FILE COPY

IN THE SUPREME COURT OF THE STATE OF ALASKA

State of Alaska, Patrick Galvin, in his official capacity of Commissioner of the Alaska, Department of Revenue and John Mallonee, in his official capacity as 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.	Supreme Court Case No. S-14935

Trial Court Case No. 1JU-10-00376 CI

APPEAL FROM THE SUPERIOR COURT
FIRST JUDICIAL DISTRICT AT JUNEAU
HONORABLE JUDGE PHILIP M. PALLEMBERG

EXCERPT OF RECORD
VOLUME I OF 1

By:

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Filed in the Supreme Court
of the State of Alaska
April 14th 2014

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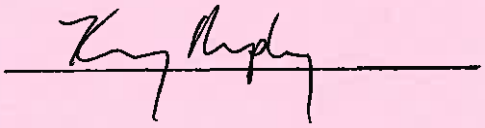
CLERK OF THE APPELALTE COURT



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Case No. S-14935

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT SERVICES DIVISION

SARAH PALIN, GOVERNOR

Please Reply To:
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550 WEST 7th AVE., SUITE 310
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August 15, 2008

Ms. Linda Gillett
Regional Program Director
OCSE Region X
2201 Sixth Avenue, RX-70
Seattle, WA 98121

Re: UIFSA Exemption Request

Dear Ms. Gillett:

Pursuant to 42 U.S.C. § 666(d), the State of Alaska, Child Support Services Division, respectfully requests a very limited and narrow exemption to the uniform version of the Uniform Interstate Family Support Act ("UIFSA").

Federal law (i.e., 42 U.S.C. § 666(f)) requires each state to enact UIFSA. Alaska enacted UIFSA in 1995, and made subsequent amendments to the same in 1997, and 1998. Notwithstanding, given Alaska's unique situation with respect to the Alaska Native Claims Settlement Act (ANSCA), 43 U.S.C. §§ 1601-29h (2000), Alaska is requesting an "Authority Exemption" in connection with UIFSA's definition of "state." Alaska's definition of "state" differs for the uniform version of UIFSA because it does not include "an Indian tribe."

To that end, please be advised that Alaska has existing legal authority to operate other UIFSA-type procedures to meet both the intent and purpose(s) of UIFSA. These same procedures could be negatively impacted were UIFSA's definition of "state" to be adopted. Moreover, adopting UIFSA's definition of "state" will *not* increase the efficiency or effectiveness of Alaska's IV-D program.

Attached please find the "Justification and Documentation" for the exemption request, as required by Action Transmittal AT-07-06. Please let me know if you have any questions and/or if you need any additional information. I look forward to hearing from you.

Sincerely,

John Mallonee

John Mallonee
Director

Attachment

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ALASKA CHILD SUPPORT SERVICES DIVISION'S JUSTIFICATION AND DOCUMENTATION FOR EXEMPTION

I. Introduction/Request

Alaska requests an "Authority Exemption" with respect to a specific provision of the Uniform Interstate Family Support Act ("UIFSA"). Alaska requests that it be exempted from adopting UIFSA's definition of "state." Alaska's definition of "state" does not include "an Indian tribe" because this definition is contrary to existing legal authority governing Alaska including federal legislation under the Alaska Native Settlement Claims Act and a United States Supreme Court decision.

II. Background

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"). One provision of PRWORA required states to adopt UIFSA in order to remain eligible for federal funding of its state child support agencies.[1] In 1995, prior to the passage of PRWORA, Alaska enacted UIFSA to replace its previous uniform law (the Uniform Reciprocal Enforcement of Support Act). The new uniform law, UIFSA, provided improved procedures for establishing, modifying and enforcing child support orders where the obligor and obligee reside in different states. After Congress passed PRWORA, Alaska amended its UIFSA in 1997, and 1998, to comply with the congressional mandate. The 1998 Amendments were based on a recommendation by the National Conference on Uniform Commissioners on State Law (NCUCSL). Indeed, an attorney for the NCUCSL found that the 1998 Amendments would make Alaska's version of UIFSA "'. . . functionally equivalent to the uniform version of UIFSA."[2]

When adopting UIFSA, a number of states made changes to the uniform version to fit their states' needs. For example, more than 30 states, including Alaska, made changes to the official text in Section 102, the definitions section of UIFSA.[3] In Alaska's version of UIFSA, "state" means:

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1 Each state was required to have in effect by January 1, 1998, the version of UIFSA "'. . . 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." 42 U.S.C. §666(f).

2 Letter from Bruce M. Botelho, Attorney General, to Tony Knowles, Governor (June 11, 1998) (on file with CSSD).

3 Unif. Interstate Family Support Act § 102, 9 U.L.A. 177 (2005).

> . . . a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States; the term "state" includes a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter or under the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.[4]

The uniform version of UIFSA includes "an Indian tribe" in the definition of "state."[5] The additional terminology, however, is unnecessary in Alaska due to existing legal authority. As a result, Alaska's version of UIFSA is functionally equivalent to the uniform version of UIFSA and a definitional change would not increase the effectiveness or efficiency of Alaska's child support program. In fact, altering Alaska's UFISA definition of "state" would be contrary to existing federal law.

III. Discussion

A. Alaska's definition of "state" is appropriate under the federal Alaska Native Claims Settlement Act and the United States Supreme Court decision in *Venetie II*.

Alaska is unique because of Congress's 1971 enactment of the Alaska Native Claims Settlement Act (ANCSA).[6] As explained below, Alaska's version of UIFSA therefore does not include "an Indian tribe" in its definition of "state," nor should it. Alaska tribes and tribal lands are different than any other state in the United States.

In 1971, Congress pioneered a new paradigm for resolution of the land claims of the Native indigenous people of Alaska. Historically, in the Lower 48 States, lands granted to Native Americans in settlement of their land claims were placed in reservation status for Natives as a tribe or group. In settling Alaska's land claims, Alaska Native leaders and their lawyers argued that approach was unacceptable.[7] Congress

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[4] Alaska Stat. § 25.25.101.

[5] Unif. Interstate Family Support Act § 102, 9 U.L.A. 177 (2005) note 3 at § 102(21).

[6] As amended, 43 U.S.C. §§ 1601-29h (2000). Indeed, the policies underlying ANSCA were significantly different from those Congress used to deal with Native Americans in the Lower 48 States.

[7] Hearings on S. 2906 before Sen. Comm. On Interior and Insular Affairs, 90th Cong. 2nd Sess., 55-56, 89-90 (1968): "The natives in Alaska are very vehemently anti reservation and they have never been in favor of reservations and are not today....Now, we are also trying to get away from the BIA, frankly, and from the Secretary of the

agreed, and with ANCSA, it revoked all existing reservations except the Annette Island Reserve occupied by the Metlakatla Indian Community, and it conveyed 44 million acres to private state-chartered Native corporations without any restraints on alienation or significant use restrictions. It also paid nearly $1 billion dollars in settlement money to those state corporations.

Congress specified:

> The settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in the decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska.[8]

Some years later the question arose as to whether Congress intended to do away with "Indian country" in Alaska when it enacted ANCSA. In *Venetie II*, the United States Supreme Court unanimously agreed with the State of Alaska that was Congress's intent.[9] More specifically, the Court concluded that ANCSA intended to treat Alaska Natives (except for the Metlakatlans) in a radical new way. After revoking all existing Indian reservations (except for the Annette Island Reserve) and extinguishing all aboriginal title and claims to Alaska land, by paying compensation and conveying land to the state-chartered corporations, the historical characterization of land occupied by Natives as "Indian Country" no longer made sense in Alaska.

Interior...We are trying to build in provisions which will prevent us from having, if you will pardon the expression, our villages frozen in history. It is my personal feeling that the Pueblos of New Mexico are frozen in history because of their rules that they have, and this is something that we want to avoid." Testimony of Barry Jackson, attorney representing Alaska Federation of Natives.

[8] 43 U.S.C. §1601(b).

[9] *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998). In this case, the State of Alaska was represented by John G. Roberts, Jr., who was later appointed to the U.S. Supreme Court. John G. Roberts, Jr. is currently the Chief Justice of the Supreme Court.

No land was "reserved" in the Lower 48 States' "reservation" sense of the word. The *Venetie II* Court determined that land conveyed under ANCSA is not "Indian country." As a result, after *Venetie II*, only the reservation occupied by the Metlakatlans on the Annette Island Reserve unequivocally satisfies the statutory definition of "Indian country" in Alaska.[10]

The Annette Island Reserve was treated differently from other reservations in Alaska under ANCSA because the Metlakatlans did not have aboriginal title. They were originally residents of British Columbia, who followed a missionary of the Anglican Church of England to a new home in the United States on Annette Island in 1891.[11] Their new reservation, which they kept intact despite ANCSA, was not aboriginal; it was created in 1891. Today Metlakatla is a very small community and represents a tiny fraction of the State's child support caseload. According to the 2000 census, the Metlakatla community had a population of 1,400 people living in 469 households, with minor children living in only 38.8% of those households. The population is 81.8% Native.[12] Regarding child support, the Alaska Child Support Services Division (CSSD) has 200 open child support cases involving Metlakatla residents, less than one-half percent of CSSD's 47,000+ caseload. Although Metlakatla operates a tribal court, it primarily handles minor criminal matters and does not address family law matters or child support. The Metlakatla Indian Community is the only tribe, of the 229 federally recognized tribes in Alaska, that occupies Indian Country.[13]

Thus, unlike other states, there was no reason to include Alaskan Indian and/or Native Tribes that lack "Indian Country" in Alaska's version of UIFSA.

B. Alaska's definition of "state" is appropriate based on the Congress's definition of "state" in FFCCSOA.

Significantly, Alaska's definition of "state" follows Congress's direction in the federal Full Faith and Credit for Child Support Orders Act ("FFCCSOA"). The federal act defines "state" as:

> a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and

[10] Some tribes claim that native allotments and town sites in Alaska may also qualify as "Indian country." The State of Alaska maintains that they do not, and for purpose of this discussion, it doesn't matter either way.

[11] *See* www.metlakatla.com/community.php.

[12] *See* http://en.wikipedia.org/wiki/Metlakatla,_Alaska.

[13] *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 77 Fed. Reg. 18,553 (April 4, 2008).

> possessions of the United States, and *Indian country* (as defined in section 1151 of title 18).[14]

Congress specifically defined "state" as "Indian country," not "tribe," recognizing that only orders from tribal courts in Indian country should be afforded full faith and credit. The Senate Report in 1994 explains:

> This [definition of state] is in recognition of the fact that courts in the territories and possession of the U.S., and in *Indian country*, have jurisdiction to enter, and often do enter, child support orders.[15]

Congress has declined to alter its definition of "state" to include "Indian tribe." Congress amended FFCCSOA twice but did not alter its definition of "state." In the 1996 PRWORA legislation, the same legislation requiring states to adopt UIFSA, Congress amended FFCCSOA to be consistent with UIFSA. The 1996 amendments included a section to address multiple valid child support orders issued prior to the FFCCSOA one-order era, clarified choice of law provisions, and defined "child's State" and "child's home State."[16] Yet, Congress did not alter the definition of "state" to expand recognition of tribal jurisdiction outside of "Indian country." In 1997, Congress further clarified the provision on recognition of multiple valid child support orders.[17] Notably, Congress did not alter its definition of "state" during either of these prior opportunities nor has it done so to date.

C. Congress's definition of "state" controls in Alaska

Congress's decision to define state as "Indian country" and not "Indian tribe" controls in Alaska. To the extent that the uniform version of UIFSA may be inconsistent with FFCCSOA, a federal law, the courts have made clear that the provisions of FFCCSOA are binding, supersede and/or preempt UIFSA, a state law.[18] In fact,

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14 28 U.S.C.A. 1738B(b)(Emphasis added)

15 S. Rep. 103-361, 1994 U.S.C.C.A.N. 3259 (Emphasis added).

16 PL 104-193, August 22, 1996, 110 Stat 2105, 2221—2222.

17 PL 105-33, August 1997, 111 Stat 251, 636.

18 Under the Supremacy Clause of the United States Constitution, the provisions of FFCCSOA are binding on all states and supersede any inconsistent provisions of uniform state laws such as UIFSA. *Brickner v. Brickner*, 723 N.E.2d 468, 472-74 (Ind. App. 2000) (*citing* 28 U.S.C.A. § 1738B). *See also Loden v. Loden*, 740 N.E.2d 865, 871 (Ind. App. 2000) ("The provisions of FFCCSOA are, pursuant to the Supremacy Clause of the United States Constitution, binding on all states and supersede any inconsistent provision of a uniform state law such as UIFSA."); and John R. Kennel, J.D., *American*

FFCCSOA only recognizes child support orders issued by tribes exercising jurisdiction over individuals on tribal reservations. As we have explained, with the exception of the Annette Island Reserve occupied by the Metlakatla Indian Community, there is no "Indian Country" in Alaska; nor, are there any Indian reservations. As a result, any and/or all reference(s) to "an Indian tribe" in Alaska's version of UIFSA would be inconsistent with FFCCSOA.[19]

In contrast to states, Indian tribes are not required to adopt UIFSA to receive federal funding for a IV-D child support program.[20] Tribes, however, must comply with federal law, specifically FFCCSOA, and provide full faith and credit to child support orders issued by states. Thus, both tribes and states must recognize and provide full faith and credit to valid child support orders, regardless of UIFSA.[21]

IV. Conclusion

Alaska is different than other states and jurisdictions because of federal legislation governing tribes and tribal lands in Alaska. There is no reason to include "an Indian tribe" in Alaska's definition because Alaska does not have "Indian Country," with the minor exception of the small area of the Annette Island Reserve. Regarding tribal orders issued in states with Indian Country, federal and state law would permit Alaska's full faith and credit recognition of a child support order issued by a tribe with Indian country, thus, meeting all of the goals and purposes of UIFSA. The inclusion of "an Indian tribe" in the definition of "state" will not increase the effectiveness or efficiency of the Alaska Child Support Services Division's child support collection. As a consequence, the State of Alaska respectfully requests that its petition for exemption based on existing legal authority be granted and/or approved.

Jurisprudence, Desertion and Nonsupport § 73 (2d ed. 2008) ("Under the Supremacy Clause of the United States Constitution, the provisions of FFCCSOA are binding on all states and supersede any inconsistent provisions of uniform laws.")

19 *Cf. In re Custody of Sengstock*, 477 N.W.2d 310, 314 (Wis. App. 1991) (Re the Uniform Child Custody Jurisdiction Act (UCCJA) the court determined that a circuit court is not required to acknowledge a tribal court custody order because the "tribe" is not a "state."); *see also Loden*, 740 N.E.2d at 871.

20 To the best of the CSSD's knowledge, no Indian tribe has ever adopted UIFSA.

21 *See* 28 U.S.C. § 1738B, and 69 Fed. Reg. 16,665 (March 30, 2004) ("UIFSA is not applicable to Tribes and is not a factor when Tribes are making jurisdictional determinations in relation to Tribal members.").

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
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June 11, 1998

Honorable Tony Knowles
Governor
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Re: SCS CSHB 344(FIN) am S – relating to child support and paternity establishment
Our file: 883-98-0122

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed SCS CSHB 344(FIN) am S, relating to child support and paternity establishment. The bill was passed to meet a series of mandates contained in the child support section of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, herein PRWORA (PL 104-193) and technical amendments made to PRWORA by PL 105-32. Failure to have statutes in place to meet the federal mandates would have subjected Alaska to substantial financial penalties imposed by the federal government.

SCS CSHB 344(FIN) am S would amend many different sections of Alaska's statutes. It would update Alaska's Uniform Interstate Family Support Act, AS 25.25.101 – 25.25.903, by passing two of the amendments recommended by the National Conference on Uniform Commissioners on State Law. SCS CSHB 344(FIN) am S also would make changes to the administrative paternity establishment procedures in AS 25.27.165. The bill would enhance the administrative enforcement tools available to Alaska's child support enforcement agency to collect child support from noncustodial parents and ensure that noncustodial parents provide medical insurance coverage for their children when they change jobs and such coverage is available to them at a reasonable cost.

SCS CSHB 344(FIN) am S would take from state agencies the power to revoke or suspend occupational, professional, or driver's licenses for failure to comply with a child support subpoena or paternity warrant and give that authority to courts in civil contempt actions. It would permit courts, in civil and criminal contempt-of-court actions, to suspend, restrict, or revoke for a period of six months, the sport fish or hunting licenses of someone for failure to pay child support

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or comply with a child support subpoena or paternity warrant. The bill would provide that such a license restriction would not prevent someone from subsistence or personal use harvesting. It would also permit someone behind in his or her child support obligation an opportunity to avoid the loss of a driver's license by convincing a court that he or she has made best efforts to keep current on the child support debt.

The bill would require applicants for sport fishing, sport hunting, and driver's licenses to provide their social security numbers on the license application. It would also require that the provided social security numbers be shared with child support agencies for child support purposes. SCS CSHB 344(FIN) am S would also enhance the ability of the Alaska Court System to protect the confidentiality of social security numbers which current law requires to be made part of paternity and domestic relations cases.

SCS CSHB 344(FIN) am S would require that every employer in the state report to the Child Support Enforcement Division (CSED) the hiring or rehiring of each employee. It would permit the Bureau of Vital Statistics to report to CSED the remarriage of a person receiving spousal support under a court order. It would also affect a court's ability to grant a noncustodial parent the right to claim a child as a dependent for federal income tax purposes. The bill would repeal AS 09.10.040(b) that currently requires that a motion to reduce child support arrears to judgment must be brought before the youngest child of the relationship reaches the age of 21 years.

The bill would permit the creation of a child support lien when the child support debtor is thirty days or more behind in payment, require that full faith and credit be given to the child support liens arising in other states and permit the enforcement of liens in the manner of a judgment lien.

SCS CSHB 344(FIN) am S contains provisions that would sunset all of its federally mandated provisions on July 1, 2001. It would also extend, from July 1, 1999 to July 1, 2001, the sunset provisions of SB 154, a bill enacted in 1997 to comply with federal child support mandates.

TITLE

The title of SCS CSHB 344(FIN) am S informs the reader in general terms, that the bill relates to paternity establishment, domestic relations cases, support order, and the crime of criminal nonsupport. Since the title gives reasonable notice of the subject of the bill, it does not violate art. II, sec. 13 of the Alaska Constitution.

LEGISLATIVE INTENT LANGUAGE

Section 1 of the bill states the legislature's intent in passing this bill. It says that the federal requirements that mandated passage of the bill are unreasonable and constitutionally

questionable, and may do little to improve the collection of child support. This section notes that the bill was passed only under duress from the federal government. This language does not have the force of law, but could be used to interpret an ambiguous provision. While the intent language in question expresses frustration, it does not suggest that the legislature intended courts to weaken provisions of SCS CSHB 344(FIN) am S through interpretation. Given the nature of the intent language, and the unambiguous language in the body of the bill, it is doubtful that the intent language would be used successfully in that manner.

SOCIAL SECURITY NUMBERS

Overview of Changes:

SCS CSHB 344(FIN) am S contains several sections designed to expand the access of child support enforcement agencies in this and other states to all social security numbers. The numbers would be used to increase the ability of those agencies to locate people who are now, or may in the future, be affected by a child support order.

The bill would require applicants for sport hunting, sport fishing licenses, and driver's licenses to provide their social security numbers on the license application. The government agencies responsible for gathering these social security numbers would be required, by other sections of the bill, to make them available to the child support enforcement agencies of this and other states with the stipulation that the numbers may only be used for child support purposes.

The bill would also replace language in current Alaska law that requires that the social security numbers of parties appear on pleadings, acknowledgments, judgments, and decrees in domestic relations and paternity cases of paternity and domestic relations court proceedings. These amendments would simplify the task of maintaining the confidentiality of social security numbers in court records.

Sectional:

The following sections of the bill require applicants for sport hunting and fishing licenses to provide their social security numbers on the application: secs. 6, 7, and 8. The aforementioned sections also would require that the social security numbers in government records would only be made available to child support enforcement agencies of this and other states for child support purposes. Section 9 would provide access to social security records in fish and game licensing records to child support enforcement agencies.

The following sections of the bill would remove, from current law, requirements that the social security numbers of those affected appear on divorce and dissolution petitions and decrees, child support orders, paternity acknowledgments, and paternity judgments and replace the provisions

with language which would require that the social security numbers of parties kept in the record: secs. 12, 14, 15, 16, and 17. Section 11 of the bill would provide such access to social security records in court system records to child support enforcement agencies.

Section 51 of the bill would require applicants for a driver's license to provide their social security numbers on the application and also require that the provided social security numbers would only be made available to child support enforcement agencies of this and other states for child support purposes. Section 52 of the bill would provide access to social security records in driver's license records to child support enforcement agencies.

Legal Issues:

Provisions of the bill that require the collection of social security numbers might draw a challenge that the provisions violate constitutional privacy rights. Such a challenge is not likely to be successful.

Alaskans enjoy rights to privacy under the Alaska and United States Constitutions. Courts interpreting the right to privacy under the Alaska Constitution have all held that the right to privacy it protects is not absolute. A person raising the right to privacy under state law must show that he or she exhibited an actual expectation of privacy and, second, that the expectation be one that society is prepared to recognize as reasonable. Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980). Only personal information of a type which, if disclosed to a friend, could cause embarrassment or anxiety, is protected. Doe v. Alaska Superior Ct. Third Jud. Dist., 721 P.2d 617, 629 (Alaska 1986). The Alaska Supreme Court applies the following three part test when evaluating an informational privacy claim:

(1) does the party seeking to come within the protection of the right to privacy have a legitimate expectation that the materials or information will not be disclosed?

(2) is disclosure nonetheless required to serve a compelling state interest?

(3) if so, will the necessary disclosure occur in that manner which is least intrusive with respect to the right to privacy?

The Alaska Wildlife Alliance v. Rue 948 P.2d 976, 980 (Alaska 1997); Jones v. Jennings, 788 P.2d 732 (Alaska 1990). The first prong of the privacy test requires a court to determine whether the party seeking to come within the protection of the right to privacy has a legitimate expectation the Alaska Constitution prevents the state from disclosing information the party considers private. Anyone challenging the social security numbers provisions of SCS CSHB 344(FIN) am S would have to show that they have a legitimate expectation that the state

will not disclose to child support agencies, the party's social security number. Alaska Wildlife Alliance, 948 P.2d at 980. It is doubtful that a court would make such a finding because the United States Congress which created the social security numbers and initially mandated that they be kept private, has now mandated that they be produced on state license applications.

Congress created the social security number. It also passed the Privacy Act of 1974 and 42 U.S.C. 405(c)(2) to enhance the privacy protections for social security numbers. Section 7 of the Privacy Act of 1974 prohibit states from denying benefits to its citizens as a penalty for refusing to produce social security numbers. 42 U.S.C. 408(a)(8) makes it a criminal offense to disclose social security numbers in violation of federal law. These laws are responsible, in large part, for creating an expectation that social security numbers are private, and not subject to release. At least one court has found that the Privacy Act of 1974 creates an expectation of privacy in the minds of employees concerning the use and disclosure of their social security numbers. Tribune-Review v. Allegheny County Housing Authority, 662 Add 677 (Pa.Commwlth. 1995).

The Privacy Act of 1974 does not apply with respect to any disclosure mandated by federal law. SCS CSHB 344(FIN) am S would not violate the Privacy Act or 42 U.S.C. 408(a)(8) because they are enacting federal mandates. Therefore, a court is not likely to find that an Alaskan resident has a legitimate expectation that the Alaska right to privacy prevents the state from requiring that the applicant produce his or her social security number on license applications or from sharing the numbers with child support agencies.

There are other reasons that it is unlikely that a court would find that expectation to be reasonable. In State v. Chryar, 793 P.2d 538 (Alaska Ct. App. 1990), the court held that there is no reasonable expectation of privacy with respect to a person's name and address and the locations where he receives utility services. Furthermore, in AS 44.99.300-44.99.350, the legislature has indicated that "personal information" does not include a person's name, address, or telephone number, if the number is published in a directory. A court is likely to find that a person's social security number is a specific identifying number, like an address or telephone number, that has become so widespread in use that an expectation that one can keep it private is unreasonable. Today, social security numbers must be divulged for identification purposes in a wide variety of circumstances. For instance, social security numbers are on drivers' licenses, which must usually be shown to write or cash a check. While there may once have been a higher expectation of privacy for social security numbers, a court is likely to recognize that, in this day and age, the use of that number for identification purposes has made the expectation of keeping it private an unreasonable expectation.

The inquiry may not end there however. Perhaps a court will decide that the expectation of privacy in one's social security number is a legitimate one. In such a case, the court would have to determine if the mandated disclosure will serve a compelling state interest. See, Alaska Wildlife Alliance v.Rue, 948 P.2d at 980. This involves balancing the state interest served

by the mandate provision with the right of privacy asserted. See, *Welcome to the "Last Frontier," Professor Gardner: Alaska's Independent Approach to State Constitutional Interpretation*, 12 Alaska L. Rev. 1, 21 (1995).

A court reviewing this issue is likely to find that the important issues served by the social security mandates far outweigh the interests of an individual in keeping his or her social security out of the state records system. The court would consider the same information about child support enforcement efforts that was considered by the Congress when it enacted the requirements relating to social security numbers in the federal Welfare Reform Act that is implemented by SB 154 and the Governor's child support bill. The Congress found that social security numbers would enhance efforts to locate child support obligors and collect child support payments. The Congress has tried other enforcement methods in the past and has found them insufficient. The Congress has determined that children's poverty, national and state expenditures on welfare programs, and other societal problems could be decreased by more effective methods of child support enforcement.

