

California Rules of Court

Rule 5.372. Transfer of title IV-D case to a tribal court



California Rules of Court

Rule 5.372. Transfer of title IV-D case to a tribal court

(a) Purpose

This rule is intended to define the procedure for transfer of title IV-D child support cases from a California superior court to a tribal court.

(b) Definitions

- (1) "Tribal court" means any tribal court of a federally recognized Indian tribe located in California that is receiving funding from the federal government to operate a child support program under title IV-D of the Social Security Act (42 U.S.C. § 654 et seq.).
- (2) "Superior court" means a superior court of the state of California.
- (3) "Title IV-D child support cases" include all cases where title IV-D services are being provided whether the case originates from the local child support agency's filing of a summons and complaint or later becomes a title IV-D case when the local child support agency registers a child support order or intervenes in a child support action by filing a change of payee.

(c) Disclosure of related case

A party must disclose in superior court whether there is any related action in tribal court in the first pleading, in an attached affidavit, or under oath. A party's disclosure of a related action must include the names and addresses of the parties to the action, the name and address of the tribal court where the action is filed, the case number of the action, and the name of judge assigned to the action, if known.

(d) Notice of intent to transfer case

Before filing a motion for case transfer of a child support matter from a superior court to a tribal court, the party requesting the transfer, the state title IV-D agency, or the tribal IV-D agency must provide the parties with notice of their right to object to the case transfer and the procedures to make such an objection.

(e) Determination of concurrent jurisdiction

The superior court may, on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under California Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and postjudgment cases. When ruling on a motion to transfer, the superior court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the transfer will occur unless a party has objected in a timely manner. On the filing of a timely objection to the transfer, the superior court must conduct a hearing on the record considering all the relevant factors set forth in (f).

(f) Evidentiary considerations

In making a determination on the application for case transfer, the superior court must consider:

- (1) The nature of the action;
- (2) The interests of the parties;
- (3) The identities of the parties;
- (4) The convenience of the parties and witnesses;
- (5) Whether state or tribal law will apply;
- (6) The remedy available in the superior court or tribal court; and
- (7) Any other factors deemed necessary by the superior court.

(g) Order on request to transfer

The court must issue a final order on the request to transfer including a determination of whether concurrent jurisdiction exists.

(h) Proceedings after order granting transfer

Once the superior court has granted the application to transfer, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court.

Rule 5.372 adopted effective January 1, 2014.



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

Title

Family Law: New Rule for Title IV-D Case
Transfers to Tribal Court

Agenda Item Type

Action Required

Effective Date

January 1, 2014

Date of Report

October 11, 2013

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 5.372

Contact

Anna Maves, Senior Attorney
916-263-8624
anna.maves@jud.ca.gov

Recommended by

Family and Juvenile Law Advisory
Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

Ann Gilmour, Attorney

415-865-4207
ann.gilmour@jud.ca.gov

California Tribal Court/State Court Forum

Hon. Richard C. Blake, Cochair
Hon. Dennis M. Perluss, Cochair

Executive Summary

The Tribal Court/State Court Forum and the Family and Juvenile Law Advisory Committee jointly propose a new California rule of court that would provide a consistent procedure for the discretionary transfer of title IV-D child support cases from the state superior courts to tribal courts when there is concurrent jurisdiction over the matter in controversy. This proposal was initiated as a result of meetings between the Yurok Tribe, federal Office of Child Support Enforcement, and the California Department of Child Support Services (DCSS).

Recommendation

The Tribal Court/State Court Forum and the Family and Juvenile Law Advisory Committee jointly recommend that the Judicial Council, effective January 1, 2014, adopt a new rule of court,

California Rules of Court, rule 5.372, to provide a consistent procedure for the discretionary transfer of title IV-D child support cases from the state superior courts to tribal courts when there is concurrent jurisdiction over the matter in controversy.

Previous Council Action

There has been no previous council action.

Rationale for Recommendation

This proposal responds to the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state superior court to the tribal IV-D child support court when there is concurrent subject matter jurisdiction.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. No. 104-193, as amended by the Balanced Budget Act of 1997, P.L. No. 105-33 (111 Stat. 251), authorized the direct federal funding of tribal child support programs. Before the passage of PRWORA, the only option available to tribal members seeking child support program services was to apply to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for start-up planning for a tribal child support program on August 1, 2011. The Yurok was required to have comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs has created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the superior court to the tribal court. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, the proposed rule is drafted in anticipation that other tribes may develop such programs in the future. Some of the information considered in developing this rule are the following:

- When tribal IV-D child support programs have been developed in other states, tribes and states have followed similar procedures of developing state rules of court and tribal/state IV-D agency protocol agreements to provide for the orderly transfer of court cases and management responsibility for child support services.¹
- In order to allow future tribal IV-D programs to tailor their specific needs to the procedure for identifying and transferring cases from the state title IV-D program, not every operational

¹ According to the federal Office of Child Support Enforcement, there are currently 52 tribal IV-D agencies located in the United States.

aspect or procedure of the respective IV-D agencies will be addressed by the statewide rule of court. The state title IV-D program and the Yurok Tribe IV-D program will be concurrently executing protocol agreements to set forth the agencies' respective responsibilities for the process of transferring case management responsibilities for child support services from the state to the tribe. Some examples of protocol provisions would include the process for identifying the specific tribal IV-D cases/parties that would be given notice of the intent to request case transfer, the number of cases selected for transfer, and how often the case transfers occur. These protocols may vary from tribe to tribe as new tribal programs come on board and protocol agreements are negotiated with DCSS.

- It is anticipated that the tribal IV-D agency and state IV-D agency will exchange information to identify child support cases with existing child support orders that would be appropriate for transfer from the superior court to the tribal court. Rule 5.372 is intentionally broad to allow the tribal IV-D agency and DCSS to develop protocols to meet the unique needs of each of the tribal IV-D programs and DCSS. Further, although it is anticipated that either a tribal IV-D agency or a state IV-D agency will be the party initiating case transfer, the rule allows for flexibility to permit a party to request transfer where appropriate.
- Each hearing on a request for case transfer will be heard in the superior court by the child support commissioner. The court's cost for the hearing and for transferring the file to the tribal court are reimbursable by the superior court's title IV-D grant as a title IV-D function.
- The content of the first proposed protocol helped inform the committee and the forum about what should be in the proposed rule of court and what will be reserved for the protocol developed between DCSS and the Yurok tribal child support agency. In order to accommodate the various needs of tribes who will apply for title IV-D funding, the committee and the forum expects each protocol to be different. The proposed protocol between the Yurok tribal child support agency and DCSS sets out that if both parties object to the case transfer from state to tribal court, the tribal child support agency will rescind the transfer request and no motion for the case transfer will be filed. If neither party objects to the case transfer, the matter will still go before the superior court for a finding on whether concurrent jurisdiction exists and an order for case transfer. If only one party objects, the matter will go before the superior court for a hearing on the issue of case transfer.
- The issue of concurrent jurisdiction between state and tribal courts is governed by various statutes and case law, for example:
 - In 1953, through the enactment of Public Law No. 83-280 (Public Law 280) (18 U.S.C. § 1162 and 28 U.S.C. § 1360), Congress extended to six states (including California) state jurisdiction over many crimes and some civil matters when the cause of action arose in Indian Country. While Public Law 280 extended state jurisdiction in specified areas, it did not diminish any inherent tribal court jurisdiction. Federal courts have specifically found that tribal courts have concurrent jurisdiction over domestic relations actions as

long as they are willing to assume jurisdiction. *Sanders v. Robinson* (9th Cir. 1988) 864 F.2d 630.

- The Full Faith and Credit for Child Support Orders Act, P.L. No. 103-383 (28 U.S.C. § 1738(B)) mandates full faith and credit for child support orders between tribal and state courts. The mutual recognition of child support orders issued by a tribal or state court has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment on the proposal was circulated for public comment from April 19, 2013, through June 19, 2013, to the standard mailing list for family and juvenile law proposals including child support professionals, as well as to the regular rules and forms mailing list.² These distribution lists include appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, child support commissioners, court administrators, attorneys, family law facilitators, court clerks, social workers, probation officers, mediators, the California Department of Child Support Services, the Child Support Directors Association's forms committee and legal practices committee, title IV-D program directors, and other family and juvenile law professionals. The invitation to comment was also circulated to California Tribal Leaders, Tribal Advocates and the Statewide Indian Child Welfare Act Working Group.

Seven written comments were received. Of these, all seven commentators agreed with the proposed rule of court. The committee and the forum reviewed and analyzed the comments and responded to a question submitted by one of the commentators. A chart of comments received and the committee and the forum's responses is attached at pages 9–11.

Several comments related to the proposed tribal transfer rule of court, including comments from the Superior Courts of Los Angeles, Orange and San Diego Counties. All three courts were supportive of the proposal. Specifically the Superior Court of Los Angeles County stated that the proposed rule is appropriate to promote the sovereignty of federal recognized tribes and provides consistency in the transfer procedure. Although neither the Superior Courts of Orange County nor San Diego County provided a specific comment regarding the proposal, both indicated they were supportive of the proposed rule. The Superior Court of San Diego County did ask whether the proposed rule applies only to cases that originated by the local child support agency or whether it also applies to dissolution cases in which a change of payee is filed and the local child support agency enforces the support order. The committee and forum revised the proposed rule to add the definition of a title IV-D case in the definition section of the rule. This definition

² As reflected in the attached comment chart, when rule 5.372 was circulated for comment, the rule number was identified as 5.380. Upon review, it was determined that there is already a rule of court with that number. Accordingly the proposed rule of court has been changed to rule 5.372 and all references to the rule number have been changed.

provides that title IV-D child support cases include all cases in which title IV-D services are being provided, whether the case originated by the local child support agency filing a summons and complaint or subsequently became a title IV-D cases when the local child support agency registered a child support order or intervened into a child support action by filing a change of payee. The committee and forum provided further clarification that under the proposed rule, at subsection (f), only the child support and custody provision of the action transfer to the tribal court.

The Yurok Child Support Services submitted a comment agreeing with the proposed rule and stated that the transfer rule is necessary because there has never been a tribal title IV-D child support program in California and the rule encourages cooperation between the state and tribe to provide child support services.

The California Judges Association also submitted a comment agreeing with the proposed rule because it will set up statewide procedures and boundaries for the transfer of child support cases from states courts to tribal courts.

Although the invitation to comment specifically requested comments on whether current title IV-D grant funding would be sufficient to address any additional costs associated with the transfer of title IV-D cases, there were no comments that responded to this question.

As an alternative to the proposed rule, the committee and the forum considered allowing each superior court to develop a local rule to transfer governmental child support cases to the tribal courts. This option was not considered practicable because while a tribe may be located in a single county, its members may be found throughout the state. The Yurok Tribe expects that it may have members with child support cases in counties throughout the state. Therefore, it is not practical to anticipate each of California's approximately 111 federally recognized tribes working out individual agreements with local courts in the 58 counties. There needs to be a uniform statewide rule. Circulating this new rule for public comment helps to ensure that it will reflect the needs of the state trial courts and the tribal courts. The committee and forum further concluded that the failure to enact a statewide rule would increase costs to the local courts by requiring each court to go through the process to develop its own local rule.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts of the rule should be minimal; courts would need to transfer cases to the tribal courts even without the adoption of the rule. Existing Judicial Council forms can be used for filing the request for case transfer with the superior court and for issuing orders after the hearing. Implementation of the rule may require some training of court staff in a new case transfer procedure for those courts that will be transferring cases. These one-time operational costs should be outweighed by the benefit to individual courts of not having to individual develop and enact local rules of court. Justice partners, including the Department of Child Support Services and the tribal IV-D programs, will have costs associated with creating notice forms and informational materials on the objection

process. DCSS and the only current tribal IV-D court recognize these costs and are nevertheless supportive of a statewide rule. Absent a statewide rule of court, there would be additional costs to justice partners, including the tribal courts, the California Department of Child Support Services, and local child support agencies, in having to train their staff in multiple local procedures.

Attachments

1. Cal. Rules of Court, rule 5.372 at pages 7–8.
2. Chart of comments at pages 9–11.

Rule 5.372 of the California Rules of Court is adopted, effective January 1, 2014, to read:

1 **Rule 5.372. Transfer of title IV-D case to a tribal court**

2
3 **(a) Purpose**

4
5 This rule is intended to define the procedure for transfer of title IV-D child support
6 cases from a California superior court to a tribal court.

