 10.02 and TCSU P & P sets out the circumstances when paternity does need to be established, and such circumstances are limited to cases of rape, surrogate mothers, or when paternity has previously been legally determined. (see Attachment 5: P & P –Sec. VI., C.)

(c) The TCSU has entered into an agreement with Reliagene to perform genetic testing on behalf of the Tribe. Reliagene is an accredited lab of reputable standing and will provide genetic testing and necessary support services at a reasonable cost (see Attachment 15: ReliaGene Letter)

(d) Establishment of paternity under this section has no effect on Tribal enrollment or membership.

309.65(a)(10) and 309.105 Child Support Guidelines. CCTHITA has law, supporting regulation, and policy and procedures that meet the child support requirements of this section.

(a)(1) One set. CCTHITA has developed one set of child support guidelines that must be used when establishing and modifying child support obligations (see Attachment 4: Tribal Statutes- Title 10.04 & Attachment 16: Child Support Schedule)

(2) In-kind. Title 10.04, Child Support Guidelines, and the Schedule address in-kind support obligations. Sec. 10.04.005, In-Kind Services and Resources, addresses the circumstances the Court and the TCSU must consider before ordering in-kind support obligations and require the Court to set out the terms of the in-kind support, including providing for a specific dollar amount (See attachment 4: Tribal Statutes – Title 10.04, Child Support). The Schedule provides details on the types of in-kind that are allowed, process for determining an in-kind obligation, and a prohibition on using in-kind to meet assigned obligations (see Attachment 16: Child Support Schedule Chapter 2).

(4) Review of child support guidelines. CCTHITA and the TCSU worked extensively to review the guidelines of the State of Alaska, other states, and tribes, and developed a child support Schedule that was appropriate for tribal children. The Schedule provides for review of the established formulas every four years to ensure that the TCSU is responsive to children's needs and the earning capacity of non-custodial parents. (see Attachment 5: P & P- Sec. VII., B., (2))

(5) Rebuttable presumption. The basic child support obligations found in this Title are presumptive and may be increased and decreased when based on the factors setout in the TCSU Schedule. The Schedule requires the application of the formulas established in the Schedule in any proceeding to establish or modify support as the correct amount of support to be ordered (see Attachment 16: Schedule Sec. 1.03 d.)

(6) Title 10.04 sets out the criteria the Court may consider when deviating from an obligation determined under the Schedule. If the Court finds an order unjust, the Court must make a written finding, on the record, the amount of support that would have been ordered and the reasons for the deviation. (see Attachment 4: Tribal Statutes – Title 10.04.004)

(b)(1) and (2) Guidelines. When CCTHITA developed its child support Statutes and Schedule it placed a heavy emphasis on the needs of children residing in southeast Alaska and the ability of parents to support their families given the economic circumstances the region. Additionally, Title 10.04 requires the Court to specifically consider the needs of a child and the ability of a parent to pay when making any support obligation determination (see Attachment 4: Tribal Statutes – Title 10.04.001 – 10.04.006).

The Schedule is clearly based on specific numeric calculations and all criteria that may be considered are described in great detail including "In kind" support to satisfy obligations. (see Attachment 16: Schedule Sec. 1.03 & Sec. 2.01)

309.65(a)(11) and 309.110 Income Withholding. The Court is vested with the power to enter any order, in any civil action, that is necessary, including garnishments, levies and contempt (see Attachment 4: Tribal Statues – Title 10.03). Under these existing Statutes, the Court is able to implement all the requirements of this section.

(a) Income for current support. The Child Support Schedule defines income (see Attachment 16: Child Support Schedule). TCSU P & P requires that enough income that is necessary to comply with an order be withheld. (see Attachment 5: P & P –Sec. XII.)

(b) Overdue support. In addition to income to meet monthly obligation, TCSU policy requires that an amount be withheld to be applied to past due support (see Attachment 5: P & P – Sec. XII.)

(c) Maximum amount to be withheld. CCTHITA statute and the TCSU policy mandate the amount of payers (noncustodial parent)'s income that may be withheld for current custodial support and arrears. (see Attachment 5: P & P – Sec. XII., A., (1) c., & d.)

(d) Due process. An order for income withholding is a civil order covered by the due process rights of the Court (see Attachment 6: Tribal Statutes – Subchapter 20, Courts and Procedures). Actions taken by the TCSU that violate a clients rights are subject to E & T Department, and specific TCSU staff as set out in policy. (see Attachment 5: P & P – Sec. II., E.)

(e) Refund overpayments. The TCSU P & P requires staff to promptly make a refund when it has been identified that support has been improperly withheld. (see Attachment 5: P & P – Sec. XIV., E.)

(f) Terminate orders. The TCSU policy requires staff to terminate orders when there is no longer a current order and all arrears have been paid. (see Attachment 5: P & P – Sec. XV., A.)

(g) Failure to withhold. CCTHITA law empowers the Court to take any civil action and enter orders that are necessary to ensure compliance by employers that are subject to the jurisdiction of the Tribe (see Attachment 4: Tribal Statutes, Courts and Procedures). TCSU P & P requires that if an employer fails to withhold the employer will be liable for the accumulated amount the employer should have withheld. TCSU staff is also required to provide for notice of violations, notice of sanctions, sanctions, and further legal action if the employer fails to comply. (see Attachment 5: P & P – Sec. XII., B.)

(h) Income not subject to income withholding. Pursuant to TCSU policy, the requirement for immediate income withholding may only be waived if one of the parents

demonstrates, and the Court enters a finding that there is good cause not to require income withholding or the parties enter into a signed written agreement that is approved by the Court. (see Attachment 5: P & P –Sec. XII., (3))

(i) Immediate income withholding is required by TCSU policy. (see Attachment 5: P & P – Sec. XII.)

(j) Contesting an income withholding order. Pursuant to TCSU policy, staff may only review an income withholding order based on a mistake of fact (see Attachment 5: P & P – Sec. XII., A., (2))

(k) Action against an employee due to income withholding. CCTHITA law empowers the Court to take any civil action and enter orders that are necessary to ensure compliance by tribal persons or entities that are subject to the jurisdiction of the Tribe (See attachment 3: Tribal Statutes, Courts and Procedures). TCSU staff is furthered required to refer an employer that discharges, refuses to employee or takes disciplinary action against a noncustodial parent due to income withholding laws for assessment of an appropriate fine or other legal action. (see Attachment 5: P & P - Sec. XII., B. (2))

(l) Use of Standard Federal Income Withholding form. Policy for the TCSU requires all staff to use the standard federal income withholding form when initiating an income withholding notice or order. (see Attachment 5: P & P – Sec. XII.)

(m) Allocate across multiple orders. Pursuant to TCSU P & P for collections, staff must ensure that collections from income withholding must be allocated across all orders for which an obligation is due and ensure that each order is implemented (see Attachment 5: P & P Sec. XIV., B., (6)).

(n) Receiving and processing foreign orders. Pursuant to tribal Statute, the Court must provide full faith and credit to all foreign orders (see Attachment 4: Tribal Statutes – 10.05, Full Faith and Credit). Additionally TCSU policy provides for identification and processing of foreign orders under the Intake and Enforcement processes (see Attachment 5: P & P – Sec. IV., B. & Sec. XIV., B., (6) c.)

309.65(a) (12) and 309.115 Collection and Distribution. The TCSU has worked extensively with its Finance department to develop a process by which the Tribe, through its' TCSU will track the collection and the disbursement of those collections. Payments received by a TCSU authorized office shall be posted within three business days and distributed to families within 3 business days upon posted receipt. Please note that a "Request for Assistance" from another state or tribal IV-D program is specifically addressed in TCSU P & P and is not repeatedly addressed under the regulation requirements as described below.

(a)(1) and (2) General rule. TCSU's P & P requires that collections must first be applied to current support obligations unless the family is currently receiving assistance from a state or tribal IV-A program (TANF program) and there is an assignment of support

rights to the state or tribal TANF program, then the TANF obligation must be paid. (see Attachment 5: P & P- Sec. XIV., B.)

(b)(1) and (2). Current receipt of TANF. As stated above, if a family has assigned support rights to a state or tribal TANF program, the TCSU shall pay assigned support obligations necessary to satisfy the current TANF obligation.

TCSU P & P address the requirement that if there is a request from another jurisdiction for collection of current support obligations that have been assigned to a TANF. (see Attachment 5: P & P- Sec. XIV., B.)

(c) (1) and (2) Former receipt of TANF. As stated above, the Tribe may retain collections, once current support or assigned TANF has been paid, to pay for TANF arrears. (see Attachment 5: P & P-Sec. XIV., B.)

(d) Assistance. TCSU P & P addresses the priority of application of collections when a request for assistance from another state or tribal IV-D agency has been made (see Attachment 5: P & P-Sec., XIV., B., 7))

(e) Federal Tax Offset (FTO). TCSU P & P requires that collections from a FTO, whether by a state or tribal IV-D program, may only be applied to satisfy support arrearages. (see Attachment 5: TCSU P & P Sec. XIV., A., b.)

(f) Contact requesting IV-D program for instructions on distribution. As setout above, the TCSU will, after complying with the previous requirements of 309.65(115) and required applications of collections, contact a requesting state or tribal IV-D program for further direction on distribution of collections (see Attachment 5: P & P-Sec. XIV., B. 8))

309.65(a) (13) and 309.120 Intergovernmental processing. The Tribe has statutes and policy that require the Court and the TCSU to accept and process foreign orders for full faith and credit, and provide the full range of IV-D services identified in its plan.

(a) Extend services to, respond to, and cooperate with other IV-D agencies. TCSU P & P clearly state that a request from another state or tribal IV-D program shall be treated as if it were a request for services made by an individual in a TCSU office. TCSU policy further requires that if a requested service is not one that is available under the Tribe's program plan, TCSU staff shall work with the requesting program to identify other actions that the TCSU can provide that may be of assistance. (see Attachment 5: P & P-Sec.IV., B.)

(b) Full faith and credit. The Tribe will recognize child support orders issued by other Tribes, Tribal organizations and states in accordance with the requirements under 28

U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act. (see Attachment 4: Tribal Statutes- Family Responsibility Sec. 10.05.001 & 10.005.002)

309.65(a) (14) Performance Targets. TCSU recognize the importance of providing expedient child support services to their community. Based on this premise, The TCSU can assure the Grantor that reasonable performance targets will be met as follows:

- Paternity Establishment Rate: 90%
- Current Support Collection Rate: 70%
- Collections of Arrears: 50%
- Support Order Establishment Rate: 80%

TCSU staff and the Tribal Court recognize that in addition to providing holistic services that support children and families, it is important to measure such services to identify activities that are proving successful and areas that need additional attention or solutions.

Paternity Establishment.

- TCSU will work with the State to identify cases that involve tribal members and work cohesively with the State to establish paternity for those cases.
- Public education and awareness campaigns. Public education will address the availability of services from the TCSU, legally recognized processes for establishment, parent rights and responsibilities, and referrals for support services. TCSU will publish articles, post information in key tribal areas and work with youth through the tribal Fatherhood Initiative program, local high schools, and other youth orientated programs.

Support order establishment.

- TCSU will work with the State to identify cases that involve tribal members and that require an order for support.
- Public education and awareness campaigns. Public education will address the availability of services from the TCSU; legally recognized processes for support obligation establishment, TCSU will publish articles, post information in key tribal areas and work with families through other tribal family orientated programs.
- Support services for unemployed or under-employed families. TCSU will spend the first couple years of its comprehensive funding identifying families that are unemployed or under employed, the reasons for this status, and the sources and types of support services that the Tribe is providing to address these needs. TCSU will then be able to identify a base-number for these types of cases, as well as track the type of support services that the tribe provides and the successfulness of providing specific support services.

Collection of current support and collections of arrears:

- TCSU will track collections of current support and arrears and make a statistical analysis in comparison with the total number of cases that have support or arrears owed. In conjunction with its efforts to track and identify families with support service needs, the Tribe will track specific factors for non-payment as identified by the family or the TCSU.

Conclusion:

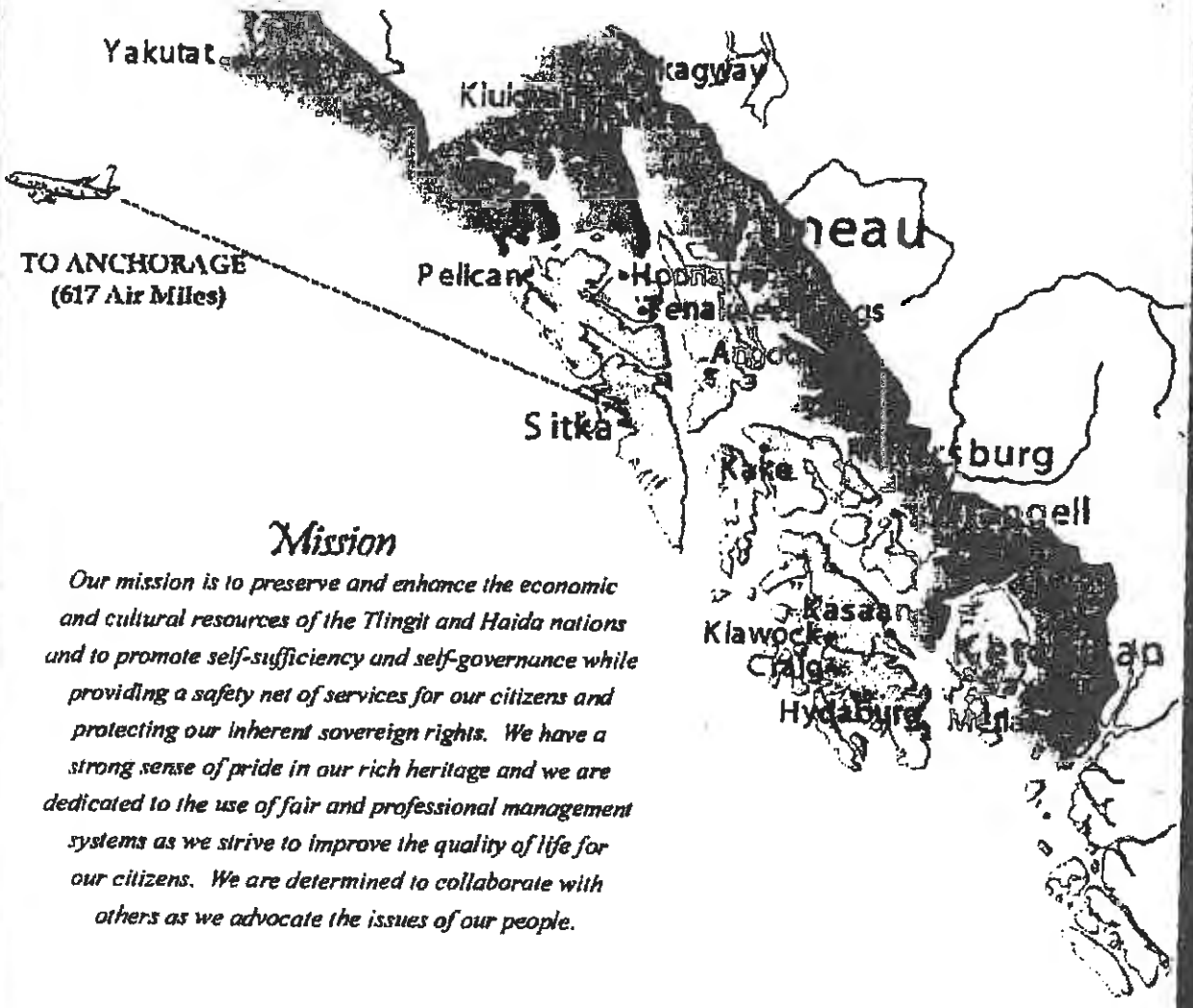
In conclusion, the Tribe believes that each child deserves to know who its biological father is and deserves to be financially and emotionally supported by both parents. CCTHITA Tribal Courts have worked diligently to set in place the statutes required to assure that orders for paternity, support, and enforcement will be executed in a way that respects the right of all individuals. The TCSU has developed policy, procedures, and intergovernmental relationships that will provide efficient and comprehensive IV-D services. The future of the Tribe is dependent on healthy, productive youth and children. CCTHITA has designed its IV-D Program to support the values of the Tribe, support existing tribal and state services, and to assist families with special needs to become financially and emotionally strong

Central Council
Tlingit and Haida
Indian Tribes of Alaska

Attachment: 1

CCTHITA
Southeast Alaska Service Area

Central Council Tlingit and Haida Southeast Alaska Service Area



Mission

Our mission is to preserve and enhance the economic and cultural resources of the Tlingit and Haida nations and to promote self-sufficiency and self-governance while providing a safety net of services for our citizens and protecting our inherent sovereign rights. We have a strong sense of pride in our rich heritage and we are dedicated to the use of fair and professional management systems as we strive to improve the quality of life for our citizens. We are determined to collaborate with others as we advocate the issues of our people.

Central Council
Tlingit and Haida
Indian Tribes of Alaska

Central Council Tlingit and Haida Indian Tribes of Alaska
320 W. Willoughby Avenue, Suite 300
Juneau, Alaska 99801
800/344-1432 or 907/586-1432 Fax: (907) 586-8970
www.ccthita.org

Central Council
Tlingit and Haida
Indian Tribes of Alaska

Attachment: 2

Letter from Program Compliance
&
Letter from the State of Alaska

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

March 15, 2006

Lionel J. Adams II - Director
Division of Special Staffs
Office of Child Support Enforcement
370 L'Enfant Promenade S.W.
Washington, DC 20447

Dear Mr. Adams:

The Central Council Tlingit and Haida Indian Tribes of Alaska currently has 25949 tribal citizens that are enrolled.

We have a total of 12091 that are under the age of 18 years old.

If you have any questions please call me at 1-800-344-1432 ext. 7144.

Sincerely,

Grace Hill

Grace C. Hill
Program Compliance Specialist

STATE OF ALASKA
DEPARTMENT OF REVENUE
CHILD SUPPORT SERVICES DIVISION

FRANK MURKOWSKI, GOVERNOR

Please Reply To:
CSSD, MS
550 WEST 7th AVE., SUITE 310
ANCHORAGE, AK 99501-6699

May 4, 2006

Re: Tribal Child Support Cases

Mr. Eddie Brakes
Central Council Tlingit and Haida Indian Tribes of Alaska
Tribal Child Support Unit

Dear Eddie,

You had a question concerning the number of child support cases with Tlingit and Haida members. We do not have a method to determine this from our caseload data. However, I believe we could estimate the number using information about total cases in Alaska and the population of Alaska. For example you could divide the total number of child support cases by the population and then multiply the results by the number of tribal members:

Total Child Support Cases 47,000 X 25,000 tribal members = 1,865 possible cases
Total Population 630,000

While this is a very rough estimate, I believe with the information we have it is the best estimate we can come up with. If there is anything else I can provide you please feel free to call me.

Sincerely,

John T. Mallonee

John Mallonee
Director
Child Support Services Division

TOLL FREE (In-state, outside Anchorage): (800) 478-3300 SOUTHEAST: (907) 465-5887 MAT-SU: (907) 357-3550
ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 6914 FAIRBANKS: (907) 451-2830
TDD machine only: (907) 269-6894 / TDD machine only, toll free (In-state, outside Anchorage): (800) 370-6894

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
Chapter 20- 24 adopted by General Assembly: April 23, 2005

TITLE 06 - TRIBAL COURTS

This statute amends the ordinance passed at the 1989 General Assembly and provides the basic authority for tribal courts of the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

It outlines the authority of the Judiciary Committee, the Trial Court, subordinate Courts and the Tribal Court Bar (Chapter 01), the Supreme Court (Chapter 02), and the Court of Elders (Chapter 03) of the Tribal Court established pursuant to CCTHITA Constitution and statute. It also includes the rules of court and civil procedures (Chapter 20-24). "Open" chapters are left for other statutes to supplement this basic law.

Chapter 01. Judiciary, Trial Court and Tribal Court Bar

Sec. 06.01.001 Purpose.

A. WHEREAS, the Central Council, Tlingit and Haida Indian Tribes of Alaska (CCTHITA) and the Communities of Tlingit and Haida Indian Tribes listed in the Rules of Election, desire to develop a model legal

system that reflects traditional authority and laws of the Tlingit and Haida Communities; and

B. WHEREAS, it is believed that a judicial system that exercises the authority set out in this Title would best serve the jurisdictional and socio-economic needs of the Communities.

C. WHEREAS, it is recognized that our children are our most vital resources for the continued existence and integrity of the CCTHITA Tribe; and

D. WHEREAS, the Tribe is compelled to promote and maintain the health and well-being of all of our children;

E. WHEREAS, there is an urgent need to develop a Magistrate/Judge position and a Child Support Clerk of the Court for the Tribe's Title IV-D Child Support Program.

F. THEREFORE, BE IT ENACTED, that this statute replaces the previously-enacted Title 06 Tribal Courts Ordinance to carry out the desire of CCTHITA that the authority and procedure for the CCTHITA judicial system be as set forth in this amended Title 06 of the Code system; and

G. THAT in all cases and controversies brought before the courts of this judicial system, the Court may apply any laws of the United States that may be applicable and any constitutional provision, statute, law, resolution, custom or code of the CCTHITA intended for enforcement by the courts of this judicial system and not prohibited by federal law; and

H. THAT as to any matter not covered by the previous subsection, the Tribal Court may be guided by the common law developed by tribal and federal courts, and by tribal and federal statutes.

Sec. 06.01.010 Definitions

When used in this Code, the following words will have the meanings here given, unless the context clearly indicates another meaning. If the meaning of a word is not clear, the Court shall construe the word in harmony with the purpose of the Code.

1. "Tribal Court" or "Tribal Judicial System" means the CCTHITA Judicial System as described in this code.

2. "Trial Court" means the general trial court of the Tribal Court.

3. "Judge" means any Judge or Justice of the Tribal Court.

4. "Magistrate" means the Judge(s) in the Tribal Court with the responsibility of establishing, modifying and enforcing child support orders.

5. "Judge Pro Tem" means a Judge who is appointed for the purpose of serving in cases of another Judge(s) absence, recusal or disqualification.

6. "Judiciary Committee" means the standing committee created to conduct business pursuant to **Sections 06.01.070. – 06.01.090.**

7. "Administrative Tribal Court Clerk" means the person with duties of carrying out all traditional clerking functions for the Tribal Court.

8. "Tribal Child Support Clerk" means the clerk of the court that is employed to carry out clerk functions for the Tribal child support cases.

9. "Supreme Court" means the appellate court of the Tribal Court.

10. "Chief Justice" means the Chief Justice of the Supreme Court.

11. "Elders Court" means process to resolve disputes pursuant to traditional or customary laws.

Sec. 06.01.020 Jurisdiction

A. **General:** The jurisdiction of the Tribal Court shall include all territory described in Article 1 of the CCTHITA Constitution and it shall be over all persons therein, and any enrolled Tribal member citizen and their descendants wherever they are located.

B. **Civil:**

1. The Tribal Court shall have general civil jurisdiction over all civil actions arising under the Constitution and laws of the Tribe including the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant or respondent may be served within the tribal jurisdiction.

2. Personal jurisdiction shall exist over all defendants/respondents served within the territorial jurisdiction of the Court, or served

anywhere in cases arising within the territorial jurisdiction of the Tribe, and over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the Court with respect to any civil action arising out of such entry.

C. **Criminal:** The Tribal Court shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Tribe insofar as not prohibited by federal law.

D. **Probate:** To the extent permitted by federal law the Tribal Court shall have probate jurisdiction over all of the real and personal property located within the jurisdiction of the Court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

E. **Juvenile:** The Tribal Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court pursuant to law. The Appeals Court shall hear appeals in juvenile cases as in other civil actions.

Sec. 06.01.030 Acts Subjecting Person to Jurisdiction

A. Any person, whether or not a member of CCTHITA, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself to the jurisdiction of the CCTHITA judicial system for any cause of action arising under the laws of CCTHITA, and, from any of the following acts:

1. Operating, conducting, engaging in, or carrying on a business or business venture or having an office or agency within the jurisdiction of CCTHITA.

2. Committing a tortious act within the jurisdiction of CCTHITA or violating any constitutional provision, ordinance, law, resolution, code or regulation of CCTHITA.

3. Owning, using, possessing or holding a mortgage or other lien on any real property within the jurisdiction of CCTHITA.

4. Contracting to insure any person, property, or risk located within the jurisdiction of CCTHITA at the time of contracting.

5. Acting, failing to act, or being otherwise subject to applicable federal public laws or tribal laws.

6. Causing injury to persons or property within the jurisdiction of CCTHITA arising out of an act or omission by the defendant outside the jurisdiction of CCTHITA, if, at or about the time of the injury:

   a. the defendant was engaged in solicitation or service activities within the jurisdiction of CCTHITA; or

   b. products, materials or things processed, serviced or manufactured by the defendant anywhere were used or consumed within the jurisdiction of CCTHITA in the ordinary course of commerce, trade or use; or

   c. the defendant is a member of CCTHITA or was a member of CCTHITA at the time of the act or omission.

7. Breaching a contract within the jurisdiction of CCTHITA by failing to perform acts required by the contract to be performed within the jurisdiction of CCTHITA subject to the terms and conditions of the contract and applicable conditions precedent to obligations.

8. With respect to any proceeding to determine paternity or parental obligation with respect to a child that is or is eligible to be an enrolled tribal member.

B. A defendant who is engaged in substantial and not isolated activity within the jurisdiction of CCTHITA, whether such activity is wholly within the jurisdiction of CCTHITA or otherwise, is subject to the jurisdiction of the CCTHITA judicial system if the claim arises from that activity.

C. Service of the citation or summons and complaint upon any person who is subject to the jurisdiction of the CCTHITA judicial system as provided in this section may be made by personally serving those papers upon the defendant outside the jurisdiction of CCTHITA. The service shall have the same effect as if it had been personally served within the jurisdiction of CCTHITA.

D. If a defendant in his response papers demands relief on causes of action unrelated to the transaction forming the basis of the plaintiff's claim, the

defendant shall thereafter in that action be subject to the jurisdiction of the Court for any cause of action, regardless of its basis, which the plaintiff may by amendment assert against the defendant.

Sec. 06.01.040 Tribal Judicial System

The Tribal Court is the Judicial System of the CCTHITA Indian Tribe previously established by its Constitution Article XI and is hereby recognized and confirmed as a separate branch of the Tribal Government. The Judicial System shall consist of the Supreme Court, Trial Court and such other subordinate courts or decision-making bodies as the General Assembly or the Executive Council may designate; and the Judiciary Committee.

Sec 06.01.050 Administrative Tribal Clerk of the Court

The Administrative Tribal Clerk of the Tribal Court shall carry out the duties of that position as set forth in this Code and other provisions of Tribal Law.

Sec. 06.01.060 Tribal Child Support Clerk

The Tribal Child Support Clerk shall carry out the administrative duties for the Tribe's Title IV-D Program and shall be supervised by the Magistrate/Judge.

Sec. 06.01.070 Judiciary Committee

A. The Judiciary Committee will consist of at least five (5) and no more than nine (9) Delegates of the General Assembly as appointed by the Executive Council, each of whom shall be duly elected and current regular Delegates to the General Assembly, and serve until successor appointees are qualified and appointed. The President shall appoint the members of the Judiciary Committee and its Chairman. Once appointed, Judiciary Committee members may be removed from the Committee only by a three-fifths affirmative, majority vote of its members for cause as follows:

1. Conviction of a felony while holding office;

2. Conviction of a crime involving moral turpitude within the previous five years; or

3. Gross neglect of duty, malfeasance in office, or misconduct reflecting on the dignity and integrity of the Judiciary Committee and Tribal Court.

4. Breach of CCTHITA Conflict of Interest and Confidentiality Policy or Agreement

5. Unexcused absences from three (3) or more consecutive meetings of the Committee duly noticed and convened.

B. During the General Assembly, duly elected and seated delegates other than members of the Judiciary Committee may participate in its business as "members-at-large", however, such "members-at-large" may not participate in actions of the Judiciary Committee pursuant to Section 06.01.080..

Section 06.01.080 Judiciary Committee – Authority, Duties

The Judiciary Committee shall have the following authority and duties:

A. To fill a vacancy for judge or justice pursuant to Section 06.01.120.C.

B. To prepare and submit budgets to the Executive Committee, report on prior year expenditures and recommend annual funding needs to the General Assembly, and recommend funding sources to meet the needs of the Tribal Judicial System.

C. To recommend increases or decreases to judge positions for the Tribal Court to the General Assembly.

D. To hear and determine complaints against judges and officers of the Court and shall issue written findings on the same. The Judiciary Committee may use the Model Code of Judicial Conduct of the American Bar Association for guidance. As such, the Judiciary Committee's written decision, with respect to complaints against judges and officers of the Tribal Court, are subject to review by the Supreme Court.

E. To approve a list of persons eligible to serve as judges pro tempore.

F. To consider removal of a judge of the Tribal Court under the procedures set forth in Article XI Section 3 of the CCTHITA Constitution and where a majority of the members of the Judiciary Committee vote such action.

G. To recommend Judge(s) Pro Tempore as the circumstances may require and as the Tribal Court budget may allow.

H. The Judiciary Committee shall have the authority to take such additional steps and adopt such rules, procedures, and fees as it deems necessary to

establish and maintain an effective court system in compliance with the Constitution and laws of the CCTHITA.

Sec. 06.01.100 Improper Interference Prohibited

Neither the Executive Council nor any Tribal official, employee, or other person, including a Judge not assigned to a case, shall interfere with the administration of justice carried out by the Tribal Court(s) except by participation as a party in a case through the procedures established by this chapter. Interference prohibited includes, but is not limited to:

A. Termination of employment of a judge by means other than those set forth in this Code;

B. Actions to remove a judge from consideration of a case other than by a motion to recuse or other procedures set forth in applicable court rules;

C. Actions designed to influence the outcome of a case other than:

1. By presentation of argument and legal authority to the court as a party to the case or as an amicus curiae;

2. In the case of the Executive Council, by amendment of Tribal law by means of procedures authorized in the Tribal Constitution.

Sec. 06.01.110 Improper Interference Null and Void

Any action taken in violation of section 06.01.100, above, shall be deemed void ab initio, and shall be of no force or effect.

Sec. 06.01.120 CCTHITA Tribal Court and Judges

The CCTHITA Tribal Court shall be general trial court(s) and appellate court(s) of the Tribal Judicial System.

A. **Tribal Court Judges.** The Tribal Court shall consist of a Chief Justice of it's Supreme Court and such number of Trial Court Judges and Subordinate Court Judges as is provided by the CCTHITA Constitutional and statutes.

B. **Qualifications of Judges(s).** A judge shall be over the age of twenty-five (25) and within the proceeding five (5) years, not have been convicted of a crime involving moral turpitude or other offense involving dishonesty or impugning moral character.

C. **Term of Office.** Judges shall serve for terms provided for in the CCTHITA Constitution Article XI Section 6. In the event of a vacancy, the Judiciary Committee shall appoint a judge to fill the vacancy until the next annual General Assembly meeting, whereupon the General Assembly shall elected a replacement judge to serve the remaining term of office.

D. **Suspension or Removal.** A Judge of a Trial Court may be suspended or removed only upon the grounds set forth in Article XI Section 3 of the Constitution and where a majority of the Judiciary Committee votes such action pursuant to **Section 06.01.080.D&F**. Suspension or dismissal is subject to review by the Tribe's Supreme Court.

E. **Magistrate Judge.** The Magistrate/Judge shall be the Judge with full authority to hear child support cases pursuant to the Tribe's Title IV-D Program. The Magistrate Judge shall be under the supervision of the Judicial Committee and subject to termination or suspension as outlined in section (4) and (6). Vacancies of the Magistrate Judge shall be made according to section (6).

F. **Term and Selection of Magistrate.** The Magistrate shall be selected by a committee composed of the Chairman of the Judiciary Committee, a member of the Judiciary Committee designated by its Chairman, and the Chief Justice. Upon selection, the Magistrate shall be subject be subject to termination under subsection D. above or may be dismissed if the Tribe has insufficient funding from the Title IV-D program.

Sec. 06.01.130 Duties and Powers of Judges and Clerk.

All judges of the Tribal Judicial System shall have the power:

A. To determine cases and controversies;

B. To issue subpoenas compelling the attendance of witnesses at proceedings and to punish for failure to comply with such subpoenas;

C. To determine the intent of any provision of law, including necessary elements of an applicable defense;

D. To issue any other order or writ, including contempt citation, necessary and proper to the complete exercise of the judicial power of the CCTHITA;

E. To request an advisory opinion from the Court of Elders regarding customary and traditional practices or culture;

F. To issue and enforce judgments and orders of the Tribal Court.

G. No later than thirty (30) days following complete submission of a matter for decision by a judge, and completion of such briefing as the Court may require, a judge shall render a decision on matters before him; provided however, that in matters involving complex or novel issues the Court may file and serve a notice indicating that up to an additional sixty (60) days may be required to render the decision.

H. The Judiciary Committee may discipline a judge where it appears that more than one hundred eighty (180) days has passed since submission of a matter to the judge for decision and no decision has been rendered.

I. All Courts within the Tribal Judicial System shall be a court of record and shall keep records of all proceedings, including the titles of cases, the names of parties and counsel, findings of fact and conclusions of law, material rulings, and such other matters sufficient to permit a thorough review of proceedings.

J. Unless sealed by Court order, all records of the Court shall be considered public records and open to inspection by anyone, except juvenile records and confidential information. Juvenile records are not subject to inspection unless by order of the Court allowing inspection.K. The Chief Justice or justices of the Supreme, or Appellate Courts, shall hear all appeals of Trial Court or subordinate Court decisions on the record.

1. The Supreme Court matters shall be heard by the Chief Justice and such number of Justices as the Chief Justice shall determine necessary.

2. The Supreme Court shall have jurisdiction of appeals from all final decisions on the record of judges of the CCTHITA Trial Court or subordinate Courts.

3. In appeals brought before it, the Supreme Court shall determine whether the Court's factual findings are supported by substantial evidence and whether its conclusions are in accordance with law. The Supreme Court shall disregard any error or defect in proceedings which does not affect the substantial rights of the parties. The Court shall consider the record of the Trial Court and such briefs and oral arguments as the Supreme Court may allow.

4. The following procedures shall apply in addition to any applicable rules of Appellate Court:

   a. An aggrieved party may file a notice of appeal together with a filing fee with the Clerk of the Court within thirty days after the date of entry of the judgment or order appealed from or after the date of granting, continuing, modifying, refusing, or dissolving an injunction or refusing to dissolve or modify an injunction.

   b. A statement of reasons shall be filed by the appellant in every appeal, accompanied by supporting documents that were part of the Court record. If the statement of reasons is not filed with the notice of appeal it shall be filed with the Clerk of the Tribal Court within thirty days after filing the notice of appeal. Any other party to the Tribal Court proceedings may file a response together with supporting documents that were part of the Tribal Court record within thirty days after receipt of the appellant's statement of reasons. The appellant may file a reply brief within thirty days after receipt of a response.

   c. Upon completion of the briefing, the Supreme Court shall schedule such oral arguments and hearings as it deems appropriate.

Sec. 06.01.140 Management of Tribal Court

A. The Chief Justice shall be responsible for the administration of the Tribal Court and shall assign cases, manage the Tribal Court's calendar, and appoint and supervise such support staff as necessary for the smooth operation of the Court, subject to the availability of funding.

B. The Clerk of the Court shall be appointed pursuant to the provisions and limitations of **Section 06.01.1.20.F.** and subject to the exceptions outlined in **Section 06.01.150.**. The Clerk of the Court, after taking the oath of office set forth in Article VII, Section 2 of the Constitution, shall perform all traditional clerking functions, administer oaths, and, at the Chief Justice's direction, carry out administration of Court functions.

Sec. 06.01.150 Management of Child Support IV-D Court Cases

A. The Magistrate Judge shall be responsible for the administration of the Tribal Child Support Cases, and shall manage this subordinate Court's

calendar, supervise such support staff as necessary for the efficient operation of the Child Support Program, subject to the availability of funding provided by the Tribe's Title IV-D program.

B. The Tribal Child Support Clerk shall be selected pursuant to the provisions and limitations of **Section 06.01.080.F.**. The Magistrate may recommend selection of a Tribal Child Support Clerk from the list of approved candidates.

C. The Tribal Child Support Clerk shall perform all traditional clerking functions, administer oaths, and, at the Magistrate Judge's direction, carry out the administration of the Tribal Child Support Clerk.

Sec. 06.01.160 Location, Hours of Court Operation

A. The Clerk's office shall be located at such place as may be determined by the Chief Justice.

B. Court sessions shall be held at such place as may be determined by the Chief Justice.

C. The hours of the Court shall be at such times as may be determined by the Chief Justice.

Sec. 06.01.170 Tribal Court Clerk and Child Support Clerk

A. The Tribal Court Clerk shall be under the supervision of the Chief Justice. The Clerk before entering his duties, shall, at Tribal expense, post bond in an amount determined by the Judiciary Committee, or shall be covered by a blanket bond provided for other Tribal employees.

B. The Tribal Court Clerk shall be responsible for the administration of the Court. The Clerk shall render assistance in answering questions concerning Court procedures. It shall be the duty of the Clerk to attend and keep a written record and tape recordings of all proceedings of the Court, to administer oaths to witnesses, and to perform such other duties as the Chief Justice may designate.

C. The Tribal Child Support Clerk shall be under the supervision of the Magistrate Judge and shall have the same duties under subsection A. and B., but such duties will be in regard to child support Title IV-D cases only.

D. The Tribal Court Clerk and Child Support Clerk are prohibited from providing legal advise. The clerk(s) may answer questions on Tribal Court procedure, but shall not provide legal advice.

E. Before taking office the Court Clerk shall take the following oath which shall be administered by the President:

"I, _____, do solemnly swear:

1. I will uphold the Constitution and laws of the Central Council of Tlingit and Haida Indian Tribes of Alaska to the best of my ability;
2. I will perform the Clerk's duties faithfully and honestly;
3. I will not let personal views and relationships affect the performance of the Clerk's duties;
4. I will not attempt to influence the course of any Court proceedings;
5. I will not reveal any confidential matters which I learn in the course of official duties."

"Subscribed and sworn to before me this _____ day of _____, 20___."

Sec. 06.01.180 Tribal Court Bar Membership.

A. To be admitted by the Court as a member, a person must fulfill all of the requirements for membership in the Tribal Court Bar listed in section 06.01.190.

B. A member may be either a lay advocate or a professional attorney.

C. The provisions of this Title shall govern membership in the Court Bar and practice before the Court because the practice of law is intimately connected with the proper administration of justice.

D. The Court may through rules, from time to time, impose additional requirements for admission or practice as justice requires.

E. No person shall appear in the Court as a lay advocate, professional attorney or judge prior to admission to the Tribal Court Bar.

F. The Chief Justice, at his discretion and subject to review by the Judiciary Committee:

1. May deem an applicant as qualified for membership in the Tribal Court Bar pursuant to section 06.01.190 who meets any one of the following criteria:

a. a practitioner of tribal law;

b. a legal representative of the CCTHITA or its Tribal Court, or another tribal government or tribal court;

c. a legal representative of a state or federal courts or government;

d. a legal representative of a non-profit profit organization providing legal assistance to tribal citizens.

2. May waive the admission fee of section 06.01.190(A)(4) for an applicant who so requests and who meets any one of the following criteria:

a. deemed qualified for membership in the Tribal Court Bar pursuant to section 06.01.190;

b. a staff attorney or legal representative for the CCTHITA or another Tribal Court and is appearing on behalf of a member of the Tribe;

c. intend to appear in Tribal Court for one client or case only;

d. a staff attorney or legal representative for a non-profit organization and is appearing on behalf of a client of the organization; ~~or~~

e. for good cause and best interests of the CCTHITA.

3. May admit an applicant as a member of the Tribal Court Bar and issue a certificate of membership.

Sec. 06.01.190 Requirements for Admission to Tribal Court Bar

A. To qualify as a member of the Tribal Court Bar either as a lay advocate or a tribal lawyer, a person must meet the following requirements:

1. The applicant must have:

a. at least two years of accredited law school training; or

b. at least three years of legal internship serving a lawyer or judge licensed in any Court of the United States which lawyer or judge submits an affidavit testifying to the applicant's legal knowledge and abilities, particularly with respect to Native Law, and the applicant satisfies criteria developed by the Judiciary Committee to test knowledge of the Alaska Native Law; or

c. licensing as an attorney in any United States jurisdiction or membership in a tribally recognized bar association; or

d. proof that the applicant has served as a judge for six months or more in any federal or state court, or the court of a federally recognized Indian tribe; or

e. has two (2) years experience working as a paralegal or legal assistant for a licensed lawyer, law firm, Tribal, State or Federal Court Judge, or has obtained a paralegal degree or certificate, or has two (2) years experience as a court clerk in a Tribal, State or Federal Court, or

f. other evidence of legal knowledge and abilities acceptable to the Clerk of the Court or the Chief Justice, provided that if the applicant cannot satisfy the requirements of subparts (a) - (d) above, he shall not appear in more than one case per year without leave of court.

g. is a traditional Clan Leader who has be so recognized by the local Tlingit and Haida Community Council or IRA Council, or

2. The applicant must be of good moral character. The applicant is required to bring to the Court's attention any matters raising questions regarding the applicant's stability and any past conduct reflecting upon the applicant's honesty or integrity.