The Alaska Legislature has consistently recognized that there is a compelling public policy favoring enforcement of child support obligations. Anderson v. Anderson, 736 P.2d 320, 323 (Alaska 1987). The legislature attempted to enhance the collection of child support in 1977 when it passed the Child Support Enforcement Act. The legislature stated that the Act was passed for the following reasons:

> The state .... declares that the common law and Alaska statutes pertaining to the establishment and enforcement of child support obligations shall be augmented by additional remedies in order to meet the needs of children. It is declared to be the public policy of this state that this Act be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently born by the general citizenry through welfare and welfare-related programs.

Ch. 126, Section 1, SLA 1977. In 1984 the Alaska Legislature passed amendments to the Child Support Enforcement Act "to encourage the efforts of those persons who seek to enforce the payment of child support obligations by noncustodial parents having the duty of support." Ch. 144, Section 1, SLA 1984.

In its statement of findings and purpose for the 1984 amendments, the legislature found that

> a disproportionately high percentage of lower-income, single-parent families are headed by women. The difficulties in obtaining child support from

> noncustodial parents contributing significantly to the hardship of those families . . .
>
> The legislature also finds that the hardship experienced by children in families who may rely on support from a noncustodial parent should not be a necessary condition that must be endured by those families.

Ch. 144, Section 1, SLA 1984.

A court, looking at this type of information, is likely to find that, even if there is some level of a right to privacy in one's social security number, that right is outweighed in this instance by the societal interests in more effective child support enforcement.

The final prong of Alaska's right to privacy test would require the court to determine, if the mandated disclosure is required to serve a compelling state interest, whether the necessary disclosure will occur in a manner which is least intrusive with respect to the right to privacy interest. See, Alaska Wildlife Alliance v.Rue, 948 P.2d at 980. Here again, the answer is yes.

SCS CSHB 344(FIN) am S would use the existing state system for dispensing licenses to collect social security numbers. This is less burdensome than requiring individuals to complete separate questionnaires or undergo an interrogation by child support enforcement officers. The Alaska Supreme Court has found that generally, self-disclosure, accompanied by the appropriate use of the summons power, constitutes the least intrusive method of obtaining information. State, Dep't of Revenue v. Oliver, 636 P.2d 1156, 1167 (Alaska 1981). The child support bills provide that social security numbers may only be shared with child support agencies for child support purposes. These provisions would help to ensure that the mandated disclosure not exceed what is necessary to serve the compelling state interest that justifies it. Given this standard, it is highly unlikely that a court would find that the social security numbers of Alaskans are protected by Alaska's constitutional right to privacy.

SECTIONS MANDATING RELEASE OF OTHER INFORMATION

Overview of Changes:

SCS CSHB 344(FIN) am S would require every employer in the state to report each new hire, rehire or return to work of an employee. It would also require the Bureau of Vital Statistics to notify CSED, upon request, if someone receiving spousal support remarries.

Sectional:

Section 25 of the bill would require every employer in the state to report each new hire, rehire or return to work of an employee. Each report would contain the name, address and social security number of each newly hired employee, and the name, address, and federal tax identifying number of the employer. Alaskan businesses who employ more than 19 employees are currently required to provide similar information for long-term employees.

Sections 10 and 48 of the bill would also require the Bureau of Vital Statistics to notify CSED, upon request, if someone receiving spousal support remarries.

Legal Issues:

SCS CSHB 344(FIN) am S would require all employers and labor unions in the state to report all new hires and rehires to the state child support enforcement agency. It is unlikely that a court would find that this provision would violate the right to privacy guaranteed by art. I, sec. 22 of the Alaska Constitution. Any court considering such a challenge would apply the three prong test discussed above in the section concerning social security numbers. The first prong requires to court to determine if the party seeking to come within the protection of the right to privacy has a legitimate expectation that the materials or information will not be disclosed. Alaska Wildlife Alliance v. Rue, 948 P.2d at 980.

In State v. Chryar, 793 P.2d 538 (Alaska App. 1990), the Court of Appeals held that a defendant did not have a reasonable expectation of privacy with respect to address information given to an electric utility for purposes of obtaining utility service. There is no reason to believe that an employee would have reason to believe that the same information would receive greater protection if it comes from an employer.

Furthermore, all of the information sought is shared on income tax returns, and other government records where, in the course of their use, are bound to be seen by others. Therefore, the legitimate expectation of privacy is lower. See, State, Dep't of Revenue v. Oliver, 636 P.2d at 1167.

Even if a person did have a legitimate expectation that his or her name, address and date of hire would not be disclosed by the employer, a court is likely to uphold the new hire reporting requirements because the disclosure requirements serve compelling state interest of enforcing child support obligations. Alaska Wildlife Alliance v. Rue, 948 P.2d at 980. The grounds for this belief are set out in the section of this letter that concerns social security numbers.

Finally, the method of employer reporting, designated by AS 25.27.075 to insure that the state child support agency obtains new hire information meets the third prong of the Alaska privacy test because it is least intrusive, with respect to the right to privacy. Alaska Wildlife Alliance

v. Rue, 948 P.2d at 980. It is likely that a court would find that employer reporting, like self-disclosure, constitutes the least intrusive method of obtaining the needed information. State, Dep't of Revenue v. Oliver, 636 P.2d at 1167.

CHANGES IN THE UNIFORM INTERSTATE FAMILY SUPPORT ENFORCEMENT ACT

Overview of Changes:

SCS CSHB 344(FIN) am S would update Alaska's Uniform Interstate Family Support Act (UIFSA), AS 25.25, by adopting two amendments recommended by the National Conference of Commissioners on Uniform State Laws Conference. The Conference drafted UIFSA to simplify matters where multiple states had issued child support orders in a given case and provide new and effective tools for collecting child support from obligor parents who live outside the enforcing state. The State of Alaska adopted UIFSA in 1995. In 1996 the Conference amended UIFSA. PRWORA requires all states to adopt UIFSA as so amended. In 1997, the Alaska Legislature made many changes to UIFSA in an effort to comply with PRWORA mandates. SCS CSHB 344(FIN) am S would amend two additional sections of Alaska's version of the federal Act in an effort to enhance compliance with federal child support mandates.

Sectional:

Sections 19 and 20 of the bill would amend UIFSA in Alaska so that it is more consistent with the Uniform Act as amended and therefore, more compliant with PRWORA mandates that states adopt UIFSA as amended. The federal Office of Support Enforcement has stated that states must adopt a verbatim version of the uniform law. Sections 19 and 20 of the bill fall short of making all the amendments necessary to make Alaska's version of UIFSA identical to the Uniform Act. However, before bill drafting, an attorney for the National Conference of Commissioners on Uniform State Laws reviewed Alaska's current version of UIFSA and found that, if two sections of the Alaska law were amended, it would be functionally equivalent to the uniform version of UIFSA. Sections 19 and 20 of SCS CSHB 344(FIN) am S would make the recommended changes. Section 19 would amend AS 25.25.602(a) by dropping a requirement that a person must provide a sworn list of all potential third-party resources to the person when the person registers a foreign child support order in an Alaskan court for enforcement. Section 20 of the bill would make stylistic changes to AS 25.25.611(a) provides courts direction concerning the modification of child support orders of another state.

Legal Issues: None identified.

CHANGES IN PATERNITY PROCEDURES

Overview of Changes:

SCS CSHB 344(FIN) am S would give clear statutory authority for CSED to enter default orders in administrative paternity cases and extend the deadlines placed on the putative father for providing information and for complying with genetic testing orders. It would also provide for the court enforcement of genetic testing orders of this and other states.

Sectional:

Sections 28 and 29 of the bill would extend from 20 to 30 days the time in which a putative father must provide financial information to CSED during the course of an administrative paternity proceeding.

Section 29 would also extend, from 30 to 45 days, the time in which a putative father must submit to a genetic testing order. In addition, the section would permit CSED to enter a default paternity order if the putative father fails to comply with an administrative genetic testing order or an order to provide financial information unless the paternity action was started at the request of the putative father.

Section 30 would provide for court enforcement of genetic testing orders of this and other states.

Legal issues:

Section 30 would give an Alaskan court the power to hold someone in contempt of court for failing to honor the genetic testing order of CSED, or a tribunal of another state. This section might be found to be contrary to Civil Rule 37(b)(2)(D) that prohibits the court from using its contempt powers to enforce an order for medical examination issued under one of the discovery rules. Article IV, Section 15 of the Alaska Constitution prohibits the legislature from changing procedural court rules through legislation unless the legislation provides notice of the court rule change and passes with a two-thirds votes of the elected members of each house. However, if the court rule primarily prescribes a method of enforcing a right, as opposed to creating a substantive right, art. IV, sec. 15 does not apply. Substantive law creates, defines and regulates rights while procedural law describes the method of enforcing the rights. State v. Williams, 681 P.2d 313, 316 (Alaska 1984). A court is likely to find that Civil Rule 37(b)(2)(D) is a substantive, rather than a procedural provision, and therefore, that sec. 30 of the bill did not violate art. IV, sec. 15 of the Alaska Constitution.

CHANGES TO CHILD SUPPORT ENFORCEMENT AND COLLECTION TOOLS

Overview of Changes:

Currently, provisions of AS 25.27 give Alaska's child support enforcement agency the authority to use income withholding orders to seize wages and other property of child support obligors held by employers and others. SCS CSHB 344(FIN) am S would make some minor changes to these enforcement and collection statutes. The bill would also permit enforcement of child support liens from other states in the manner provided for Alaska child support liens, and repeal a section of AS 09.10 that requires CSED to file a motion to reduce child support arrears to judgment before the oldest child of an obligor reaches the age of 21 years.

Sectional:

Section 2 and sec. 54(a) of SCS CSHB 344(FIN) am S would repeal AS 09.10.040(b) that requires that an action be brought to establish a judgment for child support arrears before the date on which the youngest child covered by a support order becomes 21 years of age.

Sections 21, 22, and 50 of the bill would require CSED to honor requests from another state child support enforcement agency for high volume automated enforcement of child support obligations made by electronic or other means.

Section 22 of the bill would also direct employers which receive an income withholding order from another state to comply with the laws of the state of the subject employee's principal place of residence concerning the order.

Section 23 of the bill would expand the types of property subject to an income withholding order issued by a court or administrative tribunal. Under current law, a withholding order may only be used to seize the wages of a child support debtor through service of the order on the debtor's employer. Section 23 of the bill would permit service of the withholding order on anyone, not just the obligor's employer. The withholding order could be used to seize wages, periodic income of any form, including gain from investments and interest. Section 23 would also require that withholding orders be served by certified mail or by electronic means. Current law permits service of the withholding order by first class mail.

Section 24 of the bill would require CSED to send a written medical support order to an obligor's new employer when the agency receives notice that the obligor has changed employment. If served with a medical support order, an employer must add the employee's children to the employees health insurance coverage if such coverage is available to the employee at a reasonable cost.

Section 31 of SCS CSHB 344(FIN) am S would permit CSED to assert a child support lien anytime after a child support obligor is 30 days behind in his or her child support debt.

Section 32 of the bill would require Alaska to provide full faith and credit to child support liens arising under the laws of other states. The out of state liens would be enforceable in the manner of child support liens in Alaska. Section 32 would also permit child support liens to be enforced in the manner of a judgment lien without the need for prior notice or an opportunity to be heard.

Section 33 of the bill would permit someone other than CSED to serve a recorded child support lien on any person or entity having property of the child support obligor. Current law only permits the agency to do this. Service of a child support lien provides a method of proving that someone with property of the child support obligor, has actual notice of the lien. When a person has actual notice of a child support lien, that person may not pay over, release, sell, transfer, encumber, or convey the property subject to the lien without written permission of the lien holder unless the lien has been released by administrative or court order.

Section 47 of the bill would permit CSED to serve an income withholding order upon a person holding property of a child support obligor, without prior notice to the obligor, immediately upon the issuance of an income withholding order providing for immediate income withholding, immediately after an arrearage occurs under a child support order, or thirty days after the date of service of an administrative support or paternity order.

Section 49 of the bill would change the definition of "support order" for purposes of AS 25.27 so that it includes a spousal support order for the parent with whom a child is living.

Legal Issues:

Section 32 of the bill would permit CSED to enforce a child support lien by execution under AS 09.35 as a judgment lien. Under this section, a child support creditor would be able to obtain an ex parte writ of execution permitting attachment of the property to enforce the child support debt. See, AS 09.35.070. Section 47 of the bill would permit CSED to use income withholding orders to seize the property of child support obligors if the obligor is at least 30 days in arrears. These changes raise the question of regardless of whether they may violate the due process rights of child support obligors whose child support orders do not currently allow immediate income withholding. These provisions should survive a due process challenge.

There might be a problem if the amendments permitted prejudgment attachment of the obligor's property. Prejudgment attachment, without notice and an opportunity to be heard does violate art. 1, sec. 7 of the Alaska Constitution and the Fourteenth Amendment to the U.S. Constitution. Etheredge v. Bradley, 502 P.2d 146 (1972).

The changes that would be made by secs. 32 and 47 of the bill do not provide for prejudgment execution and would only permit CSED to make post-judgment seizure of property because the section would only permit attachment by liens or withholding order after the obligor is in arrears on his child support debt. For purposes of these sections, a person may not incur a child support debt until a court or administrative tribunal has established a child support obligation. Such an obligation may not be established until the obligor has received due process notice and an opportunity to be heard. If a person is in arrears on such an obligation, the obligation has come due and gone unpaid and is therefore a judgment subject to execution under AS 09.35.010. State, Dep't of Revenue v. Demers, 915 P.2d 1219 (Alaska 1996).

ADVERSE ACTIONS AGAINST OCCUPATIONAL, SPORT, AND DRIVER'S LICENSES

Overview of Changes:

Current Alaska law authorizes adverse administrative actions against delinquent obligors' occupational and professional licenses. Similar action may be taken against those who fail, without cause, to honor a child support subpoena or paternity warrant. There are no provisions currently in Alaska law that permit the agency or the courts to adversely affect a persons' sport hunting or fishing license for failing to pay child support or to comply with a paternity warrant or child support subpoena.

SCS CSHB 344(FIN) am S would take from state agencies the power to revoke or suspend occupational, professional, or driver's licenses for failing to comply with a child support subpoena or paternity warrant and give that authority to courts in civil contempt actions. The bill would also give courts, in a civil contempt action, the authority to take adverse action against someone's sport hunting or fishing license for failure to honor a child support obligation, or comply with a child support subpoena or paternity warrant. Finally, the bill would permit a court to punish the crime of criminal nonsupport, by suspending, revoking or restricting the sport hunting or sport fishing license of the defendant.

The bill would also permit someone behind in his or her child support obligation to avoid the administrative revocation of a driver's license by convincing a court that he or she has made best efforts to keep current on the child support debt.

Sectional:

Sections 3 and 34-45 of the bill would take from state agencies the power to revoke or suspend occupational, professional, or driver's licenses for failing to comply with a child support subpoena or paternity warrant and give courts in civil contempt actions the power to revoke,

suspend, or restrict, for a period of six moths, those licenses if a child support obligor is in contempt of a child support order.

Section 3 of the bill would also give courts, in a civil contempt action, the authority to revoke, suspend, or restrict, for a period of up to six months, someone's sport hunting or fishing license for failure to honor a child support obligation, or comply with a child support subpoena or paternity warrant. A sport hunting or fishing license restricted, revoked or suspended under the provisions of sec. 3 could still be used to carry out subsistence hunting or personal use fishing activities.

Sections 4 and 5 of the bill would give a court authority to punish the crime of criminal nonsupport with the suspension, revocation, or restriction of a sport hunting or sport fishing license for a period not to exceed six months. A sport hunting or fishing license restricted, revoked, or suspended under the provisions of secs. 4 and 5 of the bill could still be used to carry out subsistence hunting or personal use fishing activities.

Section 46 of the bill would amend AS 25.27.246, the administrative driver's license suspension law, to permit someone behind in his or her child support obligation to avoid the administrative revocation of a driver's license by convincing a court that he or she has made best efforts to keep current on the child support debt.

Legal Issues:

PRWORA requires that the remedy of license suspension or revocation be available for noncompliance with child support orders and subpoenas in child support and paternity matters. All occupational, professional, sporting, and recreational licenses must be subject to negative action. Provisions in SB 98, passed by the Alaska State Legislature in 1996 and SB 154 that were enacted in 1997 met most of the PRWORA licensing mandates. SCS CSHB 344(FIN) am S adds sports hunting and fishing licenses to the list of those subject to negative licensing action if the license holder defaults on his or her child support obligation, or fails to honor a child support subpoena or warrant.

In 1997, a child support debtor challenged AS 25.27.246, the driver's license provision enacted in 1996 by SB 98. Reina v. State of Alaska, Dep't of Revenue, CSED, 3AN-97-03329. The superior court found that AS 25.27.246 violated the debtor's rights to substantive due process, a jury trial, and equal protection as guaranteed by the Alaska Constitution. CSED has appealed this decision to the Alaska Supreme Court and is arguing on appeal that the licensing statute is a reasonable and extremely effective response to a particularly difficult problem: the enforcement of support against child support debtors who are self-employed, voluntarily underemployed, move quickly from job to job, or who work under the table or strictly for cash.

The superior court found that AS 25.27.246 violated the debtor's right to equal protection because it did not allow the debtor to avoid license revocation by proving that the debtor had made best efforts under the circumstances to pay support. AS 25.27.244, which provides for the administrative revocation of occupational licenses for child support purposes, contains a "best efforts" defense of this nature. The superior court held that denying a "best efforts" defense to those facing driver's license revocation, while another statute provides such a defense to those facing revocation of their occupational licenses, denied the holders of driver's licenses equal protection of the law. Section 46 of SCS CSHB 344(FIN) am S would alleviate the superior court's concerns by amending AS 25.27.246 to include a "best efforts" defense for child support debtors facing revocation of their driver's licenses.

The superior court also found that AS 25.27.246 violated the debtor's constitutional right to substantive due process because the law did not give CSED or the court the discretion to relax the statute's rigid requirements where circumstances warrant. Despite evidence of the flexibility that CSED has built into the administrative process, the superior court noted that, in contempt of court actions, courts have a certain amount of discretion that appeared to be lacking in the revocation process provided for by the current AS 25.27.246. This suggests that the superior court *might* have ruled differently if AS 25.27.246 allowed the courts the same discretion that courts may exercise in contempt actions and that CSED is already exercising in the administrative portion of the license revocation process. The adverse licensing provisions of SCS CSHB 344(FIN) am S would give the courts this type of discretion by allowing the courts to negatively affect a sport hunting or fishing license for failure to pay child support as a part of a contempt or criminal nonsupport action. These types of actions include the discretion that the superior court found lacking in the current version of AS 25.27.246. For this reason, a substantive due process challenge to the adverse licensing portions of SCS CSHB 344(FIN) am S is unlikely to succeed.

Furthermore, the superior court's decision in this case is currently on appeal to the Alaska Supreme Court. In its implementation of the current AS 25.27.246, CSED has allowed itself sufficient flexibility to relax the statutory requirements in appropriate cases. There is no evidence that this discretion was misapplied in the case on appeal. Thus, there is a significant possibility that the superior court's decision concerning substantive due process would be reversed.

The superior court also found that AS 25.27.246 violated the debtor's due process right because the debtor believed that the statute imposes punitive sanctions with only limited judicial review which does not include the right to a jury trial. If enacted, with the exception of secs. 4 and 5 of the bill, the negative licensing provisions of SCS CSHB 344(FIN) am S that concern fish and game licenses would provide a remedial, rather than punitive system for license revocations with the flexibility that the superior court found lacking in AS 25.27.246. The loss of license would be remedial because the child support debtor may avoid the sanction by coming into compliance with the support order. Therefore, those child support debtors threatened with the loss of fish and game licenses under the civil provisions of the bill would not have a constitutional right to jury trial.

Sections 4 and 5 of the bill would give courts the authority to take negative action against a defendant' sport hunting or fishing licenses, or both, when sentencing the defendant for the crime of criminal non-support (AS 11.51.120). Since a loss of license under these sections would be punishment for committing a crime, they are punitive measures. Defendants facing the charge of criminal nonsupport already enjoy the right to a jury trial so secs. 4 and 5 of the bill would not violate the constitutional rights of defendants.

The final legal issue raised by the SCS CSHB 344(FIN) am S adverse licensing sections concerns equal protection under the Alaska Constitution. One wishing to bring an equal protection challenge might claim that, together with AS 25.27.244 and AS 25.27.246, the bill would create two classes of delinquent child support debtors. One class would be composed of debtors who face the loss of a driver's license, occupation license, or professional license. Members of this class would face the loss of their licenses through an administrative process with only limited judicial review. The other class would be composed of child support debtors with recreational fishing or hunting licenses. Members of this class would face the loss of a recreational license only through criminal or civil contempt court actions. As explained above, such actions are governed by somewhat different procedures and rights than provided in the limited judicial review under AS 25.27.244 and AS 25.27.246.

If a court found that the bill created two classes in the manner set out above, it would then have to apply a sliding balancing test to determine whether the classification violates the equal protection clause of the Alaska Constitution. Hendrick's Aero-Auto-Aqua Repair v. DOT, 754 P.2d 1111, 1114 (Alaska 1988). The person challenging the constitutionality of a statute generally has the burden of establishing the constitutional violation. In applying the balancing test in Beans, however, the superior court found that the state had the burden of proving that the distinction between the treatment of holders of driver's licenses and occupational licenses is reasonable, not arbitrary and rests on some grounds of difference having a fair and substantial relation to the object of the legislation that creates the classes. Beans, Decision, p. 10-11.

A court considering whether the classification created by operation of the recreational license sections of SCS CSHB 344(FIN) am S with existing licensing law, might reach a similar finding. Such a court would most likely determine that the object of the legislation that created the classification is to enhance the collection of child support. Therefore, the question presented by an equal protection challenge would be whether the classification is reasonable, not arbitrary and rests upon some ground of difference have a fair and substantial relationship to the object of enhancing collection of child support.

The justification for treating the holders of recreational licenses differently from those holding the other licenses, lies in the method that the licenses are dispensed. One wishing to obtain an occupational, professional, or driver's license from the state must apply for the license directly to the state. On the other hand, most recreational fishing or hunting licenses are dispensed by

vendors throughout the state. This makes it difficult, if not impossible, for the legislature to make the recreational licenses subject to administrative license action in the manner provided by AS 25.27.244 or AS 25.27.246 for driver's licenses and occupational or professional licenses. Another approach had to be found for revocation of recreational licenses. In SCS CSHB 344(FIN) am S, the legislature opted to solve the problem by giving courts the power to take negative action against recreational licenses during contempt proceedings and when sentencing a child support debtor for criminal nonsupport. This is a rational choice that is likely to be upheld by a court considering an equal protection challenge of the licensing provisions of SCS CSHB 344(FIN) am S.

MISCELLANEOUS PROVISIONS

Overview of Changes:

SCS CSHB 344(FIN) am S contains a number of provisions that do not fit in any of the previous broad categories.

Sectional:

Sections 13 and 18 of the bill would add proposed new sections to AS 25.24 would affect a court's ability to grant the noncustodial parent in a child custody action an unconditional right to claim his or her child as a dependent for federal income tax purposes. Section 27 of the bill would add a proposed new section to AS 25.27 to require CSED to comply with the requests of a child support obligee for written certification that the child support obligor is more than four months in arrears on his or her child support debt or child support payment schedule. Together, these sections provide child support obligees with a way to block a child support obligor from claiming children of the marriage as a dependent for tax purposes if the obligor is more than four months in arrears on his or her child support obligation or payment schedule.

Section 21, a portion of sec. 22, and a portion of sec. 50 of the bill would provide that requests by the child support enforcement agencies of other states for high-volume automated administrative enforcement may be made by electronic and other means.

Section 24 of the bill would require CSED, when they have notice that an obligor has changed employment and the new employer provides family health care coverage, to send a copy of the obligor's medical support order to the new employer. Other provisions of state law would require that any employer receiving such a notice must enroll the obligor's children in the family health care coverage if they are subject to a child support order even if the employee or the obligor fails to enroll the children.

Section 26 of the bill would permit CSED to ask a court to enforce one if its administrative subpoenas as if the subpoenas had been issued by the court. Section 30 of the bill would provide the child support agency in Alaska or another state a method for asking a court to find someone in contempt of an agency order to genetic testing.

A portion of sec. 49 of the bill would amend the current definition of "support order" for purposes of AS 25.27 to include orders which provide for spousal support of a parent with whom a child who is the subject of a child support order is living.

Legal Issues: None expected.

SUNSET PROVISIONS

Overview:

SCS CSHB 344(FIN) am S would sunset on July 1, 2001, most of the provisions of the bill designed to meet federal child support mandates. The court would also extend from July 1, 1999, to July 1, 2001, the sunset of all the provisions of CSSB 154 (Ch. 87, SLA 1997), which is a bill passed by the legislature in 1997, to meet the child support mandates of PRWORA.

Sectional:

Section 53 of the bill would amend Section 148(c), ch. 87, SLA 1997. Currently that section sunsets all the provisions of CSSB 154 on July 1, 1998. Section 53 would extend that sunset date until July 1, 2001. CSSB 154 was passed into law in 1997, to meet the federal child support mandates of PRWORA. Section 53 would extend the life of the provisions of CSSB 154 for two years.

Section 54(b) and (c) of the bill would sunset, on July 1, 2001, those provisions of CSHB 344(FIN) that satisfy federal child support mandates.

Legal Issues:

Almost all of the provisions of SCS CSHB 344(FIN) am S and CSSB 154 were needed to meet one of the child support mandates the United States Congress imposed on the states with PRWORA. That law requires Alaska to have laws in place which permit the child support agency of this and other states to carry out specific functions. The sunset provisions in secs. 53 and 54 of the bill would not place Alaska out of compliance with the PRWORA mandates. However, in order to avoid severe financial penalties in the next century, Alaska will have to address the sunset provisions before July 1, 2001.