7
8 **(b) Definitions**

9
10 (1) “Tribal court” means any tribal court of a federally recognized Indian tribe
11 located in California that is receiving funding from the federal government to
12 operate a child support program under title IV-D of the Social Security Act
13 (42 U.S.C. § 654 et seq.).

14
15 (2) “Superior court” means a superior court of the state of California.

16
17 (3) “Title IV-D child support cases” include all cases where title IV-D services
18 are being provided whether the case originates from the local child support
19 agency’s filing of a summons and complaint or later becomes a title IV-D
20 cases when the local child support agency registers a child support order or
21 intervenes in a child support action by filing a change of payee.

22
23 **(c) Disclosure of related case**

24
25 A party must disclose in superior court whether there is any related action in tribal
26 court in the first pleading, in an attached affidavit, or under oath. A party’s
27 disclosure of a related action must include the names and addresses of the parties to
28 the action, the name and address of the tribal court where the action is filed, the
29 case number of the action, and the name of judge assigned to the action, if known.

30
31 **(d) Notice of intent to transfer case**

32
33 Before filing a motion for case transfer of a child support matter from a superior
34 court to a tribal court, the party requesting the transfer, the state title IV-D agency,
35 or the tribal IV-D agency must provide the parties with notice of their right to
36 object to the case transfer and the procedures to make such an objection.

37
38 **(e) Determination of concurrent jurisdiction**

39
40 The superior court may, on the motion of any party and after notice to the parties of
41 their right to object, transfer a child support and custody provision of an action in
42 which the state is providing services under California Family Code section 17400
43 to a tribal court, as defined in (a). This provision applies to both prejudgment and

1 postjudgment cases. When ruling on a motion to transfer, the superior court must
2 first make a threshold determination that concurrent jurisdiction exists. If
3 concurrent jurisdiction is found to exist, the transfer will occur unless a party has
4 objected in a timely manner. On the filing of a timely objection to the transfer, the
5 superior court must conduct a hearing on the record considering all the relevant
6 factors set forth in (f).

7
8 **(f) Evidentiary considerations**

9
10 In making a determination on the application for case transfer, the superior court
11 must consider:

- 12
13 (1) The nature of the action;
14
15 (2) The interests of the parties;
16
17 (3) The identities of the parties;
18
19 (4) The convenience of the parties and witnesses;
20
21 (5) Whether state or tribal law will apply;
22
23 (6) The remedy available in the superior court or tribal court; and
24
25 (7) Any other factors deemed necessary by the superior court.

26
27 **(g) Order on request to transfer**

28
29 The court must issue a final order on the request to transfer including a
30 determination of whether concurrent jurisdiction exists.

31
32 **(h) Proceedings after order granting transfer**

33
34 Once the superior court has granted the application to transfer, the superior court
35 clerk must deliver a copy of the entire file, including all pleadings and orders, to the
36 clerk of the tribal court.

SPR13-17

Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Position | Comment | Committee Response |
|--|----------|---|------------------------------|
| <p>1. California Judges Association Lexi Howard Legislative Director</p> | <p>A</p> | <p>The California Judges Association provides the following comments on the proposed rule, as specified in Invitation to Comment SPR13-17.</p> <p>This proposal is for the creation of a new CRC providing a consistent procedure for the discretionary transfer of IV-D child support cases from State Court to Tribal Courts when there is concurrent jurisdiction. The hearing of the request for the transfer would be heard in the Superior Court by the AB 1058 Child Support Commissioner with the costs of the hearing and the potential transfer reimbursable by the IV-D grant. This is a new development because up to now there has never been a Tribal IV-D agency in California.</p> <p>It will require some additional information to be disclosed in a IV-D child support proceeding in State Court and the potential for additional hearing/s if the party objects to the transfer to Tribal Court. It does however provide for a uniform statewide rule rather than a multitude of local rules.</p> <p>CJA supports SPR13-17 because it will help set the boundaries and procedures for the potential transfer of a child support case from State to Tribal Courts and make a statewide rule for all State Courts to follow if and when applicable.</p> | <p>No response required.</p> |
| <p>2. Child Welfare Services Corey Kissel CWS Policy Analyst</p> | <p>A</p> | <p>This proposed change does not impact Child Welfare Services.</p> | <p>No response required.</p> |

SPR13-17

Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Position | Comment | Committee Response |
|---|----------|--|--|
| 3. Orange County Bar Association Wayne R. Gross President | A | No specific comments. | No response required. |
| 4. Superior Court of Los Angeles County | A | Given that there is one tribal child support agency in California which has gone through the requirements to qualify for Title IV-D funding and others are expected to follow, this CRC is appropriate to promote the sovereignty of federally recognized tribes and provide consistency in transfer procedures. | No response required. |
| 5. Superior Court of San Diego County Michael M. Roddy Court Executive Officer | A | Is it intended that the new rule only applies to cases that originate with DCSS or would this also apply to regular dissolution cases in which a substitution of payee is filed and DCSS is enforcing support? | The committee and forum revised the proposed rule to provide further clarification in response to this comment. The rule will be revised in the definition section to provide clarification that a title IV-D child support cases include all cases where title IV-D services are being provided whether the case originated by the local child support agency filing a summons and complaint or subsequently becomes a title IV-D cases by the local child support agency registering a child support order or intervening into a child support action by filing a change of payee. |
| 6. Hon. Rebecca Wightman Child Support Commissioner Superior Court of San Francisco County | A | I agree with the proposed rule, and believe it is very important to have a statewide rule that will be applicable to all courts on this subject. | Also, subsection (f) of the proposed rules specifies that only the child support and custody provisions of the action transfer. No response required. |
| 7. Yurok Child Support Services Denise Bareilles | A | The proposed rule of court acknowledges the tribe's inherent jurisdiction over domestic | No response required. |

SPR13-17

Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|--------------------------------|-----------------|---|---------------------------|
| | Staff Attorney/Program Manager | | relations matters. The case transfer rule is necessary because there has never been a Title IV-D tribal child support agency in California. The rule facilitates the tribal court and associated tribal child support agency's ability to work cases that are under the tribe's jurisdiction. The rule encourages a cooperative manner for the state and tribe to work together in servicing child support cases. | |

State of Wisconsin

Petition for discretionary transfer of
civil cases to tribal court

Wisconsin Statutes 801.54 – Discretionary transfer of civil actions to tribal court

Current as of: 2015 | *Check for updates* | *Other versions*

(1) SCOPE. In a civil action where a circuit court and a court or judicial system of a federally recognized American Indian tribe or band in Wisconsin (“tribal court”) have concurrent jurisdiction, this rule authorizes the circuit court, in its discretion, to transfer the action to the tribal court under sub. (2m) or when transfer is warranted under the factors set forth in sub. (2). This rule does not apply to any action in which controlling law grants exclusive jurisdiction to either the circuit court or the tribal court.

(2) DISCRETIONARY TRANSFER. When a civil action is brought in the circuit court of any county of this state, and when, under the laws of the United States, a tribal court has concurrent jurisdiction of the matter in controversy, the circuit court may, on its own motion or the motion of any party and after notice and hearing on the record on the issue of the transfer, cause such action to be transferred to the tribal court. The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, unless all parties stipulate to the transfer, in the exercise of its discretion the circuit court shall consider all relevant factors, including but not limited to:

- (a) Whether issues in the action require interpretation of the tribe’s laws, including the tribe’s constitution, statutes, bylaws, ordinances, resolutions, or case law.
- (b) Whether the action involves traditional or cultural matters of the tribe.
- (c) Whether the action is one in which the tribe is a party, or whether tribal sovereignty, jurisdiction, or territory is an issue in the action.
- (d) The tribal membership status of the parties.
- (e) Where the claim arises.
- (f) Whether the parties have by contract chosen a forum or the law to be applied in the event of a dispute.

(g) The timing of any motion to transfer, taking into account the parties' and court's expenditure of time and resources, and compliance with any applicable provisions of the circuit court's scheduling orders.

(h) The court in which the action can be decided most expeditiously.

(i) The institutional and administrative interests of each court.

(j) The relative burdens on the parties, including cost, access to and admissibility of evidence, and matters of process, practice, and procedure, including where the action will be heard and decided most promptly.

(k) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(2m) TRIBAL CHILD SUPPORT PROGRAMS. The circuit court may, on its own motion or the motion of any party, after notice to the parties of their right to object, transfer a post-judgment child support, custody or placement provision of an action in which the state is a real party in interest pursuant to s. [767.205 \(2\)](#) to a tribal court located in Wisconsin that is receiving funding from the federal government to operate a child support program under Title IV-D of the federal Social Security Act ([42 U.S.C. 654](#) et al.). The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the transfer will occur unless a party objects in a timely manner. Upon the filing of a timely objection to the transfer the circuit court shall conduct a hearing on the record considering all the relevant factors set forth in sub. [\(2\)](#).

(3) STAY OF PROCEEDING IN CIRCUIT COURT. When a circuit court transfers an action to tribal court under this rule, the circuit court shall enter an order to stay further proceedings on the action in circuit court. Jurisdiction of the circuit court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the action, the clerk

of the court in which the stay was granted shall without notice enter an order dismissing the action.

(4) APPEALS. The decision of a circuit court to transfer an action to tribal court may be appealed as a matter of right under s. [808.03 \(1\)](#).

(5) EFFECT OF TRANSFER. When a circuit court orders the transfer of an action to tribal court under this rule, the circuit court shall retain the circuit court filing fee and shall transmit to the tribal court a copy of all circuit court records in the action.

(6) POWERS, RIGHTS AND OBLIGATIONS UNAFFECTED. Nothing in this rule is intended to alter, diminish, or expand the jurisdiction of the circuit courts or any tribal court, the sovereignty of the state or any federally recognized American Indian tribe or band, or the rights or obligations of parties under state, tribal, or federal law

In re discretionary transfer of civil cases to tribal court**PETITION**

The Director of State Courts hereby petitions this court to create a rule governing the discretionary transfer of cases to tribal court, pursuant to the court's rulemaking authority under §751.12. This petition is submitted on behalf of the State-Tribal Justice Forum, a joint committee of state and tribal court representatives established by Chief Justice Abrahamson to promote and sustain communication, education and cooperation among Wisconsin tribal and state court systems.¹

Background**Wisconsin State-Tribal Justice Forum:**

In July of 2005, the U.S. Department of Justice, Bureau of Justice Assistance sponsored a national gathering in Green Bay, Wisconsin to foster tribal-federal-state court relations. This conference, titled *Walking on Common Ground: Pathways to Equal Justice*,² served as the catalyst for Wisconsin to reconvene its

¹ See *Wisconsin State-Tribal Justice Forum Mission and Membership*. Found at: <http://www.wicourts.gov/about/committees/tribal.htm>

² *Walking on Common Ground: Pathways to Equal Justice Report*, July 2005 National Gathering for Tribal-Federal-State Court Relations. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. Found at: http://www.walkingoncommonground.org/web-content/WOCG_Report.pdf

State-Tribal Justice Forum. The re-established committee consists of five circuit court judges, five tribal judges, one tribal attorney, one legislative liaison, one district court administrator, and the director of state courts. The Wisconsin State-Tribal Justice Forum met for the first time on May 12, 2006 and established its mission to promote and sustain communication, education and cooperation among tribal and state court systems and to develop the initiatives outlined in the final report of the *Walking on Common Ground* conference.

History of Tribal Court Jurisdiction in Wisconsin:

There are eleven federally recognized tribes in Wisconsin and each has its own independent government with its own constitution, membership and land base. Some of the tribes in Wisconsin operate a formal tribal court while others have alternative dispute resolution forums.³ Tribes possess inherent sovereignty and they are a distinct and separate entity from the state. Wisconsin is one of the six states in the United States that was mandated by P.L. 280 in 1953 to transfer criminal and civil jurisdiction in Indian Country from the Federal Government to the state. The Menominee Reservation is the one exception to this mandate where federal jurisdiction still resides.⁴

³ See Wisconsin Judicare, Inc., *Indian Law Office listing and links to Wisconsin Tribal Courts*: Bad River Tribal Court, Forest County Potawatomi Community Court, Ho-Chunk Nation, Lac Courte Oreilles Tribal Court, Lac Du Flambeau Tribal Court, Menominee Tribal Court, Oneida Tribal Judicial System, Red Cliff Tribal Court, St. Croix Tribal Court, Sokaogon (Mole Lake) Tribal Court, Stockbridge-Munsee Tribal Court, found at: <http://www.judicare.org/ilo.htm>

⁴ See *Wisconsin Legislative Council, Legislator Briefing Book 2007-2008*. Chapter P: State-Tribal Relations. Found at: <http://www.legis.state.wi.us/lc>

Cooperation among state and tribal courts in Wisconsin is critical. Tribal and non-tribal citizens interact on a frequent basis and when civil disputes arise where legal action is necessary, questions of civil jurisdiction can become complex. Wis. Stat. 806.245 provides parameters for the application of full faith and credit of Indian Tribal documents including judicial orders, records and judgments. Over the last decade, the Wisconsin Supreme Court has addressed concurrent jurisdictional issues in civil cases in its *Teague v. Bad River Band of Lake Superior Chippewa Indians*⁵ decisions and laid the foundation for the establishment of jurisdictional allocation protocols in the Ninth and Tenth Judicial Districts.