3. The applicant must be familiar with the organic documents and ordinances of the CCTHITA and its Communities.

4. The applicant must pay to the Clerk of the Court an admission fee of $25.00 for a lay advocate or $100.00 for a tribal attorney. The applicant shall also be required to meet such continuing requirements and pay such annual fees as the Court may require.

5. The applicant must execute the Oath of Admission to the Tribal Court Bar. The oath which all persons desiring to appear as spokesperson in the Tribal Court shall be taken as follows:

"SPOKESPERSON'S OATH"
"I, _____, do solemnly swear that:

a. I have read the Constitution of the Central Council of Tlingit and Haida Indian Tribes of Alaska and am familiar with its contents;

b. I will respect and obey the Constitution of the Central Council of Tlingit and Haida Indian Tribes of Alaska in all respects;

c. I will abide by the Rules established by the Tribal Court of the Central Council of Tlingit and Haida Indian Tribes of Alaska;

d. I will, at all times, maintain the respect due the Tribal Court and its officers;

e. I will not counsel or speak for any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Tribe;

f. I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statement;

g. I will abstain from all offensive conduct in the Tribal Court."

"Subscribed and sworn to before me this _____ day of _____, 19___."
_____ Judge

B. Upon meeting the above requirements the Court shall admit the applicant as a member of the Tribal Court Bar and issue a certificate of membership. The Clerk of the Tribal Court will maintain a roster of all spokespersons admitted to practice before the Tribal Court. The Clerk will also keep on file the signed oaths of all such persons and the expiration date of each oath.

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
Chapter 20- 24 adopted by General Assembly: April 23, 2005

Sec. 06.01.200 Rules of Discipline for Members of the Court Bar

A. A member of the Court Bar may be subjected to disciplinary sanctions by the Judiciary Committee for any of the following:

1. The commission of any act constituting dishonesty or impugning the member's good moral character in a substantial manner.

2. Violation of any provision of the member's Oath of Admission to practice before the Court.

3. Disobedience or violation of any Court order.

4. Suspension, disbarment or other disciplinary action taken against the member by the authorities of a foreign jurisdiction that regulate attorneys or members of its bar, or failure within 30 days to notify the Clerk of such action.

5. Undertaking any action constituting a conflict of interest.

6. Submission of frivolous or intentionally harassing claims or negligent or intentional abuse of the Court's processes or authority.

7. Engaging in any conduct compromising the integrity and respect of the Court.

B. The Court may use the Model Rules of Professional Conduct of the American Bar Association, as published from time to time, for further guidance.

Sec. 06.01.210 Sanctions Against Tribal Bar Members

A. Upon the motion of any party, or upon its own motion, the Court may order an investigation of any allegation of misconduct by a member of the Tribal Court Bar, and appoint an investigator. Upon completion of the investigation, the Court shall conduct an open hearing to determine whether the allegations are well-founded. Prior to such hearing the member of the Tribal Court Bar shall be presented with a written statement of the allegations and the results of the investigation. All interested parties shall be notified at least ten days in advance of the hearing and shall be entitled to present evidence and confront witnesses.

B. Following the hearing, the Chief Justice of the Court shall make a finding of whether or not a violation has been established, and, in the event of an

affirmative finding, the Chief Justice shall refer the finding to the Judiciary Committee that shall specify the sanction. The disciplinary sanctions affecting the status of a member of the Court Bar include censure, reprimand, suspension and disbarment.

C. Any spokesperson failing to maintain the respect due the Tribal Court or engaging in offensive conduct in the courtroom shall be deemed guilty of contempt of Court and subject to immediate sentencing by the Tribal Court Judge to a fine not to exceed Five Hundred Dollars ($500.00). The sentence may be appealed to the Judiciary Committee.

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
Chapter 20- 24 adopted by General Assembly: April 23, 2005

Chapter 02. Court of Elders

Sec. 06.02.010 Findings and Policy

WHEREAS, there is a need for traditional resolution of appropriate issues according to Tlingit and Haida customary law and traditional methods. THEREFORE, it is the policy of the CCTHITA that the Tribal Court shall certify to a Court of Elders questions on appropriate subjects.

Sec. 06.02.030 Scope of Authority of the Court of Elders

A. The Court of Elders shall determine if there are traditional or customary laws applicable to questions or issues certified to it by the Tribal Court and shall respond with written advisory opinions concerning application of such laws.

B. Upon the joint written request and knowing consent of the parties to a dispute, the Court of Elders may, in its discretion, accept, hear and mediate an issue applying traditional law and custom.

1. The Court of Elders may hear and mediate only disputes among members concerning matters not governed by a constitutional provision, ordinance, law, resolution, code or regulation of CCTHITA, and not otherwise within the jurisdiction of the Tribal Court. Parties to a matter heard by the Court of Elders may not be represented by an attorney or lay advocate.

2. The Court of Elders' written decision or agreement shall be filed by the Clerk of the Tribal Court and treated as a final judgment, except that no appeal shall be permitted from the Court of Elders.

Sec. 06.02.050 Composition of the Court of Elders

A. As the need arises, the Judiciary Committee may appoint at least two (2) and not more than six (6) members of Tlingit and Haida Communities,

including elder village tribal members, to comprise a Court of Elders for a particular matter.

B. The Court of Elders may seek advice from any source knowledgeable on Tlingit and Haida clan custom or tradition, including learned treatises, historical references, prior case law, or persons generally regarded within the Community as learned in tribal custom. The weight to be given to such source shall be determined by the Court of Elders.

Sec. 06.02.060 Records

All responses to certified questions, advisory opinions, or determinations of the Court of Elders shall be in writing and filed with the Clerk of the Tribal Court. Evidence received that, in the opinion of the Court of Elders, requires confidentiality, shall be filed under seal.

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
Chapter 20- 24 adopted by General Assembly: April 23, 2005

Subchapter 20. General Provisions

Sec. 06.20.001 Short Title

This ordinance shall be known as the "CCTHITA Tribal Civil Procedures Code".

Sec. 06.20.002 Applicability

This code applies to all civil actions in the Tlingit & Haida Indian Tribes of Alaska (the "CCTHITA") Tribal Court. The term "civil action" includes all non-criminal Court cases in which a party seeks to have the Court award relief against another party or to have a legal right declared or enforced. The Court may require, or the parties by mutual agreement allow, the application of some other set of rules, such as the federal rules of civil procedure, to be applied in a particular civil action. In an appropriate case, the Court may look to the Tribal common law or customs of the Tlingit and Haida clans for assistance in resolving a case or applying this code.

Sec. 06.20.003 Purpose and Construction

This code shall be liberally construed to provide a just and equitable result for the parties to civil actions and citizens of the CCTHITA generally, and to secure the just, speedy, and inexpensive determination of every civil action.

If a procedure is not specifically pointed out by this code, the Tribal Court may adopt any suitable procedure consistent with the spirit of this code or take any measures reasonably necessary to carry out and protect its jurisdiction.

Nothing in this code shall prevent persons involved in a dispute from agreeing to submit their dispute to persons or organizations outside the Court for resolution and nothing herein shall remove the inherent authority of the CCTHITA Tribal Court in a particular case from fashioning and controlling the scope and extent of the proceedings as it deems appropriate.

Nothing herein is intended to limit the inherent civil jurisdiction of the CCTHITA.

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
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Sec. 06.20.004 Relief Allowed

The Court may award all forms of relief necessary to the complete of its jurisdiction, including but not limited to: (a) money damages; (b) injunctions; (c) declarations of rights; and (d) such other relief as is just and proper in a particular case.

Sec. 06.20.005 Statute of Limitations

No civil action may be commenced in the CCTHITA Tribal Court unless the cause of action arose within a three-year period preceding the filing of the complaint. The three-year period shall be counted from the date on which the event giving rise to the lawsuit was first known to the complaining party or should have been known through reasonable diligence. Provided, however, that this section shall not apply to claims brought by the CCTHITA or child support enforcement actions brought by the CCTHITA or its Tribal Court.

Sec. 06.20.006 Survival of Actions

All causes of action by a person shall survive to the personal representative of that person if he should die or become unable to pursue the action before its completion.

Sec. 06.20.007 Sovereignty

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the CCTHITA or any of its subordinate boards or bodies.

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Subchapter 21. Commencement of Actions and Pre-Trial Motions

Sec. 06.21.001 Commencement of Civil Actions

A civil action is started by filing a written complaint or petition with the Court and paying any necessary filing fee established by the Clerk of the Court.

The complaint or petition shall be concise and direct and contain a statement of the events complained of or the right sought to be declared or enforced and a statement of what relief is sought. No technical wording is required. A party asserting claims in a complaint or petition may join as many claims as he has against the opposing party.

More than one person may join in bringing an action if their claims involve the same or similar transactions or occurrences and involve common questions of fact or law.

The complaint or petition shall be signed by the party bringing the action or his attorney or representative.

The Court Clerk may assist plaintiffs in putting their complaints in writing by supplying necessary forms.

Sec. 06.21.002 Summons

When a complaint or petition is filed, the Court Clerk shall issue a summons requiring the opposing party to appear and respond to the complaint or petition within twenty days. The summons shall give notice that failure to respond may result in a default judgment being entered against the defendant or respondent.

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
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Sec. 06.21.003 Service of Process

A. The summons, together with a copy of the complaint or petition shall be served upon the defendant or respondent by proper authorities or by any person over the age of eighteen who is not a party to the action. Service may be accomplished by personal service or by leaving a copy of the summons and complaint or petition with a person of suitable age and discretion residing in the residence of the person sought to be served.

Personal service on a business or corporation may be made upon a secretary, officer, registered agent, or owner of the business.

The person or officer effecting service of process shall file proof of such service with the Court.

B. The Clerk of Court may also affect service of the Summons and a copy of the Complaint or Petition by certified mail, return receipt requested. In such a case, the return receipt shall be considered proof of service.

C. When the defendant or respondent cannot be found within CCTHITA region or within the state of Alaska and upon the filing of an affidavit of the plaintiff stating that the defendant is not a resident in the CCTHITA region or in the state of Alaska or cannot be found therein and that attempts at personal service or service by certified mail have failed, service may be made by publication of notice of the lawsuit once a week for three weeks in a newspaper of general circulation.

Sec. 06.21.004 Long Arm Service

Any person, including a business or corporation, may be served outside the CCTHITA region with the same force and effect as if service was made within the CCTHITA region for any of the following reasons:

A. Transacted business or performed an act within the CCTHITA region leading to a civil action;

B. Contracts for services to be rendered for goods to be furnished within the CCTHITA region;

C. Contracts to insure a person, property, or a risk located within the CCTHITA region at the time of contracting; or

D. Owns, uses, or possesses any property involved in the case within the CCTHITA region.

E. Alledged to be a parent of or have a parental obligation to a child that is enrolled or is eligible to be enrolled as a citizen of the CCHTITA.

Sec. 06.21.005 Answer

Within twenty days after a defendant or respondent is served with the summons and a copy of the complaint or petition, he must file a written answer with the Court Clerk responding to the complaint or petition. The answer shall set forth any affirmative defenses and may deny the complaint or petition in its entirety or may deny it in part.

The following defenses must be raised either in the answer or in a pre-trial motion or they are waived: (1) lack of personal jurisdiction; (2) insufficient or improper service of process.

A defendant may file a counterclaim asserting against a plaintiff any claim or setoff which arises out of the same event as the complaint was filed for. Provided, however, that no counterclaims may be asserted against the CCTHITA or its subordinate boards or bodies.

Failure of a defendant or respondent to answer within twenty days after a complaint or petition is served shall be a default and provide grounds for judgment against the defendant or respondent as asked for in the complaint or petition.

Sec. 06.21.006 Amendment of Pleadings

Parties may freely amend or supplement their pleadings at any time on such terms as are just, as long as the other party is given notice and an opportunity to respond to or oppose the amendment.

Sec. 06.21.007 Service and Signing of Pleadings and Papers

A copy of every pleading or paper filed with the Court after the original complaint or petition must be proved to the other party unless the Court orders otherwise. Every written motion shall be filed with the Court Clerk and a copy supplied to each of the parties.

Service upon the attorney or upon a party or authorized representative shall be made by delivering a copy to them or by mailing it to him at the last known address or, if no address is known, filing with the Clerk of Court an affidavit of attempt to serve.

No service needs to be made on parties in default for failure to appear.

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
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Every pleading, motion, or paper shall be signed by a party or his attorney or representative.

Sec. 06.21.008 Motions

Questions regarding procedure or issues of law regarding the rights of the parties which are raised during a lawsuit and which are neither covered by this ordinance nor settled by agreement of the parties may be presented to the court in a motion.

Motions shall be made in writing or presented orally in open court. All motions which might eliminate the need for trial on all or some of the issues involved in a case shall be made at least ten days before trial.

A moving party shall serve notice to other parties of any pre-trial motions at least ten days before presenting it in Court, or such other time as the Court feels is necessary to provide the opposing party a fair opportunity to respond. When a motion is supported by a memorandum or affidavit, they shall be served on the other party with the motion.

Motions to dismiss the civil action because the Court lacks subject matter jurisdiction or because the plaintiff has not stated a basis for relief may be made at any state of the proceedings.

Sec. 06.21.009 Preliminary Relief

A. Temporary Restraining Order.
A Judge may issue a Temporary Restraining Order prohibiting or requiring a particular action by another party without prior notice where the party seeking an order shows the Court orally or by affidavit that he will suffer immediate loss or potential injury unless temporary relief is granted. A temporary restraining order shall be good for not more than thirty days after notice of it is given to the party restrained unless the court orders otherwise and may be renewed for the same or a lesser period of time not more than once.

B. Preliminary Injunction.
Following notice to all parties and an opportunity to be heard in court or through affidavits, the Court may consider entering a Preliminary Injunction, which shall remain in effect until final judgment in the case, requiring a party or parties to take or refrain from taking certain action while the case is pending. The request for a Preliminary Injunction may be granted if the party seeking it demonstrates a substantial likelihood that he will prevail in the lawsuit and that he will suffer immediate or irreparable loss or injury if the injunction is not issued. The Court may condition the

issuance of the injunction upon the posting of a bond by the party seeking it, if necessary to protect the other party.

C. Prejudgment.

At the commencement or during the course of a civil action, a party may by affidavit apply to the Court for an order allowing him to attach, garnish, re-levy, or take similar action against an adverse party's property where that is shown to be necessary to insure that any judgment ultimately to be entered can be satisfied. The Court may place such conditions on the granting of such relief as the Court deems just and equitable, including a requirement that the party seeking the order post a bond to protect the other party against losses which might arise from the seizure of his property.

Sec. 06.21.010. Discovery.

In order to facilitate fair trials and avoid unfair surprise in civil cases, it shall be the policy of the CCTHITA Tribal Court to allow a party to obtain information about the other party's case.

Methods of discovering and exchanging information may include submission of written questions to the other party, requesting admissions of facts, requesting witnesses' names, interviewing the other party's witnesses, and requesting the other party to produce documents or property for inspection. Such requests for information shall be as clear and specific as possible.

A party who receives a request for information shall respond within fourteen days. Failure to respond shall be grounds for the other party to seek a court order compelling a response.

If the parties disagree about whether information is required to be disclosed, the Court shall decide the dispute. If the Court deems it, conditions may be placed on the release of information to protect confidential material.

Sec. 06.21.011. Pre-Trial Conferences.

In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the judge may schedule a pretrial conference with all parties in a civil action. The pretrial conference may, in the Court's discretion, be held in an informal setting and conducted without formal procedures. The parties and the judge should discuss areas where the parties are in agreement and areas where they disagree. The discussion shall have the purposes of identifying and disposing of issues that can be resolved without trial, identifying the issues of law remaining to be decided and, if necessary, limiting the

testimony of witnesses and presentation of evidence. Any agreements reached shall be stated on the record or put in writing and signed by the parties.

Sec. 06.21.012 Orders to Show Cause

An order to show cause requiring a party to appear before the court and explain why they should not be held in contempt of court and subject to sanctions may be issued by the court upon a showing that the person to whom the order is to be directed has violated a valid existing order of the Court after he has had notice of it.

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
Chapter 20- 24 adopted by General Assembly: April 23, 2005

Subchapter 22. Trials

Sec. 06.22.001 Trials

Civil cases shall be tried by the Court without a jury. Procedure at trial shall be as follows unless otherwise agreed by the parties and the Court:

A. The party bringing the action may make an opening statement summarizing what he intends to prove, after which the defendant or respondent may make an opening statement summarizing his defense;

B. The plaintiff or petitioner shall call witnesses or present other evidence in support of his case to the Court. The witnesses shall testify under oath and be subject to cross examination by the defendant. Following cross-examination of witnesses, the plaintiff or petitioner shall have a second opportunity to question the witness about matters raised in cross examination. When the plaintiff has presented all of his witnesses and evidence he shall inform the court that the plaintiffs' case is completed;

C. After the plaintiffs case has been presented, the defendant or respondent may move the Court to dismiss the case. If the Court, after considering the evidence in the light most favorable to the party bringing the action, finds that there is insufficient evidence to support the case, the action shall be dismissed;

D. If the action is not dismissed, the defendant or respondent shall call witnesses or present evidence. A witness shall testify under oath and be subject to cross-examination by the plaintiff or petitioner, after which the defendant shall have a second opportunity to question the witness about matters brought up during cross-examination;

E. The Court, in its discretion, may allow the party bringing the action to present additional witnesses or evidence to rebut any new matters presented in the defendant's case, but no evidence or testimony which is merely cumulative or repetitive of the plaintiffs case shall be allowed;

F. The parties shall have the opportunity to present final remarks to the Court. Because the party bringing the action has the burden of proving his civil case, he will have an additional opportunity to rebut the opposing party's remarks;

G. The Court shall consider all the evidence and announce a judgment or issue a written decision at a later time.

Sec. 06.22.002 Burden of Proof

The burden of proving a civil claim shall be on the party making the claim to prove his case by a preponderance of the evidence. A party shall be considered to have met the burden of proof if most of the evidence presented tends to prove that party's claim.

Sec. 06.22.003 Evidence

This section governs the presentation of evidence in civil actions. In a particular case, the Court may require or the parties may agree to the application of other rules of evidence, specifically the state or federal rules of evidence.

A. Evidence presented in a civil action in the CCTHITA Tribal Court must be related to the issues before the Court. When questioned by the judge or another party, the party who wishes to present certain evidence shall explain why he thinks the evidence is relevant;

B. Where there is more than one kind of evidence about the same subject, the Court should allow the most reliable kind of evidence;

C. The testimony of persons having personal knowledge, such as firsthand observation and direct knowledge of or participation in a described event shall be preferred and be afforded greater weight than the testimony of persons with secondhand knowledge of the event;

D. Copies of written records, photographs, and other documentary evidence may be presented as long as they are reliably identified by the party offering them or if they are certified as true and accurate copies by a reliable source.

Sec. 06.22.004 Subpoenas

A Tribal Court Judge or the Court Clerk may issue a subpoena to compel the attendance at trial of witnesses to give testimony or to command the person to whom it is directed to produce evidence.

The Court may quash or modify a subpoena, at any time before the time specified on its face for compliance, for good cause shown and the court may condition the issuance of a subpoena upon payment of a reasonable bond to offset the affected party's costs of producing the evidence sought.

Subpoenas shall be served in the same manner as a summons and complaint or petition, except that no subpoena shall be served by publication.

Failure to comply with a subpoena may be punishable as contempt of court.

Subchapter 23. Judgments

Sec. 06.23.001 Judgments

The Judge in a civil action shall issue a judgment either orally or later in writing after completion of the trial and announce the basis of the decision. The judgment shall state any relief granted to the prevailing party. It shall be reduced to writing and become final when entered in the record by the Court Clerk.

Sec. 06.23.002 Default Judgments

When a party against whom a judgment is sought fails to appear, plead, or otherwise defend within the time allowed, and that is shown to the Court by a motion and affidavit or testimony, the Court may enter an order of default and, without further notice to the party in default, enter a judgment granting the relief sought in the complaint.

Sec. 06.23.003 Reconsideration

No later than ten days after a judgment is final, a party may ask the judge to reconsider the judgment. The matter may be decided based upon writings without a hearing. The judge may grant reconsideration and change the judgment if one of the following is found to be true:

A. The original judgment was reached as a result of fraud or mistake;

B. There is newly discovered evidence which could have affected the outcome of the case and which could not have been discovered with reasonable effort at the time of trial; or

C. The Court did not have jurisdiction over the subject matter.

Sec. 06.23.004 Enforcement of Judgments

If a party fails to satisfy any money judgment of the CCTHITA Tribal Court, not less than ten days after entry of the judgment the Court may issue an order allowing the judgment to be executed upon and satisfied out of property owned by the judgment debtor upon the filing of an application setting forth:

A. The date of entry of the judgment, the amount of the judgment, the amount paid on the judgment, the amount currently owing on the judgment including interest, the name of the Court, the case number, and the date of registration of the judgment if it is a foreign judgment;

B. The name of the requesting party and his address or the address of his attorney or authorized representative;

C. A statement of the type of execution sought the name and address of the person on whom it is to be served, and a description of the property to be seized.

Sec. 06.23.005 Types of Execution

Court order allowing execution of a judgment shall consist of two types:

A. Attachment shall be used to seize property in possession of a judgment debtor;

B. Garnishment shall be used to seize property of the judgment debtor that is in the hands of another person.

Orders of attachment or garnishment shall be served in the same manner as the summons and complaint or petition, and proof of service shall be filed with the Court.

Sec. 06.23.006 Exceptions

In the execution of any judgment the following shall be exempt from execution to satisfy a judgment:

A. All wearing apparel of every person in the family but not to exceed $500 value in furs, jewelry, beadwork, or personal ornaments for any one person;

B. Items of bona fide religious or cultural significance;

C. Fishing equipment, gear, and fishing boats of reasonable value;

D. A minimum amount of tools, instruments, and materials sufficient to allow a judgment debtor to carry on his trade;

E. Provisions and fuel for the comfortable maintenance of the home for three months time;

F. Land or interests in land held in trust or subject to restrictions against alienation imposed by the United States or other land which is the judgment debtor's principal residence;

G. Sixty-five percent (65%) of a judgment debtor's disposable wages (gross wages minus deduction required by law, but not including voluntary payroll deductions), salary, or other compensation regularly paid to a judgment debtor for personal services each pay period. An exception may apply if the judgment debtor's obligations are in arrears, in which case no less than fifty-five percent (55%) of debtor's disposable wages may apply.

H. An automobile of reasonable value necessary for personal or family use.

Provided, that none of the above property shall be exempt from execution for any judgment awarded because of the debtor's failure to pay all or part of the purchase price for that property, and, with the exception of Indian trust land, none of the above property shall be exempt from execution if it was specifically pledged as collateral or security to the person awarded the judgment.

Sec. 06.23.007 Sale Procedure

When property has been seized or otherwise delivered to the Court in execution of a judgment, the Court shall give the judgment debtor written notice that:

A. The property is in the possession of the Court pursuant to a Court Order;

B. The property will be sold at public auction on a date specified in the notice and the proceeds applied to the judgment;

C. The judgment debtor has the right to contest the execution order by filing a written opposition with the Court and requesting a hearing;

D. At any time prior to the sale, the judgment debtor has the right to satisfy the judgment and obtain the return of the property.

Sec. 06.23.008 Enforcement of Foreign Judgments

Execution on a judgment from a Court other than the CCTHITA Tribal Court shall be allowed in accordance with this code it is has been registered with the Court by filing a certified copy of the judgment with the Court Clerk, paying any necessary filing fee established by the clerk, and serving a copy on the judgment debtor. Before giving effect to a foreign judgment the court may conduct a preliminary inquiry regarding compliance with the Full Faith and Credit Act (FFCA), 28 U.S.C § 1738 (1994).

Amendments to Chapter 1 made: September 7, 2003; February 8, 2005; March 16, 2005; March 18, 2005; April 19, 2005; April 18, 2007; **November 17, 2007**
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Subchapter 24. Miscellaneous

Sec. 06.24.001 Rules Not Announced

Where this code does not expressly address a question, the court may issue any order to accomplish substantial justice.

Sec. 06.24.002 Savings Clause

If any provision of this code is declared to be invalid, the remaining provisions shall not be affected.

Tribal Child Support Unit
Policy and Procedures

I. PROGRAM INFORMATION

A. Program Goals and Objectives

CCTHITA Tribal Child Support Unit (TCSU) is motivated and dedicated to bettering the future of our children. CCTHITA children not receiving support from the non-custodial parent is intolerable. It has always been CCTHITA priority to strengthen Tribal families. The TCSU will concentrate on parent/child relationships, father initiatives, and strengthen families. Our children will not be just another case. TCSU staff gives children the utmost respect and confidentiality during case management and strives to connect children with the care and resources of both parents.

B. Jurisdiction

CCTHITA is a sovereign nation. The statutes of the CCTHITA govern the tribe's operations. The CCTHITA Tribal Court is vested with the fullest jurisdiction permissible under the Constitution of CCTHITA Article 1, including but not limited to:

a. Members of CCTHITA.
b. Consent to the jurisdiction of the Court by participating in the proceedings unless participation is for the purpose of contesting jurisdiction.
c. For purposes of enforcement, employees of the Tribe, its entities and business operations.
d. Those who are parents of children who are members or are eligible for membership in the Tribe.
e. Those who have duty to and failed to support a child who:
    - Is a member of a CCTHITA or
    - Received TANF assistance from the tribe.

C. Service Population and Services

1) CCTHITA TCSU provides services to 25,000+ members of the Tlingit and Haida Tribes (16,000 members reside in Southeast Alaska, with the remainder residing in other regions of Alaska or the lower 48 states). Each tribe has its own distinct culture, language and traditions. Over 39 percent (6,200) of this total service population lives in the Juneau area, with the remaining 61 percent (9,800) residing in the various rural villages throughout the region.

2) Services under CCTHITA TCSU will emphasize "Children First". CCTHITA whole heartedly believes that "Children can count on their parents for the financial, medical and emotional support they need to be healthy and successful" (Vision of the Future OCSE 2005-2009 Strategic Plan). A legal and emotional relationship between parents and children is essential for children to be successful. Services provided will be proactive to ensure child support is paid timely and consistently to prevent accrual of unpaid child support. CCTHITA TCSU will provide the following services:

a. **Establish paternity**: TCSU will attempt to establish paternity by providing the opportunity for the father to voluntarily acknowledge paternity.
    - Contested paternity cases require the child and all parties involved to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party.
    - TCSU need not establish paternity in any case involving incest or forcible rape or any case in which legal proceedings for adoption are pending; it would not be in the best interest of the child to establish paternity.
    - Paternity establishment has no effect on Tribal enrollment or membership.

b. **Locate Non-custodial Parent services:** The TCSU will attempt to locate custodial or non custodial parents or sources of income and/or assets when location is required to take necessary action in a case. The TCSU will use all sources of information and records reasonably available to locate custodial or non custodial parents and their sources of income and assets.

c. **Establish child support orders:** The TCSU shall comply with the statutes and laws of Tribe when making determinations that affect the establishment of support obligations.
    - All initial child support orders will be established by a Judge in Tribal Court according to Tribal Child Support Schedule Standards for Determining Support Obligations. Only new child support establishment orders, transferred case orders, and contested orders will be brought forth to a Tlingit & Haida Tribal Judge and Tribal Court for establishment.

d. **Review & modify child support orders**: Review and modification of orders not contested will be determined by the Magistrate and not by a Tribal Judge Court.
e. **Enforce child support orders**: Enforcement includes Income Withholding and Criminal Sanctions. Willful failure to comply with a CCTHITA Child Support Order may also be punishable as a criminal offense under the provisions in CCTHITA Tribal Criminal Code. Upon issuance of a written order of execution, non-exempt real and personal property may be seized and sold in a reasonable manner after notice to the owner for payment of a delinquent child support obligation after it has been adjudicated delinquent by the court.

3) Parties who need additional services may be referred to Tlingit and Haida Employment and Training who work with tribally enrolled American Indians and/or Alaska Natives that have their High School Diploma or GED, are residing within the Service Delivery Area of Southeast Alaska, and are Job Ready. Tribal members that meet these guidelines may apply for the following program services:

a. **Adult Basic Education (ABE)** - Allows Tribal members assistance while obtaining their GED through the Southeast Regional Resource Center.
b. **Adult Vocational Training or Classroom Training (AVT & CRT)** - Allows tribal members up to 24 months of training in a vocational field of study and provides financial assistance while in training. Also provides financial assistance to tribal members interested in attending short-term Classroom Training courses that will enhance a tribal member's ability to obtain employment or advance in their career.
c. **Higher Education (HE)** - Offers scholarship grants to tribal members enrolled to a University and seeking Bachelors, Masters and/or Doctorate degrees.
d. **Work Experience (WE), On-The-Job Training (OJT), and Tribal Work Experience Program (TWEP)** - Allows tribal members with limited job seeking skills and work experience to gain actual experience under a training contract with an employer for up to 500 hours under WE and TWEP and up to 1000 hours under OJT and TWEP.
e. **Employability Assistance (EA)** - Provides financial assistance for tribal members while searching for employment or enrolled in a training program.
f. **Child Care (CC)** - Provides assistance to tribal members in need of childcare.
g. **Child Care Quality Improvement** - Helps Native childcare providers with training, offers educational and safety equipment, and access to the programs toy lending library and may provide assistance to Child Care Providers.
h. **S.E. Alaska Tribal Veterans** - Offers assistance to tribal members that are veterans in need of receiving Veterans Administration Benefits.

i. **Youth Activities** - Offers tribal youth between the ages of 14 - 21 with ten (10) weeks of employment opportunities in the summer months usually between June and August. If funds are available this program may provide tribal members with scholarships to attend educational enhancement and leadership training activities.

4) Additional department referrals to Head Start, Tribal Family and Youth Services (TFYS) will be made on an individual bases and as needed. Programs available include:

a. **TFYS General Assistance (GA)** – Provides assistance to tribal members who are not work ready due to not having a HS diploma or GED, or as a result of illness.
b. **TFYS Indian Child Welfare Act (ICWA)** – The program protects and maintains the integrity and rights of Native children, their families and tribes. The program ensures the best interest of children is protected if removal of a child from their home by a State CPS agency becomes necessary.
c. **Low Income Home Energy Assistance Program (LIHEAP)** – this program is available to low income families to offset energy costs.
d. **Raymond Paddock Jr. Medical Fund (RPMF)** – Available to tribal members who have unmet needs generated by major illnesses. The amount varies based on the nature of the medical need with the maximum amount of $200.
e. **Youth Leadership** – Program that supports youth and families involved in the Juvenile Justice System to divert youth from entering and from re-offending.
f. **Elder Caregiver** – Program to increase the level of access to caregiver support services for the Native elderly within Central Council's service area
g. **Elder Emergency Services**- Provides emergency financial assistance to Tribal members 65 years of age and older who have urgent personal needs due to disastrous events such as fire, death, or illness.

D. Administrative Structure

1) The Tribal Child Support Unit is under the Employment & Training umbrella of CCTHITA. The TCSU Program Manager will have the primary responsibility of assuring the day-to-day operation of the agency and supervision of staff.

2) The TCSU Specialists will be primarily responsible for day-to-day case management.

3) The Administrative Office Leader will be responsible for the day-to day support duties, including initial contact with clients, reviewing applications, setting up appointments and files.

4) The TCSU Specialists will be responsible for receiving, paying, and reconciling Child Support payment in coordination with the CCTHITA Finance Department.

5) Tribal Child Support Unit job descriptions are available from CCTHITA Human Resources Department and on file in the TCSU Staff Directory.

II. RIGHTS AND RESPONSIBILITIES

Tribal Child Support Unit employees, as members of CCTHITA staff, will place the welfare of our clients and their families in matters affecting them above all other concerns. To this end, we will deliver kind and humane service to all in our care regardless of race, creed, age, or sexual preference.

A. Standard Tribal Employee Policy & Procedure

1) We will not deliberately do harm to a client, either physically or psychologically. We will not verbally assault, ridicule, attempt to subjugate or endanger a client, nor will we allow other clients or staff to do so.

2) We will urge changes in the lives of clients only in their behalf and in the interest of promoting their self-sufficiency. We will not otherwise press them to adopt beliefs and behaviors which reflect our value system rather than their own.

3) We will remain aware of our own skills and limitations. Since clients and former clients may perceive us as an authority and hence overvalue our opinions, we will attempt never to counsel or advise them on matters not within our area of expertise. We will be willing to recognize when it is in the best interest of our clients to refer them to another program or individual.

4) We will not engage in any activity that could be construed as exploitation of clients for personal gain, be it sexual, financial, or social. We will not attempt to use our authority over a client in a coercive manner to meet our own ends. We will not promote dependence on us, but help clients to empower themselves.

5) We understand and agree to defend both the spirit and letter of CCTHITA policy of client rights and to respect the rights and views of other staff members.

6) We understand that a client relationship does not end with a person's leaving the program. We will recognize the need to conduct any subsequent relationships with former clients with same concern for their well being that is acknowledged above.

7) In our personal lives, we will serve a responsible role model for clients, staff, and community.

8) We will accept responsibility for our continuing education and professional development as part of our commitment to providing quality care for those who seek our help.

9) We understand that if we disagree with established rules of conduct, policies, or practices, we can express our concern through the problem resolution procedure which can be found in the Employee Handbook.

B. Confidentiality

The TCSU follows the CFR §309.80 safeguarding procedures for a Title IV-D program which includes safeguarding procedures:

a. Safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support.
b. Prohibits against the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered.
c. Prohibits against the release of information on the where about of one party or the child to another person is the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child.
d. Any information defined as confidential by law or regulation will be held confidential by TCSU.
e. All TCSU employees are required to sign a confidentiality oath as a condition of employment. Employees who improperly use or disclose confidential information will be subject to disciplinary action, up to and including termination of employment and legal action, even if they do not actually benefit from the disclosed information.
f. Outside agencies, organizations or business who voluntarily or inadvertently disclose TCSU information will be subject to disciplinary action, up to and including legal action.

C. Disclosure of Information

1) Information to Law Enforcement. TCSU may provide confidential information to law enforcement under the requirements of the Personal Responsibility Act. We will provide the name and address if a Law Enforcement Officer provides the name and social security number and specifies that:

a. The client is a fugitive felon or;
b. A probation or parole violator (as defined under state law) and:
c. That the location or apprehension of such a felon is within the law officer's duties.

2) IV-D Agencies: The disclosure of personal information received by or maintained by TCSU is limited to purposes directly connected with the administration of the program which allows for the sharing of information with other IV-D programs under the guidelines of CFR 309.120.

D. Client Responsibilities

All TCSU parties have a right to be informed of their rights and responsibilities pertaining to services provided by TCSU Program.

a. To actively participate in your TCSU case:
   - To stay in contact with your assigned TCSU Specialist.
   - To inform your TCSU Specialist within 7 working days of any changes or challenges you may face regarding your TCSU order or case.
   - To arrive on time for your appointments with your TCSU Specialist.
   - To call your TCSU Specialist when you cannot keep your appointment within 24 hours to reschedule your appointment.
   - To fulfill all actions agreed to on your TCSU case/order.

b. To hand in all required paperwork/payments:
   - Monthly support orders;
   - Report of change forms;
   - And other forms or documents as necessary to maintain or adjust your child support order or to determine other service needs.

c. To fully disclose all information available and cooperate fully with request of TCSU staff. Failure to provide truthful information that result in fraud may result in suspension or termination of other program benefits.

E. Client Rights/Internal Complaints Process

Administrative Client Appeal Process: Clients who have been denied services, or have received a reduction of services, have the right to file a written appeal by following these procedures. Decisions affecting clients are made based on a review of program policies, procedures and the required official documentation.

STEP 1-Client: A client has ten (10) working days from the date of receipt of decision to submit a written appeal to the Program Supervisor or his/her designee. A client outside of Juneau must have their written appeal postmarked to the Program Supervisor within ten (10) working days of receipt of a decision.

STEP 2-Program Supervisor: The Program Supervisor or his/her designee in consultation with the Program Manager will make every effort to review documentation and make a decision in the shortest amount of time possible (not to exceed 2 working days).

STEP 3- Appeals Committee: A client not satisfied with the Program Supervisor's or his/her designee's decisions may make a request to the Office of the President to have their appeal reviewed by the Appeal Committee. A client must complete Step 1 before the Office of the President will consider a referral to the Appeals Committee.

- The Appeals Committee will review appeals within two (2) working days of receipt.
- The client will be notified of the Committee's decision within one (1) working day after the date of its meeting.
- All decisions of the Appeals Committee are final.

III. CASE PROCEDURES

TCSU believes that consistent assistance from one point-of-contact will avoid gaps in services to the client and ensure accountability of its employees. Some areas of child support services are more complex and are best served by specialization in that area.

A. Intake

TCSU Administrative Office Leader – The TCSU Administrative Office Leader shall be available during regular TCSU business hours to meet with clients. The TCSU Office Leader shall:

a. Provide an application and supporting information to everyone that requests an application and assist the client to understand the application questions and process.
b. Review applications for completeness and accuracy.
c. Pre-interview clients and schedule interview with TCSU Specialist.
d. Create application files and forward to TCSU Specialist.
e. Mail correspondences to clients.
f. Receive CS payments and prepare bank deposits and transmittals.

B. Assignment of Cases

1) Once appropriate intake has been performed, a client shall be assigned to a TCSU Specialist. The client shall remain on the caseload of the assigned Specialist unless a conflict of interest arises or a client files and wins a grievance against his or her Specialist.

2) **TCSU Specialist** - Provide comprehensive child support services to children, custodial parent, and non-custodial parent by performing advanced level of case work including but not limited to investigations, financial negotiations, and collection services. The TCSU Specialist shall:

a. Interview clients and identify the TCSU services available.
b. Provide case management and activity tracking.
c. Calculate child support obligations and debts; initiates appropriate collection actions; negotiates repayment of child support debts.
d. Provide educational opportunities for clients and communities on TCSU.
e. Assist client with an appropriate IV-D application that other tribes or a states may require.
f. Record and track collection and disbursements.
g. Generate annual and quarterly required child support reports.
h. Develop statistical reports for TCSU staff.
i. Reconcile accounts and calculate arrears due.
j. Produce and mail monthly and/or quarterly statements to the non-custodial parent and custodial parent.

3) **Paternity/NCP Specialist**. The purpose of this position is to process paternity cases. This includes, but is not limited to interviewing custodial parents, locating potential fathers, making referrals to the attorney, making court appearances, and testifying in court. The TCSU NCP Specialist shall:

a. Interview clients and identify the TCSU services available.
b. Provide case management and activity tracking.
c. Calculate child support obligations and debts.
d. Provide educational opportunities for clients and communities on TCSU.
e. Assist client with an appropriate IV-D application that other tribes or a states may require.
f. Review paternity application and interview custodial parent
g. Coordinate and process paternity tests for determination of parentage.
h. Locate parents.
i. Process serving.
j. Draft paternity judgment in conjunction with the Child Support Attorney.
k. File all original court documents and genetic test results with the court.

5) TCSU Deputy Manager. Assist in planning, directing, coordinating all program activities; acts on behalf of the Manager during his/her absence; and supervise the day to day operations of Specialists. The TCSU Deputy Manager shall:

a. Provide training to staff.
b. Review collections actions and arrears due.
c. Review applicable accounts and quarterly statements of non-custodial parents and custodial parents.
d. Serve as a resource on federal, state, and tribal rules for TCSU.
e. Coordinates efforts with other child support agencies to establish, enforce and monitor child support cases.
f. Supervise Child Support Specialists

6) TCSU Attorney. The TCSU attorney will provide legal services and representation to Tlingit & Haida Tribal Child Support Unit. The TCSU Attorney shall:

a. Review foreign order from another tribe or state pursuant to the Family Responsibility Act and the principles of FFCCSOA.
b. Determine if conflict of Interest exists.
c. Review modifications to existing legal documents, case files, stipulations, and orders for court.
d. Initiate legal actions to establish paternity and/or child support orders under guidelines set by tribe.
e. Prepare legal documents, maintain court schedule, arrange service by publication, appear in court, and
f. Assist with Specialists' preparation of court orders for all child support cases when requested.
g. Negotiating stipulations Draft stipulations and judgments related to paternity.