APPLICABILITY

Sectional:

Section 55 of the bill would ensure that the new hire reporting provisions that would be implemented by sec. 25 of the bill, would not apply to any hiring, rehiring, or return to work that occurs before the effective date of the act. Most of the provisions of the bill would be effective on the date it becomes law under the terms of sec. 57 of the bill.

Legal Issues: None identified.

NONSEVERABILITY CLAUSE

Sectional:

Section 56 of the bill would make nonseverable, almost all of the sections of the bill. Only secs. 13, 18, 27, and 54 are excluded. None of the excluded sections were designed to satisfy the federal child support mandates. Under sec. 56, if any of the provisions which are subject to the nonseverability clause are found to be unconstitutional, all the rest of the sections shall be considered invalid. The same result would follow the finding by a court, that a subject provision had been applied in an unconstitutional manner.

Legal Issues:

As 01.10.030 provides that any law which lacks a severability clause shall be construed as if it contained the following language:

> If any provision of this Act, or application thereof, to any person or circumstance is held invalid, the remainder of the Act and the application of it to other persons or circumstances shall not be affected by it.

This statute reverses the common law presumption against severability. A provision will be deemed severable unless it appears both that, standing along, legal effect can be given to and that legislature intended the provision to stand, in case others included in the act and held bad should fall. If a court strikes down one portion of an act for being unconstitutional, the question then, is whether the portion remaining, once the offending portion of the act is severed, is independent and complete in itself so that it may be presumed that the legislature would have enacted the valid parts without the invalid parts. State v. Kenaitze Indian Tribe, 894 P.2d 632, 639 (Alaska 1995).

SCS CSHB 344(FIN) am S in the name of child support enforcement, make changes to many different sections of the Alaska Statutes. Many of the changes are unrelated to others. For

example, sec. 5 of the bill would amend the penalties for criminal non support, while sec. 6 would require one applying for a sporting license to provide his or her social security number on the license. These two sections, like many of the other sections of the bill, can stand alone from the other sections. Therefore, under the standard in Kenaitze Indian Tribe, a court would presume that the legislature would have enacted the valid parts without the valid parts. Absent sec. 56 of the bill, there would little question that all the provisions of SCS CSHB 344(FIN) am S are severable.

Section 56 states that if any provision of the Act is declared unconstitutional, all the enumerated sections shall be considered invalid. There is no rational basis served by so linking all the unrelated provisions set out in the enumerated sections. A court will decline to attribute to the legislature an intent to pass an unreasonable Act. Sutherland Statutory Const. Sec. 44.03 (5th E.) Therefore, a court is likely to find that the legislature only intended to link related sections of the bill. For example, a court might find that sec. 52 of the bill, which requires an applicant for a driver's license to provide his or her social security number on the license application is linked to secs. 6 and 7 that require an applicant for a sport hunting or fishing license to provide his or her social number on the license application.

EFFECTIVE DATE

Overview:

Most of the provisions of SCS CSHB 344(FIN) am S have an immediate effective date. Sections 13, 18, and 27 of the bill will take effect on July 1.

Sectional:

Section 57 of the bill would make almost all the sections of the bill effective immediately.

Section 58 makes secs. 13, 18, and 27 of the bill effective on July 1, 1999. Together, these sections would provide child support obligees with a way to block a child support obligor from claiming a children of the marriage as a dependent for tax purposes if the obligor is more than four months in arrears on his or her child support obligation or payment schedule.

Legal Issues: None identified.

SUMMARY

While this bill presents a number of legal issues, we do not believe it poses any legal problems that cannot be managed by the agencies administering the provisions, with legal guidance from the Department of Law. This bill also contains provisions that may be subject to challenge on

constitutional grounds; however, we believe that these provisions, which were addressed above, may reasonably be defended as constitutional and our defense is likely to succeed.

Sincerely,

Deborah F. Behr for

Bruce M. Botelho
Attorney General

BMB:DNB:smo

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

2201 Sixth Avenue, RX-70
Seattle, WA 98121

OCT - 2 2008

Mr. John Mallonee
Director
Child Support Services Division
550 West 7th Avenue, Suite 310
Anchorage, AK 99501-6699

Dear Mr. Mallonee:

This is in response to your letter dated August 15, 2008 regarding Alaska's request for an authority exemption from the State plan requirement in section 466(f) of the Social Security Act (the Act), which mandates that on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act (UIFSA), 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 States Laws. Based upon the documentation submitted, the State does not meet the criteria for an authority exemption.

The authority exemption that Alaska requested requires that the State have an existing law or other legal authority for procedures under which it is operating in compliance with the intent of the Federal mandatory procedure even though the State does not have a statute specifically addressing the matter. Alaska does not have a procedure which is in compliance with or meeting the intent of section 466(f) of the Act, thus the State lacks an essential requirement for an authority exemption. The State may, however, choose to apply for an exemption not to implement a procedure or an exemption to implement a similar procedure in accordance with OCSE-AT-07-06.

The enactment of UIFSA is a condition of receiving IV-D funds, which is a State election. UIFSA's definition of "State" includes Indian tribes regardless of the existence of Indian country, while the Full Faith and Credit for Child Support Orders Act (FFCCSOA) limits full faith and credit to Indian country tribes. Yet, there is no provision in FFCCSOA that prevents States from recognizing other types of orders. As such, FFCCSOA does not trump UIFSA, instead, both Acts work in tandem with each other. Alaska's UIFSA enactment, however, excludes all tribes, including those in Indian country. As a result, and contrary to the intent of UIFSA, additional court proceedings are required for the recognition and enforcement of child support orders that are issued by certain tribal courts.

The State plan provision at section 454(20) of the Social Security Act (the Act) requires States to have in effect and use the laws and procedures specified in section 466 to improve the effectiveness of child support enforcement programs. However, States may apply for an exemption from implementing one or more of these laws and procedures which may be approved if a State demonstrates to the satisfaction of the Secretary that the mandated law or procedure would not increase the efficiency or effectiveness of the State IV-D program "through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify." [42 U.S.C. 666(d)]

If Alaska chooses to apply for another category of exemption, the State must submit all of the documentation required by section 466(d) of the Act and OCSE-AT-07-06. The State may also wish to explain how the enactment of UIFSA as required would conflict with or affect the implementation or scope of Alaska Native Claims Settlement Act (ANCSA); how the fact that most Alaskan tribes do not have any land has any bearing on the tribes' ability to issue or enforce child support orders; and why the State believes that having to hold a duplicate or second court hearing before certain child support orders can be enforced is more efficient or effective or achieves the purposes of the law.

We look forward to working with you to resolve this matter. If you have any questions or require additional information, please feel free to contact John Cheng at 206-615-2566 or me at 206-615-2564.

Sincerely,

Linda Gillett
OCSE Regional Program Manager
Region X

CC: Margot Bean
Commissioner
Office of Child Support Enforcement

STATE OF ALASKA
DEPARTMENT OF REVENUE
CHILD SUPPORT SERVICES DIVISION

SARAH PALIN, GOVERNOR

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

December 18, 2008

Ms. Linda Gillett
Regional Program Director
OCSE Region X
2201 Sixth Avenue, RX-70
Seattle, WA 98121

Re: UIFSA Exemption Request

Dear Ms. Gillett:

On August 15, 2998 the Child Support Services Division requested an authority exemption to UIFSA. This request was denied by Region X on October 2, 2008. Pursuant to 42 U.S.C. § 666(d), the State of Alaska, Child Support Services Division, once again respectfully requests an exemption to the uniform version of the Uniform Interstate Family Support Act ("UIFSA").

Attached please find the "Justification and Documentation" for the exemption request, as required by Action Transmittal AT-07-06. Please let me know if you have any questions and/or if you need any additional information. I look forward to hearing from you.

Sincerely,

John T Mallonee

John Mallonee
Director

Attachment

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

ALASKA CHILD SUPPORT SERVICES DIVISION'S JUSTIFICATION AND DOCUMENTATION FOR SECOND UIFSA EXEMPTION REQUEST

The Alaska Child Support Services Division (CSSD) previously requested an authority exemption regarding the definition of "state" in its Uniform Interstate Family Support Act (UIFSA). In Alaska's UIFSA, the definition of "state" does not include "an Indian tribe." In Region X's response, you denied Alaska's authority exemption request, but invited Alaska to apply for another category of exemption. Region X also asked several questions related to Alaska-specific issues concerning the Alaska Native Claims Settlement Act (ANCSA) and the authority of Alaska tribes without Indian Country. CSSD requests Region X to reconsider the authority exemption based on the additional information in this document. In the alternative, CSSD requests an exemption to operate a similar procedure based on authority in federal and Alaska law.

Alaska Indian tribes do not have authority to issue and enforce child support orders in the absence of Indian Country.

Region X inquired how the lack of Indian Country impacts a tribe's ability to issue or enforce a child support order. Indian County is at the heart of a tribe's subject matter and personal jurisdiction to issue and enforce child support orders against members and non-members.

American Indian tribes have been described as domestic dependent nations. As such, an Indian tribe retains inherent power to protect self-government and to control internal relations. The tribe's inherent power, however, is narrowly defined.

An Alaskan tribe's authority is directly affected by the Alaska Native Claims Settlement Act (ANCSA).[1] CSSD provided a history of ANCSA in its previous exemption request. The critical fact is the U.S. Supreme Court decided in *Alaska v. Native Village of Venetie*,[2] that land conveyed to Alaska natives under ANCSA was not Indian Country. As a result, there is virtually no Indian country in Alaska.[3] Thus, unlike tribes in the lower 48 with reservations, Alaska

[1] Region X inquired how UIFSA, if amended, would affect the scope and implementation of ANCSA in Alaska. Because ANCSA is a substantive federal law and UIFSA is a procedural state law, ANCSA affects the scope and implementation of UIFSA. ANCSA restricts UIFSA.

[2] *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998)

[3] Metlakatla, the only Indian Reservation in Alaska, is always an exception to any statement that there is "no" Indian Country in Alaska, even when it is not specifically mentioned as such.

tribes do not have any territorial jurisdiction [4] and their inherent authority extends only to matters affecting tribal self government and internal relations. [5]

An example of a tribe's internal relations is the regulation of "domestic relations among members."[6] Unlike child custody, child support--regardless of the membership status of the obligor and obligee—cannot be characterized as "domestic relations among members." Child support issues do not stop with the parents; governmental interests are also affected. The state has a direct interest in any child support case in which a child is receiving state or tribal public assistance. The federal government has an equally broad public policy interest in child support. Federal and state governments both take an active role in the establishment and enforcement of child support orders (as well as orders establishing paternity).

Direct federal and state involvement in child support began in 1975 when Congress passed legislation authorizing federal funding for state child support agencies. The federal government expects to provide $3.8 billion to states in fiscal year 2009 for state child support agencies to establish paternity, locate absent parents, and help families obtain support orders. [7] A state must provide these services free of charge to welfare recipients, and when requested, for a nominal fee to children and custodial parents who are not receiving welfare payments. [8] The increase in successful state enforcement efforts has caused a decrease in the percent of welfare recipients, who now make up only 14% of child support caseloads. [9] The majority of families no longer need public assistance in large part because of successful state child support collections. [10] Child support is more than a private family affair.

Alaska's Supreme Court considered but did not decide whether Alaska tribal courts without Indian Country have subject matter jurisdiction to issue, modify or enforce tribal child support orders. [11] These complex questions remain unresolved in Alaska, where there are 229 separate tribes. In contrast, tribes in the lower 48 with reservations have broader powers than Alaskan tribes

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[4] Tribal courts are not courts of general jurisdiction. *Nevada v. Hicks* 533 U.S.353 (2001)

[5] *Montana v. U.S.*, 450 U.S. 544 (1981); *John v. Baker I*, 982 P.2d 738 (Alaska, 1999)

[6] *Montana v. U.S.* 450 U.S. at 564-566

[7] http://www.acf.hhs.gov/opa/fact_sheets/cse_factsheet.html: Fact Sheet, Office of Child Support Enforcement, Administration for Children and Families, US Department of Health and Human Services.

[8] *Blessing v. Freestone*, 520 U.S. at 333-334.

[9] *See* footnote 8, *supra*.

[10] *Id.*

[11] *John v. Baker III*, 125 P.3d 343 (Alaska 2005).

because those tribes can govern "both their members and their territory," subject ultimately to Congress.[12] Even so, the United States Supreme Court continues to reinforce and extend its previous rulings[13] that tribal courts have little or no authority to decide claims arising out of the activities of a non-member of the tribe, even when the non-member acted on the reservation. The most recent example is *Plains Commerce Bank v. Long Family Land and Cattle Company, Inc.*[14]

Indian Country is also critical for the recognition of tribal child support orders under federal law. Congress requires states and tribes to afford full faith and credit to all valid child support orders issued in Indian Country. Tribal child support orders issued outside of Indian Country are not entitled to full faith and credit under the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA).

The Uniform Interstate Family Support Act (UIFSA) does not change federal law. As noted by Region X, UIFSA and FFCCSOA work in tandem. UIFSA is a procedural statute.[15] In tandem with FFCCSOA, UIFSA defines procedural rules between states and tribes to determine which state or tribe may issue a support order and when another state or tribe can modify the support order of another jurisdiction. It does not grant original child support jurisdiction to a tribe that does not already have it. No act of Congress gives Alaska tribes subject matter jurisdiction over child support.[16] If the tribe does not have subject matter jurisdiction to enter child support orders based on its inherent authority and territorial jurisdiction or an express congressional delegation, a state does not have the power to confer that original jurisdiction on the tribe; only Congress does. Thus, the Alaska state legislature's amendment of UIFSA to include "tribes" in the definition of "state" will not create tribal jurisdiction where it does not already exist.

The drafters of UIFSA did not contemplate that a tribe without a reservation would issue a child support order. For example, UIFSA's bedrock principle is that the court with continuing exclusive jurisdiction (CEJ) should be

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[12] *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975).

[13] *Montana v. U.S.*, 450 U.S. 544 (1981); *Strate v. A-1 Contractors* 520 U.S. 438 (1997); *Atkinson Trading Co. v. Shirley* 532 U.S. 645 (2001); *Nevada v. Hicks* 533 U.S. 353 (2001).

[14] 128 S. Ct. 2709, 2718 (2008). *See also Atkinson Trading Co. v. Shirley*, 532 U.S. at 659 (efforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are 'presumptively invalid').

[15] http://www.acf.hhs.gov/programs/cse/fct/uifsahb.htm: UIFSA PROCEDURAL GUIDELINES HANDBOOK: "This document is an excerpt from the UIFSA Handbook... NOTE: Remember, UIFSA is a procedural vehicle. As a general rule, apply the substantive law of the State where the action is occurring."

[16] *Blessing v. Freestone* 520 U.S. 329, 344 (1997) makes clear that funding statutes do not confer the subject matter jurisdiction generally necessary to adjudicate individual rights.

the only court to make decisions regarding current or future child support.[17] The principle fails when applied to an Alaska tribe without a reservation.

UIFSA's section 205, which governs continuing exclusive jurisdiction (CEJ), provides:

> (a) A tribunal of this [tribe] issuing a support order...has continuing exclusive jurisdiction over a child support order:
> (1) as long as this [tribe] remains the *residence* [emphasis added] of the obligor, the individual obligee, or the child...

The apparent intent of the provision is to allow a tribe to maintain CEJ as long as one or more of the parties live on the reservation. But Alaska's tribal members have no tribal residence because Alaska tribes do not have reservations. The problem is further magnified under UIFSA's modification provisions, sections 611 through 614. Again, the parties' and child's residence determine whether a state or tribe has jurisdiction to modify another state's or tribe's child support order.

The goals and intent of UIFSA will not be met by Alaska's amendment of UIFSA to include "an Indian tribe" in the definition of "state." UIFSA does not grant tribes authority to issue child support orders; the tribe must have that authority through its inherent powers or authority over issues and people living in Indian Country, or be given the authority by congressional delegation. UIFSA's procedural rules do not anticipate or provide for establishment, modification or enforcement of tribal child support orders issued outside of a reservation. For tribes with reservations, Alaska already recognizes tribal child support orders issued in Indian Country under FFCCSOA. CSSD requests OCSE to reconsider and grant CSSD's authority exemption.

CSSD's Request for Exemption to Operate a Similar Procedure

The inclusion of "Indian tribe" within UIFSA's definition of "state," will not increase the efficiency and effectiveness of Alaska's procedures.

In the alternative, CSSD requests an exemption to operate another procedure based on existing authority in Alaska. Alaska already has existing procedures and authority to recognize and enforce tribal child support orders.

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[17] In UIFSA, the exclusive jurisdiction provisions are also known as "one-order-at-a-time-in-one-place jurisdiction." Sampson, *Uniform Interstate Family Support Act (1996) Statutory Text, Prefatory Note, and Commissioners' Comments with more Unofficial Annotations*, 32 FAMILY LAW QUARTERLY 432 (Summer 1998)

Alaska already has procedures to recognize tribal child support orders isssued outside of the state in Indian Country. Alaska recognizes and enforces these tribal child support orders under FFCCSOA.

Alaska also has existing law to recognize tribal orders issued outside of Indian Country. If a tribe without Indian Country has authority to issue a child support order—which we dispute--the Alaska state court can recognize the order under comity principles.[18]

Region X's previous letter suggested that duplicate or second hearings would be required under the state's existing procedures. The current procedures do not require duplicate or second hearings.

CSSD estimated the following costs of operating under a similar procedure at zero: (1) the development costs of implementing the additional or alternate statutory regulatory requirements; (2) the operating costs compared to any increase or decrease in collections or performance as a result of the additional or alternate statutory or regulatory requirements; and (3) the change in staffing levels which would be needed to operate the additional or alternate statutory or regulatory requirements.

CSSD also compared the effectiveness of its current program to the effectiveness of the program were it to include "an Indian tribe" within its definition of "state," and has determined the required inclusion would neither increase nor decrease or it would have minimal impact on the following: (1) the average length of time to take an action in a case in Alaska; (2) the number of support orders enforced; and/or (3) the amount of collections. As a consequence, the State concludes the inclusion of "an Indian tribe" within its definition of "state," is unnecessary. Thus, CSSD requests the "similar procedure" exemption.

CONCLUSION

With the exception of the Annette Island Reserve, Alaska does not have "Indian Country." Changing UIFSA will not give Alaska tribes subject matter jurisdiction over child support issues. Therefore, Alaska renews its authority exemption request.

Alternatively, Alaska asks for a "similar procedure" exemption. The inclusion of an "Indian tribe" in the definition of "state" in Alaska's UIFSA will not increase the effectiveness or efficiency of the Alaska Child Support Services Division's child support collection. Federal law already requires full faith and credit recognition of a child support order issued by a tribe with Indian country, thus, meeting all of the goals and purposes of UIFSA where subject matter jurisdiction is undisputed. If the supreme court determines that tribes have subject

[18] *John v. Baker I, supra* at 765.

matter jurisdiction in child support matters in Alaska, tribal court orders can be recognized under the existing legal doctrine of comity.

As a consequence, the State respectfully requests that Region X grant one or the other of its exemption requests.

DEPARTMENT OF HEALTH & HUMAN SERVICES

JAN 29 2009

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Mr. John Mallonee
Director
Child Support Services Division, MS
550 West 7th Avenue, Suite 310
Anchorage, AK 99501

Dear Mr. Mallonee:

This is in response to your letter dated December 18, 2008 regarding Alaska's request for an exemption from the State plan requirement in section 466(f) of the Social Security Act (the Act), which mandates that on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act (UIFSA), 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 States Laws. Specifically, the State's UIFSA does not include Indian Tribes in the definition of 'State'. Based upon the submitted documentation, the State's request for an authority exemption to exclude Indian Tribes from the definition of State as well as the State's request for an exemption to operate a similar procedure is disapproved.

The State plan provision at section 454(20) of the Act requires States to have in effect and use the laws and procedures specified in section 466 to improve the effectiveness of child support enforcement programs. However, States may apply for an exemption from implementing one or more of these laws and procedures, which may be approved if a State demonstrates to the satisfaction of the Secretary that the mandated law or procedure would not increase the efficiency or effectiveness of the State IV-D program "through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify." [42 U.S.C. 666(d)]

As indicated in OCSE's October 2, 2008 letter, the authority exemption that Alaska requested requires that the State have an existing law or other legal authority for procedures under which it is operating in compliance with the intent of the Federal mandatory procedure even though the State does not have a statute specifically addressing the matter. Alaska does not have a procedure that is in compliance with or meeting the intent of section 466(f) of the Act; thus the State lacks an essential requirement for an authority exemption.

Your request asserts that the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. 1738B, provides sufficient authority to recognize the child support orders of other jurisdictions. However, UIFSA provides necessary and additional procedures, not included in

FFCCSOA, for the orderly and efficient recognition and enforcement of inter-governmental child support orders including procedures for: registration of support orders; challenging registration and enforcement of support orders; paternity establishment; direct wage withholding; and long-arm jurisdiction. These procedures apply to tribal child support orders across the United States, but do not apply in Alaska because of the failure to include "Tribes" in the definition of State. As a result, FFCCSOA does not meet the goals and intent of UIFSA and cannot substitute for UIFSA.

Alaska's second request is for an exemption to operate a similar procedure. In addition to the application of FFCCSOA, the request states that the State can recognize tribal child support orders issued outside Indian Country under comity principles. The request fails to provide any description of the similar procedure, i.e., the comity procedure, as is required by AT-07-06.

Section 466(d) of the Social Security Act, 45 CFR 302.70(d)(2) and AT-07-06 also require that the State provide supporting data showing that a mandated law or procedure would not increase the efficiency or effectiveness of the child support program. The requirement to provide supporting data was made clear to the State in the October 2, 2008 letter from Region X to the State (page 2, paragraph 1). According to the exemption request, the State estimates that the cost of operating under a similar procedure is "zero" and that the "required inclusion" would not increase, decrease, or have a minimal impact on the average length of time to take action in a case in Alaska, the number of support orders enforced, and/or the amount of collections. The State, however, failed to fully document the request by describing the similar procedure it would operate; defining the methodology used to reach its conclusion; and identifying the assumptions made and/or sampling approaches used.

As such, Alaska must enact the appropriate laws and implement the mandatory practice as soon as possible. The State must then submit for approval copies of the required laws, written policies and procedures, and administrative regulations or court rules as attachments to their IV-D State plan page for the mandated procedure.

We look forward to working with you to resolve this matter.

Sincerely,

Donna J. Bonar
Acting Commissioner
Office of Child Support Enforcement

cc: Linda Gillett
OCSE Regional Program Manager
Region X

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

2201 Sixth Avenue, RX-70
Seattle, WA 98121

MAR 27 2009

Mr. John Mallonee, Director
Child Support Services Division
550 West 7th Avenue, Suite 310
Anchorage, AK 99501

Dear Mr. Mallonee:

This is in response to your request for clarification of the potential Federal consequences if a State fails to enact laws to meet the State plan requirements with section 466(f) of the Social Security Act (the Act). The Act mandates that on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act (UIFSA), 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 States Laws. Specifically, Alaska State's UIFSA does not include Indian tribes in the definition of 'State'.

In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Social Security Act (the Act). One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466.

When a State fails to comply with any statutory requirement, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under Title IV-D to operate the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved may result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. This suspension includes the Federal share of administrative expenditures as well as any performance based incentive payments to the State.

In addition, in order to be eligible for a block grant for Temporary Assistance to Needy Families (TANF), section 402(a)(2) of the Act requires a State to certify that it will operate a child support enforcement program under the State plan approved under part D. Therefore, Alaska should be aware that TANF funds may also be at risk if the State does not enact conforming child support legislation.

In Federal Fiscal Year (FFY) 2008, the Federal share of Alaska's IV-D expenditures was. $14,657,800 and the State's TANF award amount was $46,732,590. In addition, Alaska received $1,794,516 in child support incentives for FFY 2007 (the latest year with available data).

We trust this statement of requirements and penalties clarifies our position. We are attaching our Action Transmittal 97-05 issued April 28, 1997 which outlines our procedures for determining that a State IV-D Plan is disapproved. Due to the gravity of the consequences that may result, we urge you to take all necessary steps to have the required UIFSA legislation enacted and implemented as soon as possible.

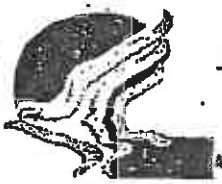
If you have any questions, please contact John Cheng at (206) 615-2566.

Sincerely,

Linda Gillett
Regional Program Manager, Region 10
Office of Child Support Enforcement

Enclosure: Action Transmittal 97-05

cc: Ms. Donna Bonar, Acting Commissioner, OCSE



PROGRAM INSTRUCTION

ACTION TRANSMITTAL

OCSE-AT-97-05

April 28, 1997

TO:STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT:Procedures for Determining That a State IV-D Plan is Disapproved

BACKGROUND:Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, made a number of amendments to sections 454 and 466 of the Social Security Act (the Act), requiring States to either establish new, or modify existing, procedures effective either October 1, 1996, March 1, 1997 or October 1, 1997. For States which require legislation in order to conform their State IV-D plans to the revised statute, section 395(b)(2) of PRWORA provides a grace period until not later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of enactment of PRWORA (August 22, 1996). In cases which require that the State constitution be amended, section 395(c) of PRWORA provides a grace period until one year after the effective date of the State constitutional amendment, but no later than five years after the date of enactment of PRWORA.

CSE is tracking the progress of each of the States in enacting the new State plan requirements and mandatory laws, and is noting the date when each State's 1997 legislative session ends in order to ascertain when these laws are required to be in effect and when the State must submit new or amended State plan material for approval by OCSE in order to operate a Child Support Enforcement program according to the requirements of title IV-D of the Act. If a State fails to submit the necessary State plan amendments, OCSE will have to determine that the State does not have an approvable State plan. A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State=s child support enforcement program; and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE.