In 2001, the Tenth Judicial District, led by Chief Judge Edward Brunner, developed a historical agreement for handling concurrent jurisdiction cases. Under this system, state court and tribal court judges temporarily stop actions that are filed in both courts and hold a joint hearing to determine which court should handle the case. If the judges cannot agree, a process was developed for them to follow until a jurisdictional agreement can be reached. The jurisdictional allocation protocols were signed by the four Chippewa bands (Bad River, Lac Courte Oreilles, St. Croix, and Red Cliff) and the 13 counties included in the

⁵ *Teague v. Bad River Band of Lake Superior Chippewa Indians*

Tenth Judicial District (Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Polk, Rusk, St. Croix, Sawyer, and Washburn).⁶

In *Teague III*, the Supreme Court clarified that in cases of concurrent jurisdiction, §806.245 is not applicable and each court should stop actions, as outlined in the Tenth District protocol, and consult and decide which court is most appropriate to proceed in handling the case. In this decision, the Supreme Court also went on to list 13 principles of comity that must be applied when determining jurisdiction. These principles included the protocols previously established by the Tenth Judicial District.⁷

In conjunction with the *Walking on Common Ground* Conference in July of 2005, the Ninth Judicial District entered into a historic agreement between the state and tribal courts in the north-central area of Wisconsin. This protocol was signed by 12 counties (Florence, Forest, Iron, Langlade, Lincoln, Marathon, Menominee, Oneida, Price, Shawano, Taylor and Vilas) and five tribes (Bad River, Forest County Potawatomi, Lac du Flambeau, Sokaogon Chippewa, and Stockbridge-Munsee). Section 7 of the Ninth District Protocol sets forth verbatim the 13 comity principles outlined in *Teague III*.⁸

⁶ *The Tenth Judicial District Tribal/State Protocol for the Judicial Allocation of Jurisdiction*
Found at: <http://www.wicourts.gov/about/committees/tribal.htm>

⁷ *Teague III*. 2003 WI 118, 265 Wis. 2d 64.

⁸ *Tribal/State Protocol, Ninth Judicial District*
Found at: <http://www.wicourts.gov/about/committees/tribal.htm>

Other States:

In its development of this proposal, the State-Tribal Justice Forum researched protocols and rules of other states in handling issues of state-tribal concurrent jurisdiction cases in civil matters. Under its *General Rules of Practice*, Minnesota developed *Rule 10* on Tribal Court Orders. Section 10.02 of this Rule outlines factors to be considered when recognition of tribal court orders and judgments is discretionary. The “comments” of MN *Rule 10* state:

*Discretionary Enforcement: Comity. Where no statutory mandate expressly applies, tribal court orders and judgments are subject to the doctrine of comity. Rule 10.02(a) does not create any new or additional powers but only begins to describe in one convenient place the principles that apply to recognition of orders and judgments by comity.*⁹

The State of Washington’s *Court Rule 82.5* provides tribal court guidance on (a) exclusive jurisdiction, (b) concurrent jurisdiction, and (c) enforcement of Indian Tribal Court Orders. Part (b) of this rule states:

(b) Indian Tribal Court; Concurrent Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, concurrent jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court may, if the interests of justice require, cause such action to be transferred to the appropriate Indian tribal court. In making such determination, the superior court shall consider, among other things, the nature of the action, the interests and identities of the parties, the convenience of the parties and witnesses, whether state or tribal law will apply to the matter in controversy, and

⁹ *Minnesota General Rules of Practice for District Courts*. Title I. Rules Applicable to All Court Proceedings. *Rule 10. Tribal Court Orders and Judgments*. Found at: <http://www.courts.state.mn.us/?page=511#generalRules>

*the remedy available in such Indian tribal court.*¹⁰

Proposed Rule:

This proposal outlines standards to be considered in the allocation of jurisdiction among state and tribal courts. It will allow Wisconsin state courts the ability to transfer civil cases of concurrent jurisdiction to tribal courts when deemed appropriate through the application of the enumerated standards. The Teague Protocol requires that cases be filed in both state and tribal courts. That requires tribal and state litigants to pay filing fees, fill out proper suit papers, and make arrangements for suit in two courts. A majority of cases in tribal courts are pro se. This proposal strives to streamline the process by allowing tribal litigants to request transfer from state court using the outlined standards. State court judges then have the ability to make a discretionary decision and either transfer the case or refuse to do so based on these same standards. Motion and order forms could be developed to assist in the process.

As tribal courts continue to expand court jurisdiction and assist the state courts in resolving disputes, many new cases as well as many cases from the past can be handled in tribal courts. Tribal litigants can have cases back in tribal court where they are most appropriately heard and where previously there may not have been a court to hear the dispute.

¹⁰ Washington Courts. Rule 82.5. Tribal Court Jurisdiction. Found at:
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr82.5

The Teague Protocol has been used infrequently in the past. The State-Tribal Justice Forum has received notice of a number of situations in which Tribal and State Courts are transferring cases in a discretionary manner as justice requires. When considering the potential number of pro se litigants, especially in family matters, a user-friendly discretionary transfer mechanism is strongly supported by all of the State-Tribal Justice Forum in an effort to provide guidance and to let judges know they have the discretion to do so when concurrent jurisdiction exists. The Forum submits this proposal to clarify this option.

This proposal has been reviewed by Wisconsin Tribal Judges Association, the Committee of Chief Judges, the Wisconsin Joint Legislative Council's Special Committee on State-Tribal Relations, and the Wisconsin State Bar's Indian Law Section.

Accordingly, the director requests additions in the statute as proposed.

§801.54 Discretionary transfer of civil cases to tribal court

should read as follows:

(1) Purpose.

The purpose is to effectively and efficiently allocate judicial resources. In situations where a circuit court and a tribal court have concurrent jurisdiction, this provision authorizes the circuit court, in its discretion, to transfer a case to the appropriate tribal court. This rule does not apply to any case in which controlling law grants exclusive jurisdiction to either the circuit court or the tribal court.

(2) Discretionary Transfer.

(a) When an action is brought in the circuit court of any county of this state, and when, under the laws of the United States the tribal court of a federally

recognized tribe has concurrent jurisdiction of the matter in controversy, the circuit court may, on its own motion or the motion of any party and after notice and hearing, cause such action to be transferred to the appropriate Indian tribal court. In making such determination the circuit court shall consider:

1. Whether issues in the action require interpretation of the tribe's constitution, by-laws, ordinances or resolutions;
2. Whether the action involves traditional or cultural matters of the tribe;
3. Whether the action is one in which the tribe is a party, or whether tribal sovereignty, jurisdiction, or territory is an issue in the action;
4. The tribal membership status of the parties;
5. Where the cause of action arises;
6. Whether the parties have by contract chosen a forum or the law to be applied in the event of a dispute;
7. The timing of any motion to transfer jurisdiction, taking into account the parties' and court's expenditure of time and resources, and compliance with any applicable provisions of the circuit court's scheduling orders;
8. The court in which the action can be decided most expeditiously;
9. Such other factors as may be appropriate in a particular case.

(b) In the event a tribal court declines to accept a transfer of jurisdiction under this rule, within 60 days of transfer, jurisdiction shall remain with the circuit court.

(3) Powers, Rights and Obligations Unaffected

Nothing in this rule is intended to alter, diminish, or expand the jurisdiction of the circuit courts or any tribal court, the sovereignty of the state or any federally recognized tribe, or the rights or obligations of parties under state, tribal, or federal law.

Respectfully submitted this ___ day of _____, 2007.

A. John Voelker
Director of State Courts

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 07-11A

In the matter of the petition to create a rule governing the discretionary transfer of cases to tribal court.

FILED

JUL 1, 2009

David R. Schanker
Clerk of Supreme Court
Madison, WI

On July 31, 2008, this court created Wis. Stat. § 801.54 governing the discretionary transfer of cases to tribal court. See S. Ct. Order 07-11, 2008 WI 114 (issued Jul. 31, 2008, eff. Jan. 1, 2009) (Roggensack, J., dissenting).

On February 9, 2009, the Wisconsin Department of Children and Families ("the Department") submitted a letter to the court asking the court to create a narrow exception to the rule to facilitate transfer of post-judgment child support cases to tribes under certain circumstances. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended by the Balanced Budget Act of 1997, authorized the direct funding of tribal child support enforcement programs by the federal government. The Department of Health and Human

Services ("DHSS") published rules¹ providing the mechanism for tribes to submit child support enforcement plans and, upon approval, to receive direct federal funding of tribally operated programs. As part of this program, federal regulations governing state IV-D plans were amended to require states to cooperate with tribal IV-D programs.² In Wisconsin, the Oneida Nation has received funding to establish such a program and assume the management of certain post-judgment child support cases from state circuit courts.³

Accordingly, the Department has been working on the transfer of approximately 4,000 post-judgment child support cases from state court to the Oneida Nation as part of this program. However, the Department has ascertained that complying with the affirmative notice requirements of Wis. Stat. § 801.54(2) will make these transfers cost-prohibitive to effectuate. The Department supports the adoption of a narrow exception that will facilitate these transfers while still affording the individual parties an opportunity to object to the transfer. The Department indicates that the Oneida Nation and

¹ The DHHS published its final rule on March 30, 2004. See 69 Fed. Reg. 16,638 (Mar. 30, 2005) codified at 45 C.F.R. Part 309.

² 69 Fed. Reg. 16,638 (Mar. 30, 2005).

³ The Forest County Potawatomi Community, the Lac du Flambeau Band of Lake Superior Chippewa Indians, and the Menominee tribe of Wisconsin have already established such programs with the assistance of the Department of Children and Families. However, the transfer of cases in these matters occurred prior to the effective date of Wis. Stat. § 801.54.

the Brown County Circuit Court acknowledge the need for this request. The Department has also consulted with the Wisconsin Department of Justice regarding this proposal. The Department asks the court to expedite its consideration of this request because the Oneida Nation's participation in the federal program and its receipt of federal funds may be jeopardized as a result of the delay in transferring these cases. Expedited consideration by the court is permissible pursuant to Wis. S. Ct. IOP III-A.

The court discussed this matter at its open administrative conference on March 9, 2009. Justice Patience Drake Roggensack reiterated her objection to the court's adoption of the rule. A majority of the court voted to grant the request of the Department. Justice Roggensack sought additional feedback on the proposed amendment from the Wisconsin Department of Justice. The court also requested the Department prepare the forms that will be used to notify parties of a prospective case transfer. The Wisconsin Tribal Judge's Association and the Wisconsin State-Tribal Justice Forum submitted written statements in support of the amendment. Mr. Rick Cornelius submitted a statement opposing the rule.

The court discussed this matter again at an open administrative conference on May 1, 2009. The court agreed to amend the proposal to reflect a suggestion from the Wisconsin Department of Justice requiring an explicit finding of concurrent jurisdiction as part of the amendment. The court discussed the proposed forms prepared by the Department and

voted to advise the records management committee, acting on behalf of the Judicial Conference, to develop standard forms to effectuate this amendment that are substantially similar to the forms attached to this order as exhibits A and B. A majority of the court then confirmed its decision to grant the request of the Department. Justice Patience Drake Roggensack stated she dissented from the adoption of the amendment and made a statement on the record explaining the basis for her dissent. She was joined by Justice Ziegler and Justice Gableman.

Accordingly, effective the date of this order:

SECTION 1. 801.54 (1) of the statutes is amended to read:

801.54 (1) SCOPE. In a civil action where a circuit court and a court or judicial system of a federally recognized American Indian tribe or band in Wisconsin ("tribal court") have concurrent jurisdiction, this rule authorizes the circuit court, in its discretion, to transfer the action to the tribal court under sub. (2m) or when transfer is warranted under the factors set forth in sub. (2). This rule does not apply to any action in which controlling law grants exclusive jurisdiction to either the circuit court or the tribal court.