C. Cross-training

Cross training will provide TCSU staff members with the knowledge of each staff's duties, procedures, protocol, and required documents and forms. Cross training is also essential to educate and train staff from the Department and the Courts to ensure a "one stop" shop for services for TCSU clients.

a. Each staff member of the TCSU shall be cross-trained on the duties and responsibilities of TCSU Specialists.
b. TCSU Specialists shall be cross-trained on positions that affect his or her ability to perform their respective duties and responsibilities.
c. All TCSU staff shall participate in cross-training within the Department, other Tribal Departments and the Court, as the Program Director deems necessary to providing holistic services that support families.

D. Conflict-of interest

1) Employees have an obligation to conduct business within general tribal protocol that prohibits actual or potential conflicts of interest (Contact the Human Resources Manger for more information). These procedures address conflicts of interest specific to the TCSU.

2) TCSU Specialists or other staff shall not perform work on a case that involves a family member (parent, sibling, uncle, aunt, niece, nephew, son or daughter).

3) TCSU Specialists or other staff shall not perform work on a case that involves a family member, as defined above in subsection (1) if the relationship is established by marriage.

4) Close, long-term friendships, or family associations, may also be considered a conflict-of-interest if:

a. The relationship is on-going and regular; and
b. The relationship extends to more than one member of a family.

E. Case Records

1) The TCSU will maintain child support records necessary for proper and efficient operation of the program including financial and statistical reporting. Each TCSU staff shall maintain a basic system by which their current activities and status of each individual case can be reviewed by TCSU management or other staff.

2) Case management and activity tracking system.

a. An original application for services shall be identified by the petitioner/respondent's last names, first initial, and suffix and the year. (Example: Horse,E Jr/Olsen,S-07).
b. An application for services shall not be assigned to a Specialist, or assigned a case number until Intake has completed all of the required actions.

c. When a case requires action to establish paternity, and the client has cleared the intake process, the case shall be identified with a flag and forwarded to TCSU Specialist.
d. Foreign orders shall be identified by the petitioner/respondent's last names, first initial, and suffix and the year. (Example: Horse,E Jr/Olsen,S-07).
e. A change in custody does not alter the identifiers for a case. Once an internal number is assigned, the number remains the same for the life of the case.
f. TCSU Specialists shall determine whether a IV-D case already exists for the parties (child, mother and father) if another case already exists for all parties, same CP, NCP, and child then the existing case will continue to be processed. The new referral will be closed with no new physical case file being made, and a notation made to that effect.

3) TCSU staff shall organize their caseload in the following manner:

a. First, by current action, until complete, and then the next required action;
b. Second, by due date for the next activity;
c. Finally, alphabetically within each of the above sub-categories, unless the original petitioner is the subject of the action.

F. Case files by section

TCSU staff shall maintain all case file information in the electronic format provided by the Tribe. Hard-copy information shall be maintained in six part folders as follows:

1) Section I:

a. Application for child support services, client rights form and supporting documentation, and waivers.
b. TCSU Specialist notes and recommendations.

2) Section II:

a. Copies of correspondence to or from the TCSU to a custodial or non-custodial parent, a third party custodian.
b. Copies of correspondence to or from the TCSU to a third party of interest such as a lawyer, tribal or state department or agency that provides financial assistance, or any other third-party that has legal standing in a case.

3) Section III:

a. Records on location attempts to locate the non-custodial or custodial parent and their assets.

4) Section IV:

a. Records of what has been done to establish paternity, establish and modify support obligations, and the enforcement of support obligations.
b. Paternity establishment actions.

5) Section V:

a. Original paternity and support orders, modifications to support orders and income withholding orders.
b. Documentation of process of service.

6) Section VI:

a. Records on the debts owed by a payer, including but not limited to current support obligation, custodial arrears, current TANF, TANF arrears, birthing expenses, current health care, child care, and any other debts identified by the a Tribal Court order pursuant to tribal law.
b. The amount and frequency of payments.
c. The date and source of payment collection for obligations.
d. Records on the distribution of payments received by the TCSU for each client.

G. Records

1) The TCSU will keep all statistical, financial, and other parties records necessary for reporting and accountability requirements. Reports are available and printed out every month and whenever requested to review the amount of child support paid by each non-custodial parent, whom it was paid to, the amount(s) paid, the dates of and how the payment was made.

2) The TCSU will maintain records required under CFR 309.85 for the proper and efficient operation of the program, including records regarding:

a. Applications for child support services.
b. Efforts to locate non-custodial parents.
c. Actions taken to establish paternity and obtain and enforce support.
d. Amounts owed arrearages, amounts and sources of support collections, and the distribution of such collections.
e. IV-D program expenditures.
f. Any fees charged and collected, if applicable.
g. Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.
h. Retain records for three years as required under 45 CFR 74.53.

IV. IDENTIFYING APPROPRIATE ACTIONS

A comprehensive intake and interview process is key to the successful delivery of TCSU services. This will ensure that all services that are available to the family, or an individual parent on behalf of their children, are identified and the parent or child receives the services they are eligible to. The TCSU shall assist any client that does not have the financial, technological or practical means by which to obtain and submit requested TCSU application information.

A. Applications

1) The Client with assistance of the Administrative Office Leader will determine which of the following services meet their needs:

a. Establishment of paternity, when paternity has been acknowledged or determined;
b. Establishment and/or modifications of child support orders;
c. Enforcement of child support orders;
d. Location of person or assets of person responsible for child support;
e. Inquiry if an existing child support order exits.

2) If the IV-D program has sufficient information, and the referral is appropriate, the TCSU may proceed with the next action without the need to interview the CP.

3) The TCSU will charge an application fee of $25.00 for all Clients unless the Client and/or respondent meet one of the following:

a. It is an intergovernmental request for assistance from another IV-D Program.
b. A parent is receiving TANF, foster care, or Medicaid.
c. The Client makes less than 125% of the Federal poverty level.
d. The parent's income or assets are limited to SSI/SSA benefits.
e. Shared or split-placement placement arrangements that have been in place for 3 or more years.

B. Referrals

Referrals received from the Tribe's, another state, or tribal IV-A program, the IV-D program shall assign a case number unless there is insufficient information to proceed.

a. The assigned TCSU Specialist shall follow-up with the requesting IV-A program to obtain additional information.
b. Upon receiving the necessary information, the assigned Specialist shall work the case under the guidelines and timelines provided in this Policy and Procedure manual.
c. TCSU shall determine if another jurisdiction has a pre-existing court order or IV-D case.
d. If the action being requested is based upon an order of another jurisdiction, the requesting IV-D program must submit all information necessary for the Court to make to determine a valid order pursuant to the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA).
e. A request for assistance from another IV-D program shall be promptly served as if it were an application for services from an individual made in a TCSU office and be processed pursuant to these TCSU policy and procedure.
f. If it is determined that the assistance being requested by another IV-D program is not one of the services provided by the TCSU in its program plan, the requesting party shall be immediately informed.

C. Domestic Violence

When a client alleges, or demonstrates that there are domestic violence (DV) issues between the CP and NCP, the client must complete the "Affidavit and Request for Address Confidentiality" and sign it before a notary or a witness, and return it within 30 days. The TCSU Specialist will then flag the case with a DV marker. Once a case has been flagged with a DV marker, the TCSU is prohibited from releasing information on the whereabouts of the client and the child if the release of such information may result in emotional or physical harm.

a. The Administrative Office Leader and/or Specialist shall make a referral to an outside domestic violence agency if the client is not already receiving domestic violence services.

D. Jurisdiction

If the Administrative Office Leader/Specialist knows right away that the case is not within the Court's jurisdiction, they will determine which state or tribe IV-D program would be the appropriate jurisdiction and assist the person to complete other IV-D application packet.

E. Verifying application documentation and information.

The Administrative Office Leader and/or Specialists shall ensure that:

a. Identifying information is complete for the mother, father and child.
b. Financial information and assets are identified for mother and father.
c. Copies of official documents are obtained.
d. Waivers and other supporting forms are completed and signed.
e. If applicable, the Affidavit and Request for Address Confidentiality form is completed.

F. Identifying intra-tribal services and appropriate referrals

1) After making an assessment for TCSU purposes, the TCSU Specialist shall identify any other needs of the mother, father or child that are barriers to emotional or financial support, or that can support the child or the family's standard of living.

2) The TCSU Specialist shall assist the client with completing an appropriate referral application and ensure that the client has contact information necessary to schedule an appointment with the appropriate tribal agency.

3) If the Tribe cannot provide a necessary service but such services are available through the State or other agencies, the TCSU Specialist shall ensure that the client has contact information necessary to schedule an appointment with the appropriate agency.

V. LOCATE

The TCSU must utilize all resources and avenues to locate a parent, or their assets, when the location of the parent, or their assets, is necessary for further action by the TCSU or another tribal or state IV-D program.

Once a case is opened, the program is required to use available federal, tribal, state and local sources to locate the non-custodial parent. The department must access all appropriate locate sources within 60 calendar days of determining location efforts are needed, and ensure that location information is sufficient to take the next appropriate action.

a. When it is necessary to locate a custodial parent, the actions required by this section must be taken.
b. When it is necessary to locate assets for either the custodial parent or non-custodial parent, the actions required by this section must be taken.

A. Custodial Parent Assistance

1) If location of the NCP is necessary, the most valuable step is to interview the Custodial Parent (CP). The CP shall be informed of his or her affirmative duty to cooperate with the TCSU and the consequences for non-cooperation and/or providing false information.

2) If an additional interview is necessary, ask the CP if he or she has access to original documentation of the following:

a. Income tax records;
b. Bank/financial institution monthly statement;
c. Old driver's license;
d. Military records;
e. Name, address, telephone number of friends or relatives;
f. Names of previous employers or old check stubs;
g. Insurance records;
h. Vehicle registration; or
i. Enrollment information.

B. Resources

Appropriate location resources include, but are not limited to:

a. Relatives and friends of the absent parent;
b. U.S. Postal Service;
c. Current or past employers;
d. Telephone, cable or utility companies;
e. Unions; associations, or fraternal organizations, such as Elks Club, Moose Lodge, Lions Club, Shriners, Veterans of Foreign Wars, tribal associations, professional associations;
f. Financial institutions and references;
g. Federal, State and Tribal agencies and departments, as authorized by law, including those departments that maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records.
h. State Parent Locator Services;
i. Police, parole, and probation records;
j. City directories;
k. The current tribally approved TCSU list of internal resources.

C. Locate steps

Not all resources need to be utilized or all activities will be necessary when taking a locate action. However, it is necessary for the Paternity/NCP Specialist to verify certain information as follows:

a. The Specialist shall confirm the NCP, or when appropriate, the CP's current employer.
b. The Specialist shall perform a postal trace prior to referring a case for process of service.
c. When a financial asset, other than regular income from an employer, is at issue, obtain original certified documentation of the asset.
d. Perform locate only services for other IV-D program.

D. Frequency of locate attempts when unable to locate

1) When resources and activities provided in this Policy and Procedure manual have been taken, the Paternity/NCP Specialist may still be unable to locate a person or their assets.

2) When attempting to locate a person, and that person has not been located, the Paternity/NCP Specialist must periodically review as new information becomes available or at least once a year to verify information is still current.

a. The Specialist must seek new identifying information and documentation from all resources.
b. The Specialist must utilize all locate resources and activities.

3) When locating a person's assets, the Paternity/NCP Specialist need not review locate efforts unless new information is received.

VI. PATERNITY ESTABLISHMENT

The TCSU shall follow applicable tribal law and policy, including the Family Responsibility Act and Civil Due Process.

a. The TCSU Specialist will refer paternity matters to Paternity/NCP Specialist.
b. A paternity interview with the mother of the child will be conducted by the Paternity/NCP Specialist.
c. An affidavit of paternity will be completed and signed by the mother.

A. Voluntary acknowledgement

1) When receiving a request to establish paternity the TCSU shall provide the alleged father with notice of his right to voluntarily acknowledge paternity.

2) The TCSU notice shall send a notice to the alleged father within 20 days of receiving the case assignment and the notice shall contain the following information:

a. Name of the mother and child;
b. That based upon the mother's allegations, the TCSU has found that there is a reasonable possibility that he may be the father;
c. Include copies and instructions of the tribally approved forms for voluntarily acknowledging paternity;
d. Inform the alleged father of the assistance he can receive from the TCSU; and
e. Inform the alleged father that failure to respond to the notice will result in legal action.

3) The TCSU shall provide alleged father assistance in completing voluntary acknowledgments form, including:

a. Reviewing the rights and responsibilities of paternity;
b. The legal timeline for rescinding the voluntary acknowledgement;
c. Ensuring the form is complete and accurate; and
filing of the voluntary acknowledgement form.

4) Under any circumstance, the TCSU shall have 10 days in which to file a voluntary acknowledgment form, or other document with the State of Alaska, or in the case of a referral, provide documentation to the requesting agency, from the date that the form or documentation has been completed by the TCSU.

B. Registration of paternity established by tribal custom

The TCSU may recommend that the Court recognize a paternity that has been established by the tradition or customs of any member tribe of CCTHITA.

a. TCSU shall document that the alleged father knowingly and voluntarily participate in the tradition or custom and that the alleged father's extended family, extended family, or clan supported the tradition or custom.

b. TCSU shall request that the mother and father complete the voluntary acknowledgment form which will be filed with the State of Alaska.
    - If the parents do not wish to voluntarily complete the necessary State of Alaska or other state statistical forms, TCSU shall schedule a hearing with the Court to determine paternity.

C. Genetic testing

Any party may request, and the TCSU shall provide genetic testing, at any time during the paternity establishment process. When paternity has been established by another tribe or state pursuant to its civil due processes and applicable paternity laws, the TCSU is prohibited from providing genetic testing. If the conception of the minor child in the case was the result of forcible rape, involves incest, or for another reason would not be in the

best interest of the child, or when adoption proceedings are pending, the TCSU is not required to proceed with paternity establishment

1) Any party may voluntarily submit to genetic testing.

a. When the parties voluntarily submit to genetic testing, no notice is required and the TCSU shall perform genetic testing immediately.
b. If a parent is deceased genetic testing may be done on next of kin.(kinship draw).

2) Once it has been determined that genetic testing is appropriate, within 10 days the TCSU shall schedule genetic testing for the parties by sending a notice that includes:

a. Names of the parties, including the child;
b. Date, time and location for the genetic testing;
c. Inform the parties of the necessary documentation that must be brought for identification purposes; and
d. Inform the parties that failure to respond to the notice will result in legal action.

3) In a contested case, a request for genetic testing must be supported by a sworn statement from the mother that alleges reasonable facts for the possibility of requisite sexual contact or a statement from the father establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

a. Upon determination of the Court, the TCSU will coordinate an Order for Genetic Testing, signed by the Tribal Judge to collect genetic samples,
b. If the alleged father is found not to be the biological father, the case will be dismissed and the mother will be re-interviewed and the paternity procedure repeated with the newly identified alleged father.

4) TCSU staff will notify both parties of DNA test results in writing within five days of receipt.

5) The TCSU shall maintain a contract for genetic testing with an accredited laboratory at all times and train appropriate staff to perform buttacal-swabs.

a. TCSU may request the mother, the father, or both to repay any genetic testing costs incurred by TCSU.

D. Default judgment order

Before a default judgment is ordered the following process of service must occur:

a. The NCP Specialist or designee has attempted personal service at the potential father's last known address or current employer, at least three times; and
b. The NCP Specialist or designee has mailed the Summons and Petition to the potential father's last known address by certified and regular mail; and
c. The NCP Specialist or designee has published the Summons in a newspaper that is located in the community of the potential father's last known address.

E. Enrollment

The TCSU shall provide all parties that request paternity establishment services, whether by voluntary acknowledgment, traditional or custom, genetic testing or by court action, information on enrolling an eligible Indian child.

1) Any party that makes an inquiring about the paternity services that TCSU provides, submits an application for paternity services, or is an alleged father, shall receive a copy of the basic CCTHITA enrollment package.

2) In conjunction with providing assistance in completing vital statistics documents, the TCSU shall assistant the parent of an Indian child with completing an enrollment application.

a. If the child is not eligible for enrollment in CCTHITA, or one of its member-tribes, the TCSU shall assist a parent of an Indian child by obtaining contact information from a tribe that the child may be eligible for enrollment.

3) When the Court has provided for proof of enrollment as part of a support obligation, the TCSU shall provide 90-days of review and oversight of the required process.

a. TCSU shall provide all the referral and paternity services provided for in this Policy and Procedure manual to the parties during the 90 –day period.
b. After 90-days, TCSU shall file a summary report with the Court.

VII. CHILD SUPPORT ESTABLISHMENT

A. Stipulated Agreements

A child support obligation can be either established by stipulated agreement or through the tribal court process.

1) A stipulated agreement can be done any time prior to the date of the hearing; the parties may enter into a stipulated agreement on the level of child support obligation.

2) The signed voluntary agreement shall be submitted to the CCTHITA Tribal Court for approval and enforcement after the Court approves the agreement, it shall be filed with the Clerk of the Tribal Court with a statement that it shall have the same force as an order issued by the Court. The obligation of the non-custodial parent to pay child support shall commence on the date that the stipulated agreement is filed if there is a prior TANF case the arrears by be calculated. (Family Responsibility Sec. 10.03.003)

B. Determining Support Obligations

Tribal Child Support Schedule Standards for Determining Support Obligations will be used to determine the monthly child support obligation. If the custodian of the children was receiving a TANF grant for the child, child support will be assessed according to the obligor's income and not the grant amount. Completed application for services is required to establish a child support obligation.

1) The purpose of the Tribal Support Schedule Standards for Determining Support Obligations is to:

a. Establish an adequate standard of support for children, subject to the ability of parents to pay;
b. Make support payments equitable by ensuring consistent treatment of individuals in similar circumstances; and
c. Improve the efficiency of the court process by promoting settlements and providing guidance in establishing levels of child support.

2) Determining Child Support Using the Percentage Standard. The TCSU schedule provides for a review of the established formulas every four years to ensure that the TCSU is responsive to children's needs and the earning capacity of non-custodial parents. TCSU shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or the parent's annual imputed income, and any other assets of the parent, and dividing that total by 12. Except as otherwise provided for in TCSU Schedule 1, the percentage of the parent's monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

a. 16% for one child;
b. 23% for two children;
c. 27% for three children;
d. 29% for four children; and
e. 32% for five or more children.
f. Increases 1% for each additional child

C. Determining Income Modified For Expenses

1) In determining a parent's monthly income available for child support TCSU will adjust a parent's gross income, if not already accounted for under another section of the TCSU Schedule, as follows:

a. Adding wages paid to dependent household members.
b. Adding income that meets the criteria in TCSU Schedule 1.02(a) and that the court determines is not reasonably necessary for the growth of the business.
c. Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.
d. Mandatory union or professional dues necessary to maintain current employment or employment in the payer's filed of expertise.
e. Court ordered spousal maintenance to the extent actually paid.
f. Normal business expenses and self-employment taxes for self-employed persons.
g. Reducing gross income based on benefits received by a child under USC 402 (d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 by subtracting one-half of the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit. (clarify credit for current support only not arrears)

2) The burden of proving the legitimacy of any of the above adjustments is on the party claiming or requesting the adjustment.

D. Determining Imputed Income

1) When the income of a parent is less than the parent's earning capacity, or is unknown, TCSU and the court may impute income to the parent at an amount that represents the parent's ability to earn income. Factors that may be considered include:

a. The parent's education, training and recent work experience.
b. Earnings during previous periods.
c. The parent's current physical, emotional and mental health.
d. The availability of work in or near the parent's community.

2) If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the TCSU shall impute to the parent the income that a person would earn by working 20 hours per week based on the minimum wage for the State of Alaska, or the Federal minimum wage under 29 USC 206 (a)(1) if residing in another state
3) The TCSU and the court may impute income to a parent's assets if its finds the parent has ownership or control over any real or personal property, including but not limited to, land, luxury vehicles, life insurance, cash and deposit accounts, stocks and bonds, business interests, allowable worker's compensation, other personal injury awards. The TCSU shall consider:

a. If the parent has diverted income into assets to avoid paying child support and income from the parent's assets; or
b. The income is necessary to maintain the child at the standard of living they would have had if they were living with both parents.
c. Expression of Ordered Support. The support amount shall be expressed as a fixed sum based upon the TCSU Schedule and having taken into consideration the provisions of this chapter and Title 10 that are applicable to the payer's income.

4) Rebuttable presumption. If the respondent contends that the CCTHITA Tribe's Child Support Guidelines are unjust as applied to his or her situation, he or she must establish this in a hearing before the CCTHITA Tribal Court or an administrative proceeding.

E. Determining the child support obligation of a low income payer

1) The court may use a lower percentage amount than is provided in TCSU Schedule to determine the support amount for a payer with a monthly income that is 125% of the poverty guidelines for the State of Alaska, or the Federal level of poverty if residing in another state, if the following apply:

a. The payer's lack of available income is not due to his or her own actions; and
b. The payer is working and providing to their full capacity for all of his or her children.

2) The court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may not be lower than five-percentage points of the corresponding percentage for the total number of children as set out in TCSU Schedule 1.03.

3) When the Court orders an amount of support that is lower than the percentage required under this Schedule, the department shall review the support obligation and the payer's total economic circumstances every 6 months. If there is a substantial change in circumstances, the department shall request a revision of the support obligation.

F. Determining the child support obligation of a high-income payer

The court may use a lower percentage amount than is provided in TCSU Schedule to determine the support amount for a payer with an annual income of $150,000 or more. The percentage shall not exceed the percentage required for the corresponding number children of this Schedule.

a. If the custodial parent's income is 75 percent of the payer's income, this section shall not apply.
b. The court may require payment of the child's expenses, other than the support obligation, based on available income that is greater than $150,000:
    - Birthing expenses.
    - Health care expenses or private insurance.
    - Child care.
    - Unusual expenses for the child's activities.
    - Travel expenses.

G. Expression of ordered support

The support amount shall be expressed as a fixed sum based upon the percentage standards of TCSU Schedule 1.03 and other applicable calculations of TCSU Schedule Chapter 1 and 2.

VIII. DEVIATIONS FROM THE STANDARDS FOR DETERMINING SUPPORT OBLIGATIONS

Deviations from the Tribal Child Support Schedule for Determining Obligations are identified as follows:

A. In-kind support

In-kind support, although consistent with Tlingit and Haida culture and tradition, in-kind services are extremely difficult to monitor and guarantee, particularly as they relate to issues of quantity, quality, and value. In-kind services shall be a set-off against a child support obligation in those exceptional cases where full financial support is not possible. In its order, the Court shall clearly specify in writing, the terms, standards, and requirements for the delivery of in-kind services.

a. In-kind services, resources. Whenever a parent is able to provide appropriate and acceptable in-kind services or resources such as fish, game, firewood, clothing or other basic needs, for the support of the

child(ren), such services or resources may be applied as a set-off against the future months support obligation if authorized by court order.

b. In-kind services, resources from extended family or community members. Whenever extended family or community members are able to provide food, clothing, shelter, or other basic needs for the child(ren), such services or resources may be applied as a set-off against the next months support obligation if authorized by court order.
c. Obtain three quotes of a business/venue that provides the same good or service, from the area that Payer resides/works in and use the average amongst the three quotes.
d. If no quote is available, then request Elder's Panel for recommendation.

B. Serial payer

1) Applicability. This subsection applies only if the additional child support obligation incurred by a payer is the result of a court order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. A payer may not use the provisions of this subsection as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

2) Determination. For a serial-family payer the child support obligation incurred for a marital or non-marital child in a subsequent family as a result of a court order may be determined as follows:

a. Determine the payer's monthly income available for child support under s. TCSU Schedule 1.01 (intro.);
b. Determine the order of the payer's legal obligations for child support by listing them according to the date each obligation is incurred. For a marital child, the legal obligation for child support is incurred on the child's date of birth. For a non-marital child, the legal obligation for child support is incurred on the date of application of service or application for TANF assistance. For a non-marital child in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgement of paternity. For a non-marital maternal child in an intact family, it is incurred on the child's date of birth;
c. Determine the first child support obligation as follows:
    - If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. TCSU Schedule 2.03, the support for that obligation is the monthly amount of that order; or
    - If the payer is in an intact family or is subject to a shared-placement order under s. TCSU Schedule 2.03, the support is determined by multiplying the appropriate percentage under s. TCSU Schedule 1.03 for that number of children by the payer's monthly income available for child support;

d. Adjust the monthly income available for child support by subtracting the support for the first legal obligation under subd. 3. from the payer's monthly income available for child support under subd. 1.;
e. Determine the second child support obligation as follows:
    - If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. TCSU Schedule 2.03, the support for that obligation is the monthly amount of that order; or
    - If the payer is in an intact family or is subject to a shared placement order under s. TCSU Schedule 2.03, the support is determined by multiplying the appropriate percentage under s. TCSU Schedule 1.03 for that number of children by the payer's monthly income available for child support;
f. Adjust the monthly income available for child support a second time by subtracting the support for the second legal obligation determined under subd. 5. from the first adjusted monthly income available for child support determined under subd. 4;
g. Repeat the procedure under subds. 5. and 6. for each additional legal obligation for child support the serial family payer has incurred;
h. Multiply the appropriate percentage under s. TCSU Schedule 1.03 for the number of children subject to the new order by the final adjusted monthly income available for child support determined in either subd. 6. or 7. to determine the new child support obligation.

C. Shared placement

1) The shared-placement formula may be applied when both of the following conditions are met:

a. Both parents have court-ordered periods of placement of at least 30%, or 122 days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.
b. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

2) The child support obligations for parents who meet the requirements of par. (a) May be determined as follows:

a. Child Support is based on each parent's income multiplied by the appropriate percentage standard, multiplied by 150% (household maintenance expenditures for each parent), multiplied by the percentage of time the other parent has with the children and then offsetting each parent's child support obligation against each other to determine child support for the month.

3) It is essential to verify the placement periods prior to negotiating a stipulation or scheduling the case for Tribal Court. Evidence of the placement should be a court order or as an agreement of the parties in writing and submitted to the Tribal Court prior to the hearing.

D. Split-placement Parents

Split-placement parents for determining the child support obligations. For parents who have 2 or more children and each parent has placement of one or more but not all of the children, the child support obligations may be determined as follows:

a. Determine each parent's monthly income available for child support under s. TCSU Schedule 1.03.
b. Multiply each parent's monthly income available for child support by the appropriate percentage under s. TCSU Schedule 1.03 for the number of children placed with the other parent to determine each parent's child support obligation.
c. Offset resulting amounts under par. (b) Against each other. The parent with a greater child support obligation is the split-placement payer.

E. Seasonal or non-recurring income

If the income of either parent is seasonal or non-recurring, the obligation may be set at a lower amount than it otherwise would be, or it may be set on a schedule that varies the amount at different times of the year.

F. Assistance Income

Social Services provided by a Tribe, State or other agency. Whenever the Tribe, State or other agency provide health care, housing, or other basic needs for the child(ren) at no cost or reduced cost, such services may be considered as a basis for setting a lower amount of support than would otherwise be determined.

G. Deviation from Support Obligation

The Court should consider:

a. Age(s) of the child(ren). The obligation shall be set closer to the higher end of the basic support obligation for older children, and closer to the lower end of the basic support obligation for younger children.
b. Number of children in family. The obligation shall be set lower per child the greater the number of children for which the obligation is being paid.

IX. OTHER FAMILY OBLIGATIONS

A. Child Care expenses

The court shall allocate equally between parties the cost of child care expenses unless the court orders otherwise for good cause.

B. Uncovered Health Care Expenses

1) The court shall allocate equally between parties the cost of uncovered health care expenses under $5,000 in a calendar year.

a. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days of receipt of the bill for the health care, payment verification, and if applicable, a health insurance statement indicating what portion of the cost is uncovered.

2) Reasonable uncovered expenses exceeding $5,000 in a calendar year will be allocated based on parties' relative financial circumstances when expenses occur.

C. Unusual expenses for activities of a child

The court shall allocate equally between parties the cost of child care expenses unless the court orders otherwise for good cause.

X. SPECIAL CONSIDERATIONS

A. Incarceration

Past-due support may accumulate while the non-custodial parent is in jail. But unless he/she has other assets, such as property or any income such as wages for a work-release program, it is unlikely that support will be collected while in jail. Support orders may be modified so that payments is deferred or reduced until the non-custodial parent is released.

B. Military

Members of the military are subject to the same wage withholding requirements as other public or private employees. Federal garnishment procedures will be used in most instances. If a service member is not meeting the support obligation, a wage withholding order can be sent to the designated military center. Support order may be reduced or deferred depending upon the non-custodial military deployment status, service length or other circumstances.

C. Bankruptcy

Child support payments cannot be discharged in bankruptcy. This means that a parent who owes child support can not escape this duty by filing for bankruptcy. As of October 1994 bankruptcies do not act as a stay or hold on actions to establish paternity or to establish or modify a child support order.

a. No statute of limitations shall apply to any action to enforce a child support order.

D. Arrears Calculation

Arrears may be requested from the date the application for services was filed.

Arrears are assigned to each custodian based on the following:

a. From the date of the order is issued.
b. Past due support owed to the custodial parent.
c. Up to an additional 10 percent of support payments or such amount as the court orders after notice and hearing shall be withheld each month to compensate for any accrual delinquent payment until the delinquency is satisfied.
d. Calculation of arrears under an existing order requires an affidavit from the custodian listing the monies received directly from the non-custodial parent.
e. If a transfer case has interest calculated on the arrears we will not recognize or collect the interest unless it is set to a judgment.

XI. ENFORCEMENT OF ORDER

The TCSU is responsible for processing all tribal and foreign income withholding orders as outlined in this Policy and Procedure per Section 10.03.006 of the Family Responsibility Codes.

A. Foreign Income Withholding Orders

The TCSU is responsible for processing all tribal and foreign income withholding orders as outlined in this Policy and Procedure per Section 10.03.006 of the Family Responsibility Codes.

B. Delinquent Payments

1) When a payer has fails to make a payment on a order of Child Support for 60-days and has no justification for the failure to make a payment.

2) Notice of violations shall set out the amount of past support owed, the number of days/months past due, and a list of the further actions the payer is subject to if they fail to come into compliance.

a. If the payer is unresponsive, TCSU staff shall send a second notice to the payer and to the attention of the payer's last known employer and known family.
b. In addition to sending a notice, TCSU shall attempt to contact the payer by phone on an additional two occasions prior to taking further action.
c. Legal action may include garnishing of permanent fund and/or native corporations' dividends and liens on assets.
d. Other actions may include Payer required to participate in education and employment services provided by the tribe.

C. Other enforcement tools

In addition to income withholding actions, the TCSU staff shall take any of the following actions as appropriate:

a. Make a referral to the Elders Panel or to the Clan of the payer or child.
b. Notify internal programs of non-custodial delinquency of support obligations.
c. Referring to other state or federal programs.

XII. Income withholding

The TCSU shall request immediate income withholding on all cases. The Standard Federal Income Withholding form must be used when implementing income withholding notices or orders.

A. Request for Income Withholding

1) An income withholding notice or order shall provide notification of the Court ordered amount for:

a. The amount to be withheld for current support.
b. The amount to be withheld for liquidation of past-due support (custodial arrears).
c. Pursuant to tribal law no more than 45% of a payer's income may be withheld for current and past due support.
d. Comply with the Consumer Credit Protection Act (15 U.S.C. 1673 (b) Sec. 303) regarding garnishment of wages.

2) The only basis for contesting an income withholding order issued by the CCTHITA Court is a mistake of fact.

3) The requirement for immediate income withholding may be waived by the Court if the TCSU can demonstrate the following:

a. That there are more effective enforcement actions that will result in payment based upon the payer's history of payment, regular employment, and compliance with Court orders.
b. The parties to the action enter into a stipulation for another payment arrangement and the Court recognizes the stipulation.

4) When income withholding is required the TCSU must use the standard federal income withholding form and complete all sections required on the form.

5) An income withholding order must be prepared and served upon an employer within 7 business days of such order by the Court.

a. For employees' of the Tribe, the income withholding order may be served on the Tribe pursuant to the agreed upon intra-tribal process.
b. For employers that are subject to the jurisdiction of the tribe, the employer will be served by registered certified mail.

6) Income withholding may also include a voluntary agreement that the NCP agrees to have his/her employer to withhold from his/her wages.

B. Employer's Failure to Recognize Income Withholding

The TCSU shall request that an enforcement action, as provided for in this Policy and Procedure or otherwise provided by law, against an employer that fails to comply with an enforcement directive.

1) The TCSU must serve a notice of Court orders to employers or authorized agent of the employer by as provided by law.

a. A notice or order for income withholding may be served by registered certified mail on an employer.
b. The employee has 30 days in which to contest the income-withholding obligation based upon the factors setout in this Policy and Procedure.

2) Disciplinary action. The TCSU is responsible for educating and tracking the activities of Tribal employers and their compliance with TCSU and employee responsibilities.

a. An employer that fails to withhold the amount of income required by a valid income withholding notice or order is liable for all amounts that should have been withheld from the employee, or the employer's agent, by the employer.
b. An employer that discharges or refuses to employee a payer/non-custodial parent or takes disciplinary action against an employee is subject to a fine for that failure.

3) Legal action. A tribal employer that has received notice of its obligation and fails to comply with an order or to respond to the TCSU, shall be subject to the following sanctions:

a. Fines, seizure of accounts or any other action necessary to ensure that valid orders for support obligations, and payment of those obligations, are collected and forwarded to the TCSU.
b. If a tribal employer fails to comply with a notice or order based upon a lack of knowledge or understanding of law or policy, the TCSU shall schedule the appropriate training for the employer.
c. If the above actions are ineffective, staff shall refer the account/matter to the TCSU Program Manager and Attorney for further review and legal action.

4) Contempt of Court. An income withholding order is a legal notice served upon the Tribe a tribal employer. The tribal employer is subject to contempt of court or any other civil remedy available to the tribal court, for failure to comply with any provision of a valid income withholding order.

C. Release from Income Withholding Order

When an income withholding order for child support or arrearages has been satisfied and at the request of the person who paid the support, TCSU will assist the person in obtaining a notice of petition to terminate prior order or modify or release the voluntary agreement.

XIII. MODIFICATION OF SUPPORT ORDER

Any order of child support may be modified upon a claim of substantial changes in circumstances such as, increase or decrease of NCP's yearly income of 15% or more, change in placement of minor, or if its serves in the best interest of the child(ren). Application for modification should be made to the TCSU and then will be presented to Tribal Court.

XIV. COLLECTIONS

The TCSU is responsible for processing all collections of support and other obligations as provided for in this section. All orders of the Tribe shall stipulate that payments will be sent to the TCSU.

A. Collecting payment

Any support payment that is received by a TCSU authorized office shall create a receipt of the payment and post payment into data system.

a. Payments received by a TCSU authorized office shall be posted within three business days.
b. Collections from a Federal Tax Offset (FTO) whether by a state or tribal IV-D program, may only be applied to satisfy support arrearages.

B. Distribution of payments

Payments will be distributed within 3 business day upon posted receipt. Collections will be distributed in the following order within each case:

1) Current support or assigned TANF obligations. Current support must be paid first unless there is an assignment of support to a state or tribal IV-A (TANF) program for current TANF payments.

2) Custodial arrears. Once current support, or the assignment of those support rights to a TANF program that is providing current TANF support, have been paid, arrears due to the custodial parent shall be paid.

3) TANF arrears. If the payments setout above in subsection (1), (2) and (3) have been met, the balance of a collection shall be applied to TANF arrears due the Tribe.

4) If no arrears are due to the Tribe for TANF or to the custodial parent, the TCSU shall apply the remaining balance to TANF arrears due another state or tribal TANF program.

5) Any monies remaining after payments setout above in subsection (1-5) will go to the custodial family.

6) If the obligor has more that one order, distribution shall be as follows:

a. Current support on each case. If there is not enough to pay all current support owing, each case shall be paid according to its share of the total current support owing. Combine all current support amounts; divide the individual case amount by the total and apply the resulting percentage of the amount collected to that case. Do this for each case with the current support obligation.
b. Arrears on each case. If there is money left over after all current support has been paid, apply it to the arrears owing on all cases. Combine all arrears and divide the individual case arrears by the total arrears. Multiply the arrears collected by the resulting percentage for each case. Within each case, apply the money first to any arrears owed the custodian and next to TANF.

7) Any case which has been referred by another entity, will have all monies forwarded to that jurisdiction. The program will account for funds using the above formulas but all monies will be sent to the referring jurisdiction for actual distribution.

8) TCSU will contact the requesting state or tribal IV-D program for further direction on distribution of collections.

C. Reconciling of Payments and Distributions

1) Collection of support payments and the distribution of those payments will be reconciled monthly by TCSU,

2) A notice of payments and distributions shall be sent to a parent that is owed a support obligation or that is paying a support obligation annually;

a. The TCSU shall maintain an open case for support obligation purposes until all custodial and IV-A obligations are satisfied.

D. Request of Information on Payment and Distribution

Records shall be kept for request for information on the collection or distribution of support, including:

a. A custodial or non-custodial parent may request copies, and the TCSU shall provide copies of financial records
b. Other than the required TCSU annual notice, request for copies shall be charged at a cost of $5.00 per request, unless the recipient is receiving IV-A or Medicaid
c. The date of the request, the requesting party, and the type of information that is requested.
d. Evidence provided to prove that the requesting party has the authority to receive confidential TCSU financial information.

E. Refunds

1) The TCSU shall be responsible for identifying errors that require refunds of support obligations improperly withheld and termination of support obligations once they have been satisfied.

2) Within 10 days of receiving information that may result in an improper withhold of support obligations, the TCSU shall confirm or deny the information.

a. If the TCSU has made an error and improperly withheld support obligations, those monies shall be promptly returned.
b. Upon a finding that the TCSU properly withheld support obligations, all monies that were being held shall promptly be released.

XV. TERMINATION OF SUPPORT

A. Case Closure

1) Case closure occurs when the child support obligation has been fully met and the child(ren) has reached the age of majority or has been emancipated.

- The TCSU will conduct a full review of the case and provide written documentation to both parties of the closure.

2) Upon complete payment of a current support obligation due to a custodial parent, the TCSU shall provide the following review services:

a. Provide a review of the status of the case, and supporting court action if necessary, that results in a reasonable payment toward custodial arrears.
b. Promptly close a case when all support and arrearages have been satisfied.

3) Non-compliance federal regulations require 60 days before a case is closed due to incomplete or insufficient information.

B. Withdraw from Services

1) The custodial parent may complete a withdrawal from services application at any time, with the understanding that:

a. If there is any child support owed to TANF, TCSU will continue to collect on behalf of TANF;
b. If any other party applied for services, the case will not be closed unless he or she withdrawals from services and;
c. The children have not emancipated, the child support order is still in effect. Even though TCSU is not collecting on the case, child support is still owed.

2) Upon withdrawal from services a written letter will be issued to both parties notifying them of the discontinuation of services from the Custodial Parent and any implications from this withdrawal.

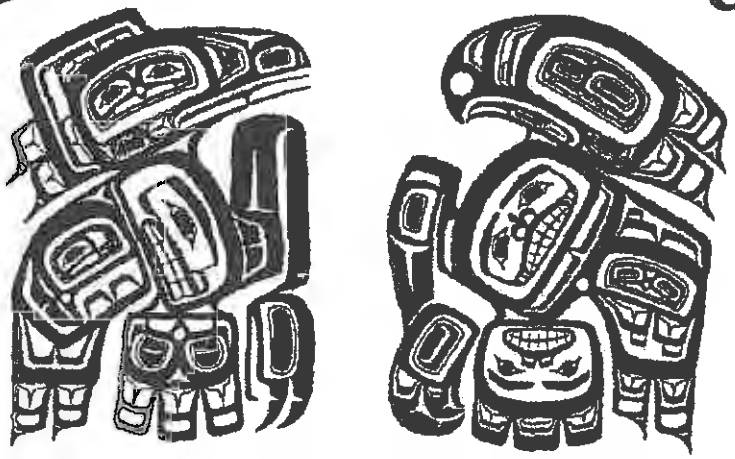
C. Emancipation of Minor Child

A child will be considered emancipated when one of the following occurs:

a. The child reaches the age of 18;
b. The child marries;
c. The child enlists in the military;
d. The child is living on his/her own and is self-supporting;
e. An order of emancipation has been entered.
f. Exception if the child is developmentally disabled will be deemed for support.

Central Council

Tlingit and Haida



Indian Tribes of Alaska

CCTHITA EMPLOYMENT & TRAINING
TRIBAL CHILD SUPPORT UNIT (TCSU)
Tribal Child Support Schedule
Standards for Determining Support Obligations

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CCTHITA EMPLOYMENT & TRAINING
TRIBAL CHILD SUPPORT UNIT (TCSU)
Tribal Child Support Schedule
Standards for Determining Support Obligations

TCSU 1.01 Introduction.