STATUTORY

AUTHORITY:Section 455(a)(1)(A) of the Act specifies that funds appropriated under title IV-D shall be paid to States with approved State IV-D plans. There is no authority to expend Federal funds under title IV-D of the Act for the operation of a Child Support Enforcement program unless such State has an approved State IV-D plan.

Section 466 of the Act requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws.

Section 454 of the Act sets the statutory requisites for the State IV-D plan. In addition, regulations at 45 CFR 301.10 define the State IV-D plan as a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program. The State IV-D plan contains all the information necessary for the Office of Child Support Enforcement (OCSE) to determine whether the plan can be approved, as a basis for Federal financial participation in the State IV-D program.

Section 452(a)(3) of the Act requires that OCSE review and approve State plans for Child Support Enforcement programs under title IV-D of the Act. The authority to approve State plans is delegated to the Regional Office, but OCSE retains authority for determining that a State IV-D plan is not approvable.

As stated above, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State=s child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with OCSE=s decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Section 402(a)(2) of the Act (as amended by PRWORA) provides that the chief executive officer of a State must certify that it will operate a child support enforcement program under an approved IV-D plan as a condition of eligibility for a TANF block grant under title IV-A of the Act. Therefore, States should be aware that TANF funds may also be at risk.

Although it is not required under Title IV-D of the Act, OCSE will give States an advance notice of "Intent to Disapprove" a previously approved State IV-D plan. The State will then be permitted the opportunity to waive reconsideration of the OCSE=s final decision and to exercise, prior to the State plan approval/disapproval decision, the right to a hearing under the procedures set forth a 45 CFR Part 213. If the State elects to pursue its hearing rights prior to issuance of OCSE's decision, no further administrative appeal will be allowed.

ATTACHMENT: Instructions for State Plan Disapproval

Timetable of Effective Dates

1997 Legislative Calendar

SUPERSEDED

MATERIAL: OCSE-AT-86-21

INQUIRIES: ACF Regional Administrators

/ S /

Anne F. Donovan

Acting Deputy Director

Office of Child Support Enforcement

Instructions for State Plan Disapproval

I. Notice of Intent to Disapprove

OCSE will issue a Notice of Intent to Disapprove a State Plan to the State umbrella agency head when it has been determined that either of the following situations exist:

Pursuant to the requirements at 45 CFR 301.13(d) the State IV-D plan no longer meets the requirements for an approved State plan based on relevant Federal statutes and guidelines.

Pursuant to the requirements at 45 CFR 301.13(e) or (f) the State IV-D plan or amendment submitted for approval does not meet the requirements under title IV-D of

the Act and regulations issued pursuant to the Act.

II. Notice Of Opportunity For Hearing

The Notice of Intent to Disapprove will provide opportunity for the State to request a hearing prior to the issuance of the final decision if the State waives its right to a reconsideration of OCSE's decision under 45 CFR 301.14. The State must request a hearing within 60 days of the date of the Notice of Intent to Disapprove. If the State does not request a hearing, OCSE shall proceed according to the procedures set forth under Determination to Withhold outlined below.

Upon request of the State for a hearing, OCSE will issue a Notice of Hearing which will state the time and place of the hearing, the issues which will be considered, and shall be published in the Federal Register. The hearing procedures contained in regulations at 45 CFR Part 213 shall apply to these proceedings.

III. Negotiations

As provided in regulations at 45 CFR 213.1(b) the hearing process does not preclude or limit negotiations between OCSE and the State, whether before, during or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of the issues are not part of the hearing, and are not governed by the hearing procedures, except as expressly provided for in such procedures.

IV. Determination to Withhold

If OCSE concludes that the State does not have an approved State IV-D plan under section I of these instructions, it will notify the State that further Federal payments under title IV-D of the Act will not be made to the State until a State IV-D plan is submitted and approved. Until a State IV-D plan is approved, no further Federal payments under title IV-D will be made to the State for any child support enforcement activities. Pursuant to 45 CFR 213.33, the effective date for the withholding of Federal funds shall not be earlier than the date of OCSE=s decision and shall not the later than the first day of the next calendar quarter following such decision.

V. Reconsideration

Any State which has not waived its right to reconsideration and is dissatisfied with OCSE=s decision that the State does not have an approvable State plan may request reconsideration of the decision pursuant to regulations at 45 CFR 301.14. Funding, however, will be suspended and may not be restored unless OCSE subsequently determines that the original decision to withhold Federal IV-D funding was incorrect.

CHILD SUPPORT LEGISLATION IN 104TH CONGRESS

TIMETABLE OF EFFECTIVE DATES FOR STATE REQUIREMENTS

Based on Dates in Text of Title III of PL 104-193

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Section 395 states that, except as specifically provided in the legislation, the effective date for provisions of PL 104-193 is 10/1/96 for provisions under "454 & 466 of the Act. Section 395 allows a grace period for State law changes and State constitutional amendments. For State law changes, the grace period is until the effective date of the State implementing provisions, but no later than the first day of the first quarter after the close of the first regular legislative session that begins after enactment of PL 104-193. For State constitutional amendments, the grace period is until one year after the effective date of the State constitutional amendment, but no later than five years after enactment of PL 104-193.

Requirements Effective 10/1/96

Income withholding ['314] -- '466(a)(1) and (b)

Locator networks; access to motor vehicle and law enforcement data ['315] -- '466(a)(12)

SSNs on applications for professional, commercial drivers, occupational and marriage licenses; on records of divorce decrees, support orders, and paternity determinations; and death records & certificates ['317] -- '466(a)(13)

Administrative enforcement in interstate cases ['323] -- '466(a)(14)

State laws providing expedited procedures, including:

Ordering genetic testing for paternity establishment; Issuing subpoenas for information and impose penalties for failure to respond; Requiring all entities in a State to promptly respond to inquiries by State agency and sanction failure to respond; Obtaining access to records of other State and local government agencies and records held by private entities including public utilities and financial institutions; Changing payee in cases subject to an assignment; Ordering income withholding; Securing assets to satisfy arrearages by intercepting or seizing periodic or lump-sum payments from a State or local agency and judgments, settlements, and lotteries; attach assets held by financial institutions; attach retirement funds; and impose liens; Increasing the amount of monthly support payments to include amounts for arrearages; Filing of information on location/identity of parties in State case registry upon entry of order; Statewide jurisdiction over orders and transfer of cases between local jurisdictions without additional filing; and Using of automated system to maximum extent feasible to implement expedited administrative procedures ['325] -- "466(c) & 454A(h)

State laws concerning paternity establishment, including:

Establish paternity before age 21 (retroactive to 8/16/84); Genetic tests in contested cases upon request w/sworn affidavits; Payment for genetic testing; Provide for a simple civil process for voluntarily acknowledging paternity with prior explanation/written notice to parents; Birth record agency must offer voluntary paternity establishment services, and other may; Name of father included on birth record only if both mother and father have signed an acknowledgment, or court or administrative authority has adjudicated paternity; Development of affidavit for voluntary acknowledgment of paternity which must be given full faith and credit in any other State; Procedures where voluntary acknowledgments and adjudication of paternity are filed with the State registry of birth records for comparison with State case registry; Admissibility of test results if performed by accredited laboratory; Rescission timeframe of 60 Days for signed voluntary paternity acknowledgments; elimination of judicial/administrative ratification proceedings on unchallenged paternity acknowledgments; Default orders; No right to jury trial in paternity cases; Issuance of temporary support orders in paternity cases; Evidentiary treatment of birth expenses/bills; and Opportunity for putative fathers to initiate paternity proceedings ['331(a)] -- '466(a)(5)

State plan requirements for paternity outreach activities ['332] -- '454(23)

Cooperation/good cause ['333] -- '454(29)

State use of definitions for collecting & reporting data ['343(b)] -- '454(30)

Simplified review & adjustment process ['351] -- '466(a)(10)

Voiding of fraudulent transfers ['364] -- '466(g)

Work requirement for persons owing child support ['365] -- '466(a)(15)

Reporting arrearages to credit bureaus ['367] -- '466(a)(7)

Liens on real/personal property by operation of law; full faith and credit to liens without registration of order ['368] -- '466(a)(4)

State law authorizing the suspension of licenses ['369] -- '466(a)(16)

International CSE -- State treatment of international requests ['371(b)] -- '454(32)

Financial institution data matches ['372] -- '466(a)(17)

Enforcing orders against grandparents in cases of minors ['373] -- '466(a)(18)

State cooperative agreements with Indian Tribes ['375(a)] -- '454(33)

Enforcement of orders for health care coverage ['382] -- '466(a)(19)

Explicit statutory requirement that Title IV-D services be provided to nonresident applicants; enforce child support & support due on behalf of child's custodian ['301(a)] -- "454(4)&(6)

Continuation of IV-D services for former recipients of IV-A assistance [301(b)] -- '454(25)

Requirements Effective 3/1/97

Use of forms by States in interstate cases ['324(b)] -- '454(9)(E)

Requirements Effective 10/1/97

Annual State self-reviews & reports ['342(a)] -- '454(15)

Data submitted on compliance with Federal performance requirements ['342(a)] --'454(15)

State privacy safeguards ['303(a)] -- '454(26)

State procedures-notices & copies of orders ['304(b)] -- 454(12)

State directory of new hires ['313] -- 454 (28)

ADP systems meeting all IV-D requirements enacted on or before Family Support Act ['344] -- '454(24)

Denial/restriction/revocation of passport if arrears greater than $5000 ['370] -- "452(k) & 454(31)

Requirements Effective 1/1/98

Adoption of UIFSA (with modifications) ['321] -- '466(f)

Requirements Effective 10/1/98

All support orders established or modified on or after 10/1/98 included in State central registry, which must be in place by 10/1/2000 ['311 and '344(a)(2)] -- '454A

Centralized automated unit for collections and disbursements ['312] -- '454(27)

Collection through State centralized collection unit of orders under wage withholding['312] -- '454B

State new hire reporting systems in existence prior to P.L. 104-193 must meet rest of new requirements ['313] -- '454(28)

Requirements Effective 10/1/99

End of optional exception period for local court collection of child support in lieu of State centralized collection unit ['312] -- '454B

Requirements Effective 10/1/2000

ADP systems must meet all IV-D requirements enacted on or before this law (with additional time tied to regulation issuance) ['344(A)(4)] -- '454(24)

UNIFORM SUPPORT PETITION

Petitioner: Name (first, middle, last) [redacted]
Social Security Number

Ivena L. Aceveda

IV-D Case: [redacted]

Respondent: Name (first, middle, last)
Social Security Number

Douglas R. Chilton

[redacted]

Non-IV-D Case: [ ]

MAR - 8 2010

File Stamp

Responding IV-D Case Number _____

Responding Tribunal Number _____

Initiating IV-D Case Number 07-0033

Initiating Tribunal Number 07-CS-0011

I. Action

The Respondent and/or the Respondent's property is subject to the jurisdiction of the responding tribunal.
The Respondent owes a duty of support to the following child(ren):

Full Legal Name(first, middle, last)	Date of Birth	Social Security Number
Tavin Reilly Aceveda Chilton	4/24/2006	[redacted]

FILE COPY

The Petitioner files this Petition to request (check all that apply):

[ ] Establishment of Paternity

[ ] Establishment of Order for:

- [ ] Current Child Support, Including Medical Support
- [ ] Retroactive Child Support
- [ ] Medical Support Only
- [ ] Spousal Support
- [ ] Costs and **Fees**

[ ] Modification of a Support Order

[ ] Determination of Controlling Order and Arrears Reconciliation

[X] Other Remedy Sought: Registration for enforcement

II. Grounds Supporting the Remedy Sought in Section I (when applicable)

[X] Respondent is the non-custodial parent of the child(ren) named in this Petition. Respondent has not provided support since: [X] child's birth or [ ] _____(date)

[ ] A modification is appropriate due to a change in circumstances

[ ] Existence of valid multiple orders

[ ] Grounds for other remedy sought:

UNIFORM SUPPORT PETITION, PAGE 2 Initiating IV-D Case Number

III. Additional Supporting Information

The following documents are attached to, and incorporated in, this Petition. These documents contain the required additional information.

[ ] Petitioner's General Testimony
[ ] Affidavit in Support of Establishing Paternity
[ ] Acknowledgment of Paternity
[ ] Birth Certificate of the Child
[X] Other: T#1, Order Establishing Paternity, Order of Child Support, Amended Order of Child Support, Certified Debt. Calculation, Certified Payment History

IV. Verification

[X] Under penalty of perjury, all information and facts stated in this Petition are true to the best of my knowledge and belief.

3/5/10
Date

[ ] Signature of Petitioner

Paternity Specialist
[X] IV-D Representative/Title TCSA

3/5/10 Juneau, AK
Sworn to and Signed Before Me This Date, County/State

Carlene J. Nore
Notary Public, Court/Agency Official and Title

09/07/11
Commission Expires

STATE OF ALASKA
OFFICIAL SEAL
Carlene J. Nore
NOTARY PUBLIC
My Commission Expires 09/07/2011

3/5/2010
Date

Jessica M. Archibald AK Bar# 07-0809
Signature of Petitioner's Attorney / Bar Number (if applicable)

CHILD SUPPORT ENFORCEMEI RANSMITTAL #1 - INITIAL REQUEST

Petitioner: Aceveda, Avena L
Social Security Number [redacted]
Tribal Affiliation (if applicable)

IV-D Case: [redacted]

Respondent: Chilton, Douglas R
Social [redacted]
Tribal Affiliation (if applicable)

Non-IV-D Case: ☐

File Sta

To: (Agency Name and Address)

ALASKA CSSD
550 W 7TH AVE STE 310
ANCHORAGE AK 99501
FAX : (907) 269-6974

Responding FIPS Code 02020 State Alaska

Responding IV-D Case Number

Responding Tribunal Number

From: Harold Dick
CCTHITA Tribal Child Support
320 W Willoughby Ave, Suite 300
Juneau AK 99801

Send Payments To: (If different from above)

Initiating FIPS Code 90SO2 Tribe CCTHITA

Initiating IV-D Case Number 07-0033

Initiating Tribunal Number: 07-CS-0011

Payment FIPS Code :

State: Alaska

Bank Account

Routing Code

I. Action. The Responding Jurisdiction Should Provide All Appropriate Services Including: (Please Return the Acknowledgment Attached)

1. [☐]Establishment of Paternity
2. [☐]Establishment of Order for:
   - A. [☐] Current Child Support, Including Medical Support
   - B. [☐] Retroactive Child Support
   - C. [☐] Medical Support Only
   - D. [☐] Spousal Support
   - E. [☐] Costs and Fees (Use Sec. VII)
3. [☐] Enforcement of Responding Tribunal Order
4. [☐] Modification of Responding Tribunal Order
5. [☐] Change IV-D Payee of Responding Tribunal Order
6. [☒] Redirect Payment to Obligee State
7. [☒] Registration of Foreign Support Order(s):
   - A. [☒] For Enforcement Only
   - B. [☐] For Modification and Enforcement
   - C. [☐] For Modification Only
   - D. [☐] For Tribunal Determination of Controlling Order Including Arrears Reconciliation

   Requested by: [ ] Obligor [ ] Obligee [ ] State Agency (Requires Sworn Statement of Arrears)
8. [☐] Collection of Arrears Only
9. [☐] Income Withholding
10. [☐] Administrative Review for Federal Tax Refund
11. [☐]Other :

II. Case Summary (Background of this Matter: Court/Administrative Actions)

Date of Support Order	State & County Issuing Order	Tribunal Case No.
2/12/08	CCTHITA Tribal Court Alaska	07-CS-0011
Support Amount/Frequency	**Date of Last Payment**	**Amount of Arrears**
$ 139.00 / Monthly	No payments	$ 5089.19

Period of Computation 3/13/2007 thru 3/5/2010

☒ Tribunal Determined Controlling Order
☐ Presumed Controlling Order

Date of Support Order	State & County or Tribe Issuing Order	Tribunal Case No.
4/21/2008	CCTHITA Tribal Court Alaska	07-CS-
Support Amount/Frequency	**Date of Last Payment**	**Amount of Arrears**
$ /		$

Period of Computation thru

☐ Presumed Controlling Order

Date of Support Order	State & County Issuing Order	Tribunal Case No.
Support Amount/Frequency	**Date of Last Payment**	**Amount of Arrears**
$ /		$

Period of Computation thru

☐ Presumed Controlling Order

0457

CHILD SUPPORT ENFORCEMENT TRANSMITTAL #1- INITIAL REQUEST

Initiating IV-D Case No. 07-0033

III. Mother Information ☐ Obligor ☒ Obligee

Full Name (first, middle, last): Aceveda, Avena L

Address (Street, City, State, Zip): [redacted]

Employer/Address (Name, Street, City, State, Zip)

Maiden Name, Alias, Former Married Name, Nickname, etc.

Home Phone

Work Phone

☐ Address Confirmed Date

☐ Employer Confirmed Date

Date/Place of Birth: Date Place

Social Security No.

IV. Father Information ☒ Obligor ☐ Obligee

Full Name (first, middle, last): Chilton, Douglas R

Address (Street, City, State, Zip): [redacted]

Employer/Address (Name, Street, City, State, Zip)

Alias, Nickname

Home Phone [redacted]

Work Phone

☐ Address Confirmed Date

☐ Employer Confirmed Date

Date/Place of Birth [redacted] Date Place

Social Security No. [redacted]

V. Caretaker

Relationship to Child(ren)

☐ Has legal Custody/Guardianship of Child(ren) (copy of order attached)

Full Name (first, middle, last)

Address (street, City, State, Zip)

Employer/Address (Name, Street, City, State, Zip)

Maiden Name, Alias, Former Married Name, Nickname, etc.

Home Phone

Work Phone

☐ Address Confirmed Date

☐ Employer Confirmed Date

Date/Place of Birth Date Place

Sex

Social Security Number

VI. Dependent Children Information

Full Legal Name (First, Middle, Last)	City, State Date of Birth	Sex	Social Security No.	State of Residence
Tavin Reilly Aceveda Chilton	06/26/2006	M	[redacted]	Life For ___ months For ___ months For ___ months

Born out of Wedlock Unknown

If established, Paternity Establishment Date

VII. Additional Case Information

☐ Additional Case Information Attached

☐ Nondisclosure Finding Attached

VIII. Attachments (Supporting Documentation)

- ☒ Arrears Statement/Payment History
- ☒ Uniform Support Petition
- ☐ General Testimony/Affidavit
- ☐ Affidavit in Support of Establishing Paternity
- ☐ Acknowledgment of Parentage
- ☒ Other Documents Relating to Paternity
- ☐ Notice of Determination of Controlling Order
- ☒ Support Order(s)
- ☐ Divorce Decree
- ☐ Assignment of Rights
- ☐ Description of Real/Personal Property
- ☐ Photograph of Respondent
- ☐ Other Attachments:

Date: 3/5/2010

Dick, Harold W
Initiating Contact Person (first, middle, last)

907-463-7138
Telephone Number and Extension:

Fax Number (907) 463-7730

E-mail hdick@ccthita.org

CHILD SUPPORT ENFORCEMENT TRANSMITTAL #1 - INITIAL REQUEST

Petitioner: Aceveda, Avena L
Social Security Number Family Violence Indicator
Tribal Affiliation (if applicable)

Respondent: Chilton, Douglas R
Social Security 574-70-3019
Tribal Affiliation (if applicable)

IV-D Case: [redacted]

Non-IV-D Case: ☐

File Stam

To: (Agency Name and Address)

ALASKA CSSD
550 W 7TH AVE STE 310
ANCHORAGE AK 99501
FAX : (907) 269-6974

Responding FIPS Code 02020 State AK

Responding IV-D Case Number

Responding Tribunal Number

From: (Contact Person, Agency, Address, Phone, Fax, E-mail)
CCTHITA Tribal Child Support
320 W Willoughby Ave, Suite 300
Juneau AK 99801

Initiating FIPS Code 90SO2 Tribe CCTHITA

Initiating IV-D Case Number 07-0033

Initiating Tribunal Number: 07-CS-0011

Send Payments To: (If different from above)

Payment FIPS Code : State: Alaska

Bank Account Routing Code

ACKNOWLEDGMENTS

Return This Form to Initiating State

[ ] Request Received and No Additional Information is Necessary

[ ] Additional Information Needed

- [ ] Arrears Statement/Payment History
- [ ] Uniform Support Petition
- [ ] General Testimony/Affidavit
- [ ] Affidavit in Support of Establishing Paternity
- [ ] Acknowledgment of Parentage
- [ ] Other Documents Relating to Paternity
- [ ] Support Order(s)
- [ ] Divorce Decree
- [ ] Assignment of Rights
- [ ] Description of Real/Personal Property
- [ ] Photograph of Respondent
- [ ] Other (See Remarks)

[ ] Remarks/Response

[ ] Your Case has been forwarded for Action to:

Name of Worker (first, middle, last)

Agency Name

Address, FIPS Code

Phone & Extension

FAX

Date

Person Completing Form (first, middle, last)

Telephone Number & Extension

FAX: ( )

E-mail:

In the Central Council Tlingit and Haida Indian Tribes of Alaska Tribal Court
Juneau, Alaska

Tribal Child Support Unit, **Ex Rel.** **TAVIN REILLY ACEVEDA CHILTON,** **A minor child under the age of 18** **AVENA L. ACEVEDA** **Petitioner** **Vs** **DOUGLAS REILLY CHILTON** **Respondent**	**AMENDED** **Order of Child Support** **Court Docket #: 07-CS-0011** **TCSU Case #: 07-0033** **MOTHER: AVENA L. ACEVEDA** **OBLIGOR: DOUGLAS REILLY CHILTON** **CUSTODIAN: AVENA L. ACEVEDA**

Based upon a motion filed by the Tribal Child Support Unit to Amend Child Support Order to correct the Child's Date of Birth; and based on testimony provided on the record on April 14, 2008 and the record herein. the Court Amends the Child Support Order as set out below.

Order of Child Support

I. BASIS

1. This order is entered pursuant to:
   - ☐ A decree of dissolution or legal separation.
   - ☐ An order determining parentage.
   - ☐ A hearing for temporary child support.
   - ☐ Modification of a custody decree of parenting plan.
   - ☒ A Petition to Establish Child Support
   - ☐ Full Faith and Credit Granted to: _____ [name of court jurisdiction]

CCTHITA TRIBAL COURT
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll-Free 1-(800) 344-1432
(907) 586-1432

2. Based on the facts declared to in the pleadings, a review of the Court's file and the testimony/documents presented on the record in this matter. Court makes the following decision(s):

II. ORDER

IT IS ORDERED that:

1. **THE CHILD/REN FOR WHO SUPPORT IS REQUIRED:**
TAVIN REILLY ACEVEDA CHILTON — **06/26/2006**
Name — Date of Birth

2. **THE PERSON PAYING SUPPORT IS:**
Name: DOUGALS REILLY CHILTON.

☐ Monthly Gross Income: $ _____
☒ The income of the obligor is imputed at $ 1,067.33
☒ The obligor's income is unknown.
☐ The obligor is voluntarily unemployed.
☐ The obligor is voluntarily underemployed.
☒ The obligor is entitled to Permanent Fund Dividend disbursements.
☐ Other: _____

3. **THE PERSON RECEIVING SUPPORT IS:**
Name: AVENA L. ACEVEDA

4. Commencing March 1, 2008, the Respondent shall pay $ 153.00 per month in child support. This amount represents $139.00 current child support and 14.00 (10% of the monthly child support) towards back child support in the amount of $ 1,614.19 for time period March 13, 2007 through February 29, 2008.

The breakdown for the back support is as follows:

Owed to Tribal TANF	$ 1,251.00
Owed to Petitioner:	$ 363.19
Total Child Support Debt	**$ 1,614.19**

5. **STARTING DATE AND DAY TO BE PAID.**
Starting Date: March 1, 2008
Day(s) of the month support is due: 1st of each Month

6. Respondent **DOUGLAS REILLY CHILTON** to pay $153.00 the total monthly obligation through income withholding:

CCTHITA TRIBAL COURT
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll-Free 1-(800) 344-1432
(907) 586-1432

☐ Voluntary wage withholding
☒ Wage Garnishment

7. HOW SUPPORT PAYMENTS SHALL BE MADE.
Payments are to be made payable to: Tribal Child Support Unit and mailed to:

CCTHITA Tribal Child Support Unit
320 W. Willoughby Ave. Suite 300
Juneau, AK 99801

8. PERMANENT FUND DIVIDEND
The Respondent shall complete and submit an application for the Alaska Permanent Fund dividends each year for the duration of this child support order, or provide proof that he/she is not eligible for a dividend in a given year.

9. TERMINATION OF SUPPORT.
Support shall be paid:

☐ Provided that this is a temporary order, until a subsequent order is entered by this court.
☒ Until the child/ren reaches the age of 18 or as long as the child/ren remain(s) in high school, whichever occurs last.
☐ Pursuant to administrative or other valid court order:
_____

10. POST –MINORITY SUPPORT.
☒ No post secondary educational support shall be required.
☐ Other: _____

11. MEDICAL INSURANCE.
The parent below shall maintain or provide health insurance coverage which is available through employment or other organization, or ensure child(ren) is/are enrolled in Indian Health Services..

☒ Mother
☐ Father

12. IT IS FURTHER ORDERED THAT pursuant to the CCTHITA Family Responsibility Act, §10.03.005, the non-custodial parent and custodial parent shall notify the CCTHITA Child Support Unit of any change of employer or change of address within 10 days of such change.

Service of child support actions after this date may be done by regular mail to the last address of record provided to the Tribal Child Support Unit or the Clerk of the Court.

Disobedience of this order is punishable by contempt.

CCTHITA TRIBAL COURT
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll-Free 1-(800) 344-1432

An order for support, which has past support due in the amount of $500.00 or more, whether or not there is an order to make periodic payments, may result in the interception of the payer's income tax refunds and Permanent Fund payment. It may also result in the interception of any other money due, liens against real property, or attachment of assets.