SECTION 2. 801.54 (2m) of the statutes is created to read:

801.54 (2m) TRIBAL CHILD SUPPORT PROGRAMS. The circuit court may, on its own motion or the motion of any party, after notice to the parties of their right to object, transfer a post-judgment child support, custody or placement provision of an action in which the state is a real party in interest pursuant to s. 767.205(2) to a tribal court located in Wisconsin that is

receiving funding from the federal government to operate a child support program under Title IV-D of the federal Social Security Act (42 U.S.C. 654 et al.). The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the transfer will occur unless a party objects in a timely manner. Upon the filing of a timely objection to the transfer the circuit court shall conduct a hearing on the record considering all the relevant factors set forth in sub. (2).

IT IS ORDERED that the court directs the records management committee, acting on behalf of the Judicial Conference, to develop standard forms to effectuate this amendment that are substantially similar to the forms attached to this order as Exhibits A and B.

IT IS FURTHER ORDERED that notice of this amendment of Wis. Stat. § 801.54 be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 1st day of July, 2009.

BY THE COURT:

David R. Schanker
Clerk of Supreme Court

STATE OF WISCONSIN CIRCUIT COURT _____ COUNTY
BRANCH _____

In re

Petitioner

v.

Case No. _____

Respondent

REQUEST FOR HEARING ON CASE TRANSFER TO [Name of tribe] TRIBE

TO THE CIRCUIT COURT JUDGE OF _____ COUNTY:

I request a hearing to contest the transfer of my case regarding the issues of legal custody, physical placement and child support to the [Name of Tribe] Tribe of Indians.

Signature

Name (please print)

Date

-----FOR AGENCY USE ONLY-----

The above requested hearing is scheduled for :

Date: _____

Time: _____

Room: _____

Presiding
Official: _____

Address: _____

_____ COUNTY CHILD SUPPORT AGENCY

123 _____ Lane
____ Floor
_____, WI

TEL: (000) 000-0000
FAX: (000) 000-0000
TDD: (000) 000-0000

Mailing Address: P.O. Box 00000, _____, WI 54000-0000
http://www.co.____.wi.us/child_support/

Party Name
Address

Date
Case No.:

Dear <NAME>

The [Name of Tribe] has received federal approval to operate a tribal child support agency. The Tribe has enacted laws authorizing the establishment of paternity and enforcement of child support.

You or the other parent in your case is a member of the [Name of Tribe] Tribe. Therefore, your child support case may be transferred to the [Tribal] Child Support Agency. If the case is transferred in part, the issues of (1) legal custody, (2) physical placement and (3) child support will be under the jurisdiction of [Name of Tribal Court]. Other aspects of your family law case, such as maintenance, will remain with the [Insert County] family court.

This is your formal notice of [Name of County] _____ County's intent to transfer your child support case to the [Tribal] Child Support Agency. You have a right to object to this transfer.

If you want to object to this transfer, you *must* complete the enclosed *Request for Hearing*. Then, within ten (10) business days of the date of this letter, you *must* send the completed *Request for Hearing* to the _____ County Child Support Agency, P.O. Box 00000, _____, WI 54000-0000. If you return the request within the appropriate time period, a hearing will be scheduled in _____ County Court, and all parties will be sent a notice of the hearing date, time and location.

If you do not complete and return the *Request for Hearing* form on a timely basis, we will ask _____ County Court to sign an order transferring your case to the [Tribal] Child Support Agency.

This agency is an equal opportunity employer and service provider. If you have a disability and need information in an alternative format, or if you need it translated to another language, please contact us at the phone number or address listed at the top of this letter.

Sincerely,

Agency Attorney, Child Support Agency

¶1 PATIENCE DRAKE ROGGENSACK, J. (*dissenting*). The majority of this court chooses to disregard the effect that its decision has on the fundamental constitutional rights of parents, gives no direction to circuit courts in regard to the standards under which concurrent subject matter jurisdiction could exist in tribal court and abrogates the rights of litigants who have chosen Wisconsin circuit courts as their forums. Once again, this court has exceeded the authority that the legislature granted in Wis. Stat. § 751.12. Accordingly, I respectfully dissent.

I. BACKGROUND

¶2 On July 1, 2008, a majority of this court legislated to create Wis. Stat. § 801.54, which permits the transfer of civil cases pending in Wisconsin circuit courts to tribal courts, over the objections of litigants and when all of the litigants are not tribal members. S. Ct. Order 07-11, 2008 WI 114, 307 Wis. 2d xxi (eff. Jan. 1, 2009). I dissented from that order. Id. at xxiii. I did so because: (1) tribal court concurrent subject matter jurisdiction rarely exists when non-tribal members are parties; (2) § 801.54 gave no guidance on the standards to be applied in evaluating whether tribal courts have concurrent subject matter jurisdiction; (3) § 801.54 contravenes Wis. Stat. § 751.12(1) by altering substantive rights of the parties to civil litigation; and (4) no information was provided about the substantive and

procedural rights that are available in the various tribal courts to which we authorized transfers. Id.

¶3 Today, a majority of this court expands the potential for infringement of the constitutional rights of non-tribal and tribal members by permitting the transfer of "post-judgment child support, custody or placement provision of an action in which the state is a real party in interest pursuant to s. 767.205(2) to a tribal court located in Wisconsin," without a hearing. S. Ct. Order 07-11A, supra at 4.

II. DISCUSSION

¶4 Today's change is a further deprivation of the rights of litigants in cases involving custody, placement and child support because Wis. Stat. § 801.54, as originally enacted, required the circuit court to provide notice and to hold a hearing in each case before a transfer could be made. § 801.54(2). During that hearing the circuit court was required to first determine whether concurrent subject matter jurisdiction existed in the tribal court, and then to examine 11 listed factors, as well as any other factors that the court deemed relevant, in order to determine whether to order the transfer to tribal court. Id.

A. Constitutional Concerns

¶5 The majority now eliminates the obligation to hold a hearing in each individual custody, placement and child support matter. However, custody and placement

decisions involve the most fundamental of constitutional rights: the right to the care and custody of one's children. Stanley v. Illinois, 405 U.S. 645, 651 (1972); State v. Shirley E., 2006 WI 129, ¶¶23-24, 298 Wis. 2d 1, 724 N.W.2d 623.

¶6 The fundamental rights of parents are protected by the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, 262 U.S. 390, 399 (1923), and the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541 (1942). However, this latest amendment to Wis. Stat. § 801.54 is contrary to our obligation to uphold the Constitutions of the United States and the State of Wisconsin.

¶7 As the United States Supreme Court has explained, the United States Constitution is not binding on tribal courts. Plains Commerce Bank v. Long Family Land & Cattle Co., 128 S. Ct. 2709, 2724 (2008) (citing Talton v. Mayes, 163 U.S. 376, 382-85 (1896)). However, litigants in Wisconsin courts are protected by the United States Constitution and the Wisconsin Constitution. Helgeland v. Wis. Municipalities, 2008 WI 9, ¶13, 307 Wis. 2d 1, 745 N.W.2d 1. The Constitutions provide the framework in which the courts of the State of Wisconsin are obligated to operate. Id. That constitutional framework includes the United States Constitution's Bill of Rights and the Wisconsin Constitution's Declaration of Rights. Id. However, as separate sovereigns antedating the

Constitutions, Indian tribes have "historically been regarded as unconstrained by those [federal] constitutional provisions framed specifically as limitations on federal or state authority." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 (1978).

¶8 In considering transfers of child custody and placement issues to tribal courts, it is also important to note that both the United States Constitution and the Wisconsin Constitution require the separation of church and state. U.S. Const. amend. I; Wis. Const. art. I, § 18. Separation of church and state is one of the basic tenets of our democracy. However, tribal courts do not separate church and state; instead, tribal courts impose their religious values as custom and tradition that informs the tribal courts' view of the law.⁴

¶9 Wisconsin courts have no power to review decisions on child support or custody and placement that may be made after transfer to tribal court because those decisions will be made by an independent sovereign. Even federal courts cannot review tribal court decisions in the normal course of a federal court review. Duro v. Reina, 495 U.S. 676, 709 (1990). Instead, federal review of tribal court decisions is provided by a separate action for

⁴ Tribal Law and Order Act of 2008: Hearing Before the S. Comm. on Indian Affairs, 1-2 (July 24, 2008) (statement of Roman J. Duran, Vice President, National American Indian Court Judges Association).

habeas corpus. Id. This lack of direct review of tribal court decisions is a significant deprivation of guaranteed procedural rights. As Justice Kennedy recognized, "[t]he political freedom guaranteed to citizens by the federal structure is a liberty both distinct from and every bit as important as those freedoms guaranteed by the Bill of Rights." United States v. Lara, 541 U.S. 193, 214 (2004) (Kennedy, J., concurring).

¶10 I recognize that holding a hearing in each case is more expensive, uses more court time and is generally more difficult than giving a notice to unrepresented parents and presuming both that the parents know how their interests will be addressed in tribal court and that they will ask for a hearing if they object to the transfer. However, neither presumption has merit.

¶11 First, how are litigants to know what procedures and substantive rights will be accorded in tribal court? I do not have the answers to those questions, nor does the majority of this court, although I repeatedly requested that the majority get this information before Wis. Stat. § 801.54 was enacted on July 1, 2008. Second, if litigants do not know how matters proceed in tribal court, how can they make an informed decision about whether to object to the transfer and how can they know what concerns to bring to the circuit court if they do file an affirmative objection to the transfer?

¶12 The process the majority has established runs roughshod over the constitutional rights of parents. Stanley, 405 U.S. at 656-57 (instructing that efficient procedures cannot trump the constitutional rights of parents). Furthermore, the genesis of the tribes' petition for this amendment to Wis. Stat. § 801.54 was asserted to be the tribes' desire to collect federal funds that would be forthcoming if the tribes established mechanisms for the collection of delinquent child support. It was not necessary to that purpose to connect child custody and placement decisions to the collection of child support, and doing so impacts the most fundamental of constitutional rights, the right to the care and custody of one's child.

B. Concurrent Jurisdiction

¶13 I continue to have concerns that, as circuit courts attempt to comply with Wis. Stat. § 801.54's requirement to determine whether tribal court concurrent subject matter jurisdiction exists, they will not recognize that tribal court concurrent subject matter jurisdiction is almost nonexistent when a non-tribal member is a party to the lawsuit. Plains Commerce Bank, 128 S. Ct. at 2722. The law the majority enacts has given them no direction.

¶14 As an initial matter, tribal court subject matter jurisdiction is established by federal laws and United States Supreme Court precedent. Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 851-52 (1985). Stated otherwise, "whether a tribal court has adjudicative

authority over nonmembers is a federal question"; it is not decided under state law or tribal law. Plains Commerce Bank, 128 S. Ct. at 2716 (citing Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 15 (1987)).

¶15 The United States Supreme Court has explained that tribal court concurrent subject matter jurisdiction is extremely limited when non-tribal members are among the parties to an action. Montana v. United States, 450 U.S. 544, 565-66 (1981). The United States Supreme Court recently has affirmed that tribal court jurisdiction over nonmembers for conduct that occurs off tribal land is almost nonexistent, having been upheld on only one occasion. Plains Commerce Bank, 128 S. Ct. at 2722. The Court has also said, "[T]ribes do not, as a general matter, possess authority over non-Indians who come within their borders: '[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.'" Id. at 2718-19 (quoting Montana, 450 U.S. at 565).

¶16 Even when nonmember conduct occurs on tribal land, the general rule is that tribes lack subject matter jurisdiction over nonmembers. Montana, 450 U.S. at 565. Tribes "may" have concurrent subject matter jurisdiction over nonmembers: (1) to "regulate . . . the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements," and (2) to

regulate nonmember conduct that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." Id. at 565-66. But as the Court's recent discussion of Montana in Plains Commerce Bank shows, the two exceptions to the lack of subject matter jurisdiction in tribal courts are not to be broadly interpreted; rather, they are extremely limited. Plains Commerce Bank, 128 S. Ct. at 2720.

¶17 In Plains Commerce Bank, tribal members (the Longs) sued a nonmember (Plains Commerce Bank) in tribal court, alleging that the bank discriminated against them when it sold property. Id. at 2715. The Longs further alleged that the property sales had arisen directly from their preexisting commercial relationship with the bank, and accordingly, the sales fell within the first Montana exception to the general rule that tribes lack jurisdiction over nonmembers. Id. at 2715-16. The tribal jury awarded \$750,000 in damages. Id. at 2716. The bank then brought a declaratory judgment action in federal court asserting that the tribal court lacked subject matter jurisdiction to adjudicate the claims, and therefore, the judgment was void. Id.