(1) AUTHORITY AND PURPOSE.
This Child Support Schedule (herein "Schedule") is made under the policy-making authority of the Tribe through its Employment and Training Department for establishing a standard to be used in determining child support obligations. Pursuant to Title 10, the Family Responsibility Act, this Schedule is binding on the IV-D Program and the Court.

(2) APPLICABILITY. This chapter applies to any petition for a temporary or final order for child support of a marital or nonmarital child in an action affecting a family under Title 10, the Family Responsibility Act.

(3) REBUTTABLE PRESUMPTION. The basic child support obligations using the application of the formulas established in the Schedule in any proceeding to establish or modify support are presumptive and considered the correct amount unless the presumptive amount is rebutted by a preponderance of the evidence and is supported by written findings on the record of the court that the application of the guidelines would be unjust or inappropriate in a particular case in accordance with the factors set out in the TCSU Schedule.

(4) EFFECT OF RULE CHANGE. A modification of any provision in this chapter shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under Title 10. A modification of any provision in this chapter shall apply to orders established after the effective date of the modification. The Schedule provides for review of the established formulas every four years to ensure that the TCSU is responsive to children's needs and the earning capacity of non-custodial parents.

TCSU 1.02 Definitions. In this chapter:

(1) "Acknowledgement of paternity" means both the mother and the father voluntarily signed and filed a tribal approved form or a comparable form from another tribe or state, and the time to appeal the acknowledgement has expired.

(2) "Adjusted monthly income available for child support" means the monthly income at which the child support obligation is determined for serial family payers, which is the payer's monthly income available for child support less the amount of any existing legal obligation for child support.

(3) "Basic support costs" means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

(4) "Child" means the natural or adopted child of the payer.

(5) "Child support" or "child support obligation" means an obligation to support a marital child either in an intact family or as a result of a court order, or an obligation to support the payer's nonmarital child as a result of a court order, adoption, subsequent marriage or an acknowledgement of paternity.

(6) "Court" means the Court or Magistrate for the Central Council Tlingit and Haida Indian Tribes of Alaska.

(7) "Dependent household member" means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.

(8) "Equivalent care" means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight.

(9) "Federal dependency exemption" means the deduction allowed in computing taxable income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of 19 or who is a student.

(10) "Gross income."

__(a) "Gross income" means all of the following:

1. Salary, wages, bonuses, and commissions.
2. Interest and investment income.
3. Social Security disability and old-age insurance benefits under 42 USC 401 to 433.
4. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income. The portion of worker's compensation awards not intended to replace income is excluded from gross income in establishing a child support order but may be subject to assignment for the collection of past due child support.
5. Unemployment insurance.
6. Gifts and prizes greater than or equal to $1000 in value; $250 if the payer is more than three months behind in making regular support payments.
7. The State of Alaska Permanent Fund.
8. Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.
9. Military allowances and veterans benefits.
10. Undistributed income due a member of a corporation or partner of a business, or a self-employed parent which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, less a reasonable allowance for economic depreciation on assets, as determined under federal income tax laws and regulations, and reasonable operating capital.
11. All other income, whether taxable or not, unless exempted by the Tribe under applicable Federal law,

(b) except that gross income does not include any of the following:

1. Child support.
2. Child support obligations incurred as a result of a Court Order for child(ren) in a subsequent family.
3. Foster care payments received from a tribe or a state.
4. Public assistance benefits received from a tribe or a state, except that childcare subsidy payments shall be considered income to a childcare provider.
5. Food stamps under 7 USC 2011 to 2036.
6. Supplemental Security Income under 42 USC 1381 to 1383f and comparable state supplemental payments.
7. Payments made for social services or any other public assistance benefits.
8. Child support for children living with the parent, calculated by using the formula provided by this schedule.

(11) "Health Care expenses" means and includes medical, dental, vision and mental health counseling expenses.

(12) "Imputed income" means a base amount on which to determine a support obligation equivalent to part-time employment (30 hours per week) at the current Federal minimum wage. Income may also be imputed based upon the actual earning capacity of a payer based on the parent's education, training and recent work experience, earnings during previous periods, and the availability of work in or near the parent's community.

(13) "Intact family" means a family in which the child and the payer reside in the same household, and the payer shares his or her income directly with the child, and has a legal obligation to support the child(ren).

(14) "Marital child" means a child born to a husband and wife during a marriage.

(15) "Monthly income available for child support" means the monthly income at which the child support obligation is determined, which is calculated by adding the parent's annual gross income; or the parent's annual imputed income based on earning capacity.

(16) "Parent" means the natural or adoptive parent of the child.

(17) "Payee" means the person who is the recipient of child support as a result of a court order.

(18) "Payer" means the parent who incurs a legal obligation for child support as a result of a court order.

(19) "Program" means the CCTHITA Tribal Child Support IV-D Program or the CCTHITA Tribal Child Support Unit.

(20) "Serial family payer" means a payer with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a court order.

(21) "Shared-placement payer" means a parent who has a court-ordered period of placement of at least 30%, (122 days of the year) and is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child, and is determined to owe a greater support amount than the other parent under this Schedule and Title 10.

(22) "Split-placement payer" means a payer who has two or more children and who has physical placement of one or more but not all of the children.

(23) "Standard" or "percentage standard" means the percentage of income standard under the TCSU schedule Chapter 1, which, when multiplied by the payer's monthly income available for child support results in the payer's child support obligation.

(24) "Title 10" means CCTHITA Statute, Title 10, and the Family Responsibility Act.

(25) "Tribe" means the Central Council of Tlingit and Haida Indian Tribe of Alaska unless used in its lower-case format or in connection with "tribal and state" Courts or IV-D Programs.

(26) "Variable costs" means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of childcare, tuition, a child's special needs, and other activities that involve substantial cost.

(27) "Worksheet" means the Program's Support Obligation standard worksheet, or other supporting worksheets developed by the Program.

TCSU 1.03 Support Orders.

(1) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD. The court shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or the parent's annual imputed income, and any other assets of the parent, and dividing that total by 12. This may be done by completing the Program's worksheet, although use of the worksheet is not required. Except as otherwise provided for in TCSU 1, the percentage of the parent's monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

(a) 13% for one child;
(b) 18% for two children;
(c) 22% for three children;
(d) 25% for four children; and
(e) 27% for five or more children.

Increases 1% for each additional child up to a maximum of 35%.

(2) DETERMINING INCOME MODIFIED FOR EXPENSES.

In determining a parent's monthly income available for child support under TCSU 1.03 (1) the court may adjust a parent's gross income, if not already accounted for under another section of this chapter, as follows:

(a) Adding income that meets the criteria in TCSU 1.02(10)(a) and that the court determines is not reasonably necessary for the growth of the business.

(b) Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

(c) Reducing gross income for mandatory union or professional dues necessary to maintain current employment or employment in the payer's filed of expertise.

(d) Reducing gross income for Court ordered spousal maintenance to the extent actually paid.

(e) Reducing gross income for normal business expenses and self-employment taxes for self-employed persons.

(f) Reducing gross income based on benefits received by a child under 42 USC 402 (d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 by subtracting one-half of the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.

The burden of proving the legitimacy of any of the above adjustments is on the party claiming or requesting the adjustment.

(3) DETERMINING IMPUTED INCOME.

(a) When the income of a parent is less than the parent's earning capacity, or is unknown, the court may impute income to the parent at an amount that represents the parent's ability to earn income.

Factors that may be considered include:

1. The Parent's education, training and recent work experience.
2. Earnings during previous periods.
3. The parent's current physical, emotional and mental health.
4. The availability of work in or near the parent's community.

(b) If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court shall impute to the parent the income that a person would earn by working 30 hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1).

(4) DETERMINING INCOME IMPUTED FROM ASSETS.

The court may impute income to a parent's assets if the court finds the parent has ownership or control over any real or personal property, including but not limited to, land, luxury vehicles, life insurance, cash and deposit accounts, stocks and bonds, business interests, allowable worker's compensation, and other personal injury awards. The court shall consider:

1. If the parent has diverted income into assets to avoid paying child support or
2. The income is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(5) FIXED AMOUNT. All child support calculations shall be expressed as a fixed sum, rounded to the nearest dollar, i.e., .50 = $1.00 and .49 = .00) based upon the TCSU Schedule and having taken into consideration the provisions of this chapter and Title 10 that are applicable to the payer's income.

(6) DEVIATION FROM PERCENTAGE STANDARD.

(a) The court may order another percentage for determining the amount of a support order, if, after considering the factors allowed by the Schedule and Title 10, and the Court finds by the greater weight of evidence that use of the percentage standard is unfair to the child or to any of the parties.

(b) If the court modifies the percentage for determining the amount of a support order, the Court shall state in writing the amount of support that would have been required, the amount of the deviation and the reasons for the deviation.

TCSU 1.04 Determining Child Support Obligations in Special Circumstances.

(1) SERIAL FAMILY PAYER.

(a) *Applicability.* This subsection applies only if the additional child support obligation incurred by a payer is the result of a court order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. A payer may not use the provisions of this subsection as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) *Determination.* For a serial-family payer the child support obligation incurred for a marital or nonmarital child in a subsequent family as a result of a court order may be determined as follows:

1. Determine the payer's monthly income available for child support under TCSU 1.03.
2. Determine the order of the payer's legal obligations for child support by listing them according to the date each obligation is incurred.
   a. For a marital child, the legal obligation for child support is incurred on the child's date of birth.
   b. For a nonmarital child, the legal obligation for child support is incurred on the date of the court order.

c. For a nonmarital child in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgement of paternity.

d. For a nonmarital maternal child in an intact family, it is incurred on the child's date of birth;

3. Determine the first child support obligation as follows:

a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order the support for that obligation is the monthly amount of that order; or

b. If the payer is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage under TCSU 1.03 for that number of children by the payer's monthly income available for child support;

4. Adjust the monthly income available for child support by subtracting the support for the first legal obligation from the payer's monthly income available for child support under subd. 1;

5. Determine the second child support obligation as follows:

a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or

b. If the payer is in an intact family or is subject to a shared placement order, the support is determined by multiplying the appropriate percentage under TCSU 1.03 for that number of children by the payer's monthly income available for child support;

6. Adjust the monthly income available for child support a second time by subtracting the support for the second legal obligation determined under subd. 5 from the first adjusted monthly income available for child support under subd. 4;

7. Repeat the procedure under 5. and 6. for each additional legal obligation for child support the serial family payer has incurred;

8. Multiply the appropriate percentage under TCSU 1.03 for the number of children subject to the new order by the final adjusted monthly income available for child support determined in either 6. or 7. to determine the new child support obligation.

Note: The following example shows how the child support obligation is determined for a serial-family payer whose additional child support obligation has been incurred for a subsequent family.

Assumptions:

Parent A's current monthly income available for child support is $3,000.

Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent A is subject to an existing support order of $390 per month.

Parent A remarries and has two children, one born in 1996 and the other in 1997, and remains an intact family.

Parent A was adjudicated father in 1998 for a child born in 1995. Child support needs to be established for this child.

Order of parent A's legal obligation for child support.

First legal obligation:	one child (1990) (divorce)
Second legal obligation:	2 children (1996 and 1997) (intact family)
Third legal obligation:	one child (1998) paternity

Calculation:

Parent A's current monthly income available for child support $3000

The first legal obligation is subject to An existing monthly support order (divorce)	$390
Adjust the monthly income available For child support	$3000 - 390
First adjusted monthly income available for child support	$2610
Determine support for the second legal obligation (intact family)	$2610 x .18
	$470
Adjust the first adjusted monthly Income available for child support	$2610
	- 470
	$2140
Determine support for the third legal obligation	x.13
	$278

(2) SHARED PLACEMENT.

(a) Applicability. The shared-placement formula may be applied when both of the following conditions are met:

1. Both parents have court-ordered periods of placement of at least 30%, or 122 days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The

combined periods of placement for both parents shall equal 100%.

2. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the above requirements may be determined as follows:

1. Determine each parent's monthly income available for child support under s. TCSU 1.03. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time, the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

2. Multiply each parent's monthly income available for child support by the appropriate percentage standard under TCSU 1.03.

3. Multiply each amount determined under subd. 2. by 150%. The 150% accounts for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items.

4. Multiply the amount determined for each parent under subd. 3. By the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.

5. Offset resulting amounts under subd. 4. against each other. The parent with a greater child support obligation is the shared-placement payer. The shared-placement payer shall pay the lesser of the amount determined under this subd. or the amount determined using the appropriate percentage standard under TCSU 1.03.

6. In addition to the child support obligation determined under subd. 5, the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the program or the program's designee, except as incorporated in the fixed sum expressed in a child support order.

Note: The following example shows how to calculate the child support obligations of shared-placement parents.

Number of children: Two

Parent A: $2000 monthly income available for child support. Court ordered placement of the children for 219 days a year or 60%.

Parent B: $3,000 monthly income available for child support. Court ordered placement of the children for 146 days a year or 40%.

	Parent A	Parent B
Income:	$ 2000	$ 3000
% std 2 children	$2000 x 18% = 360	$ 3000 x 18% = 540
Amt x 150%	360 x 150% = $540	540 x 150 % = 810
Amt x Time	540 x 40% = 216	810 x 60% = 486
Offset	$486 – 216 = $270	

The court also assigns responsibility for payment of the child's variable costs. Manner of payment between the parents or from a parent to a third party provider, except as incorporated in the fixed sum or percentage expressed child support order.

(3) SPLIT PLACEMENT

(a) Determining the child support obligations of split placement parents. For parents who have 2 or more children and each parent has placement of one or more but not all of the children, the child support obligations may be determined as follows:

1. Determine each parent's monthly income available for child support under s. TCSU 1.03.

2. Multiply each parent's monthly income available for child support by the appropriate percentage under s. TCSU 1.03 for the number of children placed with the other parent to determine each parent's child support obligation.

3. Offset resulting amounts against each other. The parent with a greater child support obligation is the split-placement payer.

Note: The following example shows how to calculate the amount of child support for split-placement parents:

Assumptions:
Parent A and B have 3 children

Parent A has placement of one child and Parent B has placement of 2 children.

Parent A's monthly income available for child support is $3,000.

Parent B's monthly income available for child support is $1,500.

Calculation:
Parent A's child support obligation is:
$3000 x .13 = $390

Parent B's child support obligation is:
$1500 x .18 = $270

Parent A owes Parent B $390 – 270 = $120

(4) IN KIND SUPPORT.

(a) Consistent with Tlingit and Haida culture, custom and tradition, in-kind services or goods to support a child or the family are common. The Court may permit the use of in-kind services to satisfy current child support obligations. Parties must obtain prior Court approval before in-kind support can be used to satisfy a child support obligation. All Tribal Support Orders allowing non-cash payments shall also state the specific dollar amount of the support obligation and describe the types of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order.

(b) *Exception.* Non-cash payments will not be permitted to satisfy assigned support obligations.

(c) *Extended Family.* Whenever extended family are able to provide food, clothing, shelter, or other basic needs for the child(ren), such services or resources may be applied as a set-off against the child support obligation if prior authorization by court order is provided.

(5) SEASONAL INCOME.

(a) Seasonal or non-recurring income. If the income of either parent is seasonal or non-recurring, the obligation may be set on a schedule that varies the amount at different times of the year.

(6) LOW INCOME PAYER.

(a) The court may use a lower percentage amount than is provided in this Schedule to determine the support amount for a payer with a monthly income that is 125% of the poverty guidelines for the State of Alaska, or the Federal level of poverty if residing in another state, if the following apply:

1. The payer's lack of available income is not due to his or her own actions; and
2. The payer is working and providing to their full capacity for all of his or her children.

(b) *Minimum Child Support Payment.* The court may set an order at an amount appropriate for the payer's total economic circumstances. The minimum child support amount that may be ordered is $50 per month.

(c) When the Court orders an amount of support that is lower than the percentage required under this Schedule, the program shall review the support obligation and the payer's total economic circumstances at least once a year. If there is a substantial change in circumstances, the program shall request a revision of the support obligation.

(7) HIGH INCOME PAYER

(a) The court may use a lower percentage amount than is provided in this Schedule to determine the support amount for a payer with an annual income of $100,000 or more. The reduced percentage shall not exceed the total sum for support based upon the percentage required for the corresponding number children of this Schedule.

(b) If the custodial parent's income is 75 percent of the payer's income, this section shall not apply.

8) OTHER FAMILIY OBLIGATIONS.

(a) *Health Insurance.* The court shall address health care insurance in the order for support. The Court may order one or both parents to enroll a child on a health insurance policy or each parent to contribute a certain amount towards the child's health care. TCSU will not collect or distribute health care funds.

(b) *Child care expenses.* Both parents have an obligation to contribute to work related day care and special child rearing expenses. The Court may enter a child support order to include a duty to provide for day care expenses. TCSU will not collect or distribute child care expenses.

(c) *Uncovered Health Care Expenses.* The court shall allocate equally between parties the cost of uncovered health care expenses under $5,000 in a calendar year.

1. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days of receipt of the bill for the health care, payment verification, and if applicable, a health insurance statement indicating what portion of the cost is uncovered.

2. Reasonable uncovered health care expenses exceeding $5,000 in a calendar year will be allocated based on parties' relative financial circumstances when expenses occur.

(c) *Unusual Expenses for Activities of the Child.* The court shall allocate equally between parties the cost of unusual expenses, i.e., extra curricular activities, etc., unless the court orders otherwise for good cause.

(9) SPECIAL CONSIDERATIONS

(a) *Incarceration.* Past-due support may accumulate while the non-custodial parent is in jail. But unless he/she has other assets, such as property or any income such as wages for work-release, it is unlikely that support will be collected while in jail. Support orders may be modified so that payments are deferred or reduced until the non-custodial parent is released.

(b) *Military.* Members of the military are subject to the same wage withholding requirements as other public or private employees. Federal garnishment procedures will be used in most instances. If a service member is not meeting the support obligation, a wage withholding order can be sent to the designated military center. Support orders may be reduced or court proceedings stayed based upon the **Servicemembers Civil Relief Act (SCRA).**

(c) *Bankruptcy.* Child support payments cannot be discharged in bankruptcy. This means that a parent who owes child support cannot escape this duty by filing for bankruptcy. As of October 1994 bankruptcies do not act as a stay or hold on actions to establish paternity or to establish or modify a child support order.

(10) ESTABLISHMENT OF PRE-ORDER ARREARS.

a) Up to an additional 20% of support payments or such amount as the court orders after notice and hearing shall be withheld each month to compensate for any accrual delinquent payments until the delinquency is satisfied.

(b) Calculation of arrears under an existing order requires an affidavit from the custodian listing the monies received directly from the non-custodial parent.

(c) If child support is initiated by the state or Tribe because public assistance is being provided on behalf of the child for whom support is sought or because the child is in state foster care, TCSU may establish arrears beginning as of the first month in which state or Tribal assistance was provided on behalf of the child or the first month of state placement, but not to exceed six years before the service on the obligor of the notice and finding of financial responsibility, or a paternity complaint, whichever is the earliest; TCSU will establish arrears up to the effective date of the ongoing support obligation for the child, including any arrears owed to the custodial parent if the state or Tribal assistance or state placement terminates for any period of time before the service of the notice and finding of financial responsibility.

(d) If child support is initiated by the custodial parent, TCSU will establish arrears beginning as of the date the custodial parent most recently applied for TCSU services; TCSU will establish arrears up to the effective date of the ongoing support obligation, including any arrears owed to the state or Tribe because the child received public assistance or was placed in state custody or state foster care after the most recent application by the custodial parent for services; however, any arrears owed to the state or Tribe may not exceed six years before the service on the obligor of the Notice and Finding of Financial Responsibility, a Notice of Paternity and Financial Responsibility, or a paternity complaint, whichever is earliest.

(e) If the custodial parent withdraws from TCSU services before the service on the obligor of the Notice and Finding of Financial Responsibility, TCSU will

1. Complete the establishment of arrears if the child for whom support is sought has received public assistance or was in state foster care or state placement for any period of time to be covered by the order; however, in the order TCSU will not establish arrears that exceed the total public assistance grant amount, or
    1. terminate its action to establish arrears if the child for whom support is sought has not received public assistance or been in state foster care

or state placement for any period of time to be covered under the order.

(f) When calculating arrears owed to the custodial parent, TCSU will give credit for direct payments made by or on behalf of the obligor directly to the custodial parent in the form of cash, a money order, a check made payable to the custodial parent when evidence is presented to the Court that shows a likelihood, in the determination of the Court, that the direct payment was actually made to the custodial parent for the period for which arrears are being calculated and that the direct payment was intended by both parents to be a direct payment of child support.

(g) When giving credit for direct or in-kind services, TCSU will give credit only up to the amount of the support that is being charged for the period for which support is established. If the direct payments or in-kind contributions exceed the amount of the support established, the excess payments or contributions will be treated as voluntary payments for which TCSU will not give credit unless a parent provides clear and convincing evidence that both parents intended the payment or contributions as future child support. TCSU will not give credit for the excess payments or contributions as future child support for any period of time in which the child received public assistance, or was in state foster care or state placement.

(11.) *Termination of Support.*

(a) *Case Closure.* Case closure occurs when the child support obligation has been fully met and the child has reached the age of majority or has been emancipated.

(b) *Emancipation.* A child will be considered emancipated when one of the following occurs:

(1) The child reaches the age of 18 and is not enrolled full time in high school; or

(2) The child marries;

(3) The child enlists in the military;

(4) An order of emancipation has been entered.

(c) *Withdrawal from Services.* The custodial parent may complete a withdrawal from services application at any time, with the understanding that if there is any child support owed to TANF, TCSU will continue to collect on behalf of TANF and that if any other party applied for services, the case will not be closed unless he or she withdraws from services. If the child has not emancipated, the child support order is still in effect and child support will continue to accrue, even though TCSU is not collecting. Upon withdrawal from services a written letter will be issued to both parties notifying them of the discontinuation of services of the custodial parent and any implications from this withdrawal.

(12.) MODIFICATION OF SUPPORT OBLIGATIONS:

(a) The future child support obligation of a NCP may be modified upon entry of an order by the CCTHITA Tribal Court upon a showing of substantial change of circumstances, including such circumstances as:

(1) an increase or decrease in the NCP's yearly income of 15% or more;

(2) a change in placement of minor from the CP to the NCP; or a

(3) substantial change in circumstance as determined by the Court.

(b) Either party may petition for modification pursuant to the schedule or application for modification can be made to the TCSU. TCSU will then prepare a Motion to Modify the Child Support Obligation based upon the above criteria and submit to the Court for approval or denial.

(13) INCOME WITHHOLDING ORDERS:

(a) In determining the amount of an Income Withholding Order, TCSU will calculate the monthly amount by adding the following amounts;

(1) monthly ongoing support obligation; and

(2) 20% of the current support amount to be applied towards arrears; or

(b) When there is no monthly current support obligation due, TCSU will collect arrears in an amount equal to the current support obligation, or as otherwise ordered by the court.

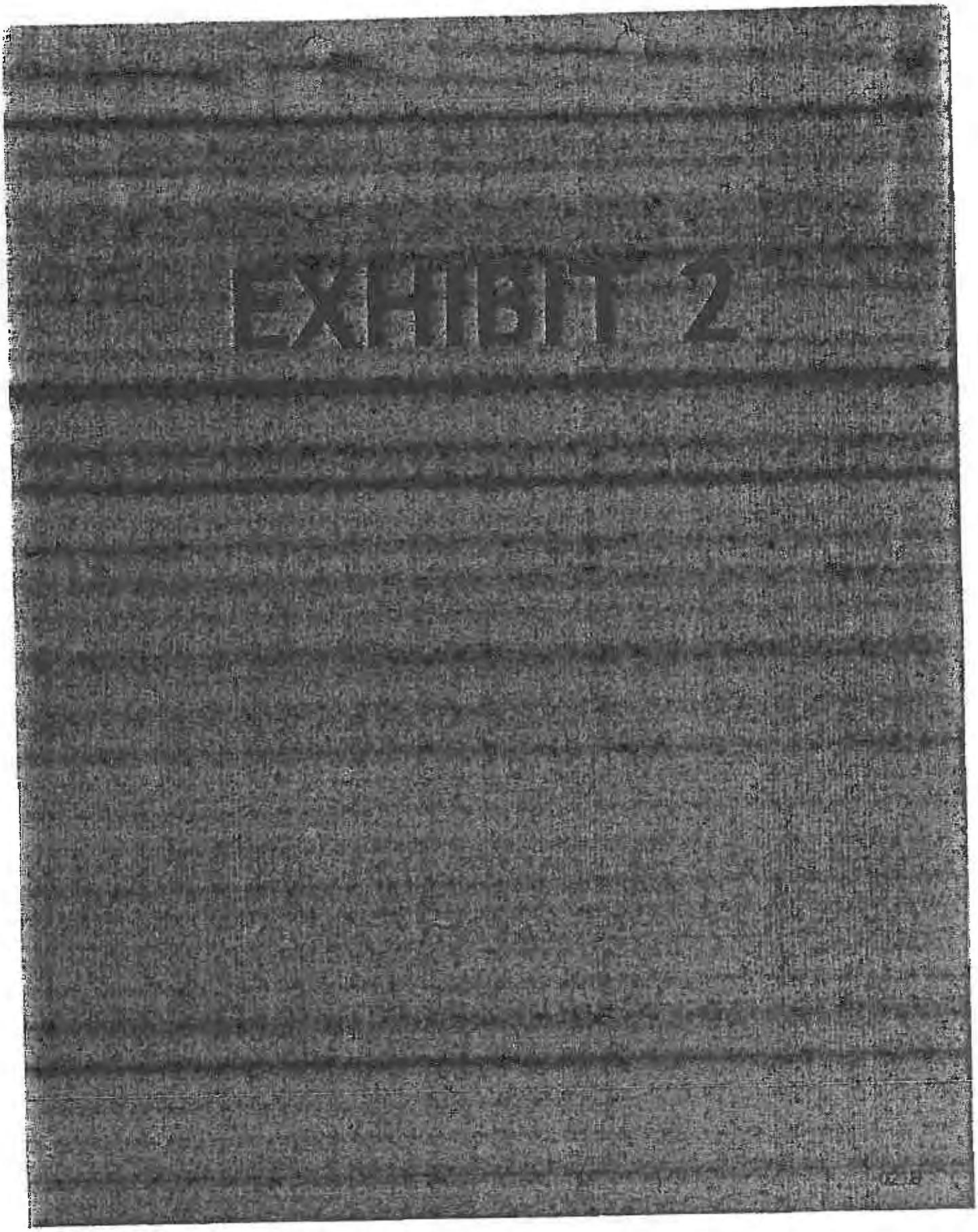


EXHIBIT 2

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

MAR 2 5 2007

The Honorable Edward K. Thomas
President
Central Council Tlingit and
Haida Indian Tribes, Alaska
320 W. Willoughby Avenue
Juneau, Alaska 99801

Dear President Thomas:

I am pleased to announce the approval of your application for full funding of your Tribal Child Support Enforcement (IV-D) Program. Your decision to participate demonstrates your commitment to the development of a successful program that will link effectively with the nationwide Child Support Enforcement System.

Within the next few days, you will receive a Notice of Grant Award, establishing the amount of your full Tribal IV-D program grant, the period during which funds may be spent and the terms and conditions that apply. Payment contact information will be provided as well.

If you require technical assistance, you may contact Lionel J. Adams, Director of the Office of Special Staffs, Office of Child Support Enforcement, by telephone at (202) 260-1527 or by email at ljadams@acf.hhs.gov; or Linda Gillett, OCSE Regional Program Manager, at the ACF Regional Office in Seattle, Washington, by telephone at (206) 615-2564 or by email at lgillett@acf.hhs.gov .

I wish you every success as you operate your full Tribal IV-D program. Welcome to Child Support Enforcement.

Sincerely,

Wade F. Horn, Ph.D.
Assistant Secretary
for Children and Families

cc: Linda Gillett, Regional Program Manager

0217

FILED
STATE OF ALASKA
FIRST DISTRICT
10 JUL 16 PM 3:47
CLERK, TRIAL COURTS
BY _____ DEPUTY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *parens patriae* on behalf of its members

Plaintiff,

v.

STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity of Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, in his official capacity of Director of the Alaska Child Support Services Division

Defendants.

Case no. 1JU-10-376 CI

AFFIDAVIT OF COUNSEL FOR THE TRIBAL CHILD SUPPORT UNIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Jessie Archibald, state the following upon oath under penalty of perjury:

1. I have been employed as the staff attorney for the Central Council of Tlingit and Haida Indian Tribes of Alaska's ("the Tribe's") Tribal Child Support Unit (TCSU) since January 2007.
2. I have reviewed documents pertaining to the history of the TCSU and am familiar with its planning-phase development.
3. I have also reviewed the case files for the cases discussed in this affidavit and am familiar with the facts of those cases.
4. The Tribe began planning its IV-D program in 1999. The Tribe's mission in establishing a child support program was to ensure that Tlingit and Haida children receive the emotional and financial support of both their parents, to promote self-

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sufficiency and strengthen families by delivering culturally appropriate child support services.

5. In 2004, the federal Office of Child Support Enforcement (OCSE) awarded the Tribe a two-year start up grant to begin the planning phase for its Tribal IV-D child support program.

6. Since at least 2005, the State and the Tribe have been engaged in discussions concerning the coordination of the State and Tribal IV-D programs.

7. After a multi-year startup period, the Tribe officially opened the doors on its Tribal Child Support Unit on March 28, 2007 — the first IV-D tribal program established in Alaska.

8. Pursuant to its IV-D plan, the Tribe provides direct child support services to families, including establishment of paternity, establishment, modification, and enforcement of support orders, location of non-custodial parents, and referral of cases to other agencies as appropriate.

9. Tribal child support orders are issued by the Tribal court pursuant to the Tribe's Constitution, Tribal Code and the *Tribal Child Support Unit Schedule*, all of which are part of the plan approved by the OCSE. The *Tribal Child Support Schedule* is similar to the State's 90.3 child support rule and provides a quantitative method for calculating child support obligations.

10. The Tribe employs a full-time magistrate and child support clerk to handle child support and paternity cases at the tribal court.

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11. The TCSU staff includes a full-time manager, a full-time staff attorney, an administrative office leader, and four full-time case specialists, including one outreach worker in Ketchikan.

12. The TCSU opens a child support case when a parent applies for services or a custodial parent applies for Temporary Assistance to Needy Families (TANF) and assigns his/her rights to child support to the Tribe.

13. Prior to the existence of the TCSU, TANF child support applications were referred to CSSD for CSSD to collect child support reimbursement from the non-custodial parent, pursuant to the custodial parents' assignment of child support rights. After TCSU opened, TANF child support applications are now referred to TCSU for TCSU to reimburse the Tribe per the assignment of child support rights, a process parallel to the State's Temporary Assistance Program (ATAP).

14. The TCSU is required to accept all applications for child support services, regardless of the membership status of the applicant. Once received, applications are screened to determine whether TCSU can open a case or whether the application should be referred to another agency.

15. In 2007 and 2008, the Tribe and CSSD reached a verbal agreement to transfer several batches of cases involving custodial parents who applied for and received TANF and assigned child support rights to the Tribe.

16. Since the initial large bulk transfers, TCSU and CSSD agreed to a process whereby TANF case transfers are done on a case by case basis.

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17. Per this agreement, the process begins when TCSU receives a TANF child support application. TCSU then makes an inquiry to CSSD about whether there is an existing state case.

18. If there is an existing state support order, CSSD will send a copy of a transmittal form and a copy of the child support order to TCSU. TCSU then registers the order in the Tribal court, seeking an order of recognition for enforcement of the CSSD order.

19. If there is no existing case, TCSU will start the process of establishing a child support order using the judicial process outlined in its grant plan. Once a new order is established, the Tribal court sends a copy of the order to CSSD to enter into its state case registry.

20. To date, the State has transferred more than 600 TANF child support cases to the Tribe. Since 2007, the Tribal court has entered approximately 126 child support orders.

21. CSSD will provide all necessary services to the Tribe to enforce the TANF cases it has transferred. However, CSSD will not recognize the Tribe's jurisdiction to issue its own support orders and refuses to provide any services to enforce tribal court child support orders.

22. Certain enforcement services against non-paying non-custodial parents in Alaska are only available through CSSD, including single-action services such as garnishment of the Alaska Permanent Fund Dividend (PFD), or general enforcement services including garnishment of unemployment benefits, license suspensions, and bank garnishments.

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23. Requests for services can be made through standardized forms or less formal methods of communication.

24. In many cases, custodial parents owed back support and the Tribe owed TANF support payments cannot obtain relief because of CSSD's refusal to provide services when the underlying order is based upon a Tribal court order. Some examples follow.

25. TCSU requests enforcement services from CSSD by sending a standardized Uniform Interstate Family Support Act (UIFSA) transmittal form together with supporting documents.

26. On November 19, 2009, the TCSU sent a request to CSSD pursuant to UIFSA requesting services, including garnishment of unemployment benefits, to enforce the child support order in Tribal court case number 09-CS-0120, *TCSU ex rel. Antoinette Kadake v. Kevin Martin*. CSSD has not acknowledged or responded to this request.

27. The Order of Child Support in *Kadake v. Martin*, indicates that the child is a member of or is eligible for enrollment with the Tribe, the Petitioner is a member of or is eligible for enrollment with the Tribe, and the Respondent is a member of or is eligible for enrollment with the Tribe who voluntarily participated in a Court hearing and did not file a written objection to jurisdiction.

28. Since the filing of this lawsuit, the TCSU has sent additional requests for services to CSSD, which have gone unanswered.

29. On January 14, 2010, the TCSU sent a request to CSSD pursuant to UIFSA requesting services, including income withholding, to enforce the child support

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order in Tribal court case number 08-CS-0041, *TCSU ex rel. Lindsey Fredrickon v. Edward Jackson, Jr.* CSSD has not acknowledged or responded to this request.

30. The Orders of Child Support in *Fredrickson v. Jackson*, indicate that the child is a member of or is eligible for enrollment with the Tribe, the Petitioner is an enrolled member of the Tribe, and the Respondent is an enrolled member of the Tribe.

31. On March 5, 2010, the TCSU sent a request to CSSD pursuant to UIFSA requesting services to enforce the child support order in Tribal court case number 07-CS-0011, *TCSU ex rel. Avena Aceveda v. Douglas Chilton.* CSSD has not acknowledged or responded to this request.

32. The Orders of Child Support and Paternity in *Aceveda v. Chilton*, indicate that the child is a member of or is eligible for enrollment with the Tribe, the Petitioner is an enrolled member of the Tribe, and the Respondent is an enrolled member of the Tribe.

33. In 2008, TCSU took all necessary steps required by CSSD to request PFD intercept services to garnish non-custodial parents' PFD funds for arrears owed to either the custodial parent or to the Tribe as TANF reimbursement.

34. CSSD processed the requests when the underlying order was a state order that had been transferred to the Tribe for enforcement; CSSD refused the requests for PFD garnishment when the underlying order was a Tribal court order.

35. Denial of the PFD requests in 2008 caused financial harm to custodial families owed child support and to the Tribe in cases where the PFD would have reimbursed tribal TANF.

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36. In 2009, TCSU made another request for PFD garnishment. This request was initially refused. A short-term agreement was later worked out with the Attorney General's office to garnish the PFD in a number of cases, but the agreement specifically refused to recognize the Tribal court's jurisdiction.

37. There is no agreement in place for 2010 PFD garnishment services.

38. In order to garnish IRS tax refunds payable to non-paying non-custodial parents, one of the 50 states must make the request to the IRS. Tribal child support agencies seeking these funds must contract with one of the 50 states. To date, the State of Alaska has refused to contract with the Tribe to intercept IRS tax refunds to enforce Tribal child support orders.

39. TCSU has had to turn to the State of Washington to negotiate a contract for IRS tax refund intercepts. The federal Office of Child Support Enforcement verbally agreed to the arrangement and it is anticipated that the final contract will be completed in time for the 2010 tax year.

40. Interstate services through the State of Alaska are critical to the tribal IV-D program — if TCSU is unable to enforce the Tribe's orders through CSSD, tribal children will not receive essential financial support to meet their basic needs.

41. The vast majority of families receiving assistance through the TCSU are low-income families for whom monthly support can mean the difference between affording or not affording rent, food, clothing and other basic necessities.

42. Some families have abandoned TCSU when it became apparent that the State will not to provide services to families when the underlying order is based upon a Tribal child support order.

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43. The funding for the Tribal IV-D program depends on the total number of open cases. TCSU will not be able to maintain its current staff level if parents continue to withdraw from services due to CSSD's refusal to honor Tribal court orders.

44. CSSD's actions in refusing to recognize or enforce Tribal court orders not only directly harms impoverished families, but has a severe impact on the Tribe's ability to obtain reimbursements for its Tribal TANF program.

45. There are also communication difficulties with CSSD.

46. Although CSSD and TCSU staff regularly confer with each other to try and resolve case-specific issues, CSSD response time to TCSU requests varies greatly. There are instances of CSSD responding immediately to TCSU requests for information, while there are other instances of CSSD completely ignoring requests from TCSU.

47. In the years leading up to the lawsuit, CSSD's refusal to cooperate and/or recognize the Tribe's jurisdiction has also resulted in conflicting orders being created for families.

48. In Tribal Court Docket No. 07-CS-0064, *TCSU ex rel. Shauna Kaye Jensen v. Joe Louis Morato-Felipe*, the TCSU opened a file on 11/28/2007 based upon the custodial parent's receipt of TANF benefits and assignment of child support rights to the Tribe. Per TCSU policy, TCSU made an inquiry to CSSD as to whether there was an existing case, and CSSD responded that there was no existing case. On 12/18/07, TCSU informed CSSD employee John Doogan that the Tribe would be proceeding to establish a new child support order. On 1/29/08, TCSU informed CSSD that it would be sending a copy of the Tribal child support order

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to CSSD case worker Verola via fax. On 3/4/08 the Tribal court entered an order of child support in case no. 07-CS-0064. In April 2009, TCSU learned that CSSD opened a case for the same parties on 1/14/08, that CSSD entered its own child support order on 4/28/08, that the non-custodial parent was paying child support through CSSD, and that CSSD was paying current support to the custodial parent when she was receiving Tribal TANF despite her assignment of child support rights to the Tribe. On 6/13/08, TCSU made a request to garnish the non-custodial parent's PFD funds for arrears owed to the Tribe. CSSD denied the request for PFD garnishment. In October 2009, TCSU sent an inter-agency request requesting that CSSD collect TANF arrears owed to the Tribe. CSSD denied the request stating that CSSD has already collected arrears for the custodial family for the same period. All relevant documents are included in the Certification of Holly Handler filed in Support of Plaintiff's Motion for Summary Judgment (hereinafter "Handler Cert."), filed and served herewith, at Exhibit 7.

49. In May 2008, the Tribal court established paternity and support for G.W., born 7/3/07 in case 08-CS-0038, *TCSU ex rel. Josephine Werth vs. Kenneth Werth and Donnelly Charboneau.* The Tribe sent a copy of the support order to CSSD on 10/22/08 and a copy of the paternity order to CSSD on 11/5/08. In this case, Kenneth Werth was married to the mother, Josephine Werth, and was the child's presumed father, but Mrs. Werth alleged Donnelly J. Charboneau to be the father. Mr. Werth filed a paternity statement declaring under penalty of perjury that he was the father of G.W. All parties were served with notice and participated in the paternity hearing. Based on the testimony and evidence presented, Kenneth

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Werth was determined to be the father. On 8/7/09, CSSD established a conflicting support order for the same child, naming Donnelly J. Charboneau as the child's father and obligor. All relevant documents are included in Handler Cert., Exhibit 8.

50. In case 08-CS-0008, *TCSU ex rel. Jilliane G. Gregorioff v. Jason R. Amundson*, the Tribal court issued a child support order on behalf of M.A. In 2009, the family moved to Anchorage, and began receiving TANF benefits from Cook Inlet Tribal Council (Cook Inlet). TCSU communicated with Cook Inlet about having support payments directed to Cook Inlet, but Cook Inlet indicated they could not accept payments without going through CSSD. TCSU staff emailed CSSD on December 16, 2009, asking for a formal transfer request so that TCSU could forward payments to Cook Inlet. CSSD did not respond to this email. On March 12, 2009, CSSD emailed TCSU about the case, but only to inquire whether there was an open case for the family and what the periods of TANF payments were. To date, CSSD has not made the necessary transfer request, so Cook Inlet has not received any TANF reimbursement payments. All relevant documents are included in Handler Cert., Exhibit 9 and Exhibit 2, page 13.