SO ORDERED ON THIS 21st **DAY OF** April, **200**8

Debra S. O'Gara

Debra S. O'Gara, Tribal Court Magistrate

This Order constitutes a final order to the purposes of appealing. Any party interested in appealing this final order must, within 30 days after the date of this order, file with the Clerk of Court a Notice of Appeal along with the appropriate filing fee. Upon request, the Clerk of Court will provide the parties to the Appeal with copies of the Tribal Statutes governing the appeal process. The Supreme Court Chief Justice reviews appeals of the Child Support Court decisions, and if deems necessary, will schedule a hearing for oral arguments. The Chief Justice will determine whether the Child Support Court's factual findings are supported by substantial evidence and whether its conclusions are in accordance with applicable law. The Supreme Court will not consider any error or defect in proceedings unless the substantial rights of the parties have been affected. The decision of the Supreme Court is final.

CCTHITA TRIBAL COURT
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll- Free 1-(800) 344-1432
(907) 586-1432

In the Central Council Tlingit and Haida Indian Tribes of Alaska Tribal Court
Juneau, Alaska

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**	~~**Proposed**~~ DSO **Order of Child Support** **Court Docket #: 07-CS-0011** **Hearing Date: 2/12/08 @ 9:00 a.m.** **TCSU Case #: 07-0033** **MOTHER: AVENA L. ACEVEDA** **OBLIGOR: DOUGLAS R. CHILTON** **CUSTODIAN: AVENA L. ACEVEDA**

Order of Child Support

I. BASIS

1. This order is entered pursuant to:

- ☐ A decree of dissolution or legal separation.
- ☒ An order determining parentage.
- ☐ A hearing for temporary child support.
- ☐ Modification of a custody decree of parenting plan.
- ☐ A Petition to Establish Child Support
- ☐ Full Faith and Credit Granted to: _____ [name of court/jurisdiction]

2. Based on the facts declared to in the pleadings, a review of the Court's file and the testimony, documents presented on the record in this matter, Court makes the following decision(s):

CCTHITA Tribal Child Support Unit
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll-Free 1-(800) 344-1432
(907) 586-1432

II. CHILD SUPPORT WORKSHEET

The child support debt calculation worksheet which has been approved by the court and is attached to this order.

III. ORDER

IT IS ORDERED that:

1. THE CHILD/REN FOR WHO SUPPORT IS REQUIRED.

TAVIN REILLY ACEVEDA CHILTON — 2/26/2006

Name — Date of Birth

2. THE PERSON PAYING SUPPORT IS:
Name: DOUGLAS R. CHILTON

- ☐ Monthly Gross Income: $ _____
- ☒ The income of the obligor is imputed at $ 1,067.33 because
- ☒ The obligor's income is unknown.
- ☐ The obligor is voluntarily unemployed.
- ☐ The obligor is voluntarily underemployed.
- ☐ The obligor is entitled to Permanent Fund Dividend disbursements.
- ☐ Other: _____

3. THE PERSON RECEIVING SUPPORT IS:
Name: AVENA L. ACEVEDA

4. Commencing MARCH 1, 2008, the Respondent shall pay $153.00 per month in child support. This amount represents $ 139.00 current child support and $ 14.00 (10% of the monthly child support) towards back child support in the amount of $1,614.19 for time period through MARCH 13, 2007 through FEBRUARY 29, 2008.

The breakdown for the back support is as follows:

Owed to the Tribal TANF	$1,251.00
Owed to Petitioner:	$ 363.19
Total Child Support Debt	**$ 1614.19**

5. STARTING DATE AND DAY TO BE PAID.
Starting Date: MARCH 1, 2008
Day(s) of the month support is due: 1ST of each month

CCTHITA Tribal Child Support Unit
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll- Free 1-(800) 344-1432
(907) 586-1432

6. Respondent to pay $ 153.00 the total monthly obligation through income withholding:

[ ] Voluntary wage withholding
[X] Wage Garnishment

7. **HOW SUPPORT PAYMENTS SHALL BE MADE.**

Payments are to be made payable to: Tribal Child Support Unit
and mailed to:

CCTHITA Tribal Child Support Unit
320 W. Willoughby Ave. Suite 300
Juneau, AK 99801

8. **PERMANENT FUND DIVIDEND**

The Respondent shall complete and submit an application for the Alaska Permanent Fund dividends each year for the duration of this child support order, or provide proof that he/she is not eligible for a dividend in a given year.

9. **TERMINATION OF SUPPORT.**
Support shall be paid:

☐ Provided that this is a temporary order, until a subsequent order is entered by this court.
☒ Until the child/ren reaches the age of 18 or as long as the child/ren remain(s) in high school, whichever occurs last.
☐ Pursuant to administrative or other valid court order: _____

10. **POST –MINORITY SUPPORT.**
☒ No post secondary educational support shall be required.
☐ Other: _____

11. **MEDICAL INSURANCE.**
The parent below shall maintain or provide health insurance coverage which is available through employment or other organization, or ensure child(ren) is/are enrolled in Indian Health Services..

☒ Mother
☐ Father

CCTHITA Tribal Child Support Unit
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll- Free 1-(800) 344-1432
(907) 586-1432

12. EXTRAORDINARY HEALTH CARE EXPENSES. The obligor shall pay _____ % of extraordinary health care expenses, which are those expenses over $5,000.

13. IT IS FURTHER ORDERED THAT pursuant to the CCTHITA Family Responsibility Act, §10.03.005, the non-custodial parent and custodial parent shall notify the CCTHITA Child Support Unit of any change of employer or change of address within 10 days of such change.

Service of child support actions after this date may be done by regular mail to the last address of record provided to the Tribal Child Support Unit or the Clerk of the Court.

Disobedience of this order is punishable by contempt.

An order for support, which has past support due in the amount of $500.00 or more, whether or not there is an order to make periodic payments, may result in the interception of the payer's income tax refunds and Permanent Fund payment. It may also result in the interception of any other money due, liens against real property, or attachment of assets.

Presented by: Signature on for Harold Dick
Harold (Jay) Dick, Paternity Specialist

Approved for entry:

Jessie M. Archibald
Jessie M. Archibald
TCSU Attorney

Signature: Appeared Telephonically
(Name of Custodial Parent)

Signature: Did Not Appear
(Name of Non-custodial Parent)

CCTHITA Tribal Child Support Unit
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll-Free 1-(800) 344-1432
(907) 586-1432

SO ORDERED ON THIS 12th DAY OF February, 2008.

Debra J. O'Gara

Debra S. O'Gara
Magistrate

This Order constitutes a final order to the purposes of appealing. Any party interested in appealing this final order must, within 30 days after the date of this order, file with the Clerk of Court a Notice of Appeal along with the appropriate filing fee. Upon request, the Clerk of Court will provide the parties to the Appeal with copies of the Tribal Statutes governing the appeal process. The Supreme Court Chief Justice reviews appeals of the Child Support Court decisions, and if deems necessary, will schedule a hearing for oral arguments. The Chief Justice will determine whether the Child Support Court's factual findings are supported by substantial evidence and whether its conclusions are in accordance with applicable law. The Supreme Court will not consider any error or defect in proceedings unless the substantial rights of the parties have been affected. The decision of the Supreme Court is final.

CCTHITA Tribal Child Support Unit
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In the Central Council Tlingit and Haida Indian Tribes of Alaska Tribal Court
Juneau, Alaska

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**	**ORDER ESTABLISHING PATERNITY** **Court Docket #: 07-CS-0011** **Hearing Date: February 12, 2008** **TCSU Case #: 07-0033**

A hearing convened to consider a Petition to Establish Paternity of the above named child. All parties were duly provided notice of the proceeding and the hearing date.

Present for the Hearing were: Avena L. Aceveda, Petitioner (via telephone); Jessie Archibald, TCSU Attorney; Harold Dick. TCSU Caseworker.

The Respondent, Douglas R. Chilton, failed to appear. On November 5, 2007, the Respondent was personally served, by the Court Clerk, a copy of the Petition to Establish Paternity and he signed a Summons for a hearing on December 4, 2007. The Respondent was served with the notice of today's hearing date by regular mail at his last known address. In addition, the Court Clerk telephoned and talked to the Respondent on February 11 2008, reminding him of the court date: and the TCSU Caseworker called the Respondent the morning of the court date to remind him of the court date.

FINDINGS OF FACT

Based on the facts declared to in the pleadings. a review of the Court's file and the testimony/documents presented on the record in this matter. Court makes the following decision(s):

I certify that I served the following parties on 2-14-08 by R (regular mail); C (certified mail), E (electronic mail), P (personal service), at his/her last known address
A. Aceveda (R)
D. Chilton (R)

I certify that I served the following parties on 2-14-08 by R (regular mail); C (certified mail), E (electronic mail), P (personal service), at his/her last known address
TCSU - P
Signed D. Dick

CCTHITA TRIBAL COURT
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll-Free 1-(800) 344-1432
(907) 586-1432

THE COURT FINDS:

1. The Respondent was properly served with Notice of the Hearing and failed to appear.
2. That the Respondent joined the Petition to Establish Paternity with a written request, attached to the Petition, that a paternity test be ordered; which was so ordered by the Court on December 4, 2007.
3. That the Order Requiring Genetic Testing was served to and complied with by all parties.
4. That the Tribal Child Support Unit represents the Central Council Tlingit and Haida Indian Tribes of Alaska, and does not represent any individual in this action.
5. That the Tribe is a real party in interest in this case pursuant to Family Responsibility, Sec. 10.03.002.
6. That the Tribal Child Support Unit provides child support enforcement services for the benefit of the minor child who is the subject of this action pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq.).
7. That this Court has jurisdiction to hear and decide this matter in accordance with Article 1, Section 1-4 of the CCTHITA Constitution, in that the Respondent is a member of or is eligible for enrollment with the Central Council Tlingit & Haida Tribes of Alaska; the Petitioner is a member of or is eligible for enrollment with the Central Council Tlingit & Haida Tribes of Alaska; and the Petitioner and Respondent have accepted the jurisdiction of this Court.
8. That the Petitioner, **Avena L. Aceveda,** is an enrolled tribal member.
9. That the Respondent, **Douglas R. Chilton,** is an enrolled tribal member.
10. That **Avena L. Aceveda** and **Douglas R. Chilton** were not legally married but engaged in sexual intercourse during the probable period of conception, that a minor child, **Tavin Reilly Aceveda Chilton,** was born alive on **June 26, 2006.**
11. That the above named child was born to **Avena L. Aceveda** on **June 26, 2006,** in the City & Borough of Juneau in Alaska. **Tavin Reilly Aceveda Chilton** currently resides with **Avena L. Aceveda.**
12. That the birth certificate is recorded at Bureau of Vital Statistics for the State of Alaska and does not reflect the name of the Respondent, **Douglas R. Chilton,** as the father.
13. There is not at present time a court order establishing paternity.
14. That the Petitioner does not desire to have paternity established for any illegal or fraudulent purpose.

CCTHITA TRIBAL COURT
320 West Willoughby Ave. Suite 300
Juneau, Alaska 99801
Phone: Toll-Free 1-(800) 344-1432
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EXC. 0782

THE COURT FURTHER FINDS:

1. That on December 7, 2007, **Avena L. Aceveda** and **Tavin Reilly Aceveda Chilton** provided DNA/genetic samples to Harold Dick, who is certified to take such samples.
2. That on December 10, 2007, **Douglas R. Chilton** provided DNA/genetic sample to Harold Dick, who is certified to take such samples.
3. That the DNA/genetic samples from **Avena L. Aceveda, Tavin Reilly Aceveda Chilton** and **Douglas R. Chilton** were sent to ReliaGene Technologies, Inc. for paternity testing.
4. That on January 9, 2008, TCSU received the Parentage Test Results back from ReliaGene which concluded that **Douglas R. Chilton** is not excluded as the biological father and that there is a 99.998% probability of paternity as compared to an untested, unrelated random person of the Other population.
5. That a copy of the ReliaGene Parentage Test Results was sent by regular mail to both **Douglas R. Chilton** and **Avena L. Aceveda.**
6. That **Douglas R. Chilton** is the biological and legal father of minor child, **Tavin Reilly Aceveda Chilton** born on **June 26, 2006.**

IT IS HEREBY ORDERED THAT paternity be established as follows:

1. That the Respondent, **Douglas R. Chilton**, is the biological and legal father of **Tavin Reilly Aceveda Chilton,** born **June 26, 2006.**
2. That the Bureau of Vital Statistics for the State of Alaska shall change their records to reflect that the **Douglas R. Chilton** is the father of **Tavin Reilly Aceveda Chilton,** born **June 26, 2006.**
3. That the Bureau of Vital Statistics for the State of Alaska shall send to the TCSU of the Central Council Tlingit and Haida Indian Tribes of Alaska a copy of the amended birth certificate of **Tavin Reilly Aceveda Chilton.**

IT IS FURTHER ORDERED THAT all parties and custodians are required to keep Tribal Child Support Unit informed of a current address of record for service of process in child support actions. Service of child support actions after this date may be done by regular mail to the last address of record provided to the Tribal Child Support Unit.

This Order constitutes a final order to the purposes of appealing. Any party interested in appealing this final order must. within 30 days after the date of this order. file with the Clerk of

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EXC. 0783

Court a Notice of Appeal along with the appropriate filing fee. Upon request, the Clerk of Court will provide the parties to the Appeal with copies of the Tribal Statutes governing the appeal process.

SO ORDERED ON THIS 13th **DAY OF** February, **2008.**

Debra S. O'Gara
Tribal Court Magistrate

I certify that on _____, a copy of this document was mailed or personally served to the following parties: [ ] Respondent___; [ ] Petitioner___; [ ] TCSU___; [ ] Other:_____.

_____
Marilyn Peratrovich
R= Regular mail; C Certified, return receipt; P=Personal; I= Interoffice mail

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Central Counc.. Tlingit & Haida Indian Tribes of Alaska

Tribal Child Support Unit

PAYMENT HISTORY NOTICE FOR THE YEAR

Date: Friday, March 05, 2010

Case Number: 070033

CP: Aceveda, Avena

NCP: Chilton, Douglas

[REDACTED FOR PRIVACY]

Deb Calculation Sheet

[REDACTED FOR PRIVACY]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KALTAG TRIBAL COUNCIL, and HUDSON AND SALINA SAM,
Plaintiff,
vs.
KARLEEN JACKSON, et al.,
Defendants.

Case No. 3:06-cv-211 TMB

ORDER

I. MOTIONS PRESENTED

Plaintiff seeks summary judgment on all counts in the Amended Complaint. Defendants move for summary judgment of dismissal on all counts. Both motions have been fully briefed, and the Court heard oral argument on February 13, 2007. The Court being fully advised, now enters the following order.

II. BACKGROUND

N.S. was born on October 18, 1999. Her birth mother is a member of the Kaltag Tribe, a federally recognized tribe as defined by the Indian Child Welfare Act, ("ICWA").[1] Her birth father is from the Native Village of Koyukuk and is either a tribal member of Koyukuk or eligible for membership in that Tribe. N.S. is therefore an "Indian child" as defined in the Act.[2]

On September 3, 2000, a "Tribal Family Youth Specialist" ("Kaltag TFYS worker"), who is an employee of Plaintiff Kaltag Tribal Council ("Kaltag"), took emergency custody of N.S. due to her mother's inability to care for N.S. and a likelihood of physical injury. On September 6, 2000, the Kaltag court took temporary custody of N.S., and N.S. continued in the temporary custody of Kaltag court until July 29, 2004, when the Kaltag court terminated the parental rights of both parents, made

[1] 25 U.S.C. § 1903(8).

[2] 25 U.S.C. § 1903(4).

N.S. a ward of the court, and granted permanent guardianship to Plaintiffs Hudson and Selina Sam, who had been N.S.'s foster parents since her placement with them on April 27, 2004.

In August of 2005, the Sams petitioned the Huslia Tribal Court to adopt N.S. and make her a permanent part of their family. Because N.S. is a member of the Kaltag Tribe, and the Kaltag Tribal Court had already exercised jurisdiction over N.S., the petition was forwarded to the Kaltag Tribal Court, which issued an Order of Adoption on November 17, 2005, declaring the Sams to be N.S.'s legal parents. In the same order, the tribal court ordered that N.S.'s name be changed to reflect that of her new parents, and that this name change shall be reflected on a new birth certificate from the State of Alaska, Bureau of Vital Statistics. The same day that the Order of Adoption was signed, the clerk of Kaltag Tribal Court signed and submitted a Report of Adoption to the Bureau of Vital Statistics requesting a new birth certificate for N.S.

On January 26, 2006, the Department of Health and Social Services, Bureau of Vital Statistics rejected the request. In a letter to the Kaltag Tribal Council, the Bureau explained:

> As of October 25, 2005, the Bureau will only be accepting Tribal Court granted adoption paperwork from the following 3 entities: Barrow, Chevak, and Metlakatla. All other tribal entities will need to submit the Cultural Adoption packet in order for the Bureau to process the adoption.

The letter also stated that a Cultural Adoption packet was enclosed with the letter, and explained that once it was completed and returned, along with some other missing information, the Bureau would continue processing the request.[3] The Bureau never received a completed Cultural Adoption packet from Kaltag regarding N.S.

The Kaltag Tribal Council and the Sams filed this case on September 8, 2006, alleging that adoption orders issued by the Kaltag court are entitled to full faith and credit under Subsection 1911(d) of the ICWA, and that the Bureau of Vital Statistics violated the subsection by not granting the request for an amended birth certificate. Plaintiffs seek a declaration that Kaltag court's

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[3] According to the Defendants, copies of denial letters such as the one sent to the Kaltag Tribal Council are not retained by the State once a cultural adoption application is received, which makes it difficult to determine how many "cultural adoptions" approved by the State were the result of the State's refusal to accept a tribal court adoption decree.

adoption orders are entitled to full faith and credit, and an injunction requiring the Bureau to grant said status to the adoption order by issuing the Sams a substitute birth certificate.

III. STANDARD OF REVIEW

Summary judgment is appropriate where there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. Where the material facts are not in dispute, the issue is one of law for the court and summary judgment is therefore appropriate. The parties here agree that there are no factual disputes.

IV. DISCUSSION

Plaintiffs' motion for summary judgment requests a declaration that federally recognized tribes in Alaska possess concurrent jurisdiction with the State to adjudicate adoptions of their own tribal members, and that the State must therefore give full faith and credit to tribal adoption orders pursuant to § 1911(d) of the ICWA. In addition, the motion seeks a declaration that, since the tribal adoption decree of N.S. is entitled to full faith and credit under § 1911(d) of the ICWA, the Sams, as the adoptive parents, are entitled to have N.S.'s adoption order recognized and an amended birth certificate issued pursuant to 42 U.S.C. § 1983.

Defendants' Motion for Summary Judgment seeks dismissal of all counts of the complaint, arguing that the case is barred by the Eleventh Amendment of the United States Constitution, and alternatively that Kaltag does not have the authority to initiate child protection proceedings in tribal court in Alaska.

The Eleventh Amendment

Defendants, all employees of the State of Alaska, ask this Court to dismiss the action because the Plaintiffs are prohibited from bringing this lawsuit by the Eleventh Amendment of the United States Constitution, which provides that a state is immune from suit regarding claims for which it has not consented to be sued.

Eleventh Amendment immunity protects Alaska and its officials from suits except for "certain suits seeking declaratory and injunctive relief against state officers in their individual

capacities."[4] This limitation of sovereign immunity is known as the *Ex parte Young* doctrine.[5] Defendants argue that although the *Ex Parte Young* exception allows state officials to be sued for declaratory and injunctive relief, that exception is not available here because of the impact the suit has on the state's "special sovereign interests." Defendants argue that a state forum is available here, and that any federal interest in interpreting the ICWA is outweighed by the state's sovereignty interests implicated by this case.[6] Accordingly, argue Defendants, the Court should decline to apply the *Ex parte Young* exception to state sovereign immunity, and should dismiss the Complaint.

The Ninth Circuit held in *Native Village of Venetie I.R.A. Council v. State of Alaska*,[7] (*"Venetie"*):

> [W]e agree with the district court -- and Alaska does not seriously challenge this holding – that the eleventh amendment does not bar the plaintiffs' request for injunctive relief against the Commissioner of the Department of Health and Human Services.
>
> . . . [D]eclaratory relief is not available if its sole efficacy would be as res judicata in a subsequent state court action for retroactive damages or restitution. However, such is not the case here. Not only has Alaska refused to recognize the native village tribal adoptions in the past, it continues to do so in the present, and will apparently continue to refuse recognition in the future. Thus, if this refusal is ultimately determined to be unlawful, the grant of declaratory relief can most properly be described as a mere case-management device that is ancillary to a judgment awarding valid prospective relief. The plaintiffs' request for declaratory

---

[4]*Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 269 (1997) ("The Tribe's suit, accordingly, is barred by Idaho's Eleventh Amendment immunity unless it falls within the exception this Court has recognized for certain suits seeking declaratory and injunctive relief against state officers in their individual capacities. *See Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908).")

[5]*Edelman v. Jordan*, 415 U.S. 651 (1974).

[6]Specifically, Defendants complain that granting the requested relief (declaration and injunction) would eliminate the state's exclusive jurisdiction, as set out in Section 1911 of the Act, to initiate child protection proceedings concerning Indian children of tribes, such as Kaltag, that are not on reservations or have not applied for exclusive jurisdiction. If, as the Plaintiffs claim, the state has to give full faith and credit to Kaltag's adoption orders arising from child protection proceedings that were initiated by Kaltag and not transferred from a state court proceeding, it would completely strip the state and its courts of its sovereign right to adjudicate matters concerning the birth family of the adopted child, since the state has no ability to intervene or transfer the action back to state court.

[7]944 F.2d 548 (9th Cir. 1991).

relief is not barred by the eleventh amendment.[8]

Although Defendants argue that the *Venetie* case is not on point, it does provide guidance on this issue. The Eleventh Amendment bars any claims for retroactive relief.[9] It does not bar a request for injunctive relief against the Commissioner of the Department of Health and Social Services.[10] If the Court determines that Defendants, as individuals, have violated federal law, injunctive relief would be appropriate. Regarding declaratory relief, the *Venetie* court noted that such relief "is not available if its sole efficacy would be as res judicata in a subsequent state court action for retroactive damages or restitution."[11] There is no indication that such is the case here. The only relief sought by Plaintiffs is a declaration that Kaltag court's adoption orders are entitled to full faith and credit, and an injunction requiring the Bureau to grant said status to the adoption order in this case by issuing the Sams a substitute birth certificate. No damages or restitution are sought.

Furthermore, the *Venetie* court specifically found that Congress intended to give Indian tribes access to federal courts to determine their rights and obligations under the ICWA.[12] "The Act includes an express congressional finding that state courts and agencies have often acted contrary to the interests of Indian tribes . . . It would thus be ironic indeed if Congress then permitted only state courts, never believed by Congress to be the historical defenders of tribal interests, to determine the scope of tribal authority under the Act."[13] The Court finds that the Eleventh Amendment does not bar this suit.

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[8] *Id.* at 552 (citations omitted).

[9] *Venetie*, 944 F.2d at 552.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 553.

[13] *Id.* at 553-54, citing 25 U.S.C. § 1901(5)(1988).

The Indian Child Welfare Act ("ICWA")

It is undisputed that the state of Alaska must give full faith and credit to child custody determinations made by the tribal courts, if the tribal court properly exercised jurisdiction in the matter. The issue here is whether the tribal court had concurrent jurisdiction with the State to initiate a child protection matter.[14] Defendant argues that allowing tribes to initiate CINA-type cases outside of reservations and Indian country discounts the distinct differences in the parties' interests in such cases, and would radically re-cast the state/tribal jurisdictional balance already struck by Congress in their enactment of the ICWA. Plaintiffs argue that concurrent jurisdiction is intended and required under the ICWA. The portion of the ICWA pertaining to child custody proceedings reads as follows:

> **Indian tribe jurisdiction over Indian child custody proceedings**
>
> **(a) Exclusive jurisdiction**
>
> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
>
> **(b) Transfer of proceedings; declination by tribal court**
> In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.
>
> **(c) State court proceedings; intervention**
> In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.
>
> **(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes**
> The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody

[14]Also referred to by the parties as "Child in Need of Aid" or "CINA-type" cases.

> proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.[15]

A "child custody proceeding" includes foster care placement, termination of parental rights, preadoptive placement, and adoptive placement.[16] The ICWA includes Alaska natives within its definition of "Indians," and Alaska native villages are "Indian tribes" within the meaning of the Act.[17] Only one tribe in Alaska, the Metlakatla Indian Community, occupies a reservation, so the jurisdictional provision of § 1911(a) related to domicile is not applicable to the Kaltag tribe.

According to the plain language of the ICWA, a tribe shall have exclusive jurisdiction over child custody proceedings (foster care placement, termination of parental rights, preadoptive placement, and adoptive placement) where the child is living within the reservation, or where a child living outside of the reservation is a ward of the tribal court.[18] In contrast, a state court, handling a proceeding for the foster care placement of, or termination of parental rights to, an Indian child *not* domiciled or residing within the reservation of the Indian child's tribe, is required to transfer such proceeding to the jurisdiction of the tribe, in the absence of good cause to the contrary.[19]

In the plain language of § 1911, there is a grey area, which is the crux of this case: When a child is *not* domiciled or residing within a reservation, must the state court initiate child custody/ protection proceedings or can such a proceeding originate in the tribal court? Plaintiffs suggest that the implication of § 1911 is that the tribal court has concurrent jurisdiction with the state court where an Indian child is not domiciled or residing on Indian land. Defendants' position is that tribes have only *transfer* jurisdiction in these circumstances, and that any case involving a child domiciled outside of Indian country must originate in state court, and be transferred to tribal court.

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[15]25 U.S.C. § 1911.

[16]25 U.S.C. § 1903.