¶18 The Supreme Court agreed with the bank. The Court began by explaining that the sovereign powers of tribes are limited by virtue of the tribes' "incorporation

into the American republic."⁵ Id. at 2719. In so incorporating, the tribes generally lost the right to govern persons coming within tribal territory except for tribal members.⁶ Id.

¶19 In any attempt to exert jurisdiction over nonmembers, "[t]he burden rests on the tribe to establish one of the exceptions to Montana's general rule" that precludes jurisdiction over nonmembers. Id. at 2720. The burden of proof rests with the tribe to establish that concurrent jurisdiction exists in tribal courts because of the general rule that tribal courts do not have subject matter jurisdiction to adjudicate claims involving nonmembers. Wisconsin Stat. § 801.54 is in conflict with

⁵ The court in Plains Commerce Bank v. Long Family Land & Cattle Co., 128 S. Ct. 2709, 2721 (2008), cited two limited types of exceptions that involved the regulation of nonmember activities on reservation land "that had a discernable effect on the tribe or its members": Williams v. Lee, 358 U.S. 217 (1959) (concluding the tribe had jurisdiction over a contract dispute about "the sale of merchandise by a non-Indian to an Indian on the reservation") and Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980) (upholding tribal determination of the taxing authority of the tribe for activities by non-Indians on reservation land). The Court cited other cases that also upheld tribal determinations involving taxes for activities within tribal land.

⁶ In Plains Commerce Bank, the Court pointed out that tribal courts lack jurisdiction over: a "tort suit involving an accident on non-tribal land"; the regulation of "hunting and fishing on non-Indian fee land"; and taxation of nonmember activities on non-Indian fee land. Id. at 2722.

that requirement of federal law because under § 801.54(2), a circuit court can transfer a case to tribal court on its own motion. Therefore, the tribe would not be a moving party who carries the burden of proof explained by the United States Supreme Court in Plains Commerce Bank. The circuit courts of Wisconsin cannot make a discretionary transfer to tribal courts, sua sponte, and still comply with this aspect of federal law because meeting that tribal burden is one prerequisite for the exercise of concurrent subject matter jurisdiction by tribal courts.

¶20 The United States Supreme Court also has explained that "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." Id. at 2720 (quoting Strate v. A-1 Contractors, 520 U.S. 438, 440 (1997)). This is an important principle because if a tribe could not pass a law that bound the conduct and the parties whose claims and defenses a tribal court attempts to adjudicate, then the tribal court lacks concurrent subject matter jurisdiction over those claims and defenses.⁷ Id. Tribes do not have the legislative jurisdiction to enact a law that will establish a non-tribal member's custody and placement rights to his or her child. See Jacobs v.

⁷ In Plains Commerce Bank, the tribe lacked "the civil authority to regulate the Bank's sale of its fee land," and therefore, the tribal court could not adjudicate the circumstances under which the land sales were made. Id. at 2720-21 (citations omitted).

Jacobs, 138 Wis. 2d 19, 26-28, 405 N.W.2d 668 (Ct. App. 1987).

¶21 It is not a simple matter for a circuit court to determine whether a case fits within one of the two very narrow Montana exceptions to the tribal courts' lack of subject matter jurisdiction over nonmembers. Wisconsin Stat. § 801.54 is completely inadequate in addressing this major obstacle to the exercise of tribal court jurisdiction over nonmembers; yet, it is a critical decision that must be made before any transfer can occur. This is so because the contention that a court lacks subject matter jurisdiction may be raised at any time, even after judgment. See Arbaugh v. Y&H Corp., 546 U.S. 500, 506-07 (2006); see also Fed. R. Civ. P. 12(h)(3). Furthermore, "subject matter jurisdiction cannot be created by waiver or consent." United States v. Hazlewood, 526 F.3d 862, 864 (5th Cir. 2008) (quoting Howery v. Allstate Ins. Co., 243 F.3d 912, 919 (5th Cir. 2001)). The majority continues to give the circuit courts no legal guidelines to assist with this weighty legal task.

C. Wisconsin Stat. § 751.12(1)

¶22 This court's power to legislate, which we speak of as "rule-making," is derived from Wis. Stat. § 751.12(1), which provides in relevant part:

The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice, and procedure in judicial proceedings in all courts, for the purposes of

simplifying the same and of promoting the speedy determination of litigation upon its merits. The rules shall not abridge, enlarge, or modify the substantive rights of any litigant.

(Emphasis added.)

¶23 Prior to the creation of Wis. Stat. § 801.54, all litigants who satisfied the statutory provisions for jurisdiction in Wisconsin courts had a statutory right to avail themselves of the Wisconsin court system. See Wis. Stat. § 801.04. Wisconsin's open courthouse doors provide a significant, substantive right for tribal as well as non-tribal litigants. However, since § 801.54 has become effective, the courthouse doors of Wisconsin can be closed to some litigants, both tribal members and nonmembers. This limitation of the substantive rights of litigants is contrary to the express provisions of Wis. Stat. § 751.12(1), which provides that any statute that this court creates "shall not abridge, enlarge, or modify the substantive rights of any litigant."

¶24 The latest amendment to Wis. Stat. § 801.54 permits a court to eliminate the right to litigate in state courts without holding a hearing before transferring the matter to tribal courts. In so doing, the majority eliminates not only the substantive right to litigate in state courts, but it eliminates the right to a hearing unless a party affirmatively requests one. This new law abridges the rights of litigants contrary to the express directive of Wis. Stat. § 751.12(1).

III. CONCLUSION

¶25 In conclusion, the majority of this court chooses to disregard the effect that its decision has on the fundamental constitutional rights of parents, gives no direction to circuit courts in regard to the standards under which concurrent subject matter jurisdiction could exist in tribal court and abrogates the rights of litigants who have chosen Wisconsin circuit courts as their forums. Once again, the majority has exceeded the authority that the legislature granted in Wis. Stat. § 751.12. Accordingly, I respectfully dissent.

¶26 I am authorized to state that Justices ANNETTE KINGSLAND ZIEGLER and MICHAEL J. GABLEMAN join in this dissent.

Saint Regis Mohawk Tribe

Proposed SRMT Family Support Act Revisions

SAINT REGIS MOHAWK TRIBE FAMILY SUPPORT ACT

SECTION I: GENERAL

A. Purpose and Authority

The Saint Regis Mohawk Tribe believes that parents have a duty to care for their children and this duty applies to all parents whose parental rights have not been terminated. This duty includes providing love, guidance, education, providing a safe and healthy environment, participation in tribal culture, and to provide financial support.

The purpose of this Act is to provide a process that ensures that the basic health and financial needs of the children are met when their parents do not live together. Child support is based on the financial resources of the parents, the financial needs of the children, and is an entitlement of the child.

Culturally, children of the Saint Regis Mohawk Tribe are cared for by parents, extended family, and the community. This Act focuses on the parents' duty to meet the needs of their children.

The Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe and is responsible for the health, safety, education and welfare of all members of the Tribe, and in furtherance of those responsibilities, the Saint Regis Mohawk Tribal Council passes this Act.

B. Definitions

1. "Acknowledgment of Paternity" means the putative father of a child born out of wedlock and the biological mother of the child may formally acknowledge paternity by executing an Acknowledgment of Paternity or by signing a birth certificate.
2. "Arrears" means the amount of money the payor has not paid pursuant to the most recent child support court order. Arrears shall not include birthing expenses imposed by a state or other Tribe.
3. "Child" or "Minor Child" means the natural or adopted child under the age of twenty one (21) years old.
4. "Clerk" means the Clerk of the Saint Regis Mohawk Tribal Court.
5. "Custodial Parent" (CP) means the person who has primary physical placement of the child (ren), whether by voluntary agreement or by Court Order. When a child (ren)'s placement is split evenly between parties meaning 50/50 then the parent who earns less income is deemed the custodial parent for child support purposes.
6. "Financial Disclosure Form" means a form that each party to a child support request

must fill out to determine his/her child support obligation. The form shall be promulgated by the Tribal Court and disseminated to each party with any child support petition or paternity petition that requests child support.

7. “Guardian” means anyone who has (a) child (ren) living with him/her for which he/she is providing financial support. The term can include any relative of the subject child(ren) even if there is no Court order establishing a guardianship.
8. “Gross Income” means the income of a parent before any permitted deductions are made.
 - (a) Gross income shall include the following:
 - i. Salaries and wages, including bonuses;
 - ii. Interest and investment income;
 - iii. Social Security disability and or social security retirement benefits;
 - iv. Net proceeds from worker’s compensation or other personal injury awards;
 - v. Unemployment benefits;
 - vi. Voluntary deferred compensation, including pension and profit-sharing plans;
 - vii. Military and veteran benefits;
 - viii. Undistributed income of a business, partnership or corporation;
 - ix. All other sources of income.
 - (b) Gross income shall not include:
 - i. Supplemental Security Income (SSI);
 - ii. Temporary Assistance for Needy Families (TANF) or IV-D benefits
 - iii. Other child support received.
9. “Imputed Income” means the amount of income that shall be assigned to a party when calculating child support. This calculation shall be used when a party’s income be unknown, if a party is unemployed or under-employed, or if a party refuses to provide sufficient information to determine his/her income.
10. “Judge” means a Saint Regis Mohawk Tribal Court Judge.
11. “Non-Cash Support” means non-cash child support provided to a family in the nature of goods and/or services rather than in cash. Non-cash support directly contributes to the needs of a child. Non-cash support may include services such as making repairs to automobiles or a home, the clearing or upkeep of property, providing a means for travel, providing needed resources for a child’s participation in Tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value. Non-Cash support is only allowable when it is mutually agreed upon by both the non-custodial parent and the custodial parent.
12. “NCP” means Non- Custodial Parent. The non-custodial parent is the parent with whom

the child (ren) do (es) not live with a majority of the time. When a child (ren)'s placement is split evenly between parties meaning 50/50, then the parent who earns more income is deemed the non-custodial parent for child support purposes.

13. "Parent" means the biological or adoptive person of a minor child.
14. "Payee" means the parent, legal guardian or agency which is receiving the child support payment.
15. "Payor" means the party who is responsible to pay child support. Stepparents, although they may have a moral and cultural duty to contribute, may not be a payor.
16. "Putative Father" means the alleged father of a minor child.
17. "Process Server" means a person who in the regular course of his/her business serves the following, including but not limited to, writs, warrants, subpoenas or petitions. When service is effectuated outside the United States of America, the SRMT-CSEU shall utilize a Process Server who meets all of the requirements of a process server within his/her jurisdiction and any such service shall be deemed proper service under tribal law.
18. "Release of Information Authorization" is required for each party when child support is requested.
19. "Social Security Disability" (SSD) means disability benefits paid to an adult, and certain members of his/her family, provided he/she has worked long enough and has a medical condition that has prevented him/her from working or is expected to prevent him/her from working for at least twelve (12) months or end in death.
20. "Supplemental Security Income" (SSI) means benefits paid to a disabled adult and his/her children with limited income and resources and exempt from child support garnishment.
21. "Social Security Retirement" (SSR) means retirement benefits paid to an adult, and certain members of his/her family, if he/she is covered under Social Security.

C. Establishment of Child Support Enforcement Unit

1. The Saint Regis Mohawk Tribe's Child Support Enforcement Unit ("SRMT-CSEU") is hereby established. The SRMT-CSEU is the designated Tribal agency identified in the approved Tribal Plan under Title IV-D of the Social Security Act, and is responsible for the administration and operation of the Tribal IV-D plan. Pursuant to its Tribal IV-D plan, the SRMT-CSEU does not represent either party in actions arising under this Act. The SRMT-CSEU is deemed to represent the best interests of the children and the Tribe.
2. The SRMT-CSEU is responsible for receiving, processing, and disbursing payments, and for maintaining a record of payments, in all cases in which the Court orders or parties agree that payments for child support be made through a child support enforcement unit.