51. Every other state the TCSU has dealt with, including Washington, Louisiana and California, has cooperated fully with our agency, providing enforcement and other services to our families; the only state the TCSU has dealt with that will not process and enforce our orders is Alaska.

7-14-2010
Date

Jessie Archibald
Jessie Archibald

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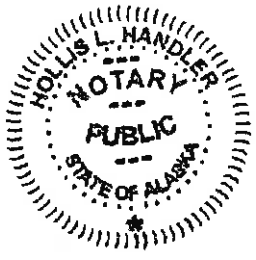
Sworn to and subscribed before me at Juneau Alaska, this the 14th day of July, 2010.



NOTARY PUBLIC
My commission expires: 1-1-2011

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *parens patriae* on behalf of its members,

Plaintiff,

v.

STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity of Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, in his official capacity of Director of the Alaska Child Support Services Division,

Defendants.

Case No. 1JU-10-376 CI

DEFENDANT STATE OF ALASKA'S MEMORANDUM IN SUPPORT OF ITS CROSS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO CCTHITA'S MOTION FOR SUMMARY JUDGMENT

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CCTHITA RESOURCES

OTHER

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The State of Alaska, Patrick S. Galvin, Commissioner of the Alaska Department of Revenue, and John Mallonee, Director of the Alaska Child Support Services Division (CSSD), cross move for summary judgment and oppose the Central Council of Tlingit and Haida Indian Tribe's of Alaska's (CCTHITA) motion for summary judgment.

INTRODUCTION

CCTHITA asks this Court to recognize its adjudicatory authority to issue child support orders. Tribal jurisdiction questions are seldom easy or self-evident.[1] CCTHITA nevertheless would reduce the jurisdictional question to one element: membership or eligibility for membership of an Indian child.[2] Governing Federal Indian law recognizes no such black-and-white jurisdictional "analysis."

Nor does the fact that tribes in other States have child support jurisdiction answer whether federally recognized tribes in Alaska do. Alaska's historical backdrop is different. Alaska tribes "were never in the hostile and isolated position of many tribes in other States," no Indian wars existed here, and there was never an attempt to

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[1] *See, e.g., Philip Morris USA v. King Mountain Tobacco Co.*, 569 F.3d 932, 937 (9th Cir. 2009) ("Tribal jurisdiction cases are not easily encapsulated, nor do they lend themselves to simplified analysis").

[2] And apparently, in practice, CCTHITA's claims of jurisdiction go much further. CCTHITA has also asserted jurisdiction in at least one case where no one, not even the child, is a member of CCTHITA. *See* Exh. 10 at 2 (mother, father, and child were all nonmembers of the Tribe). And CCTHITA asserts jurisdiction over "[a]ll persons, property and activities within the Tribe's territory," which extends to all of Southeast Alaska. Art. I, Constitution of the CCTHITA; CCTHITA Statute sec. 06.01.020(A); State's Exh. 1 at 43 and 89.

isolate Alaska tribes on reservations.[3] Based on this history, as recently as 1992 the Alaska Supreme Court held that "Congress intended that most Alaska Native groups not be treated as sovereign."[4] But in 1994, Congress passed the Tribal List Act, and the Alaska Supreme Court, in deference, acknowledged that roughly 230 federally recognized tribes in Alaska are "sovereign bodies."[5] In 1998, the United States Supreme Court held that Alaskan tribes do not inhabit Indian country[6] and therefore are without territorial reach. In 1999, the Alaska Supreme Court held in *John v. Baker I*, a sharply divided 3-2 decision, that despite being landless, tribes had authority to decide private "custody disputes involving tribal members."[7]

Against this legal backdrop, the CCTHITA asks this court to declare broad tribal jurisdiction to issue, modify, and enforce child support orders. To do this, the Court must freeze time in 1999. That is, it could not consider any legal developments since then, including the United States Supreme Court decisions that have unequivocally limited the authority of tribes over nonmembers. And it would have to expand *John v. Baker I* to mean that tribal jurisdiction in *all* cases (including child

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3 *Native Village of Stevens v. Alaska Mgmt. & Planning*, 757 P.2d 32, 36 n.6 (Alaska 1988).

4 *In re F.P.*, 843 P.2d 1214, 1215 (Alaska 1992), *overruled by, In re C.R.H.*, 29 P.3d 849 (Alaska 2001).

5 *John v. Baker*, 982 P.2d 738, 750 (Alaska 1999) (*John v. Baker I*).

6 *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 532 (1998) (Tribe's ANCSA lands do not satisfy Indian Country requirements).

7 *John v. Baker I*, 982 P.2d at 765.

support cases) is determined solely by whether an Indian child is involved.[8] However, since 1999, the Alaska Supreme Court has been understandably reluctant to expand *John v. Baker I* beyond its narrow facts,[9] leaving Alaska tribes' off-reservation authority to issue and enforce tribal child support orders unresolved.

In addition, CCTHITA asks the court to find that it is authorized to issue and enforce child support orders because of two statutes, one state and one federal. CCTHITA first posits that a 2009 definitional amendment ("state" is now defined to include "Indian tribe") to Alaska's uniform law affecting child support, UIFSA, authorizes the Tribe to enter and enforce tribal child support orders. But as we will show below, UIFSA does not grant jurisdiction to either the state or to any tribe. It simply provides procedural rules to ensure enforcement of valid child support orders with minimal difficulty when an obligee parent moves to a new location outside the issuing state (a fact pattern not present when the obligor and obligee all live in Alaska).

CCTHITA then claims that Title IV-D of the Social Security Act, the federal statute which allowed it to establish the first tribal IV-D program in Alaska,[10]

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[8] Indeed, if this were the case, the odd result would be that CCTHITA could exercise more jurisdiction outside of Indian country, than lower 48 tribes could exercise within Indian country. *See Plains Commerce Bank v. Long Family Land and Cattle Co.*, 128 S. Ct. 2709, 2719-20 (2008) (requiring application of *Montana* exceptions to allow jurisdiction over nonmembers); *id.* at 2718 (tribal authority "centers on land held by tribe and on tribal members within the reservation).

[9] *John v. Baker*, 125 P.3d 323, 325, 326 and 327 n.15 (Alaska 2005) (*John v. Baker III*) (declining to extend *John v. Baker I* to child support, notwithstanding "voluminous" briefing on the question).

[10] CCTHITA's Exh. 2 (Letter from Horn, DHSS, to Thomas, President, CCTHITA (Mar. 28, 2007)). After approval of its program, CCTHITA began issuing child support

actually answers the question of whether it has jurisdiction to issue child support orders [11] But the statute is silent on this point, and the Office of Child Support refused to comment on jurisdiction in Alaska during development of the IV-D program regulations, saying that was a matter for "applicable Federal law."[12] In fact, to a large extent, this lawsuit is the result of the Office of Child Support's decision to fund first and leave Alaska to sort out the jurisdictional details later.

In sorting out the jurisdiction details here regarding the tribe's authority to issue and enforce child support orders, two questions must be answered. First, does a tribe have inherent jurisdiction to issue child support orders off-reservation where important State interests are implicated? Second, even assuming the Tribe can issue child support orders off-reservation, does its jurisdiction reach to individuals, including obligors, who are not members of a tribe? The answer to each of these questions is a definitive no and the State is entitled to summary judgment on CCTHITA's claims.

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orders against both members and nonmembers. *See, e.g.* CCTHITA's Exhs. 5-10. CSSD is also a "IV-D" child support agency.

[11] *See* Complaint at ¶¶ 40-50 (IV-D program; right to services); *see also* CCTHITA's Motion for Summary Judgment at 2-6; *id.* at 32 ("We are faced with a state agency refusing to recognize the fundamental validity of a federally-funded tribal program and actively thwarting its operation."); *but see* State's Exh. 1 at 1 (CCTHITA's Response to Request for Admission 1) ("plaintiff has not claimed that the federal government's approval of a child support plan for its IV-D tribal child support agency confers child support jurisdiction on the TCSU or the Tribe").

[12] 69 Fed. Reg. 16638, 16648-49 (2004) (Final Rule; Tribal Child Support Enforcement) (State Exh. 37 at 2, 12-13).

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ANALYSIS

I. The special considerations that caused Congress to enact ICWA do not apply to child support.

CCTHITA's case rests in large part on the extension of ICWA (custody) principles to the child support context. CCTHITA relies heavily on the Alaska Supreme Court case of *John v. Baker I*, which recognized off-reservation jurisdiction, but only based on the premise that *custody* proceedings are "at the core of sovereignty."[13] While ICWA and custody decisions in general are directly and closely related to core tribal interests; child support is not. For this and other reasons, *John v. Baker I* cannot alone decide this case.

Below is a short overview demonstrating the different goals and purposes between child support and ICWA "child custody proceedings."[14]

A. ICWA derives from concern about state court placement of Indian children.

The Indian Child Welfare Act arose from a Congressional recognition that state courts were unable to make adequate determinations about an Indian child's best interests in custody proceedings.[15] Indian children were being removed from their natural parents by nontribal government authorities, and at an alarming rate.[16] The problem was so widespread that Congress intervened and passed ICWA in 1978.[17] The

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13 *John v. Baker I*, 982 P.2d at 758.

14 *See* 25 U.S.C. § 1903 (defining "child custody proceedings").

15 *In re Marriage of Skillen*, 956 P.2d 1, 10 (Mont. 1998).

16 *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 34 (1989).

17 25 U.S.C. §§ 1901-1923.

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U.S. Supreme Court describes the "most important" provisions as those "setting forth minimum standards for the placement of Indian children by state courts and providing procedural safeguards to insure that parental rights are protected."[18] For actions arising on a reservation, Congress gave exclusive jurisdiction to the tribes.[19] In actions arising off-reservation, tribes had "concurrent jurisdiction."[20]

B. Child support derives from national social welfare concerns.

Unlike custody decisions under ICWA, child support has never been about Tribes or Indian children in specific. The requirement (imposed through the Title IV-D funding program) that states implement UIFSA indicates that child support payments are a matter of national, not just state, interest.[21] While it is beyond the scope of this motion to exhaustively outline the development of child support, at least a brief history is provided below.

The beginnings of child support legislation as we know it today can be traced to the 1935 Aid for Families with Dependent Children (AFDC) program. That program originally funneled money to relatives of children whose parents had died. In the aftermath of World War II, American nuclear families became more fragmented, and the number of noncustodial parents with delinquent child support obligations

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18 *Holyfield*, 490 U.S. at 56 (Stevens, J., Kennedy, J., Rehnquist, J., dissenting on other grounds).

19 25 U.S.C. § 1911(a); *Holyfield*, 490 U.S. at 42.

20 25 U.S.C. § 1911(b); *Holyfield*, 490 U.S. at 60 (Stevens, J., Kennedy, J., Rehnquist, J., dissenting on other grounds).

21 UIFSA, Prefatory Note, Background (1996) (UIFSA is "valuable social policy"; based on prior federal legislation designed to impact state child support law).

increased. Custodial parents who were not collecting support began collecting welfare. The Government's social welfare program began imposing enormous costs on the nation. To address the increasing social costs, in 1975 Congress created Title IV-D of the Social Security Program. Title IV-D's purposes were twofold: "to cut the cost of welfare and to give incentives to the state to go after delinquent fathers."[22] Pursuant to Title IV-D, states were required to establish so-called "IV-D agencies."[23]

Since it was originally passed in 1975, Title IV-D has undergone a series of amendments. The most recent, significant amendment was called the Personal Responsibility and Work Opportunity Act of 1996.[24] PRWORA has been described as the "most significant federal legislation in the area of child support."[25] It ended the AFDC program and replaced it with Temporary Assistance to Needy Families (TANF). It also made other "sweeping changes," such as

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[22] Nancy Rank, Notes, *Beyond Jurisprudential Midrash: Toward a Human Solution to Title IV-D Child Support Enforcement Problems Across Indian Country Borders*, 33 Ariz. L. Rev. 337, 340-41 (1991); *see also* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 1.02 (2010) ("primary goal" was "to reduce the federal cost of the AFDC program by sharpening enforcement of support obligations").

[23] *See generally* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 1.02 (2010). In Title IV-D cases, the child support enforcement agency enforces child support orders using federally appropriated funds under Title IV-D of the Social Security Act (42 U.S.C. § 651 - 669b). Because Title IV-D cases are child support cases in which the federal government has an interest, they must be serviced according to federal rules and regulations. *Essentials for Attorneys in Child Support Enforcement: Handbook* 10 (3d ed. 2009).

[24] Public Law 104-193, 110 Stat. 2105 (1996).

[25] Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 1.02 (2010).

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> expanding paternity establishment procedures, establishing new federal and state registries for support orders and new hires, enhancing interstate enforcement by requiring all states to adopt the Uniform Interstate Family Support Act (UIFSA), expanding the use of the Federal Parent Locator Service (FPLS), and requiring states to enact tougher enforcement measures such as authorizing the placement of liens on occupational and professional licenses.[26]

Persons receiving TANF (welfare) benefits were required to assign their rights to due-but-uncollected child support payments to the government, and when the money was collected, the government was reimbursed.

In 1996, the Title IV-D program was expanded to include Indian tribes, which were given startup funding to create capacity to operate a child support program for their obligee members. Once these tribes showed they had met federal financial, administrative, and capacity requirements, they were certified as tribal IV-D agencies. CCTHITA is the first tribal program in Alaska to meet the federal certification requirements. At least one other Alaska tribe is in the startup stages of a Tribal IV-D program. The other 227 federally recognized tribes in Alaska (which do not participate in the Title IV-D federal startup program) are subject to no standards whatsoever.

As the Alaska Supreme Court described "child support," it has nothing to do with Alaska Native specific considerations. Child support "is the contribution to a child's maintenance required of both parents" and "[t]he amount of support a child is entitled to receive from a particular parent is determined by that parent's ability to

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[26] *Id.*

provide for the child."[27] This definition accurately identifies what child support is: a debt between two parents. That debt is not Native or non-Native. It is simply a debt. Collection of the debt is subject to regulation through a comprehensive state program responding in part to governing federal rules.

The financial concerns listed in the CCTHITA's Complaint fall short of articulating anything uniquely "tribal." CCTHITA's Complaint does not allege any administrative lapses or inequities in the State-run and -operated child support program. That is, this lawsuit does not arise because of any state failures. It also does not arise out of any tribal-specific concerns—tribal members are subject to the same child support rules as non-tribal members. Unlike ICWA, state courts have never been accused of applying child support rules in an unfair or discriminatory manner. And CSSD is not accused of making disparate efforts in its collection efforts depending on whether an obligor is Native or non-Native.

Now, up to 229 federally recognized tribes seek to operate separate child support programs (or to simply start issuing orders, with or without a program, and with or without any governing standards) involving precisely the same people that are subject to state child support enforcement efforts solely because an Alaska Native child is involved.[28] Unlike ICWA, child support does not stem from any uniquely tribal interests. Any claim to "inherent" jurisdiction to manage debt (child support) -- through

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[27] Alaska R. Civ. P. 90.3 commentary I(B).

[28] The State has already received at least one order from a tribe *ordering* the State of Alaska to issue a child support payment check to the tribe itself. State's Exh. 12.

a program that arose out of the national welfare program and that necessarily impacts state and nonmember interests -- is highly suspect.[29]

C. Tribal IV-D programs sprung from a concern about states being unable to enforce child support orders on reservations.

The 1996 PRWORA amendments provided that a tribe could be eligible to become a IV-D agency.[30] In 2000, the Federal Department of Health and Human Services published a Notice of Proposed Rulemaking, with a Final Rule being issued in 2004 governing the direct funding of tribal support programs.[31]

The impetus for allowing tribes to operate IV-D programs was to address a jurisdictional gap: in the lower 48 states, the states' authority was "limited or non-existent" within tribal territory.[32] "Consequently, States [were] limited in their ability to provide IV-D services on Tribal lands and to establish paternity and establish and enforce child support orders and Indian families have had difficulty getting IV-D services from State IV-D programs."[33] So, the tribal IV-D program was created primarily to prevent noncustodial parents from avoiding their child support obligations by retreating to Indian Country where state child support orders could not be enforced.

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29 *See Montana v. United States*, 450 U.S. 544, 564 (1981) (recognizing inherent power to determine tribal memberships, to regulate "domestic relations among members," and to prescribe rules of inheritance).

30 42 U.S.C. § 655(f).

31 45 C.F.R. Part 309.

32 69 Fed. Reg. 16638 (2004) (State Exh. 37 at 2); *see, e.g., Howe v. Ellenbecker*, 774 F. Supp. 1224, 1228 and 1232 n.5 (D. S.D. 1991) (state attempts to enforce state child support orders on reservations unsuccessful because of jurisdictional issues).

33 69 Fed. Reg. 16638 (State Exh. 37 at 2).

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However, this jurisdictional disconnect never existed in Alaska because Alaska has virtually no Indian country.[34] Alaska child support orders could be, and are, enforced statewide.[35]

D. *John v. Baker III* rejected the idea that child support and custody were linked.

The Alaska Supreme Court has already rejected the argument that jurisdiction over custody determines jurisdiction over child support. *John I* is not "implicit" recognition of child support jurisdiction. In *John III*, Ms. John argued that the Court in *John I* had "implicitly conceded that the courts of Alaska Native villages have jurisdiction to issue child support orders."[36] The Court disagreed, noting that it had only addressed jurisdiction to adjudicate child custody in *John I* and had made "no mention of child support."[37]

Whether a link *might* exist between custody and support is irrelevant to the jurisdictional question. For example, when inter-state custody and child support are at issue, the respective custody and child support jurisdiction may be split after application of relevant rules such as the Uniform Child Custody Jurisdiction Act, the

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[34] 43 U.S.C. § 1618(a) (2009) (revoking all Alaska Native reservations with exception of Annette Island Reserve); *Native Village of Venetie*, 522 U.S. at 524 (*quoting* 43 U.S.C. §§ 1603, 1618(a)) (recognizing ANCSA's revocation of reservations and extinguishment of all aboriginal claims). "Indian country" is defined as (a) land within Indian reservations, (b) 'dependent Indian communities,' and (c) Indian allotments under Indian title. 18 U.S.C. § 1151.

[35] *See* AS 25.27.020(a)(1) (CSSD duty to obtain, enforce and administer child support orders in the state); AS 25.27.020(a)(3)(CSSD duty to administer UIFSA).

[36] *John v. Baker III*, 125 P.3d at 326.

[37] *John v. Baker III*, 125 P.3d at 326.

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Parental Kidnapping Prevention Act, and the Uniform Interstate Family Support Act.[38] This case, too, presents a jurisdictional question which must be analyzed under relevant Indian law principles, and which cannot be decided based on "intuitively satisfying solutions."[39] Courts have repeatedly rejected policy arguments as a legitimate basis to resolve complex jurisdictional questions of Indian law.[40]

E. Summary.

In summary, child support developed as a broad, national social welfare program. Unlike ICWA, child support programs do not spring directly or indirectly from anything particular to tribes or tribal jurisdiction. The mere fact that an Alaska Native child is involved does not establish jurisdiction. And the primary reason for recognizing Tribal IV-D agencies has no application in Alaska where jurisdictional gaps are non-existent.

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38 *See, e.g., Straight v. Straight*, 195 S.W.3d 461, 467 (Mo. Ct. App. 2006) (noting cases where custody and support split between different jurisdictions).

39 *Id.*

40 *See, e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 128 S. Ct. 2709, 2726 (2008) ("bedrock principles" of tribal jurisdiction do "not vary depending on the desirability of a particular regulation"); *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 113, 128 (2005) (refusing to rule based on the dissent's argument that tribal economic development, tribal self-sufficiency and strong tribal government interests were at stake); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978) (noting problem of lawlessness on reservations, but rejecting tribal jurisdiction in criminal proceedings in part because "these are considerations for Congress to weigh").

II. Neither the Title IV-D funding mechanism nor UIFSA establish tribal child support jurisdiction.

A. Because the tribal Title IV-D program is a funding mechanism that does not create tribal jurisdiction, the State is entitled to summary judgment on the second and third causes of action.

Congress has plenary authority to define the limits of tribal jurisdiction.[41] While Congress did explicitly provide for tribal jurisdiction in child custody proceedings under ICWA,[42] it has not done so for child support in Title IV-D. Unlike ICWA, Title IV-D is merely a funding mechanism.[43] Title IV-D does not determine the subject matter jurisdiction of individual tribes to issue child support orders—much less recognize any rights whatsoever to operate off-reservation. The State is entitled to summary judgment on the second and third causes of action.

As noted above, in the lower 48 states, the states' authority was "limited or non-existent" within tribal territory, and the IV-D program was created to address this jurisdictional loophole.[44] While the purpose of the tribal IV-D program was to facilitate the enforcement of child support orders within Indian Country, Congress did *not* confer jurisdiction on tribes through Title IV-D. Rather, Congress recognized that only those child support orders that are "issued by a court of competent jurisdiction"

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[41] *See, e.g.*, William C. Canby, *American Indian Law in a Nutshell* 100 (5th ed. 2009).

[42] *See* 25 U.S.C. §§ 1901-1923.

[43] 42 U.S.C. § 655(f) (funding for tribal child support enforcement IV-D program); *see also* 42 U.S.C. § 651 (authorization of appropriations); 42 U.S.C. § 655 (payments to states); 42 U.S.C. § 658a (incentive payments to states); 45 C.F.R. § 309.1(a) and (b) ("direct grants to Indian Tribes"; eligibility requirements).

[44] *See* section I.C. *supra*.

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are enforceable in other states.[45] That is, child support orders governed by the Title IV-D program (tribal or otherwise) have to be issued by jurisdictions that have "the legal authority to take actions in child support matters."[46] Thus, IV-D requires pre-existing jurisdiction; it does not create it.

Ignoring Title IV-D's underlying jurisdictional requirement, the CCTHITA rests its Title IV-D argument on two regulations, 45 C.F.R. § 302.36(a)(2) and 45 C.F.R. 303.7(c)(7)(iii)-(iv).[47] These regulations only set a responding state's responsibilities generally, and do not determine a tribe's subject matter jurisdiction. The tribe must already have a "population *subject to the jurisdiction* of the Tribal court."[48]

This requirement of underlying jurisdiction is specifically recognized in the Final Rule on the tribal IV-D regulations. The Final Rule acknowledged that Title IV-D status does not confer jurisdiction, and found that

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[45] 42 U.S.C. § 654(9)(C) (state child support plan must provide for state cooperation "in securing compliance by a non-custodial parent . . . with an order issued by a court of competent jurisdiction"); *see also* 45 C.F.R. § 309.05 (child support order is an order "issued by a court of competent jurisdiction").

[46] 69 Fed. Reg. 16648 (cmt. 2 on § 309.05) (State Exh. 37 at 12). The legal authority of a tribe over matters is determined by federal case law. *Plains Commerce*, 128 S. Ct. 2709, 2716 (2008); *Nat'l Farmers Union Ins. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985).

[47] Complaint at ¶¶ 21, 42, 47, 48. Section 302.36(a)(2) requires that "[t]he State plan shall provide that the . . . [t]he State will extend the full range of services available under its IV-D plan to all Tribal IV-D programs, including promptly opening a case where appropriate." ¶ Section 303.7(c)(7)(iii)-(iv) governs the responding IV-D agency's necessary services in interstate cases.

[48] 45 C.F.R. § 309.65(a)(1) (emphasis added) (requiring tribe's proposed plan to include the jurisdictional statement).

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> it is not appropriate or necessary to define "Tribe" in terms of the limits of Tribal jurisdiction. The regulatory definition of "Tribe" is appropriately related to Federal recognition of governmental entities eligible for Federal funds. *Such definition is not intended to have any effect on the exercise of Tribal or State jurisdiction.*[49]

The Final Rule also found that "it is not appropriate or necessary in this regulation to define the territorial limits of a Tribe's authority" because this is "*more appropriately determined* by Tribal law, the jurisdiction of the Tribe's courts or administrative processes and *by applicable federal law*, not by child support enforcement regulations."[50] Thus, the jurisdiction of tribal courts is independent of the tribal IV-D program, and "without proper jurisdiction, a tribunal cannot proceed to establish, enforce, or modify a support order or determine paternity."[51] Where a tribe does not have jurisdiction" (such as here) then "the proper action" is "to refer the case to a State or another Tribe" that does.[52]

The tribal IV-D program's recognition that not all tribes will have jurisdiction over child support orders is not unique. The Full Faith and Credit for Child

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[49] 69 Fed. Reg. 16648 (cmt. 6 on § 309.05) (emphasis added) (State Exh. 37 at12).

[50] 69 Fed. Reg. 16648-49 (cmt. 7 on § 309.05) (State Exh. 37 at 12-13); *see also* 69 Fed. Reg. 16648 (cmt. 6 on § 309.05) (the "definition [of 'Tribe'] is not intended to have any effect on the exercise of Tribal or State jurisdiction") (State Exh. 37 at 12).

[51] 69 Fed. Reg. 16655 (cmt. 1 on § 309.70) (State Exh. 37 at 19).

[52] 69 Fed. Reg. 16655 (cmt. 1 on § 309.75) (State Exh. 37 at 19); *accord* 69 Fed. Reg. 16653 (cmt. 10 on § 309.55; if "no jurisdiction, the State can refer the applicant to an agency in the appropriate jurisdiction"; "there may be circumstances under which the only appropriate service [for a Tribal IV-D program] will be to request assistance from another Tribal or State IV-D program with the legal authority to take actions on the case") (State Exh. 37 at 17); *see also* 69 Fed. Reg. 16651 (cmt. 2 on 309.60; recognizing that "unique circumstances and challenges" in Alaska may require tribe to "[c]ontract[] with the State or with other Native entities . . . for delivery of IV-D services") (State Exh. 37 at 15).

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Support Orders Act (FFCCSOA) provides that only orders from tribes with Indian country are given full faith and credit.[53] And, even orders that are issued in Indian Country are entitled to full faith and credit *only if* the tribal court had subject matter jurisdiction, had personal jurisdiction over the parties, and due process was given.[54]

Because child support orders have to be issued by courts of competent jurisdiction and because the tribal jurisdictional issues were not decided in the tribal IV-D implementing regulations, there is no merit to the Central Council's second and third causes of action. The State is entitled to summary judgment.

B. Because UIFSA is a procedural mechanism that does not create tribal jurisdiction, the State is entitled to summary judgment.

CCTHITA asserts that the State is required to enforce CCTHITA tribal orders under UIFSA, AS 25.25.[55] In 2009, the Alaska Legislature did amend the State's version of UIFSA to include "an Indian tribe" in the definition of "state."[56] While this change brings tribes that do have jurisdiction (*e.g.*, some Lower 48 tribes) within the State's UIFSA procedural rules, it does not make the State's UIFSA applicable to tribes

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53 *See* 28 U.S.C. § 1738B(a)(1) (requiring enforcement of orders of "another State"); 28 U.S.C. § 1738B(b) ("State" means "a State of the United States . . . and *Indian country*") (emphasis added). CCTHITA orders are not issued in Indian Country.

54 28 U.S.C. § 1738B(c)(1)-(2) (requiring jurisdiction and due process); *see also John v. Baker I*, 982 P.2d at 763 (requiring subject matter jurisdiction and personal jurisdiction, and due process for comity recognition); *Starr v. George*, 175 P.3d 50, (Alaska 2008) (requiring same for full faith and credit to foreign judgment).

55 *See* complaint at ¶¶ 33-39. Enforcement of tribal orders would include Permanent Fund Dividend (PFD) garnishments on Alaska tribal child support orders.

56 Sec. 3, ch. 45, SLA 2009 (also including "United States Virgin Islands" in the definition of "state"); AS 25.25.101(19) (2009).

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who lack jurisdiction (*e.g.*, CCTHITA). This legislative change does not determine tribal jurisdiction and the State is not required to enforce CCTHITA's support orders based on this amendment.

By including "Indian tribe" in the definition of "state," the legislature intended only a "procedural change[]."[57] The legislature specifically recognized that "UIFSA does not determine the authority of an Indian tribe to enter, modify, or enforce a child support order."[58] The legislature's intent was "to remain neutral on the issue of the underlying child support jurisdiction, if any," of the tribes and to "not . . . expand or restrict the child support jurisdiction, if any, of [tribes]."[59]

This intent conforms to the case law recognizing that UIFSA "is a procedural statute" that "merely establishes the method for enforcing a right."[60] UIFSA only makes the collection of child support across jurisdictional boundaries easier. It

[57] Sec. 1, ch. 45, SLA 2009(at (b)).

[58] Sec. 1, ch. 45, SLA 2009 (at (b)).

[59] Sec. 1, ch.45, SLA 2009 (at (b)(1) and (b)(2)); *see also id.* at (b)(3) ("did not . . . assume or express any opinion about whether those entities have child support jurisdiction in fact or in law").

[60] *Goddard v. Heintzelman*, 875 A.2d 1119, 1122 (Pa. Super. Ct. 2005); *see also Child Support Enforcement Div. of Alaska v. Brenckle*, 675 N.E.2d 390, 393 (Mass. 1997) (UIFSA "provides the procedural framework for enforcing one State's support order in another jurisdiction" and does "not affect[] substantive rights"); *Thrift v. Thrift*, 760 So.2d 732, 736 (Miss. 2000) (UIFSA does not affect substantive rights, "but merely provides a procedure whereby child support orders may be enforced in foreign states").

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"does not create jurisdiction where it does not otherwise exist, and § 305(b) of UIFSA still requires the court's support order be 'otherwise authorized by law.'"[61]

That UIFSA is a procedural mechanism is also born out by the UIFSA statutes themselves. Under UIFSA, upon receipt of a request for enforcement, CSSD "shall consider and, *if appropriate*," administratively enforce the support order.[62] Only "tribunal[s]" may submit orders for enforcement[63] and a "tribunal" is "a court, administrative agency, or quasi-judicial entity *authorized* to establish, enforce, or modify support orders or to determine parentage."[64] Accordingly, under UIFSA, CSSD is permitted to administratively enforce another state's (which now includes a tribe) child support order, if it is "appropriate"—that is, if the tribunal was "authorized" to issue the order. A tribal order issued without jurisdiction is not "authorized," and it would not be "appropriate" to enforce it. This jurisdictional requirement is explicitly recognized in the superior court registration process that is followed if an order is not

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61 *Office of Child Support v. Lewis*, 882 A.2d 1128, 1133 (Vt. 2004) (interpreting UIFSA registration provisions identical to Alaska UIFSA provisions); *see also id.* ("UIFSA enforcement procedures cannot overcome [jurisdictional] defect and expand a court's jurisdiction"); *In re Marriage of Owen*, 108 P.3d 824, 829 (Wash. 2005) ("validity of order to be registered . . . is the paramount concern of the statute governing registration of out-of-state orders").

62 AS 25.25.507(b) (emphasis added).

63 AS 25.25.507(a) ("party seeking to enforce a support order . . . issued by a tribunal of another state" sends the documents required for registering the order to CSSD); *see also* AS 25.25.602 (document requirements).

64 AS 25.25.101(22) (emphasis added).

administratively enforced. That is, registered foreign orders are recognized and enforced only "if the issuing tribunal had jurisdiction."[65]

Similarly, the CSSD regulations provide for enforcement of child support orders only where the issuing tribunal had subject matter jurisdiction.[66] So, while CSSD provides "child support services . . . to child support agencies of another state,"[67] the agency only enforces child support orders issued by a state with jurisdiction.[68] Other provisions of UIFSA support this approach.

UIFSA is grounded on the "continuing, exclusive jurisdiction" of the tribunal and on the existence of only one valid support order in effect at any one time.[69] The tribunal that has "continuing, exclusive jurisdiction over the support issue" "is the tribunal that first acquires personal and subject matter jurisdiction over the parties and the support obligation."[70] That is, UIFSA doesn't give underlying jurisdiction. Rather,

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[65] AS 25.25.603(c).

[66] 15 AAC 125.900(a)(13) (defining support order as "a judgment . . . issued by a court or administrative agency *of competent jurisdiction* for the support and maintenance of a child.") (emphasis added); *see also* 15 AAC 125.500(2) (agency will provide payment services if obligor or parent "obtains immediate income withholding through a tribunal of *competent jurisdiction*") (emphasis added).

[67] 15 AAC 125.800(a).

[68] 15 AAC 125.745(b) ("agency will enforce a child support order issued after October 20, 1994 . . . only if the support order . . . was made consistently with 28 U.S.C. 1738B"); 28 U.S.C. § 1738B(c) (requiring subject matter jurisdiction, personal jurisdiction and due process).

[69] AS 25.25.201; AS 25.25.204-.207; *see also* UIFSA (2001) Prefatory Note at II.B.3 ("under UIFSA the principle of continuing, exclusive jurisdiction aims to recognize that only one valid support order may be effective at any one time").

[70] UIFSA (2001) Prefatory Note at II.D.2; see also AS 25.25.201 (personal jurisdiction); AS 25.25.205(a)(1) (jurisdiction based on residence).

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UIFSA only determines which of two entities that already have underlying jurisdiction can exert jurisdiction over a particular case.

This concept of "continuing, exclusive jurisdiction" is difficult to apply where no tribal land exists and all cases arise within the territorial boundaries of the State of Alaska. The UIFSA determines "continuing exclusive jurisdiction" by the residence of the obligor, obligee, or the child within the territory of the state.[71] Thus, cases involving tribal members living in Alaska come within the State's "continuing exclusive jurisdiction." Even where there are simultaneous child support proceedings in two different "states," jurisdiction over the case is largely determined by the "home state" of the child.[72] A "home state" is "the state in which a child lived with a parent . . . for at least six consecutive months immediately preceding the time of filing of a complaint or comparable pleading for support."[73] Where tribal children live within the State of Alaska, their "home state" is the State of Alaska. CCTHITA cannot be the "home state" because there is no CCTHITA territory "in which a child [could have] lived." CCTHITA's assertion of jurisdiction under UIFSA is not supported by the language of UIFSA itself. Under the express language of UIFSA, it is the State of

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71 AS 25.25.205(a) (a tribunal of the State of Alaska has "continuing, exclusive jurisdiction over a child support order (1) as long as this state remains the *residence of the obligor, the individual obligee, or the child* for whose benefit the support order is issued) (emphasis added); *see also* AS 25.25.207(b)(2) (in determining which order is the controlling child support order, "if more than one of the tribunals would have continuing, exclusive jurisdiction . . ., an order issued by a tribunal in the current home state of the child shall be recognized . . .").

72 AS 25.25.204(a)(3) and (b)(3); AS 25.25.207(b).

73 AS 25.25.101(4).

Alaska that has exclusive jurisdiction over child support orders involving all individuals (tribal or otherwise) who live in the State.

In conclusion, the Legislature did not grant jurisdiction to the tribes by amending the definition of "state" to include "tribe" and UIFSA does not determine the subject matter jurisdiction of the courts. Rather, UIFSA simply provides a mechanism for enforcement of valid support orders that have been issued by courts with underlying jurisdiction. CCTHITA's claims in its first cause of action based on the 2009 amendment to the definition of "state" to include "tribe," are without merit. The State is entitled to summary judgment on the Central Council's first cause of action.

III. CCTHITA's brief ignores a variety of factors distinguishing this case from *John v. Baker I*

CCTHITA ultimately presents this Court with a very misleading and incomplete jurisdictional analysis which rests almost entirely on *John v. Baker I*. Because of its overreliance on *John v. Baker I*, CCTHITA ignores several crucial issues: (1) in 2005, post *John v. Baker I*, the U.S. Supreme Court reaffirmed that state law presumptively governs off-reservation, and further held no requirement exists to balance the tribe's competing interests against those of the State's; (2) a series of post *John v. Baker I* U.S. Supreme Court cases affirm and emphasize the importance of land status as a part of the overall jurisdictional equation;[74] (3) compelling State interests of Constitutional magnitude are involved in this case, and those State Constitutional

[74] Note that the State is not suggesting tribes are divested of anything by the lack of Indian country. CCTHITA makes this straw man argument. *See* CCTHITA Motion for Summary Judgment at 16. What the State *is* suggesting is that land status, under existing law, remains a part of any jurisdictional analysis.

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concerns coupled with CSSD's necessary involvement in enforcing and providing other child support services to tribes takes this case squarely outside the ambit of "internal" domestic matters which was the subject of *John v. Baker I* (a private custody dispute between unmarried parents).

A. State law presumptively governs off-reservation.

Off-reservation the general rule is that state—*not* tribal—law governs[75] and State courts have exclusive jurisdiction.[76] In 2005, the U.S. Supreme Court recognized the State's presumptive off-reservation jurisdiction when it held that the application of state law to off-reservation activity is not contingent on balancing tribal interests.[77] Even in cases involving an Indian mother and an Indian child, the off-reservation jurisdiction of tribal courts is an "uncertain proposition at best."[78] Tribal

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75 *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973) ("Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State"); *see also Philip Morris*, 569 F.3d at 938 (citing *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 658 n.12 (2001) ("tribal jurisdiction is, of course, cabined by geography: The jurisdiction of tribal courts does not extend beyond tribal boundaries"); *see also John v. Baker I*, 982 P.2d at 744 (Matthews, J., dissenting) ("outside of Indian country the 'general rule' is that tribal authority does not apply unless there is clear congressional expression that it should").

76 *Maxa v. Yakima Petroleum, Inc.*, 924 P.2d 372, 374 (Wash. App. 1996).

77 *Wagnon*, 546 U.S. at 112-13 (interest balancing test is inapplicable to application of state law to Indians outside of off-reservation activities). State interests can trump tribal interests even for on-reservation conduct. *Nevada v. Hicks*, 533 U.S. 353, 374 (2001); *see State ex rel May v. Seneca-Cayuga Tribe of Oklahoma*, 711 P.2d 77, 89 (Okla. 1985) (increased economic activity on-reservations which have off-reservation impact have lead courts to accommodate state interests).

78 *State v. Zaman*, 946 P.2d 459, 463 (Ariz. 1997).

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interests are not as strong off-reservation as on reservation.[79] Within State boundaries on non-Indian land, State jurisdiction over tribal activities is "virtually unhindered."[80] Off-reservation tribal jurisdiction absent Congressional authorization runs afoul of presumptive state jurisdiction and the fact that off-reservation tribal interests are not balanced against state interests.

B. CCTHITA ignores land status as part of the jurisdictional equation.

Post-*John v. Baker I*, the United States has repeatedly emphasized the importance of land status as part of the jurisdictional equation.[81] Nevertheless, CCTHITA asserts tribal jurisdiction over child support even though it is acting off-reservation and outside of Indian country.[82] But as the United States Supreme Court observed in 2008, "[t]he sovereign authority of Indian tribes is limited in ways state

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[79] *In re Baby Girl A.*, 282 Cal. Rptr. 105, 111 (Cal. Ct. App. 1991) ("The tribe's interest in actions involving Indian children living off the reservation is not as great"). Off-reservation, tribes face the competing interests of the State and even individual tribal members. For example, under the Indian Child Welfare Act, parental interests may trump tribal interests through the parent's right to veto the transfer of a case from State court to tribal court. 25 U.S.C. § 1911(b).

[80] Chris Seldin, Comment, *Interstate Marketing of Indian Water Rights: The Impact of the Commerce Clause*, 87 Cal. L. Rev. 1545, 1575 (1999).

[81] *See, e.g.*, *Plains Commerce*, 128 S. Ct. at 2718; *Wagnon*, 546 U.S. at 112; *Atkinson Trading*, 532 U.S. at 653 & 655.

[82] CCTHITA admits that it is acting off reservation. State Exh. 1 at 2 (Admission No. 4). In addition, CCTHITA's ANCSA lands are not Indian country. *See Native Village of Venetie*, 522 U.S. at 526-28. The extent of CCTHITA's jurisdiction includes "[a]ll persons, property and activities within the Tribe's territory and jurisdiction" (CCTHITA Constitution Art. I, §4), which includes the entirety of Southeast Alaska. State Exh. 1 at 20-21 (Interrogatory Response 24); State Exh. 1 at 89 (CCTHITA 378); *see also* State Exh. 1 at 43 (CCTHITA 332) (CCTHITA "serves 20 villages and communities that are spread over 43,200 square miles within the Alaska Panhandle" and "encompass[ing] a 525-mile strip of coastline and interior waterways").