[17]25 U.S.C. §§ 1903(3) & (8).

[18]§ 1911(a).

[19]§ 1911(b).

The United States Supreme Court has held that §1911(b) "creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation . . ."[20] The parties disagree as to the meaning of "concurrent jurisdiction." Defendants allege that concurrent jurisdiction does not mean that Alaska Native villages have "concurrent authority" to *initiate* child protection cases, but rather that the transfer jurisdiction is a concurrent jurisdiction *conditioned upon* parental consent and the absence of good cause to deny transfer. To find otherwise, argue Defendants, would cut off the state's ability to protect its interest in child welfare, and would make the veto power that parents have with respect to transfer to tribal courts meaningless. Defendants further argue that legislative history suggests that Congress intended to limit tribal authority under §1911(b) to transfer-only concurrent jurisdiction.

The Court finds Defendants' interpretation of § 1911(b) strained, in light of the United States Supreme Court's language in *Holyfield*. It would be incongruent for this Court to find that "presumptively tribal jurisdiction" requires the Tribe to first defer jurisdiction to the state court, and then wait for the state court to transfer the matter to tribal court.

Defendants also argue that the state's interest in protecting minor Alaska Native citizens would be entirely cut off if the tribal court could take jurisdiction first, and the interests of non-Native or non-member parents could be impaired by having to appear in a tribal court without the opportunity to object to that court. However, as Plaintiff explained at oral argument, any party that finds itself in tribal court against its wishes is always free to object to the tribal jurisdiction, call a state CINA officer, or file a case in state court.[21] Alaska state courts retain concurrent jurisdiction over all disputes arising within the State of Alaska, whether tribal or not.[22] "The only bar to state jurisdiction over Indians and Indian affairs is the presence of Indian country."[23]

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[20]*Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989).

[21]Indeed, in this case the state CINA office was notified; however, what resulted from that notification is unclear.

[22]*John v. Baker*, 982 P.2d 738, 759 (Alaska 1999).

[23]*Id.*, citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973).

Voluntary vs. Involuntary Child Custody Proceedings

Plaintiffs' position is that the substantive issues in this case already have been decided by the Ninth Circuit in *Venetie*. There, the Ninth Circuit addressed the issue "whether federal law requires the state of Alaska to accord 'full faith and credit' to child-custody determinations made by the tribal courts of native villages,"[24] and concluded that it does so require. Defendants argue that the holding of *Venetie* should be limited to the facts in that case, and that the doctrine of collateral estoppel is not applicable because of the factual differences between the *Venetie* and the current case. Defendants distinguish *Venetie* arguing that it addressed strictly internal relations, such as a voluntary adoption among tribal members. The adoption in this case is not private nor voluntary, nor among members, nor did it originate as an adoption case.[25] Noting that one quarter of rural Alaskans do not have convenient access to state courts, Plaintiffs argue that drawing any line that would prevent Tribes from exercising jurisdiction over CINA-type cases would prevent them from assisting children when they are most at risk. Tribes closest to the situation in all of rural Alaska would be powerless to help children in their own villages at the most critical time.

Defendants' voluntary versus involuntary argument has previously been rejected by the Ninth Circuit. In *Doe v. Mann,* the Plaintiff's efforts to create a distinction between "involuntary" and "voluntary" proceedings in order to put her case outside of California's Public Law 280 jurisdiction were found unpersuasive and without statutory support.[26] The court examined the definition of "child custody proceeding" in the ICWA and concluded that it "definitely encompasses

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[24] *Venetie*, 944 F.2d at 550.

[25] Alternatively, Defendants argue that this case involves unmixed questions of law that should be reconsidered in light of legal developments since the *Venetie* decision. However, this Court is in no position to "reconsider" a valid Ninth Circuit decision.

[26] *Doe v. Mann*, 415 F.3d 1038, 1062 (9th Cir. 2005).

voluntary and involuntary proceedings"[27] Ultimately the Court held that imposing a "dividing line between voluntary and involuntary finds no support in the statute."[28]

Tribal Membership

Defendants note that the Alaska Supreme Court has held that a "tribe only has subject matter jurisdiction over the internal disputes of *tribal members*."[29] Similarly, in *Venetie*, the Ninth Circuit noted in a footnote that "[a] tribe's authority over its reservation or Indian country is incidental to its authority over its members."[30] However, it is the membership of the child that is controlling, not the membership of the individual parents. "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 the ICWA, which focuses on the child's tribal membership as a determining factor in allotting jurisdiction. Because the tribe only has subject matter jurisdiction over the internal disputes of tribal members, it has the authority to determine custody only of children who are members or eligible for membership."[31]

Public Law 280 and 25 U.S.C. § 1918

The State's policy that it need not grant full faith and credit to Kaltag's Tribal Adoption Order has been justified by an October 2004 Attorney General opinion, which concluded that because Alaska is a Public Law 280 state, the State has exclusive jurisdiction over adoption proceedings and therefore Alaska Tribes must petition pursuant to 25 U.S.C. § 1918 to reassume jurisdiction. Defendants argue that since most Alaska Native villages lack a reservation, they

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[27] *Id.* The court found particularly persuasive the phrase "where the parent or Indian custodian cannot have the child returned upon demand," as evidence of the fact that the ICWA covers both voluntary and involuntary proceedings.

[28] *Id.* at 1064.

[29] *John*, 982 P.2d at 759.

[30] *Venetie*, 944 F.2d at 559 n. 2 (citation omitted).

[31] See *John*, 982 P.2d at 759-60 (internal footnote omitted).

cannot exercise §1911(a) jurisdiction over child protection cases, and therefore all tribes must petition for jurisdiction under § 1918 of the ICWA.[32] In response, Plaintiffs argue that § 1918 is applicable only where tribes wish to have exclusive, rather than concurrent, jurisdiction over child custody proceedings. Plaintiffs are correct. In *Doe v. Mann,* the Ninth Circuit found that § 1918 was a mechanism provided by Congress to allow tribes in Public Law 280 states the opportunity to obtain *exclusive* jurisdiction over child custody proceedings.[33] The implication is that the tribes and the states otherwise shared concurrent jurisdiction.

In any event, despite the distinctions made by Defendants between the *Venetie* facts and the facts of this matter, the law remains the same: "resolving the jurisdictional ambiguities in favor of the villages, we hold that neither the Indian Child Welfare Act nor Public Law 280 prevents [the villages] from exercising concurrent jurisdiction [over their members' domestic relations]."[34]

V. CONCLUSION

While the Court is sensitive to the concerns expressed by the Defendants that the state will not be able to track child protection issues of Native children where a tribal court takes jurisdiction before the state does, the cases cited herein clearly control the outcome of this dispute. Furthermore, any grey area identified in § 1911 must be resolved in favor of the Tribe, as ambiguities are to be resolved to the benefit of Indians.[35] "[W]hen a question of tribal power arises,

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[32]25 U.S.C. § 1918 reads in relevant part:

"Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction."

[33]*Mann*, 415 F.3d at1061-62.

[34]*Venetie*, 944 F.2d at 562.

[35]*Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985).

the relevant inquiry is whether any limitation exists to *prevent* the tribe from acting, not whether any authority exists to *permit* the tribe to act."[36]

Accordingly, Plaintiff's Motion for Summary Judgment at **Docket 29** is GRANTED. Defendants' Motion for Summary Judgment at **Docket 31** is DENIED. The Kaltag court's adoption orders are entitled to full faith and credit, and the Bureau shall grant said status to the adoption order by issuing the Sams a substitute birth certificate.

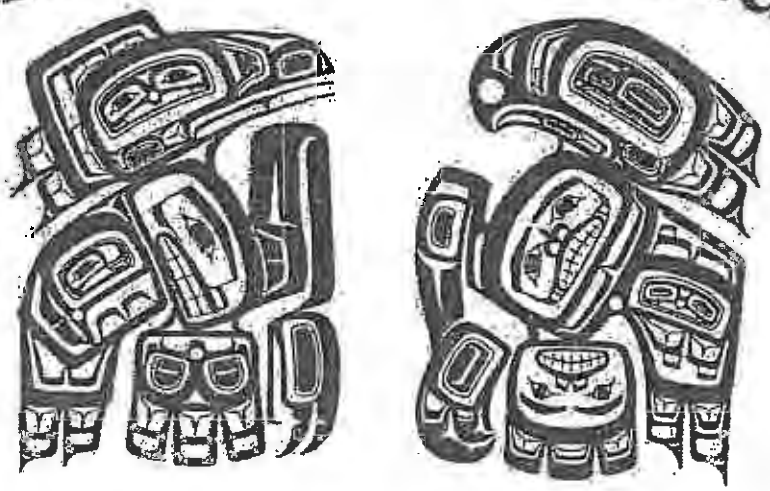
Dated at Anchorage, Alaska, this 22nd day of February, 2008.

/s/ Timothy Burgess
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE

[36] *Venetie*, 944 F.2d at 556 (citing W.Canby, *American Indian Law* 71-72 (2d ed. 1988)).

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.

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 basis 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 for the cases he/she is assigned, including other duties as assigned by the program manager.

3) The Administrative Office Leader will be responsible for day-to day support duties, including providing secretarial support to the Program Manager, handling all incoming telephone calls made to Unit's main line, making the initial contact with clients,

providing applications to clients, reviewing applications, scheduling appointments and setting up client files.

4) The TCSU Specialists will be responsible, as assigned, 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 that includes the following specific safeguarding procedures:

a. All Employees must follow procedures to protect against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support.
b. All TCSU employees are required to sign a confidentiality oath as a condition of employment.
c. TCSU policy prohibits the use or disclosure of personal information received or maintained by the Tribal IV-D Program and is limited to purposes directly connected with administration of the Tribal IV-D Program or Title IV-A (TANF) and XIX as required under CFR 309.80.
d. All information defined as confidential by law or regulation will be held confidential by TCSU, including names, addresses, contact information, mailing addresses, telephone numbers, social security numbers, place of employment, birthdates, etc.
e. Information maintained by TCSU may only be disclosed to other IV-D, or Foster Care (IV-E) agencies if the information being requested is in writing and will be used to further the administration of the duties and functions of the IV-D agency as they pertain to child support. Release based on a telephone request is prohibited.
f. Hard copy case files are to be kept in a secure area in the TCSU filing room or in caseworker's locked file cabinet.
g. TCSU requires that any documents being discarded containing sensitive or confidential client or Tribal information shall be shredded. Sensitive or confidential information may include client names, addresses, social security numbers, child information, employer information and any other information considered confidential by law.
h. Case workers are prohibited from releasing confidential information to the parties. Requests by parties and law enforcement agencies for confidential information shall be referred to the TCSU attorney.
i. Employees shall not discuss any person or case in the public areas of the office. All discussions of this nature will be within the confines of an office.

j. Employees shall not discuss a case over the telephone regarding any case or a client in the presence of an individual who is not a party to the action at hand.

k. Outside agencies, organizations or business who voluntarily or inadvertently disclose TCSU information will be subject to disciplinary action, up to and including legal action.

l. 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.

C. Disclosure of Information

1) 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 309.80.

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 10 working days of any change of employer or change of address.
   - 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.

b. To hand in all required paperwork/payments;
   - Monthly support orders;
   - Report of change forms;
   - Any other forms or documents 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 requests 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

A. Intake

The TCSU may 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. New Applications

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. Inquire as to existing State of Alaska Administrative Child Support or Court Order.
d. If there is an existing order with State of Alaska, have client complete a "Transfer of Services" form and submit form to State of Alaska.
e. For new applications, or State of Alaska transfer cases, an application is considered complete when the applicant has provided enough identifying information about the CP, NCP and the child(ren).
f. The Administrative Office leader must date stamp the application when it is received. Child Support may be backdated to this date if the Tribal Court determines it is appropriate. All other documents received by TCSU should also be date stamped.
g. Pre-interview clients and schedule interview with TCSU Specialist.
h. Assign a case number to cases. Each case number shall begin with the year, i.e., 07-0001, 07-0002, etc, except that Paternity cases shall be designated with a PA in front of the case number, i.e., PA 07-0003.
i. Case files shall be filed numerically.
j. Create /Open case files and forward to TCSU Deputy Manager.
k. Receive CS payments and prepare bank deposits and transmittals.
l. Forward payments, deposit slips to Program Manager or TCSU Attorney to deposit to bank account.

C. 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. Waivers and other supporting forms are completed and signed.
c. If applicable, the Affidavit and Request for Address Confidentiality form is completed.

D. 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.

E. Assignment of Cases

1) Upon receipt of all necessary information, the Deputy Manager shall assign the case to a TCSU Specialist within 5 days. 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) 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.

3) **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. One Specialist shall be available each day for walk-in clients.
c. Provide case management and activity tracking.
d. Calculate child support obligations and debts; initiates appropriate collection actions; negotiates repayment of child support debts.
e. Provide educational opportunities for clients and communities on TCSU.
f. Assist client with an appropriate IV-D application that other tribes or a states may require.
g. Record and track collection and disbursements.
h. Develop statistical reports for TCSU staff.
i. Reconcile accounts and calculate arrears due.
j. Produce and mail monthly and/or quarterly or annual statements to the non-custodial parent and custodial parent.
k. Any available TCSU Specialist (except designated Specialist) shall receive NCP funds and forward to Deputy Manager or designated Specialist.
l. The TCSU Specialist designated to enter NCP funds into the system shall not receive NCP funds, unless no other TCSU employee is available.
m. The assigned case worker shall disburse CP funds within 3 days after entry into the data system.

4) **Paternity/NCP Specialist**. The purpose of this position is to process and establish 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 for paternity, and non-paternity cases as needed.
c. Calculate child support obligations and debts.

d. Provide educational opportunities for clients and communities regarding TCSU services.
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. Draft paternity judgment in conjunction with the Child Support Attorney.
j. File all original court documents and genetic test results (sealed confidential envelope) with the court.
k. Act on behalf of the Administrative Office Leader during his/her absence.

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 and technical assistance to Child Support Specialists.
b. Assign case(s) to case specialists within 5 days of a receipt of a completed application for services.
c. Provide consultation to case workers on case-specific issues/problems.
d. Supervise Child Support Specialists.
e. Review collections, disbursements, and financial statements.
f. Assist in coordinating efforts with other child support agencies to establish, enforce and monitor child support cases.
g. Enter NCP funds into the computer database and assign one TCSU Specialist to assist;

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

a. Provide legal training and technical assistance for TCSU staff as needed.
b. Review cases for transfer to other jurisdictions and ensure compliance with Tribal and Federal law; file necessary motions with the Court.
c. Research legal matters; interpret statutes, rules and regulations relevant to child support.
d. Review foreign orders from another Tribe or state pursuant to the Family Responsibility Act and principles of FFCCSOA.
e. Determine if conflict of Interest exists for case assignment purposes.
f. Review modifications to existing legal documents, case files, stipulations, and orders for court.
g. Review legal documents, represent TCSU at court hearings, maintain court schedule.
h. Assist with Specialists' preparation of court pleadings for all child support cases when requested.
i. Negotiating stipulations Draft stipulations and judgments related to paternity.
j. Act on behalf of the Paternity Specialist in his/her absence.

k. Act on behalf of Program Manager upon request of Program Manager, i.e., when Deputy Manger and Program Manager are both absent.
l. Deposit NCP funds to bank account when Tribal Unit Manager is not available.

7) **Tribal Unit Manager.** Develop, coordinate and monitor policies and procedures, supervising personnel, coordinating activities with other agencies, preparing budgets, interviewing clients, making court appearances. The Tribal Unit Manager shall:

a. Manage and monitor the activities of agency personnel.
b. Assign task responsibilities for problem resolution as needed.
c. Interviews and assists in selection and training of new personnel.
d. In the absence of the Paternity Specialist, the Attorney and child support specialists, interviews paternity referrals.
e. Assure that file processing is completed in an efficient and confidential manner.
f. As needed, participate in court proceedings for child support cases.
g. Deposit NCP funds to bank account on a daily basis.

F. 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.

G. 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 Manager 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, including step-relations).

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.

H. 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 application for services shall be assigned to a Specialist within 5 days upon receipt of a completed application that contains sufficient information to identify the parties and the children.
b. 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 the TCSU Paternity Specialist.
c. Foreign orders shall be assigned a TCSU case number and identified in the same manner as a new application case file.
d. 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.
e. TCSU Specialists shall determine whether a IV-D case already exists for the parties (child, mother and father). If another case exists for the same CP, NCP and Child, the existing case will continue to be processed. The new referral will be closed, 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.

I. 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. Intake form.
   b. Application for CS services.
   c. Client Rights.
   d. Enrollment and Verification.
   e. SOA Forms, i.e. Transfer of Case, Withdrawal from Services, etc.
   f. TCSU Case Notes & Recommendations.

2) Section II:
   a. Copies of Correspondence to or from the TCSU to CP or NCP.
   b. Copies of Correspondence to or from the TCSU to a 3rd party (State, Lawyer, etc.)

3) Section III:
   a. Orders.
   b. Paternity Orders
   c. Child Support Orders.
   d. Modifications to Support Orders.
   e. Income Withholding Orders.

4) Section IV:
   a. Summons
   b. Documentation of Service of Process
   c. Petitions to Establish Support Orders
   d. Petitions to Modify Support Orders
   e. Other Documents filed w/ Court

5) Section V:
   a. Documentation of Location Efforts
   b. Paternity Information, i.e., birth certificates
   c. Paternity Questionnaire
   d. Genetic Testing Information and Results

6) Section VI:
   a. Financial Affidavits
   b. Worksheets, pay stubs, IRS Tax Returns
   c. Distribution of Payments
   d. Collection of payments (date and source)
   e. CS Obligations and Frequency of Payments
   f. Financial Record of CS Payments
   g. Debts Owed: Current Support, Arrears, Current TANF, TANF Arrears

J. 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. Applications

1) The TCSU Specialist will review the application and determine which of the following services are appropriate:

a. Establishment of paternity;
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. Collection and distribution of support obligations.

2) If there is 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 arrangements that have been in place for 3 or more years.

B. Referrals

Referrals received from another state, or tribal IV-D program shall be treated as an application for services and shall be assigned a TCSU 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 sufficient 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. 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 a DOMESTIC VIOLENCE FORM and return it to our office. 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 personal information on the whereabouts of the client and the child.

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.

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 30 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 take appropriate action when new information becomes available and must review locate section and follow steps a. and b. listed below.

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. If paternity has not been established, the mother shall complete the "Witness Statement" in the application packet, naming all potential fathers.

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 will result in TCSU taking legal action to establish paternity.

3) The TCSU shall provide alleged father assistance in completing voluntary acknowledgments form, including:

a. Reviewing the rights and responsibilities of paternity;
b. Ensuring the form is complete and accurate; and
File the voluntary acknowledgement form,* and request for a new birth certificate to be sent to TCSU.

* In Alaska the Voluntary Acknowledgement form is called "Affidavit of Paternity" and must be signed by all necessary parties.

4) The TCSU specialist shall have 10 days in which to file the form with 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.

C. Establishing Paternity Using the Court Process

a. If the parents do not wish to complete the State of Alaska Affidavit of Paternity, TCSU shall schedule a hearing with the Court to determine paternity.
b. File a Petition to Establish Paternity with the Court.
c. Alleged father should also be given an opportunity to file a "Paternity Statement-Father" form. If alleged father agrees to file this statement, the next step is to prepare a "Stipulation to Paternity Order." This is an agreement that the parties agree that the alleged father is the biological father.

d. If the parties agree, then the "Stipulation" can be entered into court prior to the court hearing or it can be entered on the date the hearing is scheduled for.
e. When the caseworker believes there will be an agreed order or "Stipulation to Paternity," the caseworker should also be working on obtaining financial documents to begin processing the child support obligation.
f. Upon receipt of the Court Order Establishing Paternity, the Order shall be filed with the State of Alaska Bureau of Vital Statistics, along with a request for a new birth certificate.

D. Genetic Testing

1) Where paternity has not been established and paternity is contested, any party may request the court approve their request for genetic testing. 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.

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 brough 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.

E. Default Judgment Order

Before a default judgment is ordered the following process of service must occur:

a. Personal service has been made upon the alleged father at his place of residence, and he has failed to respond within twenty (20) days after service of the summons and petition, and a motion for default is made by the petitioner; or

b. A copy of the Summons and Petition to establish paternity has been mailed to the alleged father's last known address, via certified mail, return receipt, and regular mail, and the alleged father's signature is on the return receipt; or

c. Service by Publication of the Summons and Petition is allowed only after service is attempted under (a) and (b), and upon the filing of an affidavit stating that the Respondent cannot be found. Publication shall be made for three (3) consecutive weeks in a newspaper that is located in the county or community of the potential father's last known address and 30 days have elapsed since the date of the last publication.

F. 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 inquiry 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 statistic documents, the TCSU specialist shall assist 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 required 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

1) A stipulated agreement can be done any time prior to the date of the court 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. Upon Court approval, the stipulated agreement shall be filed with the clerk of the Court and shall have the same force as an order issued by the Court.

B. Determining Support Obligations

The *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) Review of the established formulas in the Schedule shall be done every four years to ensure that the TCSU is responsive to children's needs and the earning capacity of non-custodial parents.

VIII. 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 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.

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 employ 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 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 employer. The 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, modify or release the voluntary agreement.

X. MODIFICATION OF SUPPORT ORDER

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:

a. an increase or decrease in the NCP's yearly income of 15% or more;
b. a change in placement of minor from the CP to the NCP; or a
c. substantial change in circumstance as determined by the Court.

Application for modification should 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.

XI. 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.

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 set out above in subsection (1) and (2) 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) 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.

6) 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.

7) 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. Overpayments

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.

XII. 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 and not enrolled full time in high school
b. The child marries;
c. The child enlists in the military;
d. An order of emancipation has been entered.

Court Procedures for Child Support & Paternity

1. **Filing an initial petition for Child Support or Paternity:**
   a. TSCU will submit to the Clerk the original and one copy of the petition, and the confidential information form (CIF).

   b. TCSU will attach a copy of the child(ren)'s birth certificate to the CIF.

   c. The Petition shall contain the printed name and a signature line for the TCSU caseworker assigned to the case.

   d. The Clerk will check that: the document has been signed and dated by TCSU Attorney; the names of the parties are on the face of the petition; the TCSU case number is on the face of the petition; the confidential sheet contains sufficient information, especially, but not limited to the party's addresses.

   e. When reviewing petitions or documents that contain missing or insufficient information, the clerk will contact the filing party to inform them of the deficiency, and the filing party will be given an opportunity to correct the deficiency.

   f. The filing party may correct petitions or documents by adding missing information or striking out incorrect information and placing his/her initials next to the addition or correction.

   g. Upon receipt of a Petition, the Clerk will date stamp and enter the time on the petition and the copy.

   h. The Clerk will assign a court docket number to the petition. From the paper case log the Clerk will use the next number in sequence for the new petition, and will write on the case log the date, the case number, petitioners name, respondents name, the title of the petition, who is filing it and the TCSU case number and put their initials next to the date.

   i. The Clerk will write (in black or blue ink) the court docket number on the original and the copy of the petition.

   j. The Clerk will return to the TCSU the conformed (date stamped) copy of the petition.

   k. The Clerk will keep the original petition and the confidential information envelope, placing these into a new file folder.

   l. The Clerk will enter the new case information from the paper case log into the electronic case log (located at tribal courts/Tribal Courts Forms/5 Tribal Court Case Logs/).

2. **Summons and Petition, Setting Hearing Date:**

a. If either of the party's is represented by an attorney or spokesperson, the Clerk will inform that person of the process for requesting a hearing, and may send out the appropriate forms.

b. The Clerk will prepare a summons.

c. The Clerk will send out the Summons, Petition and other appropriate documents to all parties in accordance with #4 below.

d. The Clerk will provide a copy of the Summons to the TCSU Administrative Assistant.

e. Once the Clerk has proof of service for all parties, the Clerk will schedule a hearing after consulting with the TCSU Administrative Assistant. After said consultation is complete, the TCSU Administrative Assistant will file a Note for Magistrate which will provide written confirmation of the scheduling of the hearing. The Note for Magistrate form shall be filed on the same date as the scheduling of the hearing.

f. Upon setting a hearing date and time, the clerk will note the hearing date and time on the master court calendar and will issue an Outlook Calendar Invite to the Court staff.

g. The Clerk will prepare a Summons/Notice of Hearing to be sent out to all parties in accordance with #4 below.

h. Upon receipt of the written Summons/ Notice of Hearing, the TCSU Administrative Assistant will place the court event on the TCSU calendar, and will issue an Outlook Calendar Invite to TCSU staff.

i. The Court Clerk and TCSU Administrative Assistant will communicate once a week to confirm hearing dates and times. During this communication, the clerk may advise the TCSU Administrative Assistant if any party address needs to be updated, and advise if any new locates are necessary to accomplish service of process.

j. If a case is continued during a court hearing, the Clerk shall prepare the Summons/ Notice of Hearing form for parties, who are physically present, to sign and receive a copy of prior to leaving the courtroom.

k. If one or more of the parties have not been served (or there is no proof of service), The Clerk will send a Return of Service (ROS) to TCSU indicating which party or parties have not been served. The ROS will contain any information concerning residence, employment or other locate information the Clerk may have acquired.

l. The TCSU Caseworker or other designated TCSU staff will research and/or refer to find the missing address(es) needed to complete service. Once TCSU has acquired a valid address or location for the unserved party(s), this information will be sent to the Clerk.