3. The SRMT-CSEU shall also provide child support enforcement services to children and families and is authorized to seek:
 - (a) Location of obligors or their assets and obligees;
 - (b) Determination of parentage;
 - (c) Establishment or modification of child support; or
 - (d) Enforcement of support orders or laws relating to the duty of support.
4. The SRMT-CSEU is authorized to develop policies and procedures, to be approved and adopted by the Saint Regis Mohawk Tribal Council, as well as take any other action necessary to implement the approved Tribal Plan IV-D Plan, consistent with this Act and any other applicable law.
5. The SRMT-CSEU staff will report to the Saint Regis Mohawk Tribe's Community Family Services Director or his/her designee, and is subject to the Saint Regis Mohawk Tribe's personnel and other administrative policies.
6. To the extent that the duties and responsibilities outlined by this Act, other applicable laws, and by its internal policies and procedures, as approved by the Saint Regis Mohawk Tribal Council, the SRMT-CSEU are in conflict with existing personnel or administrative policies, the SRMT-CSEU policies and procedures will take precedence.

SECTION II. TRIBAL COURT

A. Jurisdiction

1. The Saint Regis Mohawk Tribal Court shall have subject matter jurisdiction over the proceedings and law set forth in this Act.
2. The Saint Regis Mohawk Tribal Court shall have personal jurisdiction over a party in paternity and child support matters when:
 - a. a party or the child is an enrolled member or eligible to become a member of the Saint Regis Mohawk Tribe;
 - b. a party or the child resides or is domiciled within the territory of the Saint Regis Mohawk Tribe;
 - c. the non-Indian or non-member party has consented to the jurisdiction of the Tribe by:
 - i. express contractual consent;
 - ii. residing or domiciling within the Tribe's reservation;
 - iii. being employed as a contract, temporary, or regular employee of the Tribe or a tribal business located on the reservation;
 - iv. engaging in consensual relations or a domestic relationship with a tribal member on the reservation;
 - v. or participating in any other substantial activity within the territorial

jurisdiction of the SRMT that impacts the political integrity, the economic security, or the health and welfare of the Tribe and its members.

B. Summons

1. If a complainant does not utilize the services of the SRMT CSEU, then the complainant must file the original petition along with a Summons with the SRMT Court Clerk and a copy of the petition with the SRMT CSEU. If SRMT CSEU files the complaint on behalf of a party, then the agency shall file the original petition along with a Summons with the SRMT Court Clerk. The Summons shall be on a form approved by the Court.
2. The Summons shall include a time and date for Mediation. Mediation shall take place within thirty (30) days of the filing of the Summons and Petition.
3. The date and time of the initial court appearance shall be left blank for the Clerk of the SRMT Court to complete. The date for the initial court appearance, should an agreement not be reached at Mediation, shall be no more than 60 days from the date of the filing of the Summons and Petition.
4. The Summons shall also contain the following information:
 - a. Notification of the requirement that both parties will attend Mediation with SRMT-CSEU prior to the initial court appearance.
 - b. Notification that, if the respondent does not appear on the date, time and location of the initial court appearance as stated on the Summons, a Default Judgment may be entered.
 - c. Notification that each party may retain legal representation at his or her own expense;
 - d. Notification that the respondent may file an answer to the claims in the Petition by filing a written answer with the Tribal Court and SRMT-CSEU within twenty (20) days of the service of the Summons and Petition.
 - e. If it is a SRMT-CSEU case, notification that each party must keep SRMT-CSEU advised of his/her current address and employer. Each party must advise the SRMT-CSEU within ten (10) days of changing his/her physical address or employment.

C. Service

1. SRMT-CSEU or the complainant is responsible for service of the Petition and Summons and may effectuate such service by the use of a process server, or any person, not a party to the action, who is over the age of eighteen (18) years.

2. Both the Petition and Summons shall be served on the respondent by personal service or by certified mail, return receipt requested, unless such service is not possible in which case publication may be used as an alternative method.
3. Upon effectuating service by personal service or by certified mail, the person serving the pleadings shall file an Affidavit of Service, indicating that he or she has served the respondent, including the method, date and place of service. The affidavit of service shall comply with the requirements of SRMT's Rules of Civil Procedure §IX. When utilizing certified mail return receipt requested for service, the return receipt shall be proof of service once it is filed with the Clerk of the SRMT Court without the need for an affidavit of service.
4. In the event that the respondent cannot be served personally or by certified mail, SRMT-CSEU may apply to the Court to effectuate service by publishing the Summons in a newspaper nearest to the last known location of the respondent for two consecutive publication dates at least 30 days before the initial court appearance or any other court appearance. A copy of the published notice shall be filed with the Clerk of the SRMT Court as proof of service.
5. If the SRMT-CSEU was not the party filing the Summons and Petition, the Clerk of the SRMT Court shall provide a copy of the filed documents to the SRMT-CSEU.

D. Default Judgments

1. At an initial court appearance or for any other scheduled court appearance where the respondent fails to appear, the SRMT Tribal Court may issue a Default Judgment upon finding the following:
 - a. That the Tribal Court has jurisdiction over the subject matter of the case and over the respondent;
 - b. That the respondent was given proper service of the Petition and Summons as provided for in this Act;
 - c. That the petition before the court is based on credible evidence; and
 - d. That the respondent has failed to appear or to answer the petition.
2. The Default Judgment shall be served on the respondent as provided for in the Act or as directed by the Court.
3. A Default Judgment may be reopened upon a showing for good cause which can include, but is not limited to, the respondent not having proper notice, or that the SRMT Tribal Court lacks jurisdiction, or that it is subsequently shown that a party is not the biological parent of the child.

SECTION III – MEDIATION

A. Mediation with the SRMT-CSEU

1. Both parties will participate in mediation with SRMT-CSEU prior to the initial court appearance as provided for in the Act, in an attempt to reach an agreement on the underlying petition without court involvement. The date and location of Mediation shall be provided in the Summons.
2. During mediation, the SRMT-CSEU shall discuss with both parties the options for settling the matter without litigation. The options for settlement are as follows:
 - a. For a paternity petition:
 - i. The right to voluntarily acknowledge paternity without genetic testing and without resolving the issue of child support. The SRMT-CSEU shall provide the parties with the acknowledgment form for execution and shall file said acknowledgment with the proper state agency managing the vital records in the state in which the child was born. If the acknowledgment form is not readily available, SRMT-CSEU shall schedule a date and time for the parties to return to execute the acknowledgment. For a child born outside of the United States, the SRMT-CSEU shall provide the parties with the appropriate forms necessary to acknowledge paternity. Such forms shall then be filed with the appropriate agency where the child was born.
 - ii. The right to request genetic testing. If testing is requested, then the SRMT-CSEU shall obtain genetic test samples, if possible, on that day. If the parties and child cannot participate in genetic testing that day, then a date and time for the parties to be tested shall be agreed upon.
 - iii. The right to acknowledge paternity and settle the child support issue by signing an Agreement that sets forth the terms of the settlement which includes an acknowledgment that the putative father is the biological father based on his statements, and incorporating terms of child support, medical support and fees (if any). Both parties shall sign the Agreement and the Agreement shall be submitted to the Tribal Court with a request that the Agreement be incorporated into a Court order. The parties' signed agreement shall take effect upon signing; or
 - iv. The right to deny paternity and request a tribal court hearing. If a hearing is requested, the hearing shall be held on the date and time indicated on the initial Summons served on the party.
 - b. For child support:
 - a. The parties can sign an Agreement setting forth the amount of basic child support, child support add-ons like medical expenses and child care expenses, if appropriate, arrears

and any other matter related to child support. The SRMT-CSEU shall submit the signed Agreement to Tribal Court to be incorporated into a Court order. The parties' signed agreement shall take effect upon signing.

3. When child support is requested in a petition, the SRMT-CSEU shall prepare a Child Support Worksheet for the parties using the guidelines in this Act and the information presented by each party in the Financial Disclosure Form. The Worksheet will provide calculations on the amount of child support that may be requested by the petitioner. All information collected during the mediation shall be kept confidential.

B. Lack of Agreement

1. While attendance at mediation is desired and encouraged no party may be penalized for failing to participate. If one party refuses to participate in Mediation, the initial court appearance as set forth in the Summons shall take place.
2. If the parties are unable to reach an agreement after mediation, the initial court appearance as set forth in the Summons shall take place.

SECTION IV: PATERNITY

A. Children Born During a Marriage

1. A child born during a marriage is presumed to be the child of the husband.
2. A putative father who is not the mother's husband may challenge the presumption of the husband's paternity and file a paternity petition on the basis of the child's best interest or on the basis of the husband's lack of access.
3. The SRMT-CSEU may challenge the presumption of paternity due to the husband's lack of access and may file a paternity petition.

B. Children Born Outside of a Marriage

1. The paternity of a child born outside of a marriage may be established through: (1) genetic testing, (2) as agreed between the parties, (3) as ordered by SRMT Tribal Court; (4) through an acknowledgment of paternity or (5) a birth certificate if the jurisdiction in which the child is born establishes paternity through a birth certificate.
1. A parent can revoke an acknowledgment of paternity within sixty (60) days of signing. A parent can petition the SRMT Court to revoke an acknowledgment of paternity if more than sixty (60) days has passed since signing it, but only on the grounds of fraud, duress or material mistake of fact.

C. Actions for Establishment of Paternity

1. Any interested party, including the biological mother, the putative father, the child's legal guardian, the child, or the SRMT-CSEU on behalf of the Tribe by assignment of interest from the custodial parent, may petition the court for the determination of the paternity of a child. No child support can be ordered unless paternity has been established.
2. Establishment of paternity under this Act has no effect on Tribal enrollment, membership or eligibility for membership. Membership determinations are separate and distinct from the establishment of paternity. Any person wishing to file a membership application may do so with the Tribal Clerk of the SRMT.

D. Establishment of Paternity

1. A petition for the establishment of paternity shall contain the following information:
 - a. The name, date of birth and tribal affiliation (if known) of the child or children and the date ranges of conception;
 - b. The names, dates of birth, tribal affiliation (if known) and addresses of the biological mother and the putative father(s) in the action;
 - c. If there is a protective order in place, the address of the affected party and of any children shall be redacted from all court documents;
 - d. If there is reason to believe that emotional or physical harm may be inflicted should the whereabouts of a party or a child be disclosed, the petitioner shall state the reason and request the Court to issue an Order redacting the personal information from all court documents that respondent can access;
 - e. A statement regarding the father's access to the mother prior to the child's conception or birth;
 - f. A statement indicating if there has ever been any other proceeding including any state court or other tribal court, involving the child or children in the action for paternity, custody, placement or child support; and
 - g. A statement indicating whether the custodial party will be seeking a child support order if paternity is established.
2. A paternity petition shall contain the following notices:
 - a. that if the parties agree, they have the right to voluntarily acknowledge paternity by executing an Acknowledgment of Paternity at Mediation or at the initial court appearance;
 - b. that either party can request genetic testing if paternity is contested by either party. The party requesting genetic testing, however, shall bear the burden of paying for it unless he/she can demonstrate why he/she should not pay

for it;

- c. that if child support is requested, it shall be determined using the child support guideline calculation;
 - d. that if paternity is established and child support is requested, that support shall commence from the date that paternity is established.
3. An Answer which denies paternity may rely on the following
- a. The putative father was sterile or impotent at the time of conception; and/or
 - b. The putative father and the biological mother did not have sexual intercourse at the time of conception; or
 - c. That the mother was married to someone else at the time of the child's birth;
or
 - d. The putative father is not the biological father of the child.

E. Initial Appearance for Paternity

1. If the putative father and the biological mother are willing to voluntarily acknowledge paternity without the use of genetic tests, the Tribal Court shall issue a final order establishing the putative father as the legal father of the minor child.
2. If paternity is contested, the SRMT Tribal Court shall order that genetic testing be performed within ten (10) days of the hearing. The Order shall contain the date, time and location of the genetic testing and shall comply with the requirements of this Act.
3. Upon proper notice in the Summons, if one or both parties fail to appear at the initial court appearance, a Default Order of paternity shall be entered unless the party who failed to appear requested that the appearance date be changed or notified the Court that he/she was unable to attend the hearing for good cause. A party may only request one change to the court date or be excused once for good cause. Thereafter, failure to appear at a rescheduled court date shall result in an automatic default judgment.

F. Circumstances Where Paternity May Not Be Established

1. If the child subject to the action was conceived as a result of forcible rape or incest, and the mother or guardian has requested that paternity establishment not proceed, SRMT-CSEU will not file an action in Tribal Court for paternity establishment. If this information is received following the filing of the Summons and Petition, the Tribal Court shall dismiss the action. If SRMT-CSEU filed the action, it shall request the dismissal of the action by filing a motion for an Order to Dismiss with the Tribal Court.