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and federal authority is not."[83] "By virtue of their incorporation into the United States, the tribe's sovereign interests are now confined to managing tribal land, protecting tribal self-government and controlling internal relations."[84]

In determining the extent of tribal jurisdiction, land status can be particularly important because Tribal authority "*centers on the land* held by the tribe and on tribal members *within the reservation*."[85] In 2001 (again post *John v. Baker I*), the United States Supreme Court explained: "Both *Montana* and *Strate* rejected tribal authority to regulate nonmembers' activities on land over which the tribe could not 'assert a landowner's right to occupy and exclude,'"[86] and, "the absence of tribal ownership has been virtually conclusive of the absence of tribal civil jurisdiction."[87]

Even the *Montana* exceptions (applicable to nonmembers) are tied to land status: "Indian tribes retain inherent sovereign power to exercise some forms of civil

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83 *Plains Commerce*, 128 S. Ct. at 2726; *see also Montana*, 450 U.S. at 563 (through tribes' "incorporation into the United States . . . Indian tribes have lost many of the attributes of sovereignty"); *Hicks*, 533 U.S. at 367 (tribal courts are not courts of general jurisdiction); *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978) (tribe's sovereignty "is of a unique and limited character").

84 *Plains Commerce*, 128 S. Ct. at 2723 (citations and quotations omitted).

85 *Id.* at 2718 (emphasis added) (authority over members and territory, subject to Congress) (emphasis added)); *Atkinson Trading*, 532 U.S. at 653 ("An Indian tribe's sovereign power to tax – whatever its derivation – reaches no further than tribal land."); *id.* at 655 ("territorial restriction upon tribal power"); *Williams v. Lee*, 358 U.S. 217, 220 (1959) ("right of *reservation* Indians to make their own laws and be ruled by them") (emphasis added).

86 *Hicks*, 533 U.S. at 359.

87 *Hicks*, 533 U.S. at 360; *see also Atkinson Trading*, 532 U.S. at 653 ("An Indian tribe's sovereign power to tax . . . reaches no further than tribal land.").

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jurisdiction over non-Indians *on their reservations*, even on non-Indian fee lands."[88] Each listed transaction under *Montana's* first exception occurred "on the reservation."[89] Similarly, in applying the second *Montana* exception, the Court found that "unless the drain of the nonmember's conduct upon tribal services and resources is so severe that it actually 'imperil[s]' the political integrity of the Indian tribe, there can be *no* assertion of *civil authority beyond tribal lands*."[90]

In this case, all of the events giving rise to the child support obligation and the Tribe's child support program occur outside the boundaries of any Indian reservation. Where all events leading up to a case occur off reservation "the existence

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[88] *Montana*, 450 U.S. at 565 (emphasis added); *see also Plains Commerce*, 128 S. Ct. at 2719-20 (two *Montana* exceptions allow for tribal "civil jurisdiction over non-Indians *on their reservations*") (emphasis added); *id.* at 2721 ("*Montana* and its progeny permit tribal regulation of nonmember conduct inside the reservation that implicates the tribe's sovereign interests.") (emphasis removed); *id.* at 2720 "status of the land is relevant 'insofar as it bears on the application of . . . Montana's exceptions" (quoting *Hicks*, 533 U.S. at 376 (Souter. J., concurring)); *In re J.D.M.C.*, 739 N.W.2d 796, 810 (S.D. 2007) ("Courts generally do not apply the Montana analysis to a situation where conduct of a non-Indian, nonmember occurs off the reservation, and instead, hold to the rule that absent a clear federal directive, tribal authority does not extend to conduct off the reservation.").

[89] *Plains Commerce*, 128 S. Ct. at 2721-22 (observing each of four cases under *Montana*'s first exception "involved regulation of non-Indian activities *on the reservation*"); *MacArthur v. San Juan County*, 497 F.3d 1057, 1071-72 (10th Cir. 2007) (finding that consensual relationship test can only go to "reservation borders," and applied "within the confines of the reservation"); *In re J.D.M.C.*, 739 N.W.2d at 810 (*Montana* "generally applies to conduct *within the reservation*"); *see Smith v. Salish Kootenai College*, 434 F.3d 1127, 1139 (9th Cir. 2006) (*en banc*) (tribe could assert jurisdiction over nonmember plaintiff in tribal court because of tribe's territorial management powers and because of 'deliberate actions' to enter tribal lands).

[90] *Atkinson Trading*, 532 U.S. at 657 n.12 (emphasis added); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137-42 (1982) (tribe's inherent power to tax only extends to transactions occurring on trust land).

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of any tribal court jurisdiction, much less exclusive tribal court jurisdiction, is questionable."[91] The lack of an Indian country land base[92] significantly weakens any claim by CCTHITA to child support jurisdiction.

C. Tribal child support programs directly impact the state CSSD program, and no similar state impact existed in *John v. Baker I*.

John v. Baker I was a private custody dispute between unmarried parents. No necessary or ongoing State involvement existed. The *John v. Baker I* court applied U.S. Supreme Court precedent in *Montana* to find that Northway Village could, on those facts, exercise off-reservation jurisdiction.[93] *Montana* held that a tribe could exercise inherent jurisdiction for "domestic relations among members."[94] And, in *John v. Baker I*, a custody dispute between Alaska Natives living in different villages was treated as "domestic relations among members."[95]

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91 *Roe v. Doe*, 649 N.W.2d 566, 576 (N.D. 2002) (citing William C. Canby, Jr., American Indian Law, 194-95 (1998) (state court paternity action by nonmember against member residing on reservation where all events leading up to action occurred off reservation; state court action did not infringe on tribe's right to self government).

92 43 U.S.C. §1618 (ANCSA § 19); *Native Village of Venetie*, 522 U.S. at 532 (lands held under ANCSA are not "dependent Indian communities"); *Jones v. State*, 936 P.2d 1263, 1265 (Alaska App. 1997) (expressing doubt that Alaska Native allotments qualify as Indian country); 43 U.S.C. § 1603 (ANCSA §4) (extinguishing aboriginal title to virtually all land in Alaska); *see also* Canby, William C., *American Indian Law* 392 (4th ed. 2004).

93 *John v. Baker I*, 982 P.2d at 755 (noting with approval decisions that "stress the importance of tribal power to regulate internal domestic relations").

94 *Montana*, 450 U.S. at 564.

95 *John v. Baker I*, 982 P.2d at 765 ("Tribal courts in Alaska have jurisdiction to adjudicate custody disputes involving tribal members").

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Unlike *John v. Baker I*, this case involves direct impacts to the State of Alaska of various kinds, and necessary, continuous and ongoing State involvement. The more tribes which begin issuing child support orders (whether pursuant to a IV-D program, or not), the greater the impact on State operations. This case squarely presents the broader question of whether any tribe—Title IV-D or not—can issue child support orders, and the impact to the State of Alaska and its child support system is certain and unavoidable.

CSSD's ongoing involvement severely undercuts the notion that CCTHITA is somehow engaged in "domestic relations among members" when it issues child support orders for tribal children. CSSD would be a direct or silent partner in each and every tribal child support program. To understand this, it is necessary to briefly explain the State CSSD program and how it would be impacted if multiple child support programs existed in the State.

The State runs a highly successful child support program through its Child Support Services Division.[96] CSSD touches the lives of 1 in 6 Alaskans.[97] CSSD currently has 231 employees, and manages roughly 44,000 child support cases.[98] The CSSD operations are highly successful, exceeding all but one federal performance

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96 *See* State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶¶ 7-12.

97 *Id.* at ¶ 6.

98 *Id.* at ¶ 5.

benchmark.[99] In 2009, CSSD was second in the nation for having enforceable child support orders in its cases.[100]

The CSSD program provides a broad range of services to Alaskans. Among other things, it does the following: performs intake; establishes paternity; establishes child support orders; performs child support order modifications; enforces domestic and foreign child support orders; and offers weekday and after hour customer service.[101] Its day to day operations require an Information Technology staff, and it also has sections dedicated to complaint resolution, the Office of Administrative Hearing appeals, and accounting, audits and adjustments.[102] Its primary mission is simple and direct: collect child support.[103]

Impacts to CSSD operations would be of three general types: (1) mission impacts; (2) day-to-day operations impacts; (3) potential financial impacts. The direct or indirect regulation of State activities, off-reservation, runs afoul of the guidance provided in *Nevada v. Hicks*[104] and *Wagnon v. Prairie Band Potawatomi Nation.*[105]

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99 *Id.* at ¶ 8 & 9.

100 *Id.* at ¶ 10.

101 *Id.* at ¶ 3.

102 *Id.*

103 *Id.* at ¶ 4. In that regard, it is worth noting that State CSSD is far more efficient at collecting child support than CCTHITA. *Id.* at ¶ 7.

104 533 U.S. at 364 (commenting that tribal interference with off-reservation matters where the State has a "considerable" interest not allowed, even on-reservation). Here, the State's interest in enforcement of child support for all citizens, Native and non-Native alike, is as strong or stronger than its interest in the service of process which was the topic of *Nevada v. Hicks*.

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Yet, when tribal courts issue child support orders and CSSD has to enforce the orders, tribal courts essentially will dictate state child support enforcement efforts in one or more respects.[106]

1. CSSD Mission Impacts

The Alaska CSSD Division is mandated by law to serve all Alaskans, whether Native or non-Native.[107] CSSD's mission derives directly from State of Alaska Constitutional authority to provide for the public health and welfare.[108] And, the State of Alaska's ability to set rules for the public welfare binding even on tribes off-reservation has long been recognized.[109] Pursuant to its public welfare authority, the State mandates that parents be responsible for their children.[110] Child support is required in divorce[111] and dissolutions.[112] Of course, Alaska Court rules also set forth specific child support requirements via Alaska Civil Rule 90.3. The importance of child

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105 546 U.S. at 112-13 (reaffirming presumptive off-reservation State jurisdiction, and rejecting balancing of interest test for off-reservation State activities).

106 State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶ 16 (describing how a tribe "could direct CSSD's enforcement actions").

107 AS 25.27.100 (all persons may use agency); 42 U.S.C. § 654(l) (state plan must be in effect in all political subdivisions of the state); State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010 at ¶ 6.

108 Alaska Const. art. VII, § 4 ("The legislature shall provide for the promotion and protection of public health"); Alaska Const. art. VII, § 5 ("The legislature shall provide for public welfare").

109 *Metlakatla Indian Cmty. v. Egan*, 362 P.2d 901, 915 (Alaska 1961), *vacated on other grounds*, 369 U.S. 45 (1962).

110 AS 25.20.030 (duty of parent).

111 AS 25.240.160(a)(1) (judgments in divorce actions).

112 AS 25.24.200(a)(2) & (b)(2) (dissolution proceedings).

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support in the State is clear and unequivocal: "Parents have a paramount duty to support their children."[113]

These constitutionally-driven child support mandates will be impossible to follow if all 229 federally recognized tribes have jurisdiction over child support.[114] If that is the case, Alaska Courts or CSSD will *only* be able to set child support in those cases where a tribal court has not already done so. There is nothing in the legislative history of the State child support rules to suggest that the Alaska legislature intended that its rules apply if, but only if, a tribe did not elect to assume child support jurisdiction.

CSSD also has an overall interest in the uniform enforcement of child support in the State.[115] That goal will be undermined to the extent that some Alaska citizens— neighbors even—could end up with differing child support awards based merely on whether or not a tribal eligible child (member of the tribe, or eligible for membership) is involved. In fact, in some cases, up to three different child support amounts could be in play. If a child is eligible to be in more than one tribe, either Tribe

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113 *Kestner v. Clark*, 182 P.3d 1117, 1122 (Alaska 2008) (recognizing parents' statutory and common law duty to support children).

114 Although CCTHITA couches is complaint as only governing its own tribal authority, a decision in this case recognizing CCTHITA authority would necessarily recognize the authority of all tribes in Alaska. As discussed in section II, neither UIFSA nor the tribal IV-D program provide CCTHITA with jurisdiction. Therefore if CCTHITA has jurisdiction, it must be on the basis of inherent jurisdiction. If CCTHITA has inherent jurisdiction over child support matters involving Native children, then all tribes in Alaska also have inherent jurisdiction over child support cases involving Tribal children. Thus, the impacts of this case reach far beyond CCTHITA and its IV-D program.

115 State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶ 13-22.

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1, Tribe 2, or the State child support could apply depending on who asserts jurisdiction first. No one benefits from this kind of uncertainty.[116]

Part of the broader, overall CSSD mission includes maintaining a comprehensive registry of child support orders in the State.[117] The registry is intended to "improve child support establishment, collection and disbursement through sharing, comparing and receiving information from other databases and information comparison services."[118] Information is transmitted to the federal government, and is shared with other IV-D agencies and is used for Federal Parent Locator Services and for other diverse purposes.[119] Tribes who are not IV-D eligible (228 such tribes exist in Alaska) do not need to participate in the registry. This means a loss of control over the status of child support obligations in Alaska. Without knowing who, at any given time, is subject to an order could result in duplicate or conflicting orders.[120] The State CSSD operations are more inefficient and difficult to perform when uncertainty exists about who is, and is not, subject to orders and in what amounts. This is precisely the opposite effect of what Congress intended when it passed 42 U.S.C. 654a (requiring, in part, that states create a "State case registry"): the Congressional registry requirements are

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116 *Id.* at ¶ 21 ("State would be left with a patchwork of 229 different child support guidelines").

117 *Id.* at ¶ 20.

118 *Id.*

119 *Id.*

120 *Id.*

"intended to improve the overall efficiency of the States' child support enforcement scheme."[121]

2. Day-to-day operations impacts to CSSD.

If tribal child support orders are recognized, enforcement of tribal court orders could be requested either by the tribe directly, or by the individuals subject to the tribal court orders. That is, even if a tribe issued the order, enforcement services could be requested by either the tribe, or the parties to the order, directly from the State.[122] While this result is required by statute, of course the Alaska legislature would never have envisioned the confusing situation where 229 separate child support regimes exist in the State. CSSD will necessarily become involved because tribes lack enforcement authority in the State.[123]

By some statistics, at the national level 50% of custodial parents have a child support award but are still owed child support.[124] Regardless of the exact statistic, no one seriously contests the need for enforcement efforts against parents who do not support their families. Indeed, enforcement of collection against unwilling obligors is the *sine qua non* of child support programs. CSSD will carry the full weight of tribal child order enforcement issues on its back.

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121 *Blessing v. Freestone*, 520 U.S. 329, 345 (1997).

122 State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶ 19 ("any parent can request CSSD's assistance, regardless of who issued the order").

123 Off-reservation enforcement authority is not part of a Tribe's inherent authority per *Montana*, nor does the Tribe here contest its lack of enforcement authority.

124 Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 1.02 (2010) (citing 1995 U.S. Census Bureau statistics)

The exact extent of operational impact is, of course, uncertain. Too many variables exist. How many tribes will begin issuing child support orders? What percentage of orders will require clarification or amendment? What percentage will require enforcement action? How will the orders be formulated (in-kind services or a debt certain)? Regardless of these variables, State involvement is a certainty: "It is highly likely that CSSD would become involved in enforcement of a large majority of tribal child support orders because oftentimes a parent does not pay child support."[125] For the last two years, for example, CSSD has entered interim agreements to proceed with PFD garnishments for CCTHITA tribal court orders. Other enforcement efforts could include requiring employers to follow income withholding orders, garnishing unemployment and workers compensation benefits, Internal Revenue Service tax refund intercepts, and taking action against driver or occupational licenses.[126]

These requests for CSSD services will have a negative impact on the ability of the State to perform its day-to-day operations in providing child support services to this State's citizens.[127] John Mallonee, the Director of CSSD, concludes:

> [T]he level of impact this might have on CSSD's operations is not clear, but it could have detrimental effects on CSSD's operations and ability to provide services as well as detrimental effects for custodial parents.[128]

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[125] State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶ 18.

[126] *Id.*; *see* State Exh. 30 (IRS memo on intercept services; taxpayer information can't be released to tribe).

[127] State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶ 18. (noting difficulties of trying to run a de-centralized child support program with up to 230 different sovereigns issuing child support orders).

[128] *Id.* at ¶ 19.

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Given these clear and unavoidable impacts to State operations, it is nearly impossible to conclude that running an off-reservation child support program is "domestic relations among members." It is far more than that. It is regulating debt relationships between parents as part of a broader, comprehensive, national and state welfare program having impacts on all citizens, Native and non-Native alike.

3. Financial impacts to the State of Alaska/families.

Director Mallonee states that the "primary mission of CSSD is to collect and distribute child support."[129] CSSD does so in two ways: first, it can actually establish and collect child support; second, in public assistance cases, a parent (usually custodial, but sometimes even non-custodial) can assign the rights to child support in exchange for the public assistance.[130] In public assistance cases, the State has an independent right to recoup some of the moneys paid from child support.[131] Should a party (either the obligor or custodian) go on public assistance, normally the State could modify the child support order to recoup public assistance moneys paid.[132] In the event a tribal support order exists, the State would be unable to modify the order (unless the tribe runs a IV-D program, which almost no tribes in Alaska do).[133] This situation

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129 *Id.* at ¶ 4.

130 *Id.* at ¶ 5.

131 *Id.*

132 *Id.* at ¶ 13 (explaining that either the obligor or obligee may be a custodian who goes on public assistance, and that CSSD can go to court to obtain modifications of child support orders to recoup public assistance moneys as necessary).

133 *Id.* at ¶ 13.

means the State will suffer "direct financial harm."[134] Likewise, the State will also suffer direct financial harm if it takes custody of a child in a child-in-need-of-aid case or a juvenile delinquency proceeding and the Tribe asserts jurisdiction to issues a child support order even though the child is in *State* custody.[135] The tribal child support order will limit the amount of child support the State can collect.[136]

In the event of ambiguities or problems with a tribal child support order, obtaining clarification and making a tribal child support order enforceable could be difficult or impossible. For example, if the order were issued for "in kind" services (like providing repair services or food in lieu of monthly payments), the State would not be able to enforce, and also would not be able to modify the order.[137] Under the State system, CSSD can go to court to obtain clarification of an order. But CSSD has no authority or ability to obtain modifications or clarification from separate sovereigns. In these and other cases where ambiguities or problems exist with the child support order, cases could be closed simply for want of an enforceable order.[138] This has a harmful effect on any parent entitled to child support, as well as affecting the State's ability to recoup public assistance moneys as noted above. Other situations could exist

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134 *Id.*

135 *Id.* at ¶ 14.

136 *Id.*

137 *Id.* at ¶ 15.

138 *Id.* ("If CSSD could not, for whatever reason, enforce the tribal order it would have to close its case and would be unable to collect support from the custodian"); *id.* at ¶ 16 ("Even in the current state court system, sometimes CSSD has questions about the court's intent and must seek clarification of the child support order").

further impacting State financial interests. For example, because interpretation of tribal court orders is in the sole discretion of the tribe, a tribe could issue an order demanding that certain moneys be returned to an obligor because the obligor was overpaying.[139] Numerous hypotheticals and "what if" scenarios could be played out. But it hardly speaks to an efficient or smoothly operating child support program where the applicable child support rules could proliferate to 229.

D. Conclusion

The off-reservation tribal jurisdiction over child-support cannot rest on *John v. Baker I* alone. *John v. Baker I* turned on several findings, such as that Congressional authorization (ICWA) specifically affirmed tribal jurisdiction in custody matters,[140] that *custody* was at the "core of sovereignty," because custody involved "domestic relations among members"[141] that land and membership jurisdiction could be "teased apart,"[142] that tribes had jurisdiction unless divested to "secure tribal self-governance."[143] If any single prong is removed (as they all are here), the entire *John v. Baker I* jurisdictional analysis unravels.

The core tribal jurisdictional affirmations in ICWA are absent here. Child support cannot be analogized to ICWA. The case can't be at the core of sovereignty because it involves a debt relationship between parties, and because the case implicates

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139 *Id.* at ¶ 17.

140 *John v. Baker I*, 982 P.2d at 754.

141 *Id.* at 758.

142 *Id.* at 754.

143 *Id.* at 756.

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public health and welfare concerns of Constitutional magnitude. Moreover, this case is not in any meaningful sense "internal" to a tribe because, among other reasons, CSSD must take a lead enforcement role. Post *John v. Baker I* case law has made clear that land and membership can in no circumstances be completely separated—land remains relevant to the overall jurisdictional analysis. And, finally, promotion of tribal self-governance has been rejected as a basis for off-reservation jurisdiction in the absence of specific Congressional authorization.[144]

In resting its claims of jurisdiction on *John v. Baker I* alone, CCTHITA ignores the presumption that state law applies off-reservation and the recent United States Supreme Court cases recognizing the importance of land. The assertion of tribal jurisdiction off-reservation by the State's 229 recognized tribes will have an inordinate impact (mission, day-to-day, and financial impacts) on the State's child support program and statewide jurisdiction. The absence of a land base significantly weakens CCTHITA's claims of child support jurisdiction and the infringement of significant state interests suggests that off-reservation jurisdiction over child support should not be granted lightly. Child support is not a matter of *internal* domestic relations and

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[144] *John v. Baker I* cited *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987) for this principle. 982 P.2d at 756 & 756 n. 9. The U.S. Supreme Court has clarified that while some courts have incorrectly interpreted *LaPlante* like *John v. Baker I*, *LaPlante* "enunciate[s] only an exhaustion requirement." *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997). To the extent that off-reservation self-governance principles had any remaining vitality as an independent source of tribal jurisdiction, *Wagnon* rejected this concept in 2005. 546 U.S. at 113, 128 (rejecting dissent's call to recognize tribal "self-sufficiency, and strong tribal governments" as an independent basis to limit state jurisdiction).

therefore CCTHITA does not have jurisdiction over child support even where both parents are members of the tribe.

IV. The cases cited by CCTHITA do not compel a conclusion that it has jurisdiction.

CCTHITA cites *Iron Heart* for the proposition that "applying the state's support laws to tribal children would interfere with the Tribe's power of self-government."[145] In relying on *Iron Heart*, CCTHITA posits that "[s]ignificantly, the decision turned not on Indian country or the Tribe's reservation status, but the Tribe's long history of sovereignty over domestic relations."[146] This position ignores *Iron Heart's* pivotal facts.

The question in *Iron Heart* was whether the tribe had "retained sovereignty to decide for itself whether stepparents should be legally obligated to support their children."[147] The court explicitly found that the plaintiff lived in Indian country,[148] and that South Dakota had not assumed civil jurisdiction on the Reservation.[149] Given these facts, the court found that state application of the "stepparent responsibility law to the plaintiffs would infringe the right of *reservation*

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145 CCTHITA Motion for Summary Judgment at 19 (citing *Iron Heart v. Ellenbecker*, 689 F. Supp. 988 (D. S.D. 1988)).

146 CCTHITA Motion for Summary Judgment at 19.

147 689 F. Supp. at 993.

148 689 F. Supp. at 990 and n.2.

149 689 F. Supp. at 991.

Indians to make their own laws and be ruled by them.'"[150] Thus, while it may be, as CCTHITA suggests, that "across the United States it is common for the tribes to adjudicate support for the benefit of the tribal children as part of their authority over domestic relations,"[151] that is because the tribes are exercising their territorial jurisdiction, and States are severely restricted in their ability to operate on reservations.[152] In contrast, CCTHITA is asserting membership jurisdiction–a very new development in the law—outside of Indian country and within the territorial jurisdiction of the State of Alaska where State interests are at their highest. Because CCTHITA is setting child support orders outside of Indian country and within the territorial jurisdiction of the State of Alaska where state law applies, there is no need to balance the Tribe's interests against the State's.[153]

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[150] 689 F. Supp. at 994 (emphasis added); *see also Fisher v. District Court*, 424 U.S. 382 (1976) (state court jurisdiction over adoption proceeding "would subject a dispute *arising on the reservation among reservation Indians* to a forum other than the one they have established for themselves"; relied on by *Iron Heart*).

[151] CCTHITA Motion for Summary Judgment at 18 (citing *Howe v. Ellenbecker*, 8 F.3d 1258, 1261 (8th Cir. 1993), *overruled on other grounds by Blessing v. Freestone*, 520 U.S. 329).

[152] *See Howe*, 8 F.3d at 1261 ("State has had little success in its efforts to enforce state court orders on the reservations because of jurisdictional barriers"; case involving child support from fathers on reservation); *see also Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 603-04 (1977) (state jurisdiction on reservations "quite limited"); *Howe*, 774 F. Supp. at 1228 & 1232 n.5 (noting lack of state enforcement authority on reservations).

[153] *Wagnon*, 546 U.S. at 112-13 (interest balancing test is inapplicable to application of State law to Indians outside of the reservation); *Mescalaro Apache*, 411 U.S. at 148-49 (Indians going off reservation are subject to non-discriminatory state law).

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CCTHITA's reliance on the Arizona Court of Appeals case, *Zaman*, as a "clear statement that child support falls within the realm of a tribe's authority over domestic relations,"[154] is similarly misplaced. The Arizona Supreme Court *vacated* the Court of Appeals decision cited by CCTHITA.[155] The Arizona Supreme Court held that the state's attempt to establish a non-Native's paternity of a Navajo child and obtain back child support did *not* infringe on the Navajo Nation's authority over domestic relations.[156] Since the action by the state (a nonmember) was against a nonmember father, jurisdiction was presumptively in the state court.[157] The Arizona Supreme Court did not find that since it was a paternity or child support matter that it fell within the tribe's jurisdiction as a matter of internal domestic relations.[158] Rather, the court found that the state had "certain state jurisdiction" and the tribe had "uncertain tribal court jurisdiction" and therefore the state need not refrain from exercising its jurisdiction.[159]

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154 *State of Arizona v. Zaman*, 927 P.2d 347, 352 (Ariz. App. 1996) (finding that "the state's attempt to establish a non-Native's paternity of a Navajo child and obtain back child support infringed on the Navajo Nation's authority over domestic relations"), *vacated b, State of Arizona v. Zaman*, 946 P.2d 459 (Ariz. 1997).

155 *Zaman*, 946 P.2d 459, *vacating* 927 P.2d 347.

156 *Zaman*, 946 P.2d at 460.

157 *Zaman*, 946 P.2d at 460.

158 And for that matter, contrary to CCTHITA's statement (motion for summary judgment at 19), neither did the lower *Zaman* court. *Zaman* dealt first and foremost with the paternity, not child support. *Zaman*, 927 P.2d at 348, *vacated by Zaman*, 946 P.2d 459. ("*Zaman* challenges the subject-matter jurisdiction of the Apache County Superior Court over a *paternity* suit") (emphasis added).

159 *Zaman*, 946 P.2d at 464.

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The cases that CCTHITA cites as authority for CCTHITA's jurisdiction over child support as a matter of "a more intimate domestic relations matter"[160] are not persuasive. Each of these cases involved a tribes operating within its Indian Country. *Flammond* and *Three Irons* held that the state court could not assert jurisdiction over the tribal-member parents who lived on the tribe's reservation unless that parent had significant substantial contact with the state outside the reservation. Because the tribal-member parent in each case did not have significant substantial contacts off reservation, the state courts lacked jurisdiction over the child support cases.[161] Rather than being authority for the "clear statement that child support falls within the realm of a tribe's authority over domestic relations,"[162] these cases stand for the proposition that the state did not have jurisdiction on the reservation because Montana did not have P.L. 280 jurisdiction over Indian Country.[163] The cases cited by CCTHITA do no compel the conclusion that child support is a matter of internal domestic relations over which CCTHITA has subject matter jurisdiction.

160 CCTHITA Motion for Summary Judgment at 19 & nn. 93-94.

161 *State ex rel. Flammond*, 621 P.2d 471, 472-73 (Mont. 1980); *State ex rel. Three Irons*, 621 P.2d 476, 477 (Mont. 1980).

162 CCTHITA Motion for Summary Judgment at 19.

163 *State ex rel. Flammond*, 621 P.2d at 472; *State ex rel. Three Irons*, 621 P.2d at 477. CCTHITA also cites an unpublished Montana Supreme Court opinion (*Sanders*) as proof that child support involves domestic relations. (CCTHITA Motion for Summary Judgment at 19 n.93.) *Sanders*, however dealt with the res judicata effect to be given a previous Ninth Circuit decision (864 F.2d 630) concluding that the tribal court had jurisdiction over a marriage dissolution action, not whether such action was a matter of domestic relations. *Sanders v. State*, No. 04-736, 2005 WL 2219789, at **1-3 (Mont. 2005) (unpublished opinion); *see also Jackson County v. Smoker*, 459 S.E.2d 789, 791 (N.C. 1995) (where state and tribe had concurrent jurisdiction over action to recover AFDC payments and tribe acted first, tribe had retained jurisdiction).

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V. Even assuming off-reservation jurisdiction over tribal members, no such jurisdiction exists over nonmembers.

Even if we assume that CCTHITA may exercise jurisdiction over all-member cases, "[n]either *Montana* not its progeny purport to allow Indian tribes to exercise civil jurisdiction over the activities or conduct of non-Indians occurring outside their reservations."[164] Nevertheless, CCTHITA broadly asserts tribal jurisdiction over child support in *any* case involving a child who is a member of CCTHITA or who is eligible for membership in CCTHITA, regardless of the membership status of the parents.[165] This position ignores the presumption against tribal jurisdiction over nonmembers, and ignores the *Montana* exceptions which allow tribal jurisdiction over nonmembers in only very limited circumstances.

A. The presumption is that tribes do not have jurisdiction over nonmembers.

Because the authority of tribes is founded on their "right to make their own laws and be ruled by them," tribal jurisdiction does not normally extend to the conduct of nonmembers, unless Congress has expressly granted such authority.[166] As discussed above, there has been no express delegation of tribal jurisdiction in the tribal

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164 *Hornell Brewing Co. v. The Rosebud Sioux Tribal Court*, 133 F.3d 1087, 1091 (8th Cir. 1998).

165 *See* CCTHITA Motion for Summary Judgment at 20-24. The Tribe is already exercising child support jurisdiction when the child is in the custody of the *State*, a non-consenting, nonmember. State Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶ 14. Additionally, CCTHITA has asserted jurisdiction in cases where no one (mother, father or child) is a member. *See* State's Exh. 10 at 2.

166 *Wheeler*, 435 U.S. at 323; *Montana*, 450 U.S. at 564; *Plains Commerce*, 128 S. Ct. at 2718-19; *id.* at 2724 ("nonmembers have no part in tribal government – they have no say in the laws and regulations that govern tribal territory"); *Atkinson Trading*, 532

IV-D program or in UIFSA. Jurisdiction over nonmembers (and those eligible for membership in the Tribe) is presumptively invalid.[167]

In line with this clear presumption—and as reinforced post *John v. Baker I*—*the* trend of the United States Supreme Court has been to unequivocally limit the authority of tribes over nonmembers.[168] The United States Supreme Court has found that tribes did not have inherent power to exercise criminal jurisdiction over non-Indians,[169] to regulate the sale of nonmember-owned fee land within the reservation,[170]

U.S. at 650 ("inherent sovereignty of Indian tribes was limited to '*their members* and their territory'") (emphasis added); *see also American Indian Law Deskbook* 203 (Clay Smith ed., 4th ed. 2008) ("tribes possess inherent civil regulatory authority over nonmembers only in extraordinary instances").

167 *Plains Commerce*, 128 S. Ct. at 2720 (*quoting Atkinson Trading*, 532 U.S. at 659). Membership is determined on a tribe by tribe basis. *Duro v. Reina*, 495 U.S. 676 (1989), *abrogated by* 25 U.S.C. § 1301(2) (which provided for tribal *criminal* jurisdiction over nonmember Indians), (tribes do not have criminal jurisdiction over nonmember Natives; noting lack of representation in tribal government); *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 161(1980) (Indian nonmembers "stand on the same footing as non-Indians"). CCTHITA cannot assert jurisdiction over individuals based on eligibility for tribal membership. A person who is eligible for membership is not a member. For example, members of Ketchikan Indian Community (KIC) may be eligible for membership in CCTHITA, but KIC does not allow someone to be enrolled in KIC tribe if they are also a member of another tribe. *See* www.kictribe.org/contact/enrollment/index.html; State Exh. 10 at 7 (KIC members are not CCTHITA members).

168 *See, e.g., Plains Commerce,* 128 S. Ct. at 2718-20 (limiting tribal jurisdiction to on reservation and over domestic relations among members); *see also Merrion*, 455 U.S. at 142 ("a tribe has no authority over a nonmember until the nonmember enters tribal lands or conducts business with the tribe"); *Montana*, 450 U.S. at 565 ("the inherent sovereign powers of an Indian tribe do not extend to the activities of non-members of the tribe").

169 *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), *cited in Montana*, 450 U.S. at 565.

170 *Plains Commerce*, 128 S. Ct. 2709.

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or to tax nonmember activity on non-Indian fee land.[171] And tribal courts did not have jurisdiction over a tort suit involving an accident by nonmembers on non-tribal land,[172] or over civil tort and section 1983 claims against state officials who entered tribal land to execute a search warrant against a tribe member suspected of having violated state law outside of the reservation,[173] or over a case brought by a tribal corporation against a nonmember cigarette company.[174]

In addition to the presumption against tribal jurisdiction over nonmembers, the United States Supreme Court has found that the status of the land ownership may also be dispositive of the jurisdictional questions and the "absence of tribal ownership has been *virtually conclusive of the absence of tribal civil jurisdiction.*"[175] Indeed, the Court "with only 'one minor exception, . . . [has] never upheld under *Montana* the extension of tribal civil authority over nonmembers *on non-*

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171 *Atkinson Trading*, 532 U.S. at 659.

172 *Strate*, 520 U.S. at 454.

173 *Hicks*, 533 U.S. at 364.

174 *Philip Morris*, 569 F.3d 932.

175 *Hicks*, 533 U.S. at 360 (emphasis added); *see also id.* at 378 (Souter, J., concurring) (*Montana* "underscore[d] the distinction between tribal members and nonmembers, and seems clearly to indicate . . . that the inherent authority of the tribes has been preserved over the former [*i.e.* tribal members] but not the latter [*i.e.* nonmembers]"); *id.* at 360 (quoting *Montana*, 450 U.S. at 565) (Whether the activities occurred on Indian or non-Indian land is "one factor to consider in determining whether regulation of activities of nonmembers is 'necessary to protect tribal self-government or to control internal relations.'"); *Garcia v. Gutierrez*, 217 P.3d 591, 599 (N.M. 2009) (land owned by third parties within tribal reservation "not within tribal authority with respect to non-Indians").

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Indian land."[176] And, the "one minor exception" involved non-Indian fee land "isolated in 'the heart of [a] closed portion of the reservation.'"[177]

Given CCTHITA's lack of territorial based jurisdiction, the general restrictions on nonmember jurisdiction established in case law, and the lack of any express Congressional delegation to the tribes over child support, the clear presumption is that CCTHITA does not have jurisdiction over child support cases involving nonmembers.[178]

The Tribe, by asserting jurisdiction over any case in which the child is a member of the Tribe (including cases involving nonmember parents), suggests a reversal to the "bedrock principle" that "Tribal jurisdiction . . . generally does not extend to nonmembers."[179] This suggested reversal of the presumption against nonmember jurisdiction is not supported by the governing federal case law.

Under the governing case law, CCTHITA only has authority to regulate nonmembers if it can show that it meets one of the two *Montana* exceptions.[180] Under

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176 *Plains Commerce*, 128 S. Ct. at 2722 (quoting with emphasis *Hicks*, 533 U.S. at 360 (which cited as the exception *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989))).

177 *Id.* at 2722 (quoting *Brendale*, 492 U.S. at 440).

178 *Id.* at 2720 (*citing Atkinson Trading*, 532 U.S. at 654; *Montana*, 450 U.S. at 565).

179 *Id.* at 2726.

180 *Montana*, 450 U.S. at 565 (*Montana* exceptions set out the extent to which "Indian tribes [have] retain[ed] inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations"); *Plains Commerce*, 128 S. Ct. at 2720 (burden on tribe to establish *Montana* exception allowing tribal authority over nonmembers).

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the first *Montana* exception "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements."[181] These activities may only "be regulated to the extent necessary 'to protect tribal self-government [and] to control internal relations.'"[182] Under the second *Montana* exception "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[183] "The conduct must do more than injure the tribe, it must 'imperil the subsistence' of the tribal community.'"[184]

These two exceptions to the presumptive rule of no tribal jurisdiction over nonmembers "are 'limited' ones, and cannot be construed in a manner that would

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181 *Montana*, 450 U.S. at 565; *see Strate*, 520 U.S. at 457 (consensual relationships of the qualifying kind are business relationships).

182 *Plains Commerce*, 128 S. Ct. at 2721 (applying general limitations to the first *Montana* exception) (quoting *Montana*, 450 U.S. at 564).

183 *Montana*, 450 U.S. at 566 (nonmember hunting and fishing on non-Indian land was not a threat to political integrity).

184 *Plains Commerce*, 128 S. Ct. at 2726 (quoting *Montana*, 450 U.S. at 566); *see also id.* (quoting Cohen, §4.02[3][c] at 232 n.220 ("tribal power must be necessary to avert catastrophic consequences")).

'swallow the rule' or 'severely shrink' it."[185] As discussed below, CCTHITA does not meet either exception.[186]

While policy arguments could be made as to why CCHTITA should be able to assert jurisdiction in child support cases involving member children,[187] tribal jurisdiction is governed by rules, not policy. The "bedrock principle [that 'tribal jurisdiction . . . does not extend to nonmembers'] does not vary depending on the desirability of a particular regulation."[188] A review of the governing federal case law and application of the *Montana* exceptions leads to one conclusion: CCTHITA does not have jurisdiction over child support cases involving nonmembers.[189]

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185 *Id.* at 2720 (quoting *AtkinsonTrading*, 532 U.S. at 654 and 655; and *Strate*, 520 U.S. at 458).

186 Indeed, CCTHITA did not make any attempt to claim that it has jurisdiction over child support cases involving nonmembers under either of the *Montana* exceptions. *See* Complaint at 1-9; CCTHITA Motion for Summary Judgment 1-38. The tribe has the burden of "establish[ing] one of the exceptions to *Montana's* general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land." *Plains Commerce*, 128 S. Ct. at 2720. By failing to assert in its complaint or Motion for Summary Judgment that it meets one of the Montana exceptions, the Tribe has not sustained its burden of proof.

187 *See* CCTHITA Motion for Summary Judgment at 22.

188 *Plains Commerce*, 128 S. Ct. at 2726 (Court rejecting Justice Ginsburg's suggestion that the tribe had jurisdiction based on a policy argument).

189 While CCTHITA argues that jurisdiction pivots on the membership of the child, a jurisdictional rule premised on the child's membership has never been recognized by the United States Supreme Court. Because federal law controls in issues of Indian law, unless either the first or second *Montana* exception applies, *Montana's* general rule controls and tribal jurisdiction "does not extend to the activities of nonmembers of the tribe." *See* Willian C. Canby, *American Indian Law in a Nutshell* 91 (5th ed. 2009) ("the Supreme Court appears to have cemented firmly its view that tribes, as domestic dependent nations, have no authority over nonmembers unless one of the two *Montana* exceptions (narrowly construed) applies"); *Cohen's Handbook of Federal Indian Law*

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B. CCTHITA does not have child support jurisdiction over nonmembers under the first *Montana* exception because there is no business relationship.

Under the first *Montana* exception "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements,"[190] but only "to the extent necessary 'to protect tribal self-government [and] to control internal relations.'"[191] The first *Montana* exception applies to consensual *business* relationships,[192] and only if there is a "nexus" between that business relationship and the events that give rise to the suit in tribal court.[193]

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at 117 (Nell Jessup Newton ed., 2005 edition) ("Federal supremacy in Indian law is a bedrock principle of Indian law").

190 *Montana*, 450 U.S. at 565.

191 *Plains Commerce*, 128 S. Ct. at 2721 (applying *Montana* general limitations to first *Montana* exception); *see Montana*, 450 U.S. at 564 (general limitation that "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations . . . cannot survive without express congressional delegation").

192 *Philip Morris*, 569 F.3d at 941; *see also Hicks*, 533 U.S. at 372; *Strate*, 520 U.S. at 457.

193 *Phillip Morris*, 569 F.3d at 941 & 942; *see also Atkinson*, 532 U.S. at 656 (consensual relationship exception required nexus between the regulation and the consensual relationship itself; nonmember's business license with tribe did not give tribe jurisdiction over hotel tax on hotel guests); *Strate*, 520 U.S. at 457 (no tribal jurisdiction over traffic accident just because nonmember engaged in subcontract work on the reservation); *Plains Commerce*, 128 S. Ct. at 2725-26 ("when it comes to tribal regulatory authority, it is not 'in for a penny, in for a Pound'"); *Merrion*, 455 U.S. at 142 ("[A] tribe has no authority over a nonmember until the nonmember enters tribal lands or conducts business with the tribe").

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CCTHITA has offered no evidence to support its burden that the first exception applies.[194]

The consensual business relationship requirement cannot be met by the existence of the child-tribe relationship and the parent-child relationship.[195] First and foremost, these relationships are not the relationship "of the qualifying kind," *i.e.* a *business* relationship.[196] "[M]arrying a tribal member, allowing children to be enrolled members of the tribe and receiving tribal services do not qualify under the consensual relationship exception in *Montana*."[197] These personal relationships do not bring child support matters under the first *Montana* exception. Second, the child-tribe and parent–child relationships upon which CCTHITA relies do not have the required nexus to the obligor parent–tribe relationship. This nexus must exist in order for the Tribe to have jurisdiction over a nonmember parent under the first *Montana* exception.[198]

CCTHITA does not have jurisdiction over nonmembers under the first *Montana* exception.