3. **Filing subsequent motions or requests:**

a. For motion hearings, the party requesting a hearing shall file a Note for Magistrate's calendar along with a copy of the motions or supplemental documents (including updated information about parties' addresses or employers.)

b. Upon receipt of a request for motion hearing and Note for Magistrate, the clerk will review the court calendar, the magistrate calendar and set a hearing date by preparing a Notice of Hearing. If any party is represented by an Attorney or Spokesperson, the Clerk will attempt to coordinate scheduling of a hearing date with them as well.

c. TCSU or another party filing the request for a motion hearing shall distribute copies of the motion to all parties. The Clerk may offer assistance to parties as she deems appropriate.

d. The Clerk will check that: the document has been signed and dated by TCSU Attorney (if required); the names of the parties are included on the document; the Court and TCSU case number is on the document.

e. The Clerk will date stamp (conform) the document(s) and the copy.

f. The Clerk will enter the filing of the document onto the paper case log making note of the date, the case number, petitioners name, respondents name, the type of document being filed, who is filing it and the TCSU case number.

g. The Clerk will return to the TCSU the conformed copy of the document.

h. The Clerk will place the original document into the appropriate case file folder.

i. The Clerk will enter the new document information from the paper case log into the electronic case log (located at tribal courts/Tribal Courts Forms/5 Tribal Court Case Logs).

j. If the subsequent pleading being filed is an answer (admission or denial) to a petition, the Clerk will discuss the pleading with the Magistrate to determine if a hearing should be set or not. If a hearing on the motion or subsequent pleading is deemed appropriate, the clerk will contact the party and assist the party to schedule a hearing date using the Note for Magistrate form.

k. The Clerk shall then send out the Notice of Hearing to all parties.

4. **Process of Service: General Policy**

Note on Personal Service: Personal Service of initial petition and summons is the best way to maximum access to and participation in Tribal Child Support services and the Tribal Court. This is a priority of the Court and TCSU staff and has been expressed in the past by the Judicial Committee. In response to this priority, the following policy will be implemented.

a. The Clerk will provide, whenever possible, personal service for respondents (or person not voluntarily seeking child support services) for the initial petition and summons.

b. For the safety of the Clerk or other person conducting personal service, the following steps will be followed in each case:

1) The TCSU caseworker will indicate on the Confidential Information Form by checking the appropriate box if there is a known history of domestic violence or an anti-harassment order in place.

2) The Clerk will review the Confidential Information Form to see if the domestic violence or anti-harassment order boxes are checked.

3) When the Confidential Information Form contains a domestic violence or indications of anti-harassment issues, the TCSU caseworker shall include an Affidavit of non-disclosure if additional information is contained in the TCSU file.

4) The Clerk will research both the petitioner and respondent's names on the State of Alaska Court system data base, checking for prior convictions of violent crimes and current protection orders.

5) The Clerk will send any information she finds about the party's criminal histories to the TCSU Attorney. The Clerk and TCSU will keep each other informed of all additional information that is helpful to ensuring the safety of CCTHITA staff and clients.

6) The TCSU Caseworker will inform the Clerk when a respondent (who has not yet been served with the initial petition) has a scheduled

appointment with TCSU, so that the Clerk may use the opportunity to conduct personal service of the petition and summons.

e. If personal service by the Clerk is not possible due to safety issues, work load, or the respondent is not located in Juneau, the Clerk will do one or all of the following:

1) Contact and arrange for a processor server, for a fee, to conduct personal service on the respondent (or person not voluntarily seeking child support services); and/or

2) Mail the initial petition and summons to one or all of the party's by certified mail, postage prepaid with Return Receipt Requested; or

3) If the initial petition is a Petition to Establish Paternity, the Clerk will make all efforts to provide personal service of the petition and summons to the respondent. If personal service fails or is not possible, the Clerk will mail the petition and summons to the respondent certified mail, postage prepaid with Return Receipt Requested, Restricted Delivery.

d. For each new combined paternity and child support petition filed, the Clerk will ensure that the following forms are included in the packet mailed or personally served to the Respondent:

1) Paternity Affidavit form

2) Financial Affidavit form (this should be attached by TCSU to the Petition)

3) Answer form (this should be attached by TSCU to the Petition)

e. For each new child support petition filed, the Clerk will ensure that the following forms are included in the packet mailed or personally served to the Respondent:

1) Financial Affidavit form (this should be attached by TCSU to the Petition)

2) Answer form (this should be attached by TSCU to the Petition)

f. Upon receipt of proof that a party has been provided personal service of the summons and petition or received service via certified mail, return receipt, the Clerk shall make sufficient notation and secure the "green card" or Return of Service affidavit in the court file.

g. When the Clerk determines one or more of the party's has not been served or that one or more of the party's have a new address or invalid mailing

address, the Clerk will prepare a Return of Service (ROS) for the TCSU that contains all information about the party's location and/or mailing address that the Clerk has.

1) When no service has been accomplished, the Clerk will personally deliver a hard copy of the ROS to TCSU

2) Upon receipt of the ROS, TCSU will attempt a new locate within three business days. ;

3) TCSU will send an amended CIF to the Clerk within three business days of obtaining the updated addresses.

4) The Clerk will attempt service as described above

h. When the Clerk obtains from the post office or a process server new information concerning a change of address, an invalid address or a location of one or more parties, the Clerk will copy to the TCSU the returned envelope, certified mail "green card" or ROS from process server, by delivering a hard copy to the TCSU Attorney.

i. When TCSU becomes aware of new information concerning the Parties, the TCSU Caseworker should prepare an amended Confidential Information Form (CIF) and submit it to the Clerk within three business days

j. Subsequent service of notices and summons will be done either in Court or by Certified Mail Returned Receipt requested or Regular Mail (whichever is appropriate) for all parties who have been served with an initial petition or after they have appeared in Court.

# # #

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

PLAINTIFF'S POST-SUMMARY JUDGMENT BRIEF

Plaintiff, through counsel, submits the following brief pursuant to the Court's Order regarding summary judgment, dated October 25, 2011.

I. Relevant Background

In its Order dated October 25, 2011, this Court held that the plaintiff Tribe has inherent rights of self-governance which includes subject matter jurisdiction to adjudicate child support for children who are members of the Tribe or eligible for membership in the Tribe.[1] This Court further ordered the defendants to comply with the Uniform Interstate Family Support Act ("UIFSA") and other applicable federal and state laws vis à vis the Tribe's child support orders.[2]

[1] Order at 14-15.
[2] Order at 15.

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This Court asked for further briefing from the parties as to the precise scope of this Court's injunction and as to whether the remaining claims in plaintiff's case, i.e., its Due Process and §1983 causes of action, still needed to be adjudicated in light of this Court's October 25 Order.

II. This Court Does Not Need to Reach Plaintiff's Constitutional and §1983 Claims.

Settled jurisprudence teaches that courts should avoid deciding constitutional questions if there are other grounds upon which to dispose of the case.[3] Similarly, a court should avoid deciding a claim under Section 1983 if that claim is unnecessary to the resolution of a dispute.

The conflict at the heart of this litigation case is the defendants' refusal to process the Tribe's child support orders according to federal and state law because of the defendants' position that the Tribe lacks jurisdiction over child support. With the Court's October 25 jurisdictional ruling, and a resulting injunction requiring the defendants to follow relevant state and federal laws regarding inter-governmental child support services, this case can be resolved without this Court needing to decide the Tribe's constitutional and § 1983 claims.

III. Scope of Injunctive Relief.

Civil Rule 65(d) requires injunctions to be "specific in terms" and to "describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." The injunction should give clear direction to the enjoined party as to exactly what is expected of that party.[4] Specificity in the injunctions helps "to

[3] *See Alaska Trademark Shellfish, LLC v. State*, 91 P.3d 953, 957 (Alaska 2004).

[4] *Anchorage v. Anchorage Daily News*, 794 P.2d 584, 588 (Alaska 1990)

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prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree to vague to be understood."[5]

In its complaint, the Tribe sought an injunction requiring the defendants to follow state and federal law governing interstate support including, *inter alia*, an order requiring the defendants to enforce and respond promptly to interstate requests for child support services from the Tribe, in accordance with UIFSA and federal regulations.[6]

In light of its October 25 Order, this Court should enter an injunction that specifically:

- prohibits the defendants from denying the "full range of services available under its IV-D plan" to the Tribe's IV-D program, as required by in 45 C.F.R. § 302.36(a)(2), including processing and enforcing child support orders referred by the Tribe's IV-D program;
- prohibits the defendants from excluding Tribal IV-D programs from their state plan regarding interstate services;
- prohibits the defendants from denying interstate enforcement services under UIFSA to the Tribe's IV-D program;
- requires the defendant to, whenever requested by the Tribe's IV-D program, provide administrative enforcement of the Tribe's child support orders under UIFSA Article 5;

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[5] *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974).

[6] Complaint at ¶¶4, 61.

- requires the defendants to, whenever necessary, register the Tribe's child support orders under UIFSA Article 6;
- prohibits the defendants from processing requests for services from the Tribe's IV-D program in a less timely manner than requests for services from other state IV-D programs; and
- prohibits the defendants from acting to establish a State of Alaska child support order for a child after they have been sent notice from the Tribe that the Tribe has already issued a child support order for that same child;

With respect to the resolution of current multiple, conflicting child support orders that the Tribe has notified the defendants about, this Court should Order that the defendants must communicate with plaintiff to promptly resolve such conflicts — including the conflicting order referenced in the Affidavit in Support of Plaintiff's Motion for Summary Judgment — according to UIFSA's rules regarding continuing, exclusive jurisdiction and multiple orders.[7]

Finally, the injunction should encompass the requests for enforcement that the Tribe has sent to CSSD since November 2009, which CSSD has ignored, including the requests specified in the Motion for Summary Judgment.[8] The injunction should prohibit

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[7] *See* Affidavit of Jessie Archibald ¶48, referencing conflict between Tribal Court Docket No. 07-CS-0064, *TCSU ex rel. Shauna Kaye Jensen v. Joe Louis Morato-Feliipe*, issued March 4, 2008, and CSSD Administrative Child Support and Medical Support Order, Case No. 001151508 issued April 28, 2008.)

[8] See Plaintiff's Motion for Summary Judgment, page 4 (identifying TCSU requests for UIFSA enforcement of tribal child support orders on Nov. 19, 2009 for Tribal court case number 09-CS-0120, *TCSU ex rel. Antoinette Kadake v. Kevin Martin;* Jan. 13, 2010 for Tribal court case number 08-CS-0041, *TCSU ex rel. Lindsey Fredrickon v. Edward Jackson, Jr.;* and March 8, 2010 for Tribal court case number 07-CS-0011, *TCSU ex rel. Avena Aceveda v. Douglas Chilton*).

the state from further delay in processing these requests, and require prompt action to provide enforcement services in accordance with UIFSA, related state regulations, Title IV-D, and related federal regulations.

IV. This Court Need Not Yet Address The Question of Personal Jurisdiction.

The scope of this Court's injunction need not cover personal jurisdiction, as this lawsuit does not address questions of personal jurisdiction over any particular parties. As the Court notes, there is a possibility that questions of personal jurisdiction may be raised in the future in individual cases.[9] However, no such case is before the court today. If and when a party subject to a tribal child support order wants to raise an objection to CSSD enforcement in the future due to lack of personal jurisdiction, UIFSA provides an avenue for such a challenge. That party could raise a jurisdictional challenge under AS 25.25.506 (contest of income withholding order), 25.25.507 (contest of administrative child support enforcement) or 25.25.606-607 (procedure to contest validity or enforcement of registered child support order on specified grounds, including the ground that "the issuing tribunal lacked personal jurisdiction over the contesting party"). Attempting to decide issues of personal jurisdiction at this stage, without an active controversy over personal jurisdiction, would be premature and constitute an advisory opinion.

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[9] Order at 14.

IV. Final Judgment

Following a decision by this Court on the matters addressed in the parties' post-summary judgment briefs, plaintiff will file a motion for final judgment and submit a form Final Judgment for entry by this Court.

DATED: December 2, 2011

ALASKA LEGAL SERVICES CORPORATION
Attorneys for Plaintiff

Holly Handler, AK Bar No. 0301006

Certificate of Service

The undersigned certifies that on the 2d day of December, 2011, a true copy of this document was served on Stacy Steinberg and Mary Lundquist via email and US Mail, by:

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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

STATE'S ADDITIONAL BRIEFING

Introduction

The Court granted summary judgment to the Central Council of Tlingit and Haida Indian Tribes of Alaska (the Tribe) on October 25, 2011. The Court found that the tribal court has subject matter jurisdiction to enter child support orders concerning tribal member (or membership eligible) children. Specifically, the Court found that it "will enter a declaratory judgment declaring that the Tribe possesses inherent rights of self-governance that include subject matter jurisdiction to adjudicate child support for

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children who are members of the Tribe or eligible for membership in the Tribe" and that it will issue "an injunction requiring the State of Alaska, Child Support Services Department to comply with [the Uniform Interstate Family Support Act (UIFSA)] and applicable federal and state regulations."[1] The Court requested additional briefing on:

1) whether its conclusions on declaratory relief and injunctive relief "require summary judgment on the constitutional and § 1983 claims set out in plaintiff's fourth and fifth cause of action"; and

2) "the precise language of the injunctive relief," including "how broadly . . . the injunction [should] be phrased as to future cases," and "how (or whether) to address possible questions about personal jurisdiction, under *Kulko* or other authority, in crafting an injunction"; and

3) "whether, based on the conclusions set out in [its] order, the court should enter final judgment in this case" and the State's "position[] on what that judgment should be."[2]

In sum, the Court does not need to reach the constitutional and § 1983 questions, the injunctive relief, if any, must be narrowly tailored, questions of personal jurisdiction should be resolved in the context of specific cases, and final judgment will be appropriate once the matters in this additional briefing have been resolved.

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1 Order on Summary Judgment at 14-15 (Oct. 25, 2011).
2 Order on Summary Judgment at 15 (Oct. 25, 2011).

I. The Court does not need to reach CCTHITA's constitutional and section 1983 claims.

The State agrees with the plaintiff that, given the Court's decision regarding the jurisdiction of the Tribe over child support matters, there is no need for the Court to decide the Tribe's constitutional and § 1983 claims. Claims "should ordinarily not be decided on constitutional grounds when narrower grounds are available."[3] And given that the § 1983 claim hinges on the constitutional claim, which will not be reached, the § 1983 claim also does not need to be decided.

II. The precise language of any injunctive relief that might be granted.

The State disagrees with the Court's legal conclusion that the only relevant factor for determining the Tribe's subject matter jurisdiction is the membership status of the child. But given the Court's order, the State offers the following comments regarding the scope of injunctive relief, if any, to be issued in this case.

A. The injunctive relief should be narrowly drawn.

Under the Civil Rules, injunctive relief "shall set forth the reasons for its issuance; shall be specific in terms; and shall describe in reasonable detail . . . the act or acts sought to be restrained."[4] It is a "principle [] of equity jurisprudence" that "the

[3] *See Alaska Trademark Shellfish, L.L.C. v. State, Dep't of Fish and Game*, 91 P.3d 953, 957 & n.12 (Alaska 2004).

[4] Alaska R. Civil P. 65(d).

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scope of injunctive relief is dictated by the extent of the violation established."[5] In addition, injunctions should not create blanket prohibitions against violations of statute.[6] Given these rules, no injunction is necessary in this case. And, if the Court issues an injunction, it should be narrowly drawn, only cover matters raised in the litigation, and not require the State to follow a pre-existing duty to comply with the law.

First, given the scope of the declaratory relief that this Court has signaled that it will be issuing, an injunction is simply unnecessary. A declaration that the actions of CSSD officials did not comply with the law "is functionally the same as an injunction prohibiting the state itself from doing those acts."[7] Thus, a declaratory judgment in this case will obviate the need for an injunction.

Second, an injunction requiring the State to comply with UIFSA misses the essence of the dispute between the Tribe and the State regarding the processing of tribal child support orders. This litigation did not focus on any particular tribal child support case, whether any particular State action complied with UIFSA, or what UIFSA might

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[5] *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *see also Globe Slicing Mach. Co. v. Hasner*, 333 F.2d 413, 416 (2d Cir. 1964) (remanding for modification of injunction on the basis that "[t]he scope of the injunction is not limited sufficiently to prevent infringement of the rights that [defendant] does have ").

[6] *See Beatty v. United States*, 191 F.2d 317, 321 (8th Cir. 1951) ("Blanket injunctions against general violation of a statute are repugnant to American spirit and should not lightly be either administratively sought or judicially granted.").

[7] *State, Dep't of Health and Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388, 404 (Alaska 2006) (finding that a party injured by the actions of a state official has a remedy even where the State declined to waive its sovereign immunity because "either remedy—a declaratory judgment or an injunction directed against the official—is

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require under particular circumstances. To be clear, the State declined to enforce the tribal orders mentioned in these proceedings based on the State's longstanding position that Alaska tribes do not have subject matter jurisdiction over child support. This jurisdictional dispute reaches back at least to *John v. Baker III*, where the Alaska Supreme Court specifically declined to decide this issue even though both parties had briefed it.[8] Thus, the issue in this case (whether an Indian Tribe without a land base has inherent jurisdiction to issue a child support order) was one of first impression. Given this Court's recent resolution of this subject matter jurisdiction issue, there is no need to issue an injunction requiring the State to process tribal orders. This will occur in the regular course of business as tribal orders are submitted to the State for enforcement.

Third, a broadly worded injunction (as suggested by the Tribe) requiring the State to comply with its pre-existing duties under various state and federal laws is meritless and would be an abuse of discretion.[9] "The State is already obliged" to comply with state law.[10] "To that pre-existing duty, an injunction to follow the law

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functionally the same as an injunction prohibiting the state itself from doing those acts").

[8] *John v. Baker III*, 125 P.3d 323, 327 n.15 (Alaska 2005); Appellant's Brief 2004 WL 4908722, Appellee's Brief 2004 WL 4908721; Appellant's Reply 2004 WL 4908720. Alaska Legal Services was also counsel in that case. *John v Baker III,* 125 P.3d at 324.

[9] *See Brady v. State*, 965 P.2d 1, 17 (Alaska 1998) ("request that we enjoin the State to follow the Constitution and . . . law is meritless"); *see also Beatty v. United States*, 191 F.2d at 321 ("Blanket injunctions against general violation of a statute are repugnant to American spirit and should not lightly be either administratively sought or judicially granted.").

[10] *Brady*, 965 P.2d at 17.

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would only add, at the remedial level, the possibility of contempt sanctions."[11] "Nor would it provide [a] workable legal standard to evaluate the State's performance . . . ."[12] The crux of the dispute between the State and the Tribe was the extent of the Tribe's subject matter jurisdiction over child support matters. It was this subject matter jurisdiction dispute that gave the State pause in processing the Martin-Kadake child support order—which served as the basis for this lawsuit.[13] By declaring that the Tribe's child-support subject matter jurisdiction is based solely on the membership status of the child, the Court has resolved this longstanding jurisdictional dispute.[14] With this resolution, the State can begin processing tribal child support orders under state statutes. An injunction requiring the State to comply with state law would not "describe in detail…the act or acts sought to be restrained,"[15] would be overly broad and unnecessary.

Fourth, an order requiring the State to comply with UIFSA would be ineffectual. The unique circumstances of each case dictate what steps CSSD must take under UIFSA. While some of these as yet-unknown circumstances may fall squarely under the language of UIFSA, others will not. Most notably, UIFSA does not offer clear rules for cases in which a tribe is operating within Alaska but outside of any tribal land base.

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11 *Brady*, 965 P.2d at 17.

12 *Brady*, 965 P.2d at 17.

13 *See* Complaint at 5 ¶ 30.

14 The State is, however, not waiving any right it may have to appeal from an adverse decision.

15 Alaska R. Civil P. 65(d).

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For example, an order requiring the State to resolve conflicts between State and Tribal child support orders "according to UIFSA's rules regarding continuing, exclusive jurisdiction,"[16] would be unworkable because of UIFSA's residence-based jurisdictional principles. The concept of a tribunal's "continuing, exclusive jurisdiction" is the foundation of UIFSA and results in only one valid support order in effect at a given time.[17] But UIFSA determines "continuing exclusive jurisdiction" by the residence of the obligor, obligee, or the child (that is, whatever state they live in, is the state with continuing, exclusive jurisdiction).[18] Thus, the concept of "continuing, exclusive jurisdiction" is impossible to apply where the Tribe (i.e., a "state" as defined in UIFSA) is operating without reference to a land base and within the territorial boundaries of another "state" (i.e., the State of Alaska). Under the explicit language of UIFSA, tribal members living in Alaska are within Alaska's "continuing exclusive jurisdiction" (not the Tribe's).

Similarly, where there are simultaneous child support proceedings in two different "states," jurisdiction over the case is largely determined by the "home state" of

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[16] Plaintiff's Post-Summary Judgment Brief at 4 (Dec. 2, 2011).

[17] 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").

[18] AS 25.25.205(a) (a tribunal of the State 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) ("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 . . .").

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the child.[19] 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."[20] Under this language, where tribal children live in the State of Alaska, their "home state" is the State of Alaska. Conversely, the Tribe cannot be the "home state" because the Tribe has no territory "in which a child [could have] lived." Given this, an injunction requiring the State to comply with UIFSA would be less than helpful. Issues regarding the application of UIFSA to particular situations will have to be worked out between the State and the Tribe as they arise in future cases. Broad mandates set out in an injunction do not serve the interests of either party.

No injunction should be issued by this Court. If, however, this Court does issue an injunction, it should be very narrowly tailored to the issue actually decided: that the Tribe has subject matter jurisdiction over child support based on the membership status of the child.[21]

B. The Tribe's proposals for injunctive relief go well beyond what is necessary.

The Tribe proposes a number of broad statements of injunctive relief. The State will respond to each of the Tribe's proposals in the order in which the Tribe presented them.

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[19] AS 25.25.204(a)(3) and (b)(3); AS 25.25.207(b).

[20] AS 25.25.101(4) (emphasis added).

[21] *See Califano v. Yamasaki*, 442 U.S. at 702 (stating rule that "scope of injunctive relief is dictated by the extent of the violation established".)

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1. The Tribe proposes that the injunction "prohibit[] the defendants from denying the 'full range of services available under its IV-D plan' to the Tribe's IV-D program, as required by...45 C.F.R. § 302.36(a)(2), including processing and enforcing child support orders referred by the Tribe's IV-D program."[22]

As discussed above, once the jurisdictional issues are settled by declaratory judgment, an injunction requiring the State to process tribal orders will be irrelevant. The State will process tribal child support orders in the regular course of business as the tribal orders are submitted to the State for enforcement. A broad statement prohibiting the State from denying the full range of services, suggests that the State is stripped of any discretion and cannot deny services under any circumstances. For example, if CSSD does not administratively enforce a tribal order because there is no proof that the father was served, will that be a denial of services?

When an out-of-state order is presented to CSSD for administrative enforcement and a parent objects that they did not get notice of that state's proceeding, CSSD's standard procedure is to request proof of service from the originating state. If the originating state is unable to produce the requested proof of service, the State of Alaska will not administratively enforce or register that foreign order. CSSD will then confer with the other state to try to agree on a proper course of conduct, which may include CSSD issuing a child support order in the matter. If this were to happen to a tribal order

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[22] Plaintiff's Post-Summary Judgment Brief at 3 (Dec. 2, 2011).

(even though this is how CSSD deals with all similar foreign orders) this might be interpreted as a denial of services under the tribe's proposed language.

The Tribe's suggested language is too broad and should not be adopted.

2. The Tribe proposes that the injunction "prohibit[] the defendants from excluding Tribal IV-D programs from their state plan regarding interstate services."[23]

This tribally proposed language is unwarranted and outside of the relief requested in the Tribe's complaint. CSSD's state plan is governed by federal law and regulations. The Tribe has not identified any deficiency in CSSD's current state child support plan nor do they allege in their complaint that CSSD's state plan is deficient. CSSD's current state plan provides for intergovernmental (including tribes) IV-D cooperation. The Tribe's own complaint admits that both the Tribe and CSSD were cooperating together on child support enforcement services but ultimately the fundamental jurisdiction issue had to be resolved.[24] To the extent the proposed injunction language can be read as prohibiting the State from denying any services, regardless of the circumstances, it suffers from the same flaws described above in the State's response to the Tribe's first proposal.

3. The Tribe proposes that the injunction "prohibit[] the defendants from denying interstate enforcement services under UIFSA to the Tribe's IV-D program."[25]

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[23] Plaintiff's Post-Summary Judgment Brief at 3 (Dec. 2, 2011).
[24] Complaint at 5 ¶28.
[25] Plaintiff's Post-Summary Judgment Brief at 3 (Dec. 2, 2011).

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Again, this proposed language is flawed for the same reasons set forth in the State's response to the Tribe's first proposal. If the State declined to enforce a Tribal order based on the facts of a specific case, would the State then be "denying interstate enforcement services under UIFSA to the Tribe's IV-D program"? The statutes should be allowed to govern the individual cases on their own facts as presented. A broad statement like this would do nothing but cause confusion and "add, at the remedial level, the possibility of contempt sanctions."[26] The Court should reject the suggested language as overly broad.

4. The Tribe proposes that the injunction "require[] the defendant to, whenever requested by the Tribe's IV-D program, provide administrative enforcement of the Tribe's child support orders under UIFSA Article 5."[27]

The only provision of Article 5 that is applicable to State administrative enforcement of foreign support orders is AS 25.25.507.[28] To require CSSD to administratively enforce a tribal order "whenever requested" ignores the language that CSSD shall administratively enforce "if appropriate."[29] The Tribe's proposal strips the agency of any discretion to refuse administrative enforcement of a flawed order. This proposal unnecessarily restrains the agency and results in an overly broad application of

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[26] *Brady*, 965 P.2d at 17.

[27] Plaintiff's Post-Summary Judgment Brief at 3 (Dec. 2, 2011).

[28] The remaining provisions of Article 5 of the State's UIFSA deal with employer compliance with income withholding orders of another state. That is an issue between the employer and the Tribe.

[29] AS 25.25.507(b).

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the statute. As such, this proposed language suffers from the same problems described in the responses to proposals 1 and 3 above.