2. In any case in which a legal proceeding for adoption is pending, if, in the opinion of the SRMT-CSEU, it would not be in the best interests of the child to establish paternity, an action for paternity establishment will not be filed. If this information is received following the filing of the Summons and Petition, the Tribal Court may dismiss the action. If SRMT-CSEU filed the action, it may request the dismissal of the action by filing a motion for an Order to Dismiss.

G. Genetic Testing

1. In ordering genetic testing, the SRMT-CSEU or the SRMT Tribal Court shall ensure that:
 - a. Genetic test samples are collected by certified buccal swab collectors at the SRMT-CSEU;
 - b. Genetic testing samples are provided to an accredited genetic testing laboratory with a notice to where to send the results;
 - c. Results should be sent to the SRMT-CSEU if the parties attended Mediation and wish to resolve the matter without further litigation. If the matter is pending in Tribal Court the results shall be sent to it;
 - d. Once Tribal Court has received genetic testing samples it shall notify the parties and notify the parties of the next court date. Once SRMT-CSEU has received the results, it shall notify the parties and notify them of a new Mediation date;
 - e. If genetic tests show that the putative father is the biological father by a percentage of 99.0% or higher, paternity is presumed and the putative father shall be adjudicated the legal father;
 - f. Whenever the results of the genetic tests exclude the putative father as the biological father of the child, this evidence shall be conclusive evidence of non-paternity and the Tribal Court shall dismiss the action unless it finds good cause in the child's best interest to allow the matter to go forward;
 - g. If the paternity action was brought by the child's biological mother but she refuses to submit herself or the child to the genetic tests, the action shall be dismissed; and
 - h. Establishment of paternity under this section has no effect on Tribal enrollment or membership.

H. Final Paternity Hearing

1. If paternity was not established by voluntary acknowledgment at the initial court appearance, and a genetic test was ordered, a final paternity hearing shall be held where the results of the genetic testing shall be presented unless the parties agree to the establishment of paternity. The hearing shall be held no later than ten (10) days after the receipt of the genetic testing results.
2. Upon the Tribal Court's receipt of the genetic test results, it shall advise the parties of its receipt of the results. The SRMT Court Clerk shall then schedule the matter for a hearing.
3. If the genetic tests results indicate a probability of 99.0% or higher, the SRMT-CSEU shall file a Proposed Order, that:
 - a. Finds the putative father is the biological father based on genetic testing
 - b. Sets conditions for the repayment of any fees or costs associated with the paternity action including, but not limited to, genetic testing, service of process and modification of the official birth record.
4. If genetic tests establish that there is a probability of 98.9% or lower and there has been no showing by the preponderance of the evidence that the putative father named in the Petition is not the biological father, the SRMT-CSEU shall file a Proposed Order that the case be dismissed unless the Court determines there is good cause in the child's best interest to move forward with the hearing.
5. Absent new information being received by the Court at the final hearing which would render the Proposed Order in error, the Court shall sign the Proposed Order and the Order shall become a final judgment of the Court.

SECTION V: ESTABLISHMENT OF CHILD SUPPORT

A. Establishment or Modification of Child Support

A parent, child, custodial parent, the child's legal guardian, or the SRMT-CSEU on behalf of the Tribe, may petition the court for the establishment of a child support order. No child support can be ordered unless paternity has been established.

B. Petition for the Establishment of Child Support

1. In order to petition for child support, a parent, child, custodial parent, guardian or any other person who is providing financial support and with whom the child (ren) reside shall submit a complete child support application to the SRMT-CSEU. Based on that application, the CSEU shall file a petition for an order establishing child support.

2. The petition for establishment of child support shall contain the following information:
 - a. The name, date of birth and tribal affiliation (if known) of the child;
 - b. The names, dates of birth, tribal affiliation (if known) and addresses of the parents in the action.
 - c. If there is a protective order in place, the address of the affected party and of any children shall be redacted from all court documents; or if there is reason to believe that emotional or physical harm may be inflicted should the whereabouts of a party or a child be disclosed, the petitioner shall state the reason and request the Court to issue an Order redacting the personal information from all court documents that respondent can access;
 - d. The amount of the proposed child support requested pursuant to the guidelines provided for in this Act.
 - e. A statement indicating how health insurance and/or medical support is to be provided, whether there are any outstanding medical bills, and whether there are any extraordinary medical expenses for the child(ren);
 - f. A statement indicating whether there are any work-related child care expenses;
 - g. A statement indicating if there has ever been a separate proceeding in another jurisdiction for paternity, custody, placement, or child support involving the subject child(ren) ;
 - h. A statement as to the current custody, placement and parenting time of the child (ren);
 - i. An official birth certificate, acknowledgment of paternity or court order indicating that the father is named as the legal father of the child or children. A copy of either the official birth certificate, court order or acknowledgment of paternity shall be attached to the petition. If the parties were married at the time of the child (ren)'s birth then such a statement shall be included in the petition.

C. Financial Disclosure

1. Each party to the action shall be required to complete a Financial Disclosure Form and to provide SRMT-CSEU with the disclosure prior to the Mediation as required by Section III (A) (3). Each party shall sign a confidentiality statement that will require each of them to keep any information learned during the mediation confidential. If a party fails to attend Mediation then each party shall file the Financial Disclosure Form with the Court prior to the initial court appearance.
2. Prior to Mediation, each party shall provide the SRMT-CSEU with the following financial

documents: the last two (2) years of income tax returns, W-2s, 1099s, and current pay stubs, if available. If a party fails to attend Mediation then each party shall file the required financial documents to Tribal Court prior to the scheduled initial court appearance.

3. Each party to the action shall complete a Release of Information Authorization which shall allow SRMT-CSEU to obtain additional financial records and to confirm any information provided by a party.
4. The following SRMT entities are required to release information to SRMT-CSEU for the purpose of establishing, modifying or enforcing a child support order:
 - a. All departments of SRMT;
 - b. Akwesasne Housing Authority and Community Development;
 - c. SRMT Tribal enterprises; and
 - d. Any person or entity doing business within the territory of the Saint Regis Mohawk Tribe.
5. If a party declines to participate in Mediation, or otherwise fails to provide the required financial disclosure as outlined above, the Court and SRMT-CSEU will utilize imputed income to determine his/her child support obligation.
6. Financial information shall be kept confidential and full disclosure of information shall be available only to the Court and the SRMT-CSEU. When any financial documents are filed with the Court to be placed in the public docket, the Court shall redact all personal and confidential information such as social security numbers, employee identification numbers, tax identification numbers and all other identifying data. The Court shall order the parties to keep confidential any financial information obtained during the hearing.
7. Any financial information provided to SRMT-CSEU or the Court shall be used for the sole purpose of establishing, modifying, or enforcing child support.

D. Child Support Guidelines

1. Every four (4) years, SRMT-CSEU shall prepare a Child Support Standards Chart (CSSC) guideline which shall serve as a guide to parties and the SRMT Court in determining the basic child support obligation. The chart shall be broken down by annual income ranges and by the number of children in a case.
2. A parent's child support obligation shall be established utilizing the annual gross income of the CP and NCP. If a parent's income is unknown or if the parent is unemployed, imputed income may be used when calculating the child support.
3. Child support is based on a percentage of income determined by the number of children as follows:

- a. 17% for one child;
 - b. 25% for two children;
 - c. 29% for three children;
 - d. 31% for four children;
 - e. No more than 35% for five or more children.
4. Child support obligations may be impacted by a “Self-Support Reserve” (SSR) which shall be one hundred thirty-five percent (135%) of the poverty income guidelines amount for a single person as reported by the Federal Department of Health and Human Services and shall be part of the child support calculation.
 5. Child support obligations shall be based on the percentages contained in this Section and shall be represented as a whole dollar amount in the Court Order, unless the Court finds good cause to deviate from the SRMT CSSC or based on the child’s needs.

E. Child Support Calculations

1. Worksheet. The Child Support Calculation Worksheet provided for in this Act will determine the proposed amount of child support a parent will be responsible for. The worksheet will be completed utilizing the following steps:
 - a. Determine Total Gross Annual Income of each parent. Total Gross Income is determined by totaling all funds received from any source before taxes or other expenses of any kind are taken out. Total Gross Annual Income does not include public assistance payments or child support received or paid on behalf of children of other relationships
 - b. Determine Total Annual Deductions of each parent. Total Annual Deductions is determined by totaling all deductions from income which include federal, state, and local taxes, state unemployment and disability taxes, and social security taxes, union dues but it does not include deductions such as voluntary retirement contributions and transportation deductions.
 - c. Calculate Annual Net Income of each parent. Annual net income is calculated by subtracting the total annual deductions (b) above from the total gross annual income (a) above.
 - d. Calculate Combined Annual Net Income. Combined Annual Net income is determined by totaling the annual net income of the Custodial Parent’s (CP) and Non-Custodial Parent’s (NCP) annual net incomes.
 - e. Determine the Basic Child Support Obligation. To determine the Basic Child Support Obligation, multiply the Combined Annual Net Income by the appropriate child support percentage listed in the CSSC.

- f. Determine Proportional Share of Combined Annual Net Income. To determine each parent's proportional share of combined annual net income in order to calculate their proportional share of the basic child support obligation, divide each parent's annual net income by the total combined annual net income.
 - g. Calculate Basic Child Support Obligation without consideration of low income limitations. To calculate each parent's Basic Child Support Obligation without considering low income limitation, multiply the basic child support obligation by each parent's proportional share of combined annual net income.
 - h. Determine Low Income Limitations. Low income limitations are determined by utilizing the current Federal Poverty Level (FPL) and the Self-Support Reserve (SSR) as reported by the United States Department of Health and Human Services. These limitations are calculated by subtracting each parent's basic child support obligation from their annual net income and then comparing the result with the current FPL and SSR. If the amount falls between the FPL and the SSR, then the presumptive amount will be \$25.00 per month (\$300.00 annually). If the amount falls below the FPL, then the presumptive amount will be \$0.00. If the amount is greater than the SSR, then the low income limitations do not affect the obligation and the presumptive amount will be the Child Support Obligation as calculated.
 - i. Determine Social Security Offset. If a child is receiving Social Security cash benefits as a result of the parent's disability, the amount owed for child support shall be reduced by the amount of the child's monthly cash benefit. Should the child's monthly cash benefit exceed the amount of the monthly child support obligation there shall be no credit against any child support arrears.
 - j. Offset for other child support obligations. If a parent has more than one child support case, any prior child support obligation shall be deducted from his or her gross income.
2. Medical Costs. Medical support may be considered if one or both parents have accessible and affordable health coverage available for the child at a reasonable cost. Reasonable cost is defined as being no more than 5% of a parent's gross income. If a child is eligible for Indian Health Service, the Tribal Court will not establish a medical support order. However, the Tribal Court may require parents to share in the child care expenses and/or extraordinary medical expenses not covered under any policy, plan, or Indian Health Service (IHS).

3. Non Cash Support. Non-cash support may be considered by the Tribal Court in lieu of cash child support only when agreed upon by both parties.
 - a. In determining whether to permit non-cash support, the Tribal Court shall consider the current circumstances of the parties including whether a non-custodial parent is able to obtain employment, and the availability of other financial resources to meet the current cash child support obligation.
 - b. If a low income limitation is determined, non-Cash Support may be considered per the SRMT Child Support Guidelines.
 - c. Non-cash support may not be ordered to repay assigned debts owed to a state or tribal jurisdiction.
 - d. All non-cash support orders must describe the type of non-cash support contribution and the SRMT Court must assign a dollar value to the contribution.
 - e. Should a non-cash support contribution not be met, the recipient of the non-cash support is required to notify SRMT-CSEU by the end of each month of the non-compliance in writing. If a notice of non-compliance is not received by the last day of the month, it shall be presumed the non- cash support contribution was met and the payor shall receive a credit based on the Tribal Court Order.