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194 *Plains Commerce*, 128 S. Ct. at 2720 (tribe's burden of proof).

195 CCTHITA has argued that these relationships provide the relationship necessary to meet the first *Montana* exception. *See* State Exh. 32 at 4 (CCTHITA White Paper on Tribal Child Support).

196 *See* cases cited in footnote 186; *American Indian Law Deskbook* 204 (Clay Smith ed., 2008 edition) ("*Atkinson* and *Hicks* . . . strongly support the proposition that the first exception is limited to commercial relationships between private persons")

197 *In re J.D.M.C.*, 739 N.W.2d at 809-10 & n.21.

198 *See Plains Commerce*, 128 S. Ct. at 2724-25 ("no reason Bank should have anticipated that its general business dealings with [members] would permit Tribe to regulate the Bank's sale of land it owned in fee simple"); *Atkinson Trading*, 532 U.S. at 656 (hotel-tribe business license relationship did not have required nexus to guest-tribe; no tribal jurisdiction under first *Montana* exception).

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C. CCTHITA does not have jurisdiction over nonmembers under the second *Montana* exception because there is no nonmember conduct that imperils the existence of the Tribe.

Under the second *Montana* exception "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[199] To meet the second *Montana* exception, the conduct must "'imperil the subsistence' of the tribal community,'"[200] and jurisdiction must "be necessary to avert catastrophic consequences."[201] The United States Supreme Court "has never found the second exception applicable, and a suitable set of circumstances where its application will be appropriate does not come readily to mind."[202]

CCTHITA has asserted that it meets the second exception because "[t]he opening of the CCTHITA's Tribal Court was necessary for the protection of the welfare of its most vulnerable members, our children, and to secure, exercise and protect the Tribes' political integrity, economic security, or health or welfare."[203] This argument falls flat. First, CCTHITA offers no concrete evidence to support it, and therefore does not meet its burden. Second, it is difficult or impossible to meet the

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199 *Montana*, 450 U.S. at 566.

200 *Plains Commerce*, 128 S. Ct. at 2726 (quoting *Montana*, 450 U.S. at 566).

201 *Id.* at 2726 (quoting Cohen, §4.02[3][c] at 232 n.220).

202 *American Indian Law Deskbook* 209-10 (Clay Smith ed., 2008 edition).

203 State Exh. 32 at 5 (CCTHITA White Paper on Tribal Child Support).

burden where State CSSD already provides the same service.[204] Finally, off reservation or on non-Indian lands, general "impact" arguments are not sufficient to sustain tribal jurisdiction.[205]

Lacking any specific evidence to support a claim that the second exception has been met, CCHITA resorts to making general allegations.[206] Claims of necessity and generalized threats posed by nonpayment of child support are not what the second *Montana* exception is intended to capture.[207] "The [second] exception is only triggered by *nonmember conduct* that threatens the Indian tribe; it does not broadly permit the exercise of civil authority wherever it might be considered necessary to self government."[208] Under the second exception, "the drain of the nonmember's

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[204] *See, e.g., Ford Motor Co. v. Todecheene*, 221 F. Supp.2d 1070, 1084 (D. Ariz. 2002) ("remedies are available in state and federal court," and "[m]embers are protected by existing state laws and state remedies. Thus, it is not necessary to provide a forum for claims against non-Indians in order to protect the health or welfare of tribal members as a whole or the tribe's interest in tribal self government").

[205] *See, e.g., Wagnon*, 546 U.S. at 113 (majority) (rejecting dissent's arguments (*see* 546 U.S. at 128) that tribal interests in economic development, tribal self-sufficiency, or strong tribal government should be considered); *Atkinson*, 532 U.S. at 654-55 (rejecting hotel occupancy tax over nonmembers even though hotel was served by tribal police, medical and fire).

[206] CCTHITA Motion for Summary Judgment at 16 (a "parent's failure to provide adequate financial support to an Indian child has a direct effect on the political integrity, the economic security, and the health and welfare of the Tribe").

[207] *See Philip Morris*, 569 F.3d at 943 (generalized threats posed by torts by or against the tribe's members do not fall within second exception).

[208] *Atkinson*, 532 U.S. at 657 n.12 (internal quotations omitted) (operation of hotel on non-Indian fee land did not imperil existence of tribe even though taxation might be considered "necessary" for tribal government).

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conduct upon tribal services and resources [must be] so severe that it actually 'imperil[s]' the political integrity of the Indian tribe."[209]

Economic injury, if any, does not imperil CCTHITA's political integrity. This is especially so where CSSD can and does already provide the same services. Tribal authority over child support involving a member child is not "necessary to avert catastrophic consequences"[210] – especially given the longstanding and ready availability of state child support resources to all children of the State.

The State of Alaska provides child support services to all children throughout the state, including Southeast Alaska (where CCTHITA predominantly operates). CCTHITA's interest in ensuring support for tribal children is readily supported through CSSD services and access to State courts. The lack of tribal jurisdiction does not deny support to children. Indeed, prior to CCTHITA's garnering IV-D funding, all child support matters involving Tlingit-Haida children within the State were handled readily by the State's child support enforcement program. The availability of the "plain, speedy, and adequate remedies" of the state system

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209 *Id.* (citing *Montana*, 450 U.S. at 566); *Plains Commerce*, 128 S. Ct. at 2726 (must "'imperil the subsistence' of the tribal community"; *see also Hicks*, 533 U.S. at 394 (tribal interests under second exception are "far more likely to be implicated where . . . the nonmember activity takes place on land owned and controlled by the tribe") (O'Connor, J., concurring).

210 *See Plains Commerce,* 128 S. Ct. at 2626 (quoting Cohen § 4.02[3][c] at 232 n.220).

undermines any argument that tribal interests are jeopardized by the tribe's lack of jurisdiction over child support.[211]

To construe the second exception so broadly as to cover jurisdiction over nonmember parents who owe child support for member children would "construe[] [it] in a manner that would 'swallow the rule' or 'severely shrink it.'"[212] While the Tribe might desire to have control over child support matters involving tribal children, the second *Montana* exception does not compel that result.

D. A nonmember's consent does not create subject matter jurisdiction where it does not already exist, and CCTHITA orders issued without subject matter jurisdiction are void.

The United States Supreme Court "has repeatedly demonstrated its concern that tribal courts not require 'defendants who are not tribal members' to 'defend [themselves against ordinary claims] in an unfamiliar court,'"[213] and, as discussed above, the presumptive rule is that CCTHITA does not have jurisdiction over nonmembers. Even if a nonmember parent consents,[214] this jurisdictional equation is

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211 *Wilson v. Marchington*, 127 F.3d 805, 815 (9th Cir. 1997); *Philip Morris*, 569 F.3d at 943 (finding that pursuit of federal and state trademark claims hardly poses a direct threat to tribal sovereignty).

212 *Plains Commerce*, 128 S. Ct. at 2720 (quoting *Atkinson*, 532 U.S. at 654; *Strate*, 520 U.S. at 458).

213 *Smith*, 434 F.3d at 1131 (suit by nonmember counter-plaintiff against school located on reservation allowed); *see also Philip Morris*, 569 F.3d at 940 (no tribal jurisdiction over nonconsenting nonmember defendant; primary consideration is "whether a nonmember is being haled into tribal court against his will"); *Hicks*, 533 U.S. at 358 n.2 (Court has "never held that a tribal court had jurisdiction over a nonmember defendant").

214 CCTHITA claims child support jurisdiction in any family proceeding in which child support issues arise (*e.g.*, child welfare proceedings). CCTHITA Statute sec.

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unchanged. While tribal "laws and regulations may fairly be imposed on nonmembers *only if* the nonmember consented, either expressly or by his actions," "*[e]ven then* the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations."[215] Thus, under *Plains Commerce*, a tribe can have jurisdiction over a nonmember (even where the nonmember consents) only under those circumstances that fall within the tribe's inherent powers (or within the *Montana* exceptions). That is, consent can only be made to a matter otherwise within the tribe's jurisdiction under federal Indian law.

10.03.001. Under its family court statutes, CCTHITA claims jurisdiction over not only proceedings over member children, but also over any case involving an "Indian child with the consent of all parties." CCTHITA Statute sec. 04.01.005 A.1.b. Accordingly, by its statutes, it is CCTHITA's position that a nonmember's consent creates subject matter jurisdiction in its courts. *See, e.g.* State Exh. 10 at 7 (nonmember-nonmember case based on petitioners assignment of rights in TANF application).

Even assuming consent could somehow confer subject matter jurisdiction on the Tribe, it would have to be an affirmative consent, with full knowledge of the law and possible consequences. CCTHITA finds consent where nonmembers "voluntarily participated in a Court hearing," or "did not file a written objection to jurisdiction with the CCTHITA Court." *See, e.g.* State Exhs. 9 at 2-3; 11 at 23 ("accepted the jurisdiction"). Even if consent to jurisdiction was possible, a nonmember's failure to object to CCTHITA jurisdiction can be a manifestation of many things. Perhaps the nonmember did not know that consent was an issue (or that objection was an option). Perhaps the nonmember simply forgot to object.

And interestingly, although CCTHITA's production includes a consent to jurisdiction form (State Exh. 1 at 81) it was not used in any of the nonmember cases produced in this litigation. *See* State Exhs. 4, 8; *see also* State Exh. 3. The issue of consent was not discussed in the tribal court hearings. *See* State Exhs. 13-29. And, jurisdiction was referred to in only a few of the tribal court proceedings. *See* State Exhs. 16 at 4, 20 at 6, 27 at 8. Jurisdiction was only discussed in any detail in one case. *See* State Exh. 28.

215 *Plains Commerce,* 128 S. Ct. at 2724 (emphases added); *American Indian Law Deskbook* 209 (Clay Smith ed., 4th ed. 2008) ("a nonmember cannot create 'residual' tribal authority through consent; the nonmember can merely consent to the application of such authority when it otherwise exists").

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As discussed in section V, obtaining child support from nonmembers does not fall within the "inherent power . . . to regulate domestic relations among members" and does not fall within either of the *Montana* exceptions (consensual business relations or threat to the tribe's political integrity). Thus, under *Plains Commerce*, while a party could consent to the personal jurisdiction of a tribe, consent cannot create subject matter jurisdiction in an improper tribal forum (such as CCTHITA, which lacks subject matter jurisdiction over nonmembers under federal case law). This comports with the well-established principle that "no action of the parties can confer subject-matter jurisdiction."[216]

As a court that lacks subject matter jurisdiction over child support, CCTHITA "is '**without power** to decide a case.'"[217] Any CCTHITA child support decision would be issued outside of the tribal jurisdictional rules set by federal case law and would be "plainly beyond the authority of the court," and therefore would be void.[218] A CCTHITA child support order would also "substantially infringe on the

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[216] *Insurance Corp. of Ireland, Ltd. v. Compangnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (consent, estoppel, and waiver are never sufficient to establish subject matter jurisdiction).

[217] *Dewey v. Dewey*, 969 P.2d 1154, 1159 (Alaska 1999) (quoting *Wanamaker v. Scott*, 788 P.2d 712, 713 n.2 (Alaska 1990) (emphasis added)); *DeNardo v. State*, 740 P.2d 453, 456-67 (Alaska 1987) ("A judgment is void 'where the state in which the judgment was rendered had no jurisdiction to subject . . . the subject matter to its control, . . ., or where the judgment was not rendered by a duly constituted court with competency to render it . . . .'"); *see also Perry v. Newkirk*, 871 P.2d 1150, 1155 (Alaska 1994) (superior court's termination order was void for want of subject matter jurisdiction and therefore subject to attack under Civil Rule 60(b)(4) as void).

[218] *See Wall v. Stinson*, 983 P.2d 736, 741 (Alaska 1999) (applying the Restatement (Second) of Judgments (1982) to case contesting validity of foreign child support

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authority of another tribunal"—i.e., the State and its operation of the CSSD program—and as such, the tribal child support order could be voided on this ground, as well.[219] In sum, there is a clear presumption that tribes do not have jurisdiction over nonmembers, and child support matters do not fall within the limited *Montana* exceptions. Without the required subject matter jurisdiction, CCTHITA is simply without power to decide these child support matters, regardless of whether a party gives their consent, or not.

VI. All citizens of the State of Alaska have a constitutional right of access to the state courts.

All citizens of the State of Alaska, including tribal members, enjoy a right (under the due process and equal protection clauses) of access to the state courts.[220] The Alaska Constitution establishes "a system of uniform laws applied equally to all citizens" and "a unified judicial system."[221] This right of access to state courts is "an

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order); *see also* AS 09.30.120 (a foreign judgment is not conclusive if the foreign court did not have subject matter jurisdiction).

219 *See Wall v. Stinson*, 983 P.2d at 741.

220 *John v. Baker I*, 982 P.2d at 760 (recognizing tribal custody jurisdiction "while preserving the right of access to state courts"); *id.* at 759 ("[o]utside Indian country, all disputes arising within the State of Alaska, whether tribal or not, are within the state's general jurisdiction."); *Sands v. Green*, 156 P.3d 1130, 1134 (Alaska 2007) (statute preventing minors' access to courts violated due process); *Bush v. Reid*, 516 P.2d 1215, 1217 (Alaska 1973) (statute barring felon's access to courts violated due process and equal protection clauses); *see also* U.S. Const. 14th amend. (state may not deprive person of "life, liberty, or property, without due process of law" or "equal protection of the laws); Alaska Const. art. I, § 1 ("all persons are equal and entitled to equal rights, opportunities, and protection under the law"); Alaska Const. art. I, § 7 ("No person shall be deprived of life, liberty, or property, without due process of law.").

221 *John v. Baker I*, 982 P.2d at 805 (Matthews, J., dissenting).

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important one."[222] Even if the Tribe had jurisdiction over child support matters involving all tribal members, the State retains concurrent jurisdiction.[223]

While the *John v. Baker I* majority assured that "Alaska Natives who for any reason do not wish to have their disputes adjudicated in a tribal court will retain complete and total access to the state judicial system,"'[224] the problems are in the application. For example, despite the right of access to the state courts, members and nonmembers alike who find themselves in tribal court on child support matters will be denied state access because the CCTHITA statutes do not allow for removal of these cases to state courts.[225] And, requiring nonmembers who have no contacts or ties to the Tribe to have their child support matters heard in tribal court (because of the unilateral activity of a tribal member)[226] denies them due process.[227] The Tribe's assertion of

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[222] *Sands*, 156 P.3d at 1134 (quoting *Patrick v. Lynden Transport, Inc.*, 765 P.2d 1375, 1379 (Alaska 1988)).

[223] *John v. Baker I*, 982 P.2d at 761; *id.* at 759 ("tribe's inherent jurisdiction does not give tribal courts priority, or presumptive authority)..

[224] *Id.* at 761.

[225] *See* CCTHITA statutes Title 6; Title 10 (no provisions for transfers of child support cases); CCTHITA sec. 10.02.004 (once tribal court enters paternity finding, it has "exclusive jurisdiction over the parties"); *compare* CCTHITA sec. 04.01.005D. (allowing for transfer of jurisdiction to other courts in child protection cases); *see also* State Exhs. 13-29 (parties in tribal child support cases were not notified of any possibility of removal to state court).

[226] When tribal members apply for Tribal TANF benefits they must agree to cooperate with the Tribe to establish a child support order and assign their rights to child support to CCTHITA for each month that they receive tribal TANF assistance. State Exh. 9 at 2, State Exh. 1 at 55 and 68,State Exh. 1 at 15 (Interrog. 8 response). Thus, by applying for TANF, the tribal member forces the other parent (nonmembers and members alike) into tribal court.

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authority over these cases which are otherwise within the state's jurisdiction "erects a direct and 'insurmountable barrier' in front of the courthouse doors."[228] Under this scheme parents who are similarly situated[229] (all living within the territorial jurisdiction of the State of Alaska) will be subjected to differing treatment. This denial of access to state courts "rends the fabric of justice."[230]

These equal protection and due process concerns are not merely hypothetical. Under the broad CCTHITA jurisdictional statutes, almost any person in Southeast Alaska could find themselves in tribal court. Despite the absence of Indian country, CCTHITA asserts territorial jurisdiction over "lands in Alaska conveyed under the Alaska Native Claims Settlement Act" and "[a]ll persons, property and activities within the Tribe's territory and jurisdiction."[231] In addition, CCTHITA asserts personal

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227 *See Kulko v. Superior Court*, 436 U.S. 84, 91 (1978) (personal jurisdiction depends on reasonable notice and sufficient connection between defendant and forum State to make it fair); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316-17, 319 (1945) (defendant must have "certain minimum contacts" with the forum state so that it is "reasonable" and "fair" to require him to conduct a defense in that forum); *see In re Defender*, 435 N.W.2d 717 (S.D. 1989) (fathers' membership status not enough to establish jurisdiction over the nonmember mother living off reservation).

228 *Sands*, 156 P.3d at 1134 (under due process clause, the court balances "the private interest affected by the official action," "the risk of an erroneous deprivation of such interest," "the probable value, if any, of additional or substitute procedural safeguards," and "the government's interest").

229 "A threshold question in [an] equal protection analysis is whether similarly situated groups are being treated differently. *Black v. Municipality of Anchorage*, 187 P.3d 1096, 1102 (Alaska 2008). If the groups are not similarly situated then the different legal treatment is justified by the differences in the groups. *Id.*

230 *Bush*, 516 P.2d at 1218.

231 CCTHITA Constitution art. I; CCTHITA statute § 06.01.020(A); State Exh. 1 at 43 and 89.

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jurisdiction over all persons "served within the territorial jurisdiction of the Court" and over any person that consents to the Tribe's jurisdiction.[232] The Tribe considers "[t]he act of entry within the territorial jurisdiction of the Court" to be "consent to the jurisdiction of the Court with respect to any civil action arising out of such entry."[233] Indeed CCTHITA claims personal jurisdiction over anyone carrying on a business or having an office within the jurisdiction of CCTHITA, over anyone who violated CCTHITA constitutions or laws, over anyone who possesses real property within CCTHITA's jurisdiction, over anyone who insures a person or property within CCTHITA's jurisdiction, over anyone who is subject to federal public laws or tribal laws, over anyone who causes injury to persons or property within CCTHITA's jurisdiction, over anyone who fails to perform acts required by contract,[234] and over anyone who is engaged in substantial activity within CCTHITA's jurisdiction.[235] The Tribe specifically asserts jurisdiction over any paternity matter and any child support matter involving a child that is a CCTHITA tribal member or eligible for

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232 CCTHITA statute § 06.01.020(B)(2).

233 CCTHITA statute § 06.01.020(B)(2); *see also* CCTHITA statute § 03.01.020(C) (asserting broad criminal jurisdiction); CCTHITA statute § 06.01.020(E) (asserting child in need of aid jurisdiction over all "children found within the jurisdiction of the Court"); CCTHITA statute § 06.01.030 (broad assertion of personal jurisdiction over any person committing a broad array of acts within CCTHITA's ANCSA lands).

234 CCTHITA statute § 06.01.030(A).

235 CCTHITA statute § 06.01.030(B).

membership.[236] Given this expansive assertion of jurisdiction, it is hard to imagine what cases CCTHITA won't be claiming jurisdiction over.

In addition, the parties' participation in CCTHITA proceedings is hardly voluntary. The action begins with the service of a summons requiring a response to a complaint or taking a paternity test, and the summons threatens contempt of court proceedings and even arrest for noncompliance.[237] And once a support order is set, the respondent is notified that disobedience of the tribal order is punishable by contempt, income tax refunds and PFDs may be intercepted, liens may be placed against real property, and any assets will be attached.[238] Despite these coercive measures, CCTHITA considers mere participation in the tribal court proceedings as consent to the Tribe's personal jurisdiction.[239] Participation in a court hearing under threat of contempt proceedings and attachment of real and personal property can hardly be

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236 CCTHITA statute § 06.01.030(A)(8); *see also* CCTHITA statute § 06.21.004 (asserting long arm jurisdiction over anyone with ties to region, including the parent of a member child); CCTHITA statute § 06.23.004 - .006.

237 *See, e.g.*, State Exh. 1 at 75, 77, 80; State Exh. 4 at 90-91, 19-20, 1-2; State Exh. 5 at 102 (failure to take genetic test may result in arrest); State Exh. 8 at 70-71; State Exh. 10 at 73; State Exh. 11 at 125.

238 *See, e.g.*, State Exh. 5 at 102, 24-25, 16; State Exh. 6 at 2, 5; State Exh. 8 at 4; State Exh. 9 at 5; State Exh. 10 at 9-10; State Exh. 11 at 20.

239 *See* State Exh. 1 at 20-21 (CCTHITA's Interrogatory Response Nos. 20 and 25); CCTHITA Exh. 5 (*TCSU ex rel. Kadake*, Order of Child Support at 2-3 (Nov. 17, 2009)) (voluntary participation in hearing provides personal jurisdiction); *but see* CCTHITA sec. 06.01.020B.2. (just service within territorial jurisdiction of CCTHITA is consent to court's personal jurisdiction); CCTHITA sec. 06.01.030C. (service); State Exh. 5 at 56 (Default Order; service of summons was enough for personal jurisdiction even though Respondent failed to appear); State Exh. 10 at 7 (nonmember-nonmember case; tribal jurisdiction because petitioner assigned her child support rights to Tribe and because respondent owes duty of child support).

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considered voluntary relinquishment of a state citizen's constitutionally protected right of access to state courts.

Even more alarming is the fact that CCTHITA asserts personal jurisdiction based only on the service of documents on defendants/respondents "served within the territorial jurisdiction of the Court or served anywhere in cases arising within the territorial jurisdiction of the Tribe."[240] And, "[t]he act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the Court with respect to any civil action arising out of such entry."[241] That is, every individual entering Southeast Alaska has unwittingly "consented" to the personal jurisdiction of the CCTHITA tribal courts.

And, even if a party does *not* consent to the jurisdiction of CCTHITA, that party may not be able to simply file a parallel action in the state Superior Court (which has concurrent jurisdiction under *John v. Baker I*). Under *National Farmers Union Insurance*, "the forum whose jurisdiction is being challenged" is given "the first opportunity to evaluate the factual and legal bases for the challenge."[242] While there are exceptions (*e.g.*, "the action is patently violative of express jurisdictional prohibitions"), the default will be that the non-consenting parties will be forced to

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240 CCTHITA sec. 06.01.020B.2; sec. 10.02.004C. (personal jurisdiction in paternity cases).

241 CCTHITA sec. 06.01.020B.2; CCTHITA sec.06.01.030(statute encompassing almost any activity done in Southeast Alaska).

242 *Nat'l Farmers Union Ins.*, 471 U.S. at 856.

litigate in tribal court. Thus, the state courts would have concurrent jurisdiction in name alone.

If a parent does not bring a child support case in the state superior court before the Tribe asserts jurisdiction, then the parent's sole avenue of relief will be a separate action (such as a declaratory judgment action) in state court. Requiring relief through an after-the-fact state court proceeding "will be uncertain, hard to obtain, and expensive" and is a "long step away from the Alaska constitutional goal of equal rights under the law."[243] An after-the-fact review of tribal proceedings is hardly an adequate substitute for Alaska citizens' constitutional right of access to the state courts.

VII. Title IV-D does not create due process rights in individuals or families, and claims under 42 U.S.C. § 1983 cannot be maintained against the state.

A. No due process rights are created by Title IV-D

Because the State has not responded to one or more requests to enforce tribal court orders, CCTHITA suggests a due process violation has occurred. According to CCTHITA, the due process violation stems from Title IV-D requirements that CSSD offer a full range of services and process and enforce tribal child support orders according to UIFSA.[244] In specific, CCHITA states that "this case has denied tribal children and families the right to procedural protections afforded by the registration and enforcement provisions of UIFSA."[245]

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243 *John v. Baker I*, 982 P.2d at 767 (Matthews, J., dissenting).

244 CCTHITA Motion for Summary Judgment at 29.

245 *Id.* at 35.

Due process claims arising under or due to Title IV-D violations have been roundly rejected by courts.[246] 42 U.S.C. § 601 casts immediate doubt on CCTHITA's entire line of argument. That section states:

> **(b) No individual entitlement**
>
> This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.

Courts that have considered the question of individual rights arising out of Title IV-D have had little trouble rejecting claims by "individuals or families." Title IV-D is "directed towards states-not individuals-for purposes of improving child-support administration and lessening the need for public assistance."[247] Title IV-D provisions "shall not be interpreted to provide entitlement to 'any individual or family.'"[248]

To the extent a due process claim survives, it must be premised on a federal statute affording *individuals* participating in the child support program a specific right.[249] CCTHITA merely alleges general delay in responding to its requests

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[246] *Barnes v. Anderson*, No. 95-15969, 1997 WL 583325, at *1 (9th Cir. Sept. 19, 1997) ("Title IV-D does not affect a liberty or property interest protected by the Due Process Clause") (unpublished opinion—*see* Alaska R. App. P. 214(d)(1) for use of unpublished opinions in Alaska State Courts).

[247] *See, e.g. Consumer Advocates Rights Enforcement Soc'y. v. State of California*, No. C05-01026 WHA, 2005 WL 3454140, at *3 (N.D. Cal. Dec. 16, 2005) (plaintiffs do not possess individual rights to enforce states' alleged violations of Title IV-D).

[248] *Id.* (citing 42 U.S.C. § 601); *see also Hill v. San Francisco Hous. Auth.*, 207 F. Supp.2d 1021, 1030 (N.D. Cal. 2002) (denying § 1983 claim for death and injury of tenants that was based on alleged violations of federal Housing Act).

[249] *See, e.g., id.* at 1029 ("courts cannot broadly determine whether a statutory scheme . . . creates an enforceable right . . . Instead, courts must examine the specific

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for registration and enforcement, but fails to identify a particular statutory or regulatory provision except for time requirements *as between states*.[250] A state-to-state response requirement falls short of establishing any due process right for individuals to enforce in court.

B. CCTHITA's Title IV-D claims are not enforceable under § 1983

CCTHITA brings its section 1983 action "on its own behalf and as *parens patriae*."[251] CCTHITA's section 1983 claims fail for three reasons. First, CCTHITA is not a "person" that may sue under § 1983 when it does so to vindicate its sovereign rights. Second, while the Tribe can be a "person" under § 1983 when it brings a *parens patriae* action, *parens patriae* actions may only be brought to vindicate quasi-sovereign interests -- which it does not do. Third, the statutes under which CCTHITA brings its action do not create an individual entitlement to services that could support a § 1983 action. The State is entitled to summary judgment on these claims.

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statutes and/or regulations identified by the plaintiffs to determine if they create a federal right").

250 CCTHITA Motion for Summary Judgment at 37 (noting 20-day response requirement to referrals). The federal requirements currently in effect only set time frames for CSSD, a state IV-D agency, to respond to requests from other *state* IV-D agencies. *See* 45 CFR § 303.7; 45 C.F.R. § 301.1 (defining state so as not to include tribes).

251 CCTHITA Complaint at 8, ¶ 57.

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1. CCTHITA may not sue under § 1983 to vindicate CCTHITA's sovereign rights.

CCTHITA brings this § 1983 action "on its own behalf and as *parens patriae*."[252] To the extent that CCTHITA brings the § 1983 cause of action on its own behalf, the Tribe is an improper plaintiff.

The essence of CCTHITA's § 1983 action is that the Tribe is a sovereign, it has authority to issue child support orders in any case involving a member child,[253] and the State is therefore required to enforce the Tribe's orders and honor the Tribe's requests for service under 45 C.F.R. § 303.7, 45 C.F.R. § 309.120, and 45 C.F.R. 302.36.[254] The Tribe claims that Title IV-D and its implementing regulations require the State to cooperate with the Tribe and extend the full range of services, including the processing and enforcement of its tribal orders.[255]

CCTHITA claims that the State is violating the Tribe's right to self-government, and these statutes and regulations apply to the Tribe in its sovereign status. The entire focus of CCTHITA's claims is the Tribe's claims of jurisdiction over child support and a perceived affront to its tribal sovereignty. Under *Curyung* and *Inyo County*, because the Tribe is advancing its interests and vindicating its own sovereign rights, the Tribe is foreclosed from bringing a § 1983 claim.

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252 CCTHITA Complaint at 8, ¶ 57.

253 *See* CCTHITA Motion for Summary Judgment at 20-24.

254 CCTHITA Complaint at 4 ¶ 21; 6 ¶ 42; 7 ¶ 47-48; 8 ¶60. CCTHITA also brings a due process claim alleging that the State's failure to timely respond to the Tribe's requests for interstate service owed the Tribe "deprives the Tribe and the individual Tribal family of due process." *Id.* at 8 ¶ 54.

255 CCTHITA Motion for Summary Judgment at 28-29.

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In *Inyo*, a tribe brought a § 1983 declaratory and injunctive relief claim to prevent the state court from authorizing a search warrant allowing the search of tribal premises and seizure of tribal records.[256] As here, the allegations centered on the extent of the Tribe's right to self-government, the tribe-state jurisdictional boundaries, infringement of the tribe's federally protected rights, and vindication of the tribe's sovereign rights. The claims are made "only by virtue of the Tribe's asserted 'sovereign' status."[257] Because "section 1983 was designed to secure private rights against government encroachment, not to advance a sovereign's prerogative,"[258] the tribe was not a person who could sue under § 1983.

Our Court held in *Curyung* that "*Inyo County* simply precludes tribes from using § 1983 to vindicate their own *sovereign* rights."[259] "Sovereign interests include 'the exercise of sovereign power over individuals and entities within the relevant jurisdiction,' as well as 'the demand for recognition from other sovereigns.'"[260] Because "the tribal notification provisions appl[ied] to the villages in their sovereign status," the "claims alleging their violation [were] therefore foreclosed by *Inyo County*."[261] Just like in *Curyung*, the provisions complained of (here, the Title IV-D statutes and regulations) apply to the Tribe. To the extent the Tribe has

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256 *Inyo County v. Paiute-Shoshone Indians*, 538 U.S. 701, 705-06 (2003).

257 *Id.* at 711.

258 *Id.* at 712 (internal citation omitted).

259 *State, Dep't of Health and Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388, 399 & 402 (Alaska 2006).

260 *Id.* at 399.

261 *Id.* at 402.

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jurisdiction to issue child support orders, it is exercising its sovereign rights. Thus, the Tribe "may not bring these claims on [its] own behalf under § 1983,"[262] and the State is entitled to summary judgment.

2. Because CCTHITA is not suing to vindicate Quasi-sovereign interests, CCTHITA's *parens patriae* claims also fail.

In addition to the § 1983 claims made on its own behalf, CCTHITA also brings its § 1983 claims as "*parens patriae.*"[263] These claims also fail.

"The doctrine of *parens patriae* allows a state to bring suit to protect its interests in matters of public concern," but they "may only be brought to vindicate quasi-sovereign interests."[264] "Quasi-sovereign interests . . . are those interests 'that the State has in the well-being of its populace.'"[265] "Section 1983 was designed to secure private rights against government encroachment,"[266] and therefore the *parens patriae* action is based on the "injury a population suffers when the rights of some of its members are systematically violated."[267] That is, government encroachment on private

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262 *Id.*

263 CCTHITA Complaint at 8 ¶ 57.

264 *Native Village of Curyung*, 151 P.3d at 399.

265 *Id.*; *see also id.* ("state must be able to articulate an injury to the well-being of the state as a whole" "overall injury must be more than the mere sum of its parts").

266 *Id.* at 400 (quoting *Inyo County*, 538 U.S. at 721).

267 *Id.* at 400; *see also id.* ("[T]he injury the sovereign seeks to remedy [in bringing parens patriae claims] is not to its sovereignty, but rather to its larger population.").

rights must occur first and give rise to an injury to the population as a whole, for a viable *parens patriae* action.[268]

CCTHITA's claims are not based on government encroachment on the private rights of tribal members that then derivatively raise tribal interests in the well-being of its populace. CCTHITA's claims fall squarely within the protection of its *sovereign* interests, *i.e.*, the Tribe's claimed exercise of sovereign power over individuals and the Tribe's demand for state recognition of its tribal sovereignty. These sovereign claims (even with the alleged trickle down damage to tribal members) may not be made through a *parens patriae* claim.[269]

While CCTHITA has tacked the "magic words" of *parens patriae* to its complaint, it has neglected to express any quasi-sovereign interests. CCTHITA's section 1983 claims must be dismissed.

3. Title IV-D does not create a binding obligation and therefore CCTHITA's § 1983 claims fail.

Even if CCTHITA (either on its own behalf or as *parens patriae*) was a proper plaintiff, its claims under section 1983 fail because Title IV-D does not

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[268] *Id.* That it is government encroachment on private rights that occurs first (resulting in injury to the state) is demonstrated by the cases cited by the *Curyung* court. *See Support Ministries for Persons with Aids, Inc. v. Village of Waterford*, 799 F. Supp. 272 (N.D.N.Y. 1992) (*parens patriae* based on discrimination against persons with AIDS); *Pennsylvania v. Glickman*, 370 F. Supp. 724 (W.D. Pa. 1974) (*parens patriae* based on racial discrimination in hiring firefighters); *Pennsylvania v. Flaherty*, 404 F. Supp. 1022 (W.D. Pa. 1975), *vacated on other grounds*, 760 F. Supp. 472 (W.D. Pa. 1991) (*parens patriae* based on deprivation of civil rights); *Pennsylvania v. Porter*, 659 F.2d 306 (3d Cir. 1981) (police mistreatment, illegal arrests, and illegal search and seizures).

[269] *Native Village of Curyung*, 151 P.3d at 399.

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unambiguously imposes a binding obligation on the State or create enforceable individual rights.

In order for CCTHITA to present a viable § 1983 action, it "'must assert the violation of a federal *right*, not merely a violation of federal *law*.'"[270] Under *Blessing*, the Supreme Court adopted a three-part test for determining whether a federal right was violated. "First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the States. In other words, the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms."[271] Further, it is not enough that the plaintiff falls within the general zone of interest of the statute. Rather, the Supreme Court has clarified that "§ 1983 may only be used where Congress intended that the substantive statute at issue actually confer *rights* on the plaintiff. Merely conferring 'broader or vaguer "benefits" or "interests"' does not render a statute enforceable under § 1983."[272]

As evidence that it meets the requirements for a § 1983 action and its members have a private right of action to enforce IV-D statutes and regulations, the

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270 *Id.* at 405 (quoting *Blessing v. Freestone*, 520 U.S. at 340).

271 *Blessing*, 520 U.S. at 340, *quoted in*, *Native Village of Curyung*, 151 P.3d at 405.

272 *Native Village of Curyung*, 151 P.3d at 405 (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002)).

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Tribe relies on the pre-*Blessing* case of *Howe v. Ellenbecker*.[273] Granted, *Howe v. Ellenbecker* did find a private right of action (regarding state child support collection efforts on reservation) based on the IV-D general plan and regulatory requirements.[274] But, significantly, *Howe v. Ellenbecker* was abrogated by *Blessing v. Freestone*.

Under *Blessing*, the court must focus on whether the plaintiff has presented a "well-defined claim" under "a specific statutory provision," and whether that specific statute actually conferred rights on the plaintiff.[275] In order for a statute to create a right on the plaintiff, the language of the statute must be individually-focused and evince a congressional intent to create rights in particular individuals.[276] As in *Howe*, CCTHITA here complains about "a wholesale refusal of services to a group of people" and the "state agency refusing to recognize the fundamental validity of a federally funded tribal program."[277] These generalized grievances about the lack of intergovernmental cooperation[278] do not give rise to a recognizable cause of action under § 1983.

The requirements under 42 U.S.C. § 654, 45 C.F.R. § 302.36(a)(2) and 45 C.F.R. § 303.7 for the State to "cooperate with any other State" and to "extend the full

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273 CCTHITA Motion for Summary Judgment at 31.

274 *Howe v. Ellenbecker*, 8 F.3d 1258, 1262-63 (8th Cir. 1993), *abrogated by Blessing v. Freestone*, 520 U.S. 329 (1997).

275 *Blessing v. Freestone*, 520 U.S. at 342 (citations omitted).

276 *Gonzaga Univ.*, 536 U.S. at 283-84 and 287-88.

277 CCTHITA Motion for Summary Judgment at 32.

278 *See* CCTHITA Motion for Summary Judgment at 31-34, 28.

range of services" to tribal IV-D programs[279] do not create an individual entitlement to services. Rather Title IV-D provides a mechanism to fund State child support programs and the State is only required to "substantially comply" by meeting set targets.[280] "[T]he requirement that a State operate its child support program in 'substantial compliance' with Title IV-D was not intended to benefit individual children and custodial parents and therefore it does not constitute a federal right."[281] While the tribe and tribal members might benefit from the implementation of the state plan, in order for its § 1983 action to survive, the tribe must show that the statute is "phrased 'with an *unmistakable focus* on the benefitted class.'"[282] The statutory provisions focus on requirements placed on the State in order to participate in federal funding and without

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[279] *See* CCTHITA Motion for Summary Judgment at 28-29 (CCTHITA relying on these provisions as basis for its section 1983 action). CCTHITA also relies on 45 CFR § 303.7. The current version of the regulation does not apply to tribal IV-D requests. The amended regulation that includes tribal IV-D cases as "intergovernmental" requests is not effective until next year, January 3, 2011.

[280] 42 U.S.C. § 655 (payments to states); 42 U.S.C. § 652(g) (performance standards for substantial compliance); 42 U.S.C. § 658a (incentive payments for meeting performance measures); 45 C.F.R. Part 305 (program performance measures, financial incentives and penalties); 45 C.F.R. § 305.33 (paternity establishment percentages; support order establishment performance measures); 45 C.F.R. § 305.63 (standards for determining substantial compliance).

[281] *Blessing*, 520 U.S. at 343; *see also Gonzaga Univ.*, 536 U.S. at 283-84 (where statute "grants no private rights to an identifiable class" there is no private right of action); *Consumer Advocates Rights Enforcement Soc'y*, No. C05-01026 WHA, 2005 WL 3454140, at *3 (unpublished opinion) (Title IV-D does not create enforceable rights; "language of these statutes is directed towards states—not individuals—for purposes of improving child-support administration and lessening the need for public assistance").

[282] *Gonzaga Univ.*, 536 U.S. at 284 and 285-86; *Sanchez v. Johnson*, 416 F.3d 1051, 1057 (9th Cir. 2005) (statute any less direct than "no person shall" cannot support § 1983 claim unless accompanied by "unambiguous" indicia of congressional intent).

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Congress stating an unambiguous intent to confer individual rights, these "federal funding provisions provide no basis for private enforcement by § 1983."[283] Therefore, there is no intent to confer federal rights upon the Tribe and there is no private right of action that could support a section 1983 action. "Further, "even when a State is in 'substantial compliance' with Title IV-D, any individual plaintiff might still be among the 10 or 25 percent of persons whose needs ultimately go unmet."[284] Even where there is no substantial compliance the result is only a reduction in federal funding to the state.[285] The federal government "cannot, by force of her own authority, command the State to take any particular action or to provide any services to certain individuals," and as such "it does not give rise to individual rights" enforceable by individual plaintiffs.[286]

CCTHITA asserts that the terms of 42 U.S.C. § 654 are mandatory and therefore enforceable under § 1983.[287] While it is mandatory to develop a state plan in

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283 *Gonzaga Univ.*, 536 U.S. at 280; id. at 281 ("recent decisions . . . have rejected attempts to infer enforceable rights from Spending Clause statutes").

284 *Blessing*, 520 U.S. at 344; *see also Gonzaga Univ.*, 536 U.S. at 288 (where there is an "aggregate focus they are not concerned with 'whether the needs of any particular person have been satisfied' and [the statute] cannot give rise to individual rights'") (quoting *Blessing*, 520 U.S. at 343-44).

285 42 U.S.C. § 655; 42 U.S.C. § 658a; 45 C.F.R. Part 305; 45 C.F.R. § 305.33; 45 C.F.R. § 305.63.

286 *Blessing*, 520 U.S. at 344.

287 CCTHITA Motion for Summary Judgment at 31.

order to receive federal funding,[288] there is no mandate for the State to provide specific services to specific people. The statute does not actually confer rights on the tribe or its members and thus it is not enforceable under § 1983. As such, CCTHITA's claims fail to meet the third *Blessing* requirement.