5. The Tribe proposes that the injunction "require[] the defendants to, whenever necessary, register the Tribe's child support order under UIFSA Article 6."[30]

Again, this suggested provision suffers from the same problems described in the responses to proposals 1 and 3 above. In addition, this provision adds another layer of confusion by providing that the State is "require[d] . . . whenever necessary, [to] register the Tribes child support order." Who will determine when registration is "necessary"?

Where CSSD is provided with a foreign order for enforcement and registration, and that foreign order does not on its face warrant enforcement and registration,[31] CSSD's standard procedure is to return the order to the initiating state (rather than defending an obviously defective order).[32] CSSD should be allowed the same discretion with respect to any foreign order, including a tribal order. The State should be permitted to enforce UIFSA by applying the statutory scheme according to the facts of a particular case.

The Tribe's proposed language is overly broad and should be rejected.

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30 Plaintiff's Post-Summary Judgment Brief at 4 (Dec. 2, 2011).

31 For example, where the other state admits that it did not give adequate notice to the parties.

32 *See, e.g.*, AS 25.25.603(c) ("a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction").

6. The Tribe proposes that the injunction "prohibit[] the defendants from processing requests for services from the Tribe's IV-D program in a less timely manner than requests for services from other state IV-D programs."[33]

As discussed in section II.A. above, the dispute between the State and the Tribe centered on the issue of whether the Tribe had subject matter jurisdiction over child support matters. Given the Court's order on that issue, there is no need to issue an injunction requiring the State to process tribal orders. This will occur in the regular course of state business as tribal orders are submitted to the State for enforcement.

In addition, this proposed prohibition is imprecise because it is unclear what "less timely" means. While the State will be processing tribal orders based on this Court's order, tribal orders raise different issues from orders from other states (as in states of the United States) and even Tribes operating out of reservations.[34] Some of these tribal issues will take more time for CSSD to resolve. And, as a general matter, the time that CSSD has to spend with the Tribe on general questions and assistance far outweighs the extent of administrative support required by other states.[35] It is unclear

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[33] Plaintiff's Post-Summary Judgment Brief at 4 (Dec. 2, 2011).

[34] *See, e.g.*, Affidavit (second) of John Mallonee at 3 ¶ 10 (Dec. 20, 2010); AS 25.25.205(a) (defining continuing exclusive jurisdiction as the state that is the residence of the obligor, obligee, or child); AS 25.25.207(b)(2) (if there is more than one tribunal with continuing exclusive jurisdiction, the order issued by the tribunal in the current home state of the child controls); AS 25.25.204(a)(3) & (b)(3) (jurisdiction is determined by home state of child).

[35] Affidavit (second) of John Mallonee at 1-3 ¶¶ 1-11 (Dec. 20, 2010). Many of the questions from the Tribe are whether the State has a child support order for a specific child. These questions arise because the Tribe operates out of the same land base as the

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from the Tribe's suggested language whether a complicated matter (or a matter in which the Tribe poses lots of questions) would be "less timely" just because it takes longer because of the circumstances.

CSSD has a created an entire network within its agency to deal with the Central Council and its orders.[36] The State has dedicated two staff members to respond to Central Council requests at a cost to the State of $109,000 per year.[37] The State has agreed to special procedures (at the Tribe's request) to assist the Tribe with its child support program and to respond to Tribal inquiries regarding specific cases and CSSD procedures.[38] All of these special accommodations for the Tribe suggest that CSSD's assistance will be focused and prompt, not "less timely."

The Tribe's suggested language should be rejected because it does not set out a valid legal standard as discussed above.

7. The Tribe proposes that the injunction "prohibit[] the defendants from acting to establish a State of Alaska child support order for a child after they have been sent notice from the Tribe that the Tribe has already issued a child support order for that same child."[39]

State of Alaska. This type of question simply doesn't occur with other states. Id. at 3 ¶10

[36] Affidavit (second) of John Mallonee at 1-3 (Dec. 20, 2010).
[37] Affidavit (second) of John Mallonee at 2 ¶3 (Dec. 20, 2010).
[38] Affidavit (second) of John Mallonee at 2-3 ¶¶4-9 (Dec. 20, 2010).
[39] Plaintiff's Post-Summary Judgment Brief at 4 (Dec. 2, 2011).

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Again, while this language might initially seem reasonable, it fails to recognize the inherent and unanswered legal issues that arise under UIFSA because the Tribe lacks a land base. In addition, there are now three types of tribunals that can issue child support orders in the State of Alaska: the Alaska Courts, CSSD, and the tribes.[40] It is inevitable that the State courts, CSSD, *or Tribe* will inadvertently issue a child support order when another jurisdiction has already done so. Each case should be addressed as it arises. A blanket prohibition ignores the complexities of the situation and will do nothing to serve the interests of either party.

One case, the Werth/Charboneau[41] case (discussed in the briefing on summary judgment) illustrates how complicated child support can be—especially where there are three tribunals with jurisdiction operating in the same state.

- On April 8, 2008, the Tribe instituted proceedings to establish paternity of the Werth child.[42] Mr. Werth was served with the petition on April 29, 2008.[43]
- On April 9, 2008, divorce proceedings for Mr. and Mrs. Werth were filed in the Alaska Superior Court at Ketchikan.[44]

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[40] And notably, there are 229 different tribes that can now set child support orders in the State of Alaska based solely on the membership status of the child and without regard to land base. Each of those tribes can have their own rules and procedures with regard to ordering child support.

[41] Mr. Werth and Mr. Charboneau are not members of the Tribe. The child was a member or eligible for membership in the Tribe.

[42] State's Exh. 8 at 69-71 (Exhibits to Cross Motion for Summary Judgment).

[43] State's Exh. 8 at 72.

[44] This information is available in the Trial Courts Records Search in Courtview. http://www.courtrecords.alaska.gov/pa/pa.urd/pamw2000.docket_lst?1018957200.

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- On May 13, 2008, in the tribal hearing to establish paternity, the attorney for the Tribal Child Support Unit notified Mr. Werth that even if the Tribe established paternity, he would still be able to petition the Alaska courts to disestablish paternity.[45] Mr. Werth, then agreed to be the legally recognized father, and the Tribe issued a paternity order establishing him as the father and setting child support.[46]
- In September 2008, in the divorce action, the Alaska Superior Court disestablished Mr. Werth as the father and declared that he had no obligations to the child.[47]
- In February 2009, the Tribal Court refused to recognize or enforce the Alaska Superior Court's disestablishment of paternity (despite the earlier representations by the Tribal Child Support Unit attorney.)[48]
- In March 2009, the former Mrs. Werth applied to CSSD for services, did not tell CSSD about the earlier tribal proceedings, named Mr. Charboneau as the father, and sought child support from Mr. Charboneau.[49]

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[45] State's Exh. 28 at 26.

[46] State's Exh. 8 at 1-4, 6-8. A copy of the tribal order was sent to CSSD in October 2008. State's Exh. 8 at 1. At that time, the State did not recognize tribal jurisdiction over child support, and there was also no state registry of tribal orders, so CSSD had no record of the tribal order.

[47] State's Exh. 8 at 13, 16. This disestablishment fulfills the representation by the Tribal Child Support Unit that Mr. Werth would be able to disestablish paternity in the Alaska Superior Court regardless of the Tribal order. State's Exh. 28 at 26.

[48] State's Exh. 8 at 28.

[49] State's Exh. 3 at 6, 15-18. In her request for services, Ms. Werth did not mention the Tribe's establishment that Mr. Werth was the father, OR the Alaska Superior Court's disestablishment of Mr. Werth as the father. *Id.; see also id.* at 40-42.

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- In June 2009, CSSD established Mr. Charboneau as the father based on genetic testing and in August 2009 CSSD issued a child support order against Mr. Charboneau.[50]

These facts demonstrate the distinct possibility that duplicate orders will be issued, perhaps by the Tribe, perhaps by the Alaska Superior Court, or perhaps by CSSD. To some extent, circumstances such as this will be prevented by the lines of communication set up between the Tribe and CSSD. But, these multiple-order situations will probably still occur—perhaps because the Alaska Court System has no access to tribal court information (except to the extent that the parents themselves inform the Alaska Court System of the tribal proceedings), and perhaps because parents requesting CSSD services failed to fully inform the State (or the Tribe) of parallel proceedings. The State and the Tribe should be allowed to resolve these multiple order situations as they arise.

In addition, the Tribe's suggested blanket prohibition against duplicate orders runs far afield of the question resolved in this litigation—the extent of tribal jurisdiction over child support matters. The Tribe's language fails to recognize that there will be inherent and unanswered legal issues arising under UIFSA. Those issues should be resolved on a case-by-case basis as they arise. The Court should narrowly tailor the injunction to fit the legal question answered in this case, and reject the Tribe's proposed language.

[50] State's Exh. 3 at 14 and 19-24.

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8. The Tribe proposes that "[w]ith respect to the resolution of current multiple, conflicting child support orders that the Tribe has notified the defendants about, this Court should Order that the defendants must communicate with plaintiff to promptly resolve such conflicts—including the conflicting order referenced in the Affidavit in Support of Plaintiff's Motion for Summary Judgment—according to UIFSA's rules regarding continuing, exclusive jurisdiction and multiple orders."[51]

The State has no problem communicating and working with the Tribe to resolve issues regarding conflicting orders given the Court's decision that the Tribe has subject matter jurisdiction based on the membership of the child. In fact the State has created an extensive system within CSSD to facilitate those communications (at great cost to the State).[52] An order requiring the State to communicate with the Tribe is unnecessary.

In addition, the Tribe's language is problematic in that it requires the resolution of conflicts "according to UIFSA's rules regarding continuing, exclusive jurisdiction and multiple orders." We have explained above how UIFSA's rules regarding these issues are based on land and the residences of the parties, making a strict application of UIFSA impossible. The State and the Tribe will have to jointly resolve these fundamental problems created by UIFSA's language and the fact that the Tribe's jurisdiction is determined by child membership (and not land).[53]

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51 Plaintiff's Post-Summary Judgment Brief at 4 (Dec. 2, 2011).

52 Affidavit (Second) of John Mallonee at 2-3 ¶3, 7, 8, 9 (Dec. 20, 2010).

53 Other "states" as defined in UIFSA operate out of their state boundaries or out of their reservations. *See* AS 25.25.101(19) (defining "state").

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The Tribe's suggested language is unnecessary and imprecise, and should not be adopted by this Court.

9. Lastly, the Tribe proposes that "the injunction should encompass the requests for enforcement that the Tribe has sent to CSSD since November 2009, which CSSD has ignored, including the requests specified in the Motion for Summary Judgment" and "prohibit the state from further delay in processing these requests, and require prompt action to provide enforcement services in accordance with UIFSA, related state regulations, Title IV-D, and related federal regulations."[54]

The core dispute between the State and the Tribe was whether the Tribe had subject matter jurisdiction over child support. It was not how to process orders of "states" that had jurisdiction over child support. CSSD did not "ignore" these orders. Once the Tribe sued the State, these orders were placed in abeyance pending resolution of the fundamental legal question—whether the Tribe had jurisdiction over child support. With that question resolved by this Court, CSSD and the Tribe can move forward on these orders. An order telling the State to do so is simply unnecessary.

The Tribe's proposed terms go well beyond the bounds of any appropriate injunctive relief. The Tribe's proposed terms are not "specific in terms."[55] It is unclear what state conduct might be perceived as violating the Tribe's proposed injunctive

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54 Plaintiff's Post-Summary Judgment Brief at 4-5 (Dec. 2, 2011).

55 Alaska R. Civil P. 65(d).

terms, or what state acts are even being "sought to be restrained."[56] The Tribe's proposal for injunctive relief should be rejected.

III. Possible questions about personal jurisdiction, under *Kulko* or other authority, should not be addressed in the injunction.

The State agrees with the Tribe that the Court's injunction need not cover personal jurisdiction. The Tribe did not raise (and the parties did not brief) any claims regarding personal jurisdiction in this litigation. Accordingly, the Court should not broaden the injunctive relief to include discussion of *Kulko*[57] or to address personal jurisdiction. Questions related to the existence and extent of tribal personal jurisdiction over particular parties should be left to future cases, if any, where such questions are actually at issue.

IV. Final judgment should be entered, but the form of that final judgment should be subject to future briefing.

All of the issues raised by the Tribe's complaint in this matter have been resolved by this Court's order (and the agreement of the parties regarding constitutional claims, section 1983, and personal jurisdiction, as discussed above). However, the State agrees with the Tribe that the form of final judgment should be determined following the issuance of this Court's order on declaratory and injunctive relief.

Conclusion

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56 Alaska R. Civil P. 65(d).

57 *Kulko* v. *Superior Court of California*, 436 U.S. 84 (1978).

The Court does not need to reach the constitutional and § 1983 questions that were raised by the Tribe's complaint. Injunctive relief is unnecessary in this case given the Court's decision on declaratory relief. But if injunctive relief is provided it must be very narrowly tailored. The parties agree that any questions of personal jurisdiction should be resolved in the context of specific cases. This case is ready for issuance of final judgment since the Court's orders will dispose of all matters in this case. However, the precise wording of a final judgment should be drafted once the matters in this additional briefing have been resolved.

DATED: February 3, 2012

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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

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2012, a true and correct copy of the State's Additional Briefing and this *Certificate of Service* were served by U.S. Mail to the following:

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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

PLAINTIFF'S REPLY BRIEF REGARDING POST-SUMMARY JUDGMENT ISSUES

In its decision on summary judgment, this Court held that it would issue an injunction requiring the State of Alaska CSSD to comply with UIFSA and applicable regulations. The Court directed the parties to brief the precise wording of the Court's injunction.[1] The Tribe has submitted proposed language to this Court. The State has not. Instead, the State continues to argue against the issuance of any injunction.[2] In the alternative, the State submits that any injunction should be narrowly tailored but does not suggest any wording to this Court.

[1] Order on Summary Judgment at 14-15 (Oct. 25, 2011).

[2] If the State wanted to challenge the court's holding on issuing an injunction, it could have done so in a motion to reconsider. It did not. Those arguments do not fit within the briefing ordered by the court, and should be rejected at this point.

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For the reasons detailed below, entering an injunction with the Tribe's proposed language — modified in certain instances to accommodate the State's concerns — will put the State on notice of its obligations while allowing it appropriate discretion to manage its inter-state caseload. An injunction against a state agency should be "closely tied to the identified violation."[3] The injunctive relief the Tribe is proposing closely tracks the problems outlined in the plaintiff's Complaint and Motion for Summary Judgment surrounding CSSD's failure to process — and in some cases even acknowledge — requests for services from the Tribe because of its longstanding jurisdictional objections.

1. **ENJOINING THE DEFENDANTS FROM DENYING THE FULL RANGE OF SERVICES AVAILABLE UNDER ITS IV-D PLAN TO THE TRIBE'S IV-D PROGRAM, AS REQUIRED BY 45 C.F.R. 302.36(A)(2).**

The Tribe's suggested language enjoins CSSD only from denying the Tribe's IV-D program its full range of appropriate services, and does not impose any greater restriction than is necessary to ensure those services.[4]

Contrary to the State's arguments, nothing in the language would strip the State of its discretion to deny services to avoid a violation of due process or any other law, since the provision of services is contingent on 45 C.F.R. 302.36(a)(2). That regulation in turn cites 45 C.F.R. 303.7, which requires IV-D agencies responding to requests from other IV-D agencies "to provide any necessary services as it would in intrastate IV-D cases."[5] This regulation does not force CSSD to enforce invalid orders. It only requires CSSD to consider tribal support orders and other states' support orders on a level playing field.

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[3] *Ashker v. Cal. Dep't of Corr.*, 350 F.3d 917, 924 (9th Cir. 2003).
[4] *See Kohl v. Legoullon*, 936 P.2d 514, 519 (Alaska 1997) (*reh'g denied*).
[5] 45 C.F.R. 303.7(c)(7).

The State can still, on a case-by-case basis, determine whether an order submitted by the Tribe for enforcement meets the same requirements as an order submitted by an Alaska superior court or another state IV-D program. As described in 45 C.F.R. 303.7(c)(4), there are prescribed measures that CSSD can take to address problems of inadequate documentation. The proposed language is consistent with those procedures.

The aim of the Tribe is to ensure that its orders are treated the same as orders from other states, as required by law. The Tribe's proposed language is narrowly tailored to satisfy this legitimate goal.

2. ENJOINING THE STATE FROM EXCLUDING TRIBAL IV-D PROGRAMS FROM THEIR STATE PLAN REGARDING INTERSTATE SERVICES.

Federal child support regulations at 45 C.F.R. § 302.36(a) require that every state IV-D plan "shall provide that .... The 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."

Services available under a IV-D plan are described in Section 303.7 and they include processing and enforcing orders referred by another "state."[6] Section 303.7 also discusses timelines for responding to requests for enforcement. The Tribe's summary judgment brief notes that "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)."[7]

This suggested injunction language would enjoin the state from remaining out of compliance with the federal IV-D regulations. As explained above, this language would not deprive CSSD the discretion and flexibility to address requests for enforcement that are legally inadequate.

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[6] 45 C.F.R. § 303.7(c)(7)(iii).
[7] Plaintiff's Motion for Summary Judgment, page 30.

3-5. ENJOINING THE DENIAL OF INTERSTATE ENFORCEMENT SERVICES UNDER UIFSA, INCLUDING ADMINISTRATIVE ENFORCEMENT AND REGISTRATION.

Just as UIFSA does not require the enforcement of legally inadequate orders, an injunction prohibiting the denial of enforcement services under UIFSA would not require the State to enforce legally inadequate tribal court orders. The language does not impose a blanket injunction on denying services, only those required under UIFSA.

For example, for CSSD to comply with the injunction, it would have to provide administrative enforcement of a tribal child support under Article 5 only "if appropriate," as determined by CSSD.[8] Similarly, Article 6 calls for CSSD to register a tribal child support order only when the appropriate documentation has been submitted by the tribal IV-D agency and when administrative enforcement is appropriate.[9] If the Tribe were to request administrative enforcement or registration of a flawed order, the state's regulations implementing UIFSA offer options to address the flawed order.[10] These regulations track the federal IV-D regulations at 45 C.F.R. 303.7(c)(4). Requiring the State to enforce an order "under UIFSA" does require the State to enforce an order contrary to UIFSA and its implementing regulations, but rather in conformity with those laws.

If it would be clearer, the injunction could be worded to include the phrase "implementing regulations" instead of just UIFSA. The Tribe would also not oppose narrowing the proposed language enjoining the denial of services under UIFSA to read:

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[8] AS 25.25.507(b).

[9] AS 25.25.507(b) and AS 25.25.602.

[10] 15 AAC 125.700(b) ("If the documentation received by the agency under (a) of this section does not conform to the requirements of AS 25.25.602 (a), the agency will remedy any defect that it can without the assistance of the requestor. If the agency is unable to remedy a defect, the agency will immediately notify the requestor of the necessary additions or corrections required to enforce the order or orders.").

"The defendants shall refrain from denying interstate enforcement services required by UIFSA and its implementing regulations to the Tribe's IV-D program."

6. ENJOINING THE STATE FROM PROCESSING REQUESTS FOR SERVICES FROM THE TRIBE IN A LESS TIMELY MANNER THAN REQUESTS FROM OTHER STATES.

The phrase "less timely" is not ambiguous. Nor is requiring the State to process requests from the Tribe in a timely manner "overly intrusive," as it only ensures the State will treat tribal and out-of-state requests similarly.[11] For example, if another state sends CSSD an enforcement request with inadequate documentation, CSSD must notify the other state within 75 calendar days.[12] To satisfy the federal requirement that it provide its full range of services to both state and tribal IV-D agencies, CSSD should use the same timelines for state and tribal IV-D agencies. Providing services to the Tribe in a less timely manner than providing services to other states equates to less than the "full range of services."

The State speculates that it will take more time to process requests for services for tribal court orders because tribal orders sometimes raise unique issues.[13] This speculation does not justify CSSD providing slower services to the Tribe than it does to other states. First, according to CSSD, it pays two dedicated staff members $109,000 a year to respond to the Tribe's requests.[14] To the extent there may be an occasional conflicting order or unique tribal issue, the State does not explain why the efforts of two wholly-dedicated staff members would be inadequate to address these issues according to normal

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[11] *Ashker v. Cal. Dep't of Corr.*, 350 F.3d 917, 924 (9th Cir. 2003).
[12] 45 C.F.R. 303.7(c)(4)(ii).
[13] State's Additional Briefing, page 13.
[14] *Id* at page 14; State's Reply to Opposition to State's Cross-Motion for Summary Judgment, at page 30; Affidavit (second) of John Mallonee at 2 ¶3 (Dec. 20, 2010).

deadlines. Even if that staffing were inadequate, it would be CSSD's responsibility as a recipient of IV-D funds to make its staffing adequate to fulfill inter-state requests for services:

> The State must ensure that the organizational structure and staff of the IV-D agency are adequate to provide for the administration or supervision of the following support enforcement functions specified in 303.20(c) of this part for its interstate IV-D caseload: Intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement and investigation.[15]

The fact that the Tribe may ask certain questions that other states do not ask is irrelevant to responding to requests for services in a timely manner. However, this Court may build flexibility into the injunction by adding that caveat that: "Timelines may be adjusted as appropriate through mutual agreement of the state and the Tribe."

7 & 8. ENJOINING THE ISSUANCE OF MULTIPLE, CONFLICTING ORDERS

The State objects to language requiring avoidance of duplicate orders and communication to promptly resolve current multiple, conflicting child support orders. The Tribe would not object to withdrawing this requested language. The State has demonstrated efforts to try and avoid multiple orders, and the Tribe anticipates that the parties can address these issues on a case-by-case basis.

9. ENJOINING FURTHER DELAYS IN PROCESSING PENDING ENFORCEMENT REQUESTS

The State explains that the Tribe's requests for enforcement dating back to 2009 were placed in abeyance pending resolution of the fundamental legal question of whether

[15] 45 C.F.R. 303.7(c)(3).

the Tribe has jurisdiction over child support.[16] The State claims that with that question resolved by the court, CSSD and the Tribe can move forward on these orders.[17] Unfortunately, it has been over four months since the court's jurisdictional ruling and the state has yet to take action on the outstanding requests for enforcement from the Tribal Child Support Unit, or taken action on a new request for enforcement.[18] The amended language proposal could not be any clearer: the State needs to start processing these requests for services and cease its longstanding policy of denying services for children and families who have Tribal child support orders. The proposed injunctive language is narrowly tailored and would allow the Tribe to address further delays, if needed, without the necessity of filing new lawsuits.

A proposed order with the Tribe's suggested language is attached.

DATED: March 6, 2012

ALASKA LEGAL SERVICES CORPORATION
Attorneys for Plaintiff

Holly Handler, AK Bar No. 0301006

Certificate of Service

The undersigned certifies that on the 6th day of March, 2012, a true copy of this document was served on Stacy Steinberg and Mary Lundquist via email and US Mail, by: hdh

[16] State's Additional Briefing, at page 19.

[17] *Id.*

[18] *See* attached Affidavit of Tribal Child Support Unit attorney Jessie Archibald, ¶4-5.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

2012 JAN 25 PM 4:03

COURTS

BY _____ DEPUTY

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' POST-SUMMARY JUDGMENT REPLY BRIEF

I, Jessie Archibald, state the following upon oath under penalty of perjury:

1. I am staff attorney for the Central Council of Tlingit and Haida Indian Tribes of Alaska's ("the Tribe's") Tribal Child Support Unit (TCSU).
2. The facts below are true to the best of my knowledge and belief.
3. I have recently consulted with the TCSU's case specialists regarding TCSU's requests for child support enforcement services pending at CSSD since as far back as 2009.
4. Upon investigating the cases in which services were requested — other than PFD garnishment requests — our records indicate that CSSD has still taken no action to acknowledge or process these requests for services.
5. Since the court's October 2011 decision, an additional request for enforcement services was sent from TCSU to CSSD. This request dated December 6, 2011, in tribal IV-D case

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Fax: (907) 586-2449

number 08-0084 was for collection of unemployment benefits. CSSD has made no response.

3-6-2012
Date

Jessie Archibald
Jessie Archibald

Sworn to and subscribed before me at Juneau Alaska, this the 6th day of March, 2012.

NOTARY PUBLIC
My commission expires: 09/07/15

STATE OF ALASKA
OFFICIAL SEAL
Carlene J. Nore
NOTARY PUBLIC
My Commission Expires 09/07/2015

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 IN THE TRIAL COURTS
STATE OF ALASKA
FIRST DISTRICT
12 SEP 18 AM 11:34
CLERK, TRIAL COURTS
BY _____ DEPUTY

Case no. 1JU-10-376 CI

PLAINTIFF'S NON-OPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT AND INJUNCTION

Plaintiff, through counsel, submits the attached proposed final judgment and injunction. This motion is non-opposed by defendants, as explained in the attached affidavit of counsel.

DATED: September 18, 2012

ALASKA LEGAL SERVICES CORPORATION

Attorneys for Plaintiff

Holly Handler, AK Bar No. 0301006

Certificate of Service

The undersigned certifies that on the 18th day of September, 2012, a true copy of this document and attachments was served on Stacy Steinberg and Mary Lundquist via US Mail, by: HLH

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AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S NON-OPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT AND INJUNCTION

I, Holly Handler, after being first duly sworn, upon oath depose and state:

1. I am attorney for plaintiff in this matter.

2. I have contacted the attorneys for the defendants about the proposed final judgment and injunction in this case and they have confirmed that they do not oppose the attached form of the final judgment and injunction.

FURTHER AFFIANT SAYETH NAUGHT.

Holly Handler, AK Bar. 0301006

SUBSCRIBED AND SWORN to before me this 18th day of September, 2012 at Juneau, Alaska.

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Notary Public, State of Alaska
My Commission Expires: 9/21/13