F. Child Support Establishment

1. Hearing. If the parties are unable to reach an agreement with respect to the child support and other conditions in Mediation, the hearing shall be held on the date and time shown in the Summons and Petition.
2. Supplement. If the amount of child support requested has changed based on information obtained after the filing of the Summons and Petition, the SRMT-CSEU shall file an amended Child Support Worksheet prior to the parties' appearance in Court, with notice to the parties.
3. Order. Following a child support hearing, the Court Order for Child Support shall contain the following information:
 - a. A statement that SRMT has jurisdiction over the child support case and personal jurisdiction over the respondent;
 - b. The amount of child support and any amount to be paid towards arrears, if any exist. Child support arrears may be ordered by the Tribal Court beginning from the date paternity was determined or the date in which the child support petition was filed;

- c. The amount of work-related non-subsidized daycare or health insurance cost to be paid by the NCP;
 - d. A statement regarding the circumstances under which the child support obligation will terminate;
 - e. A statement that each parent shall notify SRMT-CSEU of any change of employer or address within ten (10) days of said occurrence;
 - f. A statement that if a payor becomes delinquent in an amount equal to one month's child support or fails to follow the terms of the Court Order, any and all enforcement remedies available to SRMT- CSEU under this Act shall be taken;
 - g. An order to seek work if the NCP is unemployed or underemployed;
 - h. That each party may request a review of the support order once every twenty-four (24) months or sooner if there is a change in circumstances warranting a modification;
 - i. If the parties request that child support payments not be made to the SRMT-CSEU pursuant to a Federal Notice of Income Withholding, the Tribal Court will take testimony on how the parties intend to remit payments. If either the CP or NCP demonstrates that there is good cause not to require income withholding, the Court may enter such a finding. However, the order also shall state that if the payor becomes delinquent in an amount equal to one month's child support SRMT-CSEU may issue a Notice of Income Withholding and submit it to the employer or other source of income of the payor.
4. Deviation. There is a rebuttable presumption that the worksheet calculations are correct to support the requested award of child support. However, the Tribal Court has discretion to deviate from the child support calculation based on substantial evidence that the calculation would be harmful to the parent. If the Court decides to deviate from the calculations, the Court shall state in a written order the amount that would have been ordered had the guidelines been followed and the Court must justify such deviation. The Court may only rely on one or more of the following reason(s):
- a. The financial resources of the child (ren) and or parent(s) require it;
 - b. One of the parents is a seasonal employee of a trade or profession;
 - c. The party has a verified and documented legal financial obligation to a person other than the child, to make payments, such as extraordinary medical or educational expenses;

- d. The party has verified and documented extraordinary travel expenses incurred in exercising the right to periods of physical placement or visitation;
 - e. The party has verified and documented extraordinary travel expenses incurred to secure employment;
 - f. The best interests of the child including physical, mental and emotional needs and the child's educational needs;
 - g. The NCP already provides for the child's needs, without a child support order including but not limited to, shelter, food, and extracurricular activities. The NCP shall provide an affidavit attesting to this claim with supporting affidavits from school officials, social service workers, employers, and any other source that can substantiate the claim; or
 - h. An agreement by the parties for a deviation.
5. Default Order. When the respondent fails to appear or fails to answer a Petition filed herein, the Tribal Court shall enter a Default Child Support Order pursuant to Section II D.
- a. In issuing the Default Order, the Court must also find that the Petition or the recommendation of SRMT-CSEU is based on available, relevant and material financial information and the respondent's child support obligation, at the amount provided for in the Default Order, has been correctly determined under the guidelines and schedule based on calculation of the income provided or based upon the child (ren)'s needs.
 - b. The Default Order shall be served on the respondent by the Tribal Court Clerk per the Service requirements at Section II C.
 - c. A Default Child Support order may be reopened upon motion of the party and such motion to reopen shall be liberally granted for good cause.
6. Modification of Child Support Determination. Any party to an action may request a child support review from SRMT-CSEU to determine if there has been a substantial change in circumstances since the last order for child support or if the child support order has not been reviewed for twenty-four (24) months or more. A substantial change in circumstances includes, but is not limited to, a change in annual income of 15% or a change in the actual residence of a child (ren) has changed. If a modification is justified, the SRMT-CSEU shall file a petition for modification of child support. The petition shall be subject to the same procedures as an initial petition for child support including the requirement for Mediation, a worksheet calculation, and a court hearing to review the petition.
7. Termination of Child Support. Child support shall continue until the child reaches the age of twenty one (21) years, unless emancipated pursuant to a valid court order. When the

child reaches the age of twenty one (21), SRMT-CSEU shall file a petition with the Tribal Court to terminate the duty to pay support. A hearing will be scheduled at a date not to exceed the child's twenty-first (21) birthday.

G. Payment of Child Support

1. SRMT-CSEU will be responsible for the receipting, distribution and disbursement of all child support payments pursuant to their IV-D Plan.
2. After an agreement is reached between the parties or the issuance of an order for child support, SRMT-CSEU, if appropriate, will file a Federal Income Withholding Order/Notice for Support (IWO) (Form # OMB0970-0154) and submit to the employer or other source of income of the payor.
3. An IWO shall indicate the amounts to withhold and any additional amounts to repay any arrearages pursuant to the terms of the Order. The employer must submit all amounts withheld to SRMT-CSEU no later than five (5) days following the date the income was withheld.
4. The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor's disposable income available for child support. For the purpose of calculating the amount of income subject to garnishments, Disposable Income means an individual's compensation (including salary, overtime, bonuses, commission, and paid leave) after the deduction of health insurance premiums and any amounts required to be deducted by law. Amounts required to be deducted by law may include federal, state and local taxes, state unemployment and disability taxes, social security taxes, and other garnishments or levies, union dues, but does not include such deductions as voluntary retirement contributions and transportation deductions. This requirement shall be so stated in the court order and any SRMT-CSEU correspondence.
5. If the Court has not ordered income withholding, the income of the NCP shall become subject to withholding, at the earliest, on the date when the payments which the NCP has failed to make are at least equal to the support payable for one month. In that case, SRMT-CSEU shall issue a Notice of Income Withholding and submit it to the employer or other source of income of the payor.
6. No employer shall refuse to honor a Notice of Income Withholding or a party's wage withholding request issued under this Act. If the employer fails to withhold income in accordance with the terms contained in the Notice of Income Withholding, the employer may be held liable for all amounts that should have been withheld from the payor. The SRMT-CSEU has the authority and standing as the Tribal agency with authority to enforce this Tribe's interest in child support, to initiate an action to recoup such amounts. The SRMT-CSEU Standard Operating Procedures will provide detail on when and how this will occur.

7. An employer may not discharge, refuse to employ or take disciplinary action against an employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section may subject an employer to appropriate penalties as to be determined under SRMT law or custom.
8. When there is no current child support order and all arrearages have been satisfied, the SRMT-CSEU shall promptly terminate an Income Withholding Order/Notice for Support and provide the employer or other source of income, a termination notice.
9. Parties will be provided with a detailed account statement, broken down by month, annually and upon request. The SRMT CSEU will promptly refund amounts which have been improperly withheld.
10. The SRMT-CSEU shall allocate withheld amounts across multiple withholding orders to ensure that withholding occurs for each case and does not result in any case not being implemented.

H. Enforcement of Child Support Orders

1. Should a payor fail to pay his or her support pursuant to the Tribal Court Order, SRMT-CSEU may report the delinquency to credit bureaus and pursue any other enforcement action available under applicable law.
2. The SRMT-CSEU may take the following enforcement actions by requesting a court order for any or all of the following:
 - a. That any tribally issued licenses or permits, or other forms of “permission needed” licenses or permits issued by the Saint Regis Mohawk Tribe from the Tribal Council be suspended or revoked;
 - b. That the gaming winnings of the payor be seized;
 - c. That the payor seek work if unemployed or under-employed;
 - d. That the payor attend classes to achieve a high school diploma or equivalent;
 - e. That the payor cooperate with SRMT-CSEU and follow any referrals made for services;
 - f. That the payor’s non-essential personal property be seized and sold to pay off the arrears.
3. In the event that any of the foregoing does not result in the payor making his/her child support obligations, the SRMT-CSEU may request assistance from other State and Tribal

IV-D agencies to take any actions necessary to collect such support. Such actions may include but are not limited to:

- a. Seizure of state and federal tax refunds;
 - b. Placement of liens on personal property or real property located off-reservation;
 - c. Passport denial;
 - d. Driver's license and professional license suspension;
 - e. Seizure of bank and other financial accounts;
 - f. A finding contempt and possible incarceration.
4. In the enforcement of any child support order, the following shall be exempt from execution as follows:
- a. Supplemental Security Income (SSI); Temporary Assistance for Needy Families (TAN-F);
 - b. All wearing apparel of every person in the family except that only \$500 in value in furs, jewelry, beadwork and personal ornaments for the person owing the child support obligation;
 - c. Items of bona fide religious or cultural significance;
 - d. Equipment, vehicles, tools, instruments and/or other materials determined by the Court to be necessary to enable the payor to obtain income;
 - e. Any lands within the SRMT reservation that are used by the payor as a primary residence.

SECTION VI: FOREIGN ORDERS

A. Registration for Enforcement of Foreign Order

1. The SRMT Court shall recognize and enforce any valid child support order that is properly registered with the Tribal Court pursuant to the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B).
2. Foreign Orders may be registered with the Tribal Court by request of the transferring foreign court or by petition of the SRMT-CSEU. Any requests to the Tribal Court from a foreign jurisdiction for enforcement of a child support order shall be referred to SRMT-CSEU for processing of the petition under this section.

B. Petitions for Registration of Order.

1. A petition and proposed order shall be filed with the Tribal Court requesting registration of the foreign child support order. The Petition shall include:
 - a. The name of the petitioner;
 - b. The name of the payor;
 - c. Statement that upon information and belief the payor is an enrolled member or employee of the Saint Regis Mohawk Tribe;
 - d. The name of the child and other children that the payor may have child support obligations to;
 - e. The amount of arrears, if any;
 - f. A copy of the most recent court order from the foreign jurisdiction for which enforcement is sought;
 - g. The record of payment over the past twelve months;
 - h. The person or entity that should be paid if the petition is granted;
 - i. Any other relevant information that will aid the court.
 - j. Identification of what child support enforcement services are being requested.
2. The Tribal Court shall serve the petition for registration along with a Notice of Registration by mailing a copy of the petition with the notice of registration to the payor. The payor shall be notified of the right to object in writing to the registration within twenty (20) days of the mailing. The only allowable objection to the recognition and enforcement of a judgment is a mistake of fact or that the court lacked jurisdiction to hear the matter.

C. Enforcement of Foreign Judgment

1. If twenty (20) days have lapsed and no objection from the payor has been received, the Tribal Court shall issue an order within seven days recognizing the judgment as enforceable
2. The Tribal Court Order shall not allow any modification of the underlying child support order or otherwise change the payment percentage, or other payment amount in the underlying child support order unless the parties agree the originating Court no longer has exclusive, continuing jurisdiction to hear the matter. The foreign court retains exclusive, continuing jurisdiction until neither party nor the child reside there or the parties agree to have SRMT Tribal Court assume jurisdiction.

3. Upon issuance of the Order recognizing the judgment, the SRMT-CSEU shall issue a Federal Notice of Income Withholding and submit the Notice to the employer or other source of income of the payor, if applicable.
4. Income Withholding Order/Notice for Support shall indicate the amounts requested to be withheld and any additional amounts to repay any arrearages pursuant to the terms of the order. The employer must submit all amounts withheld to the SRMT-CSEU no later than five (5) days following the date of withholding from the payer's income.
5. The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor's gross income as outlined above in § V G(4).
6. An employer may not discharge, refuse to employ or take disciplinary action against an employee because his or her wages have been subjected to withholding for child support.
7. Failure to comply with this section may subject an employer to appropriate penalties as to be determined under SRMT law or custom.
8. All other provisions of this Act shall be followed with respect to enforcement of the order.

SECTION VII: LOCATION OF PARENTS AND ASSETS

SRMT-CSEU is responsible for locating or attempting to locate all parents and their assets should that information be needed to establish or enforce a child support order. The SRMT-CSEU shall utilize all sources available to them to perform locate tasks.

SECTION VIII: APPEALS

Any party to a child support action may appeal from any final Tribal Court Order under the Rules of Civil Appellate Procedure.

SECTION IX: SEVERABILITY

The provisions of this Act are severable and if any part of provision shall be held void by the Saint Regis Mohawk Tribal Court, the decision of the court shall not affect or impair any of the remaining parts or provisions of this Act.

SECTION X: SOVEREIGN IMMUNITY NOT WAIVED

Nothing in this Act is intended nor shall be construed as any waiver of the sovereign immunity of the Saint Regis Mohawk Tribe from suit in State, Federal or Tribal Court against the Saint Regis Mohawk Tribe, or as to any Tribal entity, official, or employee acting in his or her official capacity.

SECTION XI: AMENDMENT

This Act may be amended upon the approval of such amendments by the majority of Tribal Council and upon notice to the Tribal membership.

SECTION XII: REPEALER

This Act shall supersede and replace all prior Acts, or portions thereof, adopted by the Saint Regis Mohawk Tribe, as they pertain to the matters contained herein.