4. CCTHITA has not established that it has been harmed by State action.

CCTHITA's claims to harm are premised on CCTHITA tribal members having a "right to certain services" under the CCTHITA Title IV-D program.[289] CCTHITA also asserts that it has been harmed by families abandoning the Tribe's IV-D program, and by there being duplicative orders being issued by the Tribe and the State.[290] Ignoring the fact that all of these services[291] are readily available to families through the State's CSSD, the essential problem with these claims of harm is that CCTHITA is simply not entitled to these services from the State. CCTHITA's bootstrapped claims of harm fall flat.

These services are dependent on CCTHITA having tribal jurisdiction over child support in the first instance. As discussed above, the Tribe's assertion of

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[288] *See, e.g.* 42 U.S.C. § 654 (state plan requirements); 42 U.S.C. § 652(b)-(c) (payments to States with approved plan); 42 U.S.C. § 655 (payments to States with approved plan).

[289] CCTHITA Motion for Summary Judgment at 27. Specifically, CCTHITA claims that it has been harmed because the State has not provided certain child support services (such as PFD garnishments, unemployment benefit garnishments, license revocations and federal tax refund intercept services) to CCTHITA. CCTHITA Motion for Summary Judgment at 5.

[290] CCTHITA Motion for Summary Judgment at 6.

[291] *E.g.*, PFD garnishments, unemployment benefit garnishments, license revocations and federal tax refund intercept services.

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jurisdiction over child support is not supported by the governing federal case law. The State's failure to recognize CCTHITA tribal jurisdiction cannot support claims of harm and does not give rise to a cause of action when CCTHITA does not have tribal child support jurisdiction for the State to recognize.

In fact, even the IV-D tribal child support program regulations themselves do not require the State to extend services to a Tribe that does not have underlying jurisdiction. Only those orders that are issued by "a court of competent jurisdiction" are enforceable in other states.[292] Where a Tribe (such as CCTHITA) does not have jurisdiction over a case, "the proper action" is "to refer the case to a State or another Tribe" that does.[293]

CCTHITA also claims harm based on its inability to recoup TANF debt owed to the Tribe.[294] Again, this claim is dependant on CCTHITA having tribal

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292 42 U.S.C. § 654(9)(C); 69 Fed. Reg. 16655 (cmt. 1 on § 309.70) (State Exh. 37 at 29).

293 69 Fed. Reg. 16655 (cmt. 1 on § 309.75) (State Exh. 37 at 19); *see also* 69 Fed. Reg. 16653 (cmt. 10 on § 309.65; "If the State where the request for services is made had no jurisdiction, the State can refer the applicant to an agency in the appropriate jurisdiction"; "there may be circumstances under which the only appropriate service will be to request assistance from another Tribal or State IV-D program with the legal authority to take actions on the case") (State Exh. 37 at 17); 69 Fed. Reg. 16653 (cmt. 11 on § 309.65; "there may be instances in which the appropriate services will be to request assistance from another Tribal or State IV-D program") (State Exh. 37 at 17); 69 Fed. Reg. 16655 (cmt. 1 on § 309.70; "Lack of jurisdiction does not excuse a Tribal IV-D program from the responsibility of providing services when asked, including seeking assistance from another IV-D program") (State Exh. 37 at 19); 69 Fed. Reg. 16655 (cmt. 1 on § 309.75; proper action of Tribal IV-D agency may be "to refer the case to a State or another Tribe because the Tribe has no jurisdiction over the parties") (State Exh. 37 at 19).

294 CCTHITA Motion for Summary Judgment at 5.

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jurisdiction over child support in the first instance. CSSD is already providing enforcement services to CCTHITA for valid state and administrative child support orders. If CCTHITA needs a child support order established for its tribal TANF recoupment, it can request a child support agency with jurisdiction to establish a child support order, just as the federal regulations anticipate.[295] In fact, prior to CCTHITA's operation of its IV-D tribal child support program in April 2007, CSSD established child support orders and handled all collections for all CCTHITA TANF cases.[296]

Similarly, CCTHITA's claims of harm based on the State not entering into an agreement with the Tribe regarding the intercept of income tax refunds are baseless. Whether the State enters into an agreement with a Tribe is completely voluntary matter, and cannot support a claim for damages.[297]

The Tribe claims that the State's nonrecognition of CCTHITA tribal orders "undermines the heart of Title IV-D's intergovernmental scheme: eliminating multiple child support orders through UIFSA" and creates "administrative problems" for the Tribe.[298] To the extent "problems" arise,[299] they are not being created by the

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295 69 Fed. Reg 16655 (cmt. 1 on § 309.70) (State Exh. 37 at 19).

296 State Exh. 1 at 6-7 (RFA 16 & 17 responses); *see* State Exh. 38, Affidavit of John Mallonee at 2 ¶ 6.

297 Exh. 38, Affidavit of John Mallonee, Oct. 28, 2010, at ¶ 17; *see also* State Exh. 30 (IRS memo requiring tribe to be agent of state to receive federal taxpayer information).

298 CCTHITA Motion for Summary Judgment at 32-33.

299 CCTHITA claims that it "has documented two instances where CSSD issued its own support order for a family after being notified of an existing tribal child support order for the same family." CCTHITA Motion for Summary Judgment at 33. The

State. These cases are simply examples of the confusion that will occur when tribes (of which CCTHITA is only 1 of 229) begin issuing child support and paternity orders outside of Indian country, within the State's jurisdiction, and involving members and nonmembers alike. While eliminating multiple child support orders might be one goal of UIFSA, as discussed above in Section III, problems like this will inevitably arise by the assertion of jurisdiction outside of a land base, a position that is fundamentally at odds with the concept of continuing exclusive jurisdiction upon which UIFSA is based.[300]

5. Conclusion to § 1983 section

In sum, while it is possible for a tribe to bring an action under section 1983 to vindicate quasi-sovereign interests as *parens patriae*, the interests sought to be vindicated here are the Tribe's sovereign interests. Since CCTHITA is not advancing quasi-sovereign interests, CCTHITA's § 1983 claim must be dismissed.

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documents submitted by CCTHITA tell only half of the story in these cases. *See* State's Exh. 3 and 8.

CCTHITA is correct that CSSD issued a support order naming Mr. Charboneau as the father even though the tribe had earlier issued a support order naming Mr. Werth as the father (both nonmembers of the tribe). State Exh. 8 at 1-8; State Exh. 14. But CSSD did so as part of the mother's request for services, based on the mother's statement that Mr. Charboneau (a nonmember) was the father, and in the face of the state superior court order disestablishing Mr. Werth (a nonmember) as the father. State Exh. 3 at 56, 52-53; State Exh. 3 at 6-8, 15-18; State Exh. 14; *See also* State Exh. 28 at 26 (tribe informed Mr. Werth that he could petition state superior court to disestablish paternity even if the tribe had a previous order establishing paternity. The tribe had not requested comity recognition of its paternity determinations, and CSSD could hardly ignore these facts and the state superior court order.

300 *See* AS 25.25.205; *see also* discussion in section II.B. *supra*.

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Section 1983 claims must be brought under a specific and exact statutory provision that was intended to benefit the plaintiff and that unambiguously imposed an obligation of the State. CCTHITA's § 1983 claim fails because it has not articulated a specific right that has been violated, let alone one that imposed a binding obligation on the State or one that was intended to specifically benefit the plaintiff. Rather, CCTHITA claims that the State has violated a "policy" of "streamlining support orders" and "fostering cooperation among state and tribal IV-D programs"[301] These amorphous claims do not support a section 1983 action. CCTHITA's claims should be dismissed.

CONCLUSION

For the reasons stated above, summary judgment should be entered in favor of the State of Alaska on all counts of the complaint.

DATED: November 1, 2010

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: _____
Mary Ann Lundquist
Senior Assistant Attorney General
ABA No. 9012132

By: _____
for Stacy K. Steinberg
Chief Assistant Attorney General
ABA No. 9211101

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301 CCTHITA Motion for Summary Judgment at 34.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *Parens partriae* on behalf of its members, Plantiff, v. STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity of Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, In his official capacity of Director of the Alaska Child Support Services Division. Defendants.	)	Case No. IJU-10-376 CI

PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST AND SECOND SETS OF DISCOVERY REQUESTS

Plaintiff responds to defendants' first and second sets of discovery requests as follows:

RFA No. 1: Please admit that the federal government's approval of a child support plan for a IV-D tribal child support agency does not confer child support jurisdiction on that agency or on the tribe.

Response: This question calls for a legal conclusion and/or analysis. Plaintiff is not a lawyer and therefore objects and cannot answer this question. Plaintiff also objects because the request is not relevant to the issues in this lawsuit and not calculated to lead to the discovery of relevant information: plaintiff has not claimed that the federal government's approval of a child support plan for its IV-D tribal child support agency confers child support jurisdiction on the TCSU or the Tribe.

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any existing child support order in place for that child. If CSSD is aware of an existing child support order, the Tribe will avoid issuing any conflicting orders. The TCSU application forms also inquire about existing child support orders. *See* Bates Nos. 357-362 & 371-377.

Interrogatory No. 22: If CCTHITA denies, in full or in part, any of the requests for admission in the State's First Set of Discovery Requests, please state the basis of each denial.

Response: Plaintiff objections to this interrogatory because it calls for a narrative and is overbroad and is improper.

Subject to the above, this information is provided in the Plaintiff's responses to the State's requests for admission.

Interrogatory No. 23: In the complaint, the Tribe alleges that the State failed to provide services to the Tribe, including failing to collect child support, and that the alleged conduct harms the Tribe. Complaint at ¶¶ 32, 38-39, 43-44, 49-50. Please describe how this alleged conduct harms the Tribe.

Response: Please see Affidavit of Jessie Archibald Submitted in Support of Plaintiff's Motion for Summary Judgment ¶¶ 24, 35, 39, 40, 41, 42, 43, 44.

Interrogatory No. 24: Please provide a complete physical description of and the boundaries of the territory of the Central Council of Tlingit and Haida Indian Tribes of Alaska as referred to in Article 1 of the Central Council of Tlingit and Haida Indian Tribes of Alaska, including any reservation which has been established for the Tlingit and Haida Indian Tribes of Alaska as referred to in Article 1, section1, of the Constitution of the Central Council of Tlingit and Haida Indian Tribes of Alaska; a list of all dependent Indian communities as set out in Article 1, section 2, of the Constitution of the Central Council of Tlingit and Haida

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Indian Tribes of Alaska; and all lands, islands, waters, and airspace held in trust status for the Tribe, or for an enrolled tribal member citizen therefore.

Response: Plaintiff objects to this Interrogatory because it is not relevant to the issues in this lawsuit and not calculated to lead to the discovery of relevant information. There are no claims to jurisdiction in this case based on territorial claims or Indian Country. Without waiving this objection, a map of traditional Tlingit country is attached at Bates No. 378.

Interrogatory No. 25: According to the Order Establishing Paternity in Tribal Child Support Unit, Ex Rel. Tavin Reilly Aceveda Chilton, A minor child under the age of 18, Avena L. Aceveda, Petitioner, Vs. Douglas R. Chilton, Respondent, Tribal Court Docket #07-CS-0011 and TCSU Case # 07-0033, Douglas R. Chilton failed to appear at the February 12, 2008 hearing, but both Douglas R. Chilton and Avena L. Aceveda "accepted the jurisdiction of [the CCTHITA Tribal] Court." Exhibit 7, Order Establishing Paternity at page 2, paragraph 7. What is the factual basis for the assertion that both parties "accepted the jurisdiction" of the CCTHITA Tribal Court?

Response: Pursuant to Civil Rule 33(d), Plaintiff refers the State to the relevant court file available to the public at the CCTHITA Tribal Court, 358 West Willoughby Avenue, Juneau AK.

Interrogatory No. 26: Please state the city and state of the physical residences of the parties, including the child(ren), named in the tribal court proceedings attached as exhibits to the motion for summary judgment. *See* Exhibits 5-10.

Response: Plaintiff objects to this Interrogatory because it is not relevant to the issues in this lawsuit and not calculated to lead to the discovery of relevant information. Plaintiff also objects to providing the information requested for the parties in the proceedings attached

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Document Produced: Objection to this request as it is vague, overbroad, and not relevant. Without waiving this objection, please see Tribal Statutes, Titles 6 and 10. To the extent that this request asks Plaintiff to produce all documents relating to jurisdiction for all tribal court child support cases since 2007 that involve a nonmember party, this request is unduly burdensome.

Production No. 26: The Tribe in its Order of Child Support, Tribal Child Support Unit Ex Rel, Wyatt, A minor child under the age of 18, Antionette R. Kadake, Petitioner, Vs. Kevin E. Martin, Respondent, Court Docket # 09-CS-0120, TCSU Case # 09-0092 finds that it has jurisdiction to hear and decide the case based in part on a finding that the petitioner "applied for Tribal TANF benefits and agreed to cooperate with TCSU to establish a child support order." Please provide a copy of the completed form by which the petitioner agreed to cooperate with TCSU to establish a child support order and any agreement by the petitioner to the jurisdiction of the tribal court.

Document Produced: See Bates Nos. 472-477, containing the confidential application of Antoinette Kadake. For the additional documents requested, Plaintiff refers the State to the relevant court file available to the public at the CCTHITA Tribal Court, 358 West Willoughby Avenue, Juneau AK.

Production No. 27: Please provide a copy of the documents showing the enrollment of the parents, alleged parents, and children in the Tribal child support cases and paternity cases in Exhibits 5-10 (including Antoinette R. Kadake, Kevin E. Martin, Wyatt Kadake, Lindsey Fredrickson, Edward G. Jackson Jr., Sam Julius Fredrickson, Avena L. Aceveda, Douglas R. Chilton, Tavin Reilly Aceveda Chilton, Shauna Kaye Jensen, Jose Luis Morato-Felipe, Valentino Aurillo Morato, Josephine K. Werth (AKA Josephine K. Guthrie), Kenneth

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D. Werth, Jr., Donnelly J. Charboneau, Gabriel G. Werth, Jilliane G. Gregorioff, Jason R. Amundson, and Mia G. Amundson) as enrolled members of CCTHITA in accordance with Article III of the Constitution of the Central Council of Tlingit and Haida Indian Tribes of Alaska.

Document Produced: See Bates Nos. 478-490.

Production No. 28: Please provide a copy of all documents (including tapes, transcriptions or other records of the tribal court proceedings, any correspondence between TCSU and CSSD, any notes from telephone calls between TCSU or the tribal court and CSSD, and other pleadings or orders) filed in or involving Tribal Court Docket #07-CS-0011 and TCSU Case # 07-0033, Tribal Child Support Unit, Ex Rel. Tavin Reilly Aceveda Chilton, A minor child under the age of 18, Avena L. Aceveda, Petitioner, Vs. Douglas R. Chilton, Respondent, that were not in Exhibit 7.

Document Produced: Please see Bates Nos. 491-493. Plaintiff also refers the State to the relevant court file available to the public at the CCTHITA Tribal Court, 358 West Willoughby Avenue, Juneau AK.

Production No. 29: Please provide a copy of all documents (including tapes, transcriptions or records of tribal court proceedings, any correspondence between TCSU and CSSD, any notes from telephone calls between TCSU or the tribal court and CSSD, the petition, and any other pleadings or orders) filed in or involving Tribal Court Docket #07-CS-0064 and TCSU Case # 07-0317, Tribal Child Support Unit, Ex Rel. Valentino Aurillo Morato, A minor child under the age of 18, Shauna Kaye Jensen, Petitioner Vs. Jose Luis Morato-Felipe, Respondent that were not in Exhibit 8.

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Production No. 41: Please provide a copy of all documents (including tapes, transcriptions or other records of the tribal court proceedings, any correspondence between TCSU and CSSD, any notes from telephone calls between TCSU or the tribal court and CSSD, and other pleadings or orders) filed in or involving Tribal Court Docket #08-CS-0041 and TCSU Case # 07-0223, Tribal Child Support Unit, Ex Rel. Sam Julius Fredrickson, A minor child under the age of 18, Lindsey Fredrickson, Petitioner, Vs. Edward G. Jackson, Jr., Respondent, that were not in Exhibit 6.

Document Produced: Please see Bates Nos. xx-xx, which includes CONFIDENTIAL information. Plaintiff also refers the State to the relevant court file available to the public at the CCTHITA Tribal Court, 358 West Willoughby Avenue, Juneau AK.

Production No. 42: Please produce any documents supporting or relating to any of CCTHITA's answers to Interrogatories 24-28 above.

Document Produced: Production of documents related to the Interrogatories are referenced in each relevant Interrogatory.

As to responses to requests for production, responses to requests for admission, and objections:

DATED this 19th day of August, 2010.

Holly Handler, Bar No. 0301036
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As to responses to interrogatories:

DATED this 11th day of August, 2010.

Eddie Brakes
CCTHITA Tribal Child Support Unit Manager

Subscribed to and sworn before me this 11th day of August 2010.

HOLLIS L. HANSEN NOTARY PUBLIC STATE OF ALASKA

Notary Public for the State of Alaska
My commission expires: 1-1-2011

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Central Council Tlingit & Haida Indian Tribes of Alaska Narrative Report

FY 2009 October 2008 through September 2009

Tribal Child Support Unit Program

The Central Council Tlingit and Haida Indian Tribes of Alaska is a federally recognized regional Tribal organization for the Alaska's Tlingit and Haida population. Central Council serves 20 villages and communities that are spread over 43,200 square miles within the Alaska Panhandle. The region encompasses a 525-mile strip of coastline and interior waterways, bordered by Canada on the north, south and east, with the Gulf of Alaska on the west. There is no road system linking Southeast Alaska communities; therefore communities can only be reached by airplane, boat or ferry. The Tribal Child Support Unit's (TCSU) main office is located in the Alaska state capital city of Juneau, Alaska. TCSU has an outreach office in Ketchikan, Alaska.

TCSU uses a judicial system for its child support enforcement program. The Tribal court clerk works with process servers throughout the regional area to ensure that parents are personally served with notice and summons of paternity and child support petitions. When process servers are not available, certified mail return receipt is used. Careful attention is paid to due process to ensure all parents are given an opportunity to participate and prepare for court hearings. Because of the remoteness of the communities, telephonic court hearings are used quite frequently. Some parents from remote communities travel to Juneau to actively participate in the child support proceedings.

Central Council's mission is to preserve and enhance the economic and cultural resources of the Tlingit and Haida nations and to promote self-sufficiency. We are dedicated to the use of fair and professional management systems as we strive to improve the quality of life for our citizens.

Statistical Report

Using statistics from the 2008 Report, TCSU's active IV-D caseload grew in size from 343 (2008) to 593(2009) (73% larger than in fiscal year 2008). TCSU distributed $112,371.06 in child support for fiscal year 2009. Collections increased from the prior year by 254%.

Activities

TCSU accepts all applications for child support services and makes appropriate referrals when necessary. TCSU staff continues to work collaboratively with the State of Alaska CSSD to transfer cases where the custodial parent has applied for and received Tribal Assistance to Needy Family funds (TANF). For year 2009, the number of cases transferred from CSSD decreased

from year 2008 and 2007. It is expected that at some point, TCSU caseload will plateau. This is based upon the number of child support applications received by TCSU. In 2009, TCSU only had 192 new cases to open, based upon no previous case. This is a 45% decrease from 2008. In 2010, the number of new cases will probably be even less. It is anticipated that TCSU will eventually plateau at 850-900 cases a year.

Accomplishments

PFD Intercept: In year 2008, Alaska CSSD refused to provide an inter-agency service, i.e., interception of the Alaska Permanent Fund Dividend for all cases with a Tribal court child support order. In 2009, TCSU was able to negotiate a short term solution with the Alaska Department of Law and CSSD agreed to provide PFD services for some of the Tribal court child support cases.

Case Processing: For year 2009, TCSU staff has been able to process "transferred cases" more efficiently than the previous year. In 2007 and 2008, processing of these cases was very difficult, primarily due to lack of information from CSSD regarding the "transferred" cases. However CSSD is now providing copies of the Transmittal #1 sheet, TCSU case processing is more efficient.

UIFSA Amendment: In 2009, Region 10 informed the State of Alaska that the state would lose millions of dollars in federal funding for child support and TANF funding if Alaska did not amend the UIFSA definition of "state" to include an "Indian tribe." In 2009, the Alaska state legislature amended its UIFSA statute definition of "state" to include an "Indian tribe."

Initially, the draft amendment of SB 96 contained negative language regarding tribal jurisdiction over child support. TCSU staff worked with the Tribal Judiciary Committee and met with state legislatures to persuade legislatures that the negative language regarding tribal jurisdiction was against the spirit and intent of the UIFSA. The Senate agreed to change the language in the final bill to reflect a more neutral stance toward tribal entities.

The final language in the bill reads that, "In adopting the UIFSA conforming amendments, the legislative intent is to 1) remain neutral on the issue of the underlying child support jurisdiction, if any, for the entities, listed in the amendment of "state."; 2) not to expand or restrict the child support jurisdiction, if any, of the listed "state" entities in the amended definition; and 3) not to assume or express any opinion about whether those entities have child support jurisdiction in fact or in law. "

Challenges

Recognition of Orders: Despite the UIFSA amendment that now includes an "Indian tribe" within the definition of "state," the State CSSD continues its policy of refusing to recognize and enforce the Tribe's child support orders and refuses to provide any services when the underlying order is based upon a Tribal child support order.

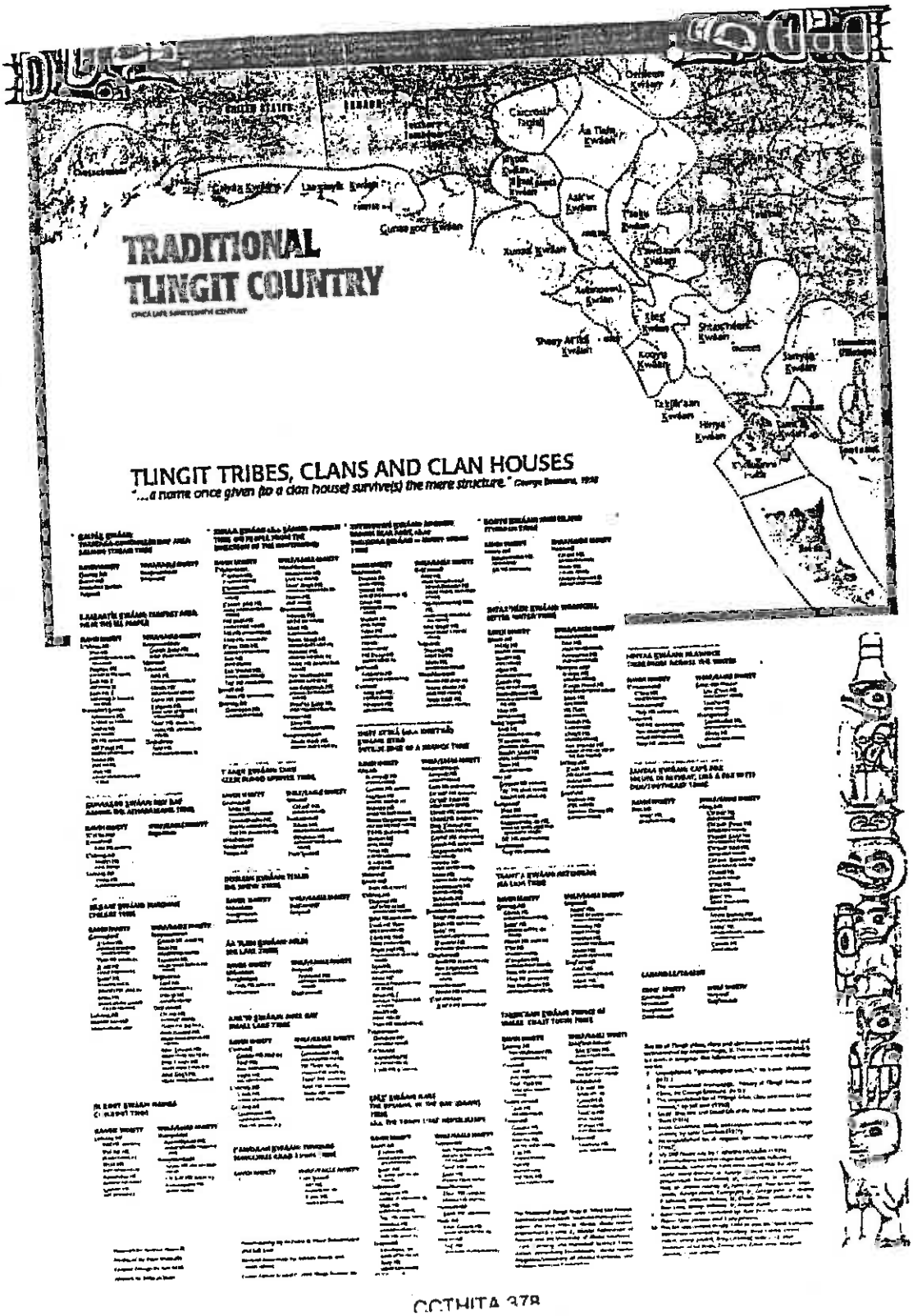
PFD Intercept only for 2009: When TCSU began making PFD intercept requests, the State responded by stating, "We are returning this transmittal as there is no state of Alaska or other state order." TCSU was able to negotiate a short term solution by entering into a written memoranda with CSSD which " ...was an operational agreement and takes no position on subject matter jurisdiction to issue child support orders under any set of facts" and that "...neither party waives any potential jurisdictional claims, defenses or arguments" and that, "Both parties retain their respective rights and remedies against each other, and can exercise those rights or remedies at any time and regardless of the status of this MOU or whether the action might undermine, conflict or result in the termination of this MOU." There is also language in the agreement that, "This MOU does not set a direct or implied precedent for any future agreements on child support or any other issue and cannot be relied on for any purpose." The language drafted by the Alaska Department of Law implies Alaska CSSD can choose not to provide the PFD intercept in the future. The Alaska Permanent Fund is a significant part of the Alaska economy. For some custodial parents, the intercept funds are the only child support funds received for the entire year. TCSU will have to negotiate a new MOU for the PFD intercept for year 2010.

Consequences: The State of Alaska's refusal to provide intercept services for Tribal court child support orders is a serious problem that undermines the integrity of the TCSU child support program. When custodial parents learn that they are not able to obtain the benefit of the PFD intercept because their child support order is with the Tribe and not the State, custodial parents have chosen to withdraw from TCSU child support services to obtain the financial benefit of the PFD intercept.

The State's overall refusal to recognize, enforce or provide services to families with Tribal child support orders has a severe impact on the longevity and the caseload of the TCSU. TCSU is not able to obtain any State services for Tribal child support orders. Some of these services include typical enforcement tools used by states and tribes: IRS Intercept, PFD Intercept, driver's license suspension, criminal sanctions, passport denial.

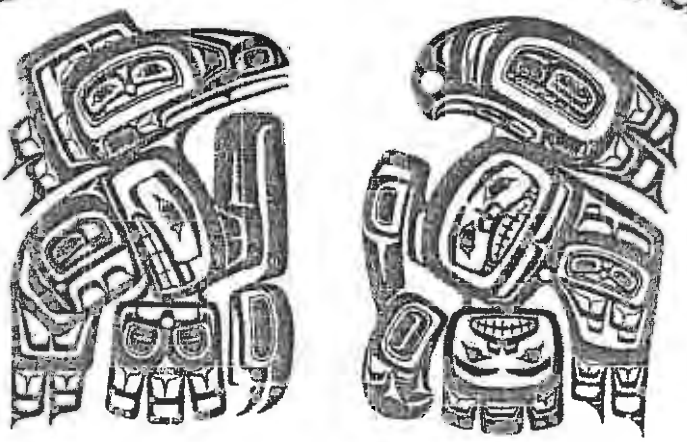
Other states and tribes cooperate by identifying and transferring or referring state cases with tribal members. Alaska CSSD will only agree to "transfer" cases where a custodial parent has applied for TANF benefits and assigned rights to the Tribe to collect child support. CSSD's refusal to acknowledge, recognize, or provide services to TCSU child support cases that have Tribal court child support orders has resulted in a significant loss of revenue to children, families and the Tribal TANF program. CSSD's failure to cooperate and provide service for families with Tribal child support orders has cost the Tribe countless hours of employee time in negotiating with the Alaska CSSD only to have no resolution; this time could be better spent providing necessary services to children and families.

TCSU continues to collaboratively approach these challenges to CSSD and Alaska Department of Law. There has been some minute head way in some of these areas but progress is slow and deprives clients of much needed revenue to manage in the current economic times.


TRADITIONAL
TLINGIT COUNTRY
TLINGIT TRIBES, CLANS AND CLAN HOUSES

Central Council

Tlingit and Haida



Indian Tribes of Alaska

Tribal Child Support Unit

POLICY & PROCEDURES

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Tribal Child Support Unit
Policy and Procedures

I. PROGRAM INFORMATION

A. Program Goals and Objectives

CCTHITA Tribal Child Support Unit (TCSU) is motivated and dedicated to bettering the future of our children. CCTHITA children not receiving support from the non-custodial parent is intolerable. It has always been CCTHITA priority to strengthen Tribal families. The TCSU will concentrate on parent/child relationships, father initiatives, and strengthen families. Our children will not be just another case. TCSU staff gives children and families the utmost respect and confidentiality during case management and strives to connect children with the care and resources of both parents.

B. Jurisdiction

CCTHITA is a sovereign nation. The statutes of the CCTHITA govern the tribe's operations. The CCTHITA Tribal Court is vested with the fullest jurisdiction permissible under the Constitution of CCTHITA Article 1, including but not limited to:

a. Members of CCTHITA.
b. Consent to the jurisdiction of the Court by participating in the proceedings unless participation is for the purpose of contesting jurisdiction.
c. For purposes of enforcement, employees of the Tribe, its entities and business operations.
d. Those who are parents of children who are members or are eligible for membership in the Tribe.
e. Those who have duty to and failed to support a child who:
    - Is a member of a CCTHITA or
    - Received TANF assistance from the tribe.

C. Service Population and Services

1) CCTHITA TCSU provides services to 25,000+ members of the Tlingit and Haida Tribes (16,000 members reside in Southeast Alaska, with the remainder residing in other regions of Alaska or the lower 48 states). Each tribe has its own distinct culture, language and traditions. Over 39 percent (6,200) of this total service population lives in the Juneau area, with the remaining 61 percent (9,800) residing in the various rural villages throughout the region.

2) Services under CCTHITA TCSU will emphasize "Children First". CCTHITA whole heartedly believes that "Children can count on their parents for the financial, medical and emotional support they need to be healthy and successful" (Vision of the Future OCSE 2005-2009 Strategic Plan). A legal and emotional relationship between parents and children is essential for children to be successful. Services provided will be proactive to ensure child support is paid timely and consistently to prevent accrual of unpaid child support. CCTHITA TCSU will provide the following services:

a. **Establish paternity:** TCSU will attempt to establish paternity by providing the opportunity for the father to voluntarily acknowledge paternity.
    - In contested paternity cases, any party, by submitting a sworn statement, may petition the Court to request that genetic testing be conducted to determine paternity if paternity has not been established. Upon such request, the Court may order all parties to submit to genetic testing.
    - TCSU need not establish paternity in any case involving incest or forcible rape or any case in which legal proceedings for adoption are pending; it would not be in the best interest of the child to establish paternity.
    - Paternity establishment has no effect on Tribal enrollment or membership.

b. **Locate Non-custodial Parent services:** The TCSU will attempt to locate custodial or non custodial parents or sources of income and/or assets when location is required to take necessary action in a case. The TCSU will use all sources of information and records reasonably available to locate custodial or non custodial parents and their sources of income and assets.

c. **Establish child support orders:** The TCSU shall comply with the statutes and laws of Tribe when making determinations that affect the establishment of support obligations.
    - All initial child support orders will be established by a Judge/Magistrate according to *Tribal Child Support Schedule Standards for Determining Support Obligations.*

d. **Review & modification.** Review and modification of orders will be determined by the Judge/Magistrate assigned to hear Title IV-D child support cases.

e. **Enforce child support orders:** Enforcement includes Income Withholding, civil and Criminal Sanctions. Willful failure to comply with a CCTHITA Child Support Order may also be punishable as a criminal offense under the provisions in CCTHITA Tribal Criminal Code. Upon issuance of a written order of execution, non-exempt real and personal property may be seized and sold in a reasonable manner after notice to the owner for payment of a delinquent child support obligation after it has been adjudicated delinquent by the court.

f. **Appeals of child support orders.** Appeals of the child support orders shall be made to the CCTHITA Supreme Court. An aggrieved party may file a notice of appeal within 30 days after the date of entry of a final order.

3) Parties who need additional services may be referred to Tlingit and Haida Employment and Training who work with tribally enrolled American Indians and/or Alaska Natives that have their High School Diploma or GED, are residing within the Service Delivery Area of Southeast Alaska, and are Job Ready. The Tribal Court may also require that the NCP apply for these Tribal services. Tribal members that meet these guidelines may apply for the following program services:

a. **Adult Basic Education (ABE)** – Provides Tribal members with assistance in obtaining their GED through the Southeast Regional Resource Center.
b. **Adult Vocational Training or Classroom Training (AVT & CRT)** - Allows tribal members up to 24 months of training in a vocational field of study and provides financial assistance while in training. Also provides financial assistance to tribal members interested in attending short-term Classroom Training courses that will enhance a tribal member's ability to obtain employment or advance in their career.
c. **Higher Education (HE)** - Offers scholarship grants to tribal members enrolled to a University and seeking Bachelors, Masters and/or Doctorate degrees.
d. **Work Experience (WE), On-The-Job Training (OJT), and Tribal Work Experience Program (TWEP)** - Allows tribal members with limited job seeking skills and work experience to gain actual experience under a training contract with an employer for up to 500 hours under WE and TWEP and up to 1000 hours under OJT and TWEP.
e. **Employability Assistance (EA)** - Provides financial assistance for tribal members while searching for employment or enrolled in a training program.
f. **Child Care (CC)** - Provides assistance to tribal members in need of childcare.
g. **Child Care Quality Improvement** - Helps Native childcare providers with training, offers educational and safety equipment, and access to the programs toy lending library and may provide assistance to Child Care Providers.
h. **S.E. Alaska Tribal Veterans** - Offers assistance to tribal members that are veterans in need of receiving Veterans Administration Benefits.

A. Foreign Income Withholding Orders

The TCSU is responsible for processing all tribal and foreign income withholding orders as outlined in this Policy and Procedure per Section 10.03.006 of the Family Responsibility Codes.

B. Delinquent Payments

1) When a payer is one month delinquent in paying a child support obligation, the TCSU shall serve upon the payer a notice of delinquency. Service of the notice shall be made by sending the notice by prepaid certified mail addressed to the payer at his or her last known address, or by any other method provided by law.

2) Notice of delinquency shall inform the obligor of the following:

a. The terms of the child support enforcement order sought to be enforced;
b. The period and total amount of the delinquency; and
c. That an order to withhold income shall be served on the payer's employer.

3) In addition to sending out a Notice of Delinquency, the TCSU Specialist shall attempt to contact the payer by phone on at least two occasions prior to serving an order to withhold income on the payer's employer.

a. Legal action may also include garnishment of permanent fund and/or native corporation dividends and/or liens on assets.
b. TCSU may also request the Court enter an order requiring the Payer to participate in education and employment services provided by the Tribe.

4) The notice of delinquency shall be verified and filed, with proof of service, with the Clerk of the Court.

C. Other Enforcement Tools

In addition to income withholding actions, the TCSU staff shall take any of the following actions as appropriate:

a. Make a referral to the Elders Panel or to the Clan of the payer or child.
b. Notify internal programs of non-custodial delinquency of support obligations.
c. Referring to other state or federal programs.

IX. INCOME WITHHOLDING

The TCSU shall request immediate income withholding on all cases. The Standard Federal Income Withholding form must be used when implementing income withholding notices or orders.

A. Request for Income Withholding

1) An income withholding notice or order shall provide notification of the Court ordered amount for:

a. The amount to be withheld for current support.
b. The amount to be withheld for liquidation of past-due support (custodial arrears).
c. Pursuant to tribal law no more than 45% of a payer's income may be withheld for current and past due support.
d. Comply with the Consumer Credit Protection Act (15 U.S.C. 1673 (b) Sec. 303) regarding garnishment of wages.

2) The only basis for contesting an income withholding order issued by the CCTHITA Court is a mistake of fact, which means an error in the amount of current or overdue support or in the identity of the alleged NCP.

3) The requirement for immediate income withholding may be waived by the Court if the payer has met the burden of showing good cause why income should not be withheld per written order of the Court. Good cause may include these or other relevant factors:

a. That there are more effective enforcement actions that will result in payment based upon the payer's history of payment, regular employment, and compliance with Court orders.
b. The parties to the action enter into a stipulation for another payment arrangement and the Court recognizes the stipulation.

4) When income withholding is required the TCSU must use the standard federal income withholding form and complete all sections required on the form.

5) An income withholding order must be prepared and served upon an employer within 7 business days of such order by the Court.

a. For employees' of the Tribe, the income withholding order may be served on the Tribe pursuant to the agreed upon intra-tribal process.
b. For employers that are subject to the jurisdiction of the tribe, the employer will be served by registered certified mail.

6) Income withholding may also include a voluntary agreement that the NCP agrees to have his/her employer to withhold from his/her wages.

B. Employer's Failure to Recognize Income Withholding

The TCSU shall request that an enforcement action, as provided for in this Policy and Procedure or otherwise provided by law, against an employer that fails to comply with an enforcement directive.

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Antoinette Kadake

Tribal Enrollment Number: A003827

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace C. Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
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Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Kevin Martin

Tribal Enrollment Number: A003861

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace C. Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
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Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Lindsey Fredrickson

Tribal Enrollment Number: A012072

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
Indian Tribes of Alaska

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Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

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Name: Edward Jackson Jr.

Tribal Enrollment Number: A002507

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

August 18, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Sam Fredrickson

Tribal Enrollment Number: 22066

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace C. Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
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320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Avena Aceveda

Tribal Enrollment Number: A005921

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER

Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
Indian Tribes of Alaska

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Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Douglas Chilton

Tribal Enrollment Number: 18270

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace C. Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
Indian Tribes of Alaska

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Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Tavin Chilton

Tribal Enrollment Number: 22179

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER

Grace C. Hawkins
Program Compliance Coordinator

Central Council
Tlingit and Haida
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August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Shauna Jenson

Tribal Enrollment Number: A006594

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace C. Hawkins
Grace C. Hawkins
Program Compliance Coordinator

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Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Jose Morato-Felipe

Tribal Enrollment Number: A013011

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
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August 17, 2010

TO WHOM IT MAY CONCERN:

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Name: Velentino Morato

Tribal Enrollment Number: 21677

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER
Grace Hawkins
Grace C. Hawkins
Program Compliance Coordinator

Central Council
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Juneau, Alaska 99801-1726

August 18, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Josephine Guthrie

Tribal Enrollment Number: A002009

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER

Grace C. Hawkins
Program Compliance Coordinator

CENTRAL COUNCIL
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Juneau, Alaska 99801-1726

August 17, 2010

TO WHOM IT MAY CONCERN:

In accordance with the tribal records of Central Council, Tlingit and Haida Indian Tribes of Alaska, this hereby certifies that the person listed below is a member of the Central Council, Tlingit and Haida Indian Tribes of Alaska, a federally recognized tribe.

Name: Jilliane Gregorioff

Tribal Enrollment Number: A002934

This information should provide the necessary proof needed to establish verification. If you have any questions, or require additional information, you may contact our office at the above address or by calling 1-800-344-1432 ext., 7144.

Sincerely,
VALERIE M. HILLMAN, PROGRAM COMPLIANCE MANAGER

Grace C. Hawkins
Program Compliance Coordinator

001315

EXHIBIT 1
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EXC. 299

PEARSON & HANSON
713-B Sawmill Creek Boulevard
PO Box 98
Sitka, Alaska 99835
(907)747-3257 (ph) / (907) 747-4977 (fax)

In the Central Council Tlingit and Haida Indian Tribes of Alaska Tribal Court
Juneau, Alaska

Tribal Child Support Unit, **Ex. Rel.** **Nikolas & Caleb,** **Minor children under the age of 18** **Evelyn N. Edenshaw,** **Petitioner** **Vs** **Ryne M. Calhoun,** **Respondent**	**NONOPPOSITION TO MOTION TO MODIFY CHILD SUPPORT ORDER** **Court Docket #: 09-CS-0015** **TCSU Case #: 08-0282**

NON-OPPOSITION TO MOTION TO MODIFY CHILD SUPPORT ORDER

COMES NOW the Respondent, by and through his attorney, and non-opposes the motion filed by TCSU on August 27, 2010. Please be advised that at the hearing on the motion, Respondent intends to argue for and present evidence supporting a finding of imputed income for the Petitioner.

DATED this 31st day of August, 2010.

PEARSON & HANSON LLC
Attorneys for Ryne M. Calhoun

By: Brian E. Hanson
Alaska Bar No. 8505037