

FILE COPY

IN THE SUPREME COURT OF THE STATE OF ALASKA

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

Appellants,

v.

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

Appellee.

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



Supreme Court No.: S-14935

EXCERPT OF RECORD VOLUME 2 of 2

Mary L. Lundquist Alaska Bar No. 9012132 State of Alaska Office of the Attorney General 100 Cushman Street, Suite 400 Fairbanks, AK 99701

Attorney for Appellant State of Alaska Department of Revenue Child Support Services Division

Filed in the Supreme Court of the State of Alaska, this 11th day of September, 2013.

Clerk of the Appellate Court

By: [Signature] Deputy Clerk

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State of Alaska v. CCTHITA

Case No. S-14935

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I certify that on 8-27-10, a copy of this document was mailed to the following parties:

Respondant  Petitioner

CMR  
Signature

Jesse Aubold  
Printed Name

CCHITA Tribal Court

AUG 27 2010

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

Tribal Child Support Unit,  
Ex Rel.  
Nicholas & Caleb,  
  
A minor child under the age of 18  
  
Evelyn N. Edenshaw,  
  
Petitioner,  
  
Ryne M. Calhoun,  
  
Respondent.

**MOTION TO MODIFY CHILD  
SUPPORT ORDER**

Court Docket #: 09-CS-0615

Hearing Date: To be set by Court Clerk

TCSU Case No. 08-0282

**MOTION**

NOW COMES the Tribal Child Support Unit (TCSU) and prays the Court, based upon the records and pleadings below, to enter an Order modifying the child support order as necessary to reflect a change in circumstance of the parties, and respectfully requests the court enter an order suspending collection of current support pending the outcome of the hearing on the modification.

1. The Tribal Child Support Unit does not represent the Petitioner or the Respondent in this action and will not provide legal advice to either party.
2. On April 7, 2009 the Central Council Tribal Court entered an order for child support payments in the amount of \$ 473 for two children and \$341 per month for the following children:

|     | <u>Name of Child</u> | <u>DOB</u> | <u>Resident of (City &amp; State)</u> |
|-----|----------------------|------------|---------------------------------------|
| (1) | Nicholas E. Calhoun  | 5/3/2004   | Sitka, AK                             |
| (2) | Caleb S. Calhoun     | 12/10/2007 | Sitka, AK                             |

Motion to Modify Child Support Order  
Page 1 of 4

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

EXHIBIT 2  
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3. The Tribal Child Support Unit is providing enforcement services for the benefit of the minor child(ren) who is/are the subject of this action pursuant to Title IV-D, Part D of the Social Security Act (42 U.S.C. § 301 et seq.). The Tribal Child Support Unit is authorized to initiate an action to modify the child support order pursuant to CCTHITA Family Responsibility Statute Title 10.03.007.

4. The Tribal Child Support Unit has determined that there has been:

- An increase in the Respondent's monthly income of 15% or more,
- A decrease in the Respondent's monthly income of 15% or more;
- Substantial change in circumstances to be determined by the Court:

The TCSU offers the following facts in support of the Motion to Modify the CCTHITA Tribal child support order.

- a. On July 6, 2009, the Sitka Superior Court entered an interim order providing that the parties shall share physical custody of the minor children 50/50, effective July 10, 2009. A copy of this interim order is attached herewith.
- b. On October 9, 2009, the Sitka Superior Court entered a final order providing that the parties will share physical custody 50/50. A copy of this order is attached.
- c. This arrangement is a substantial change of circumstances from when the initial child support order was entered. At the time of entry of the prior order, the Petitioner, Evelyn Edenshaw, had 100% custody of the children.
- d. The court should enter an order staying the collection of current support until the modification hearing is held. The TCSU is currently collecting child support per the April 7, 2009 Tribal child support order which is based upon a 100% custody arrangement which does not fit the parties' current legal and physical arrangements.

II. Relief Requested

- Determine support for the dependent child(ren) listed in Section 1 pursuant to the Tribe's Child Support Schedule and order either or both parents to provide health coverage and/or ensure child(ren) is/are enrolled in Indian Health Care Services.
- Determine the amount of any arrearages and who arrearages are owed to.
- Issue an order suspending collection of current support until a hearing on the modification is held.

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Order that the non-custodial parent pay the current support obligation as determined pursuant to the Tribe's Child Support Schedule, plus 20% of the current support obligation to be paid towards arrearages.

Provide that the support obligation and payment shall be made through wage garnishment as a means of execution to pay the support obligation(s), or:

Order that payments shall be made to:

Payable to Tribal Child Support Unit  
Send to Tlingit and Haida Tribal Child Support Unit  
320 West Willoughby Ave., Suite 300  
Juneau, Alaska 99801

Order that if Custodial Parent or the child or children's custodian withdraws from TCSU child support services and no longer receives Tribal TANF benefits, the Tribal Child Support Unit may collect arrears owed to the Tribe in an amount up to the amount of the current support obligation until the Tribal TANF debt is paid in full.

Order that when the child(ren) emancipate, and no current support is due, the Tribal Child Support Unit shall collect arrears owed to the Custodial Parent or custodian and/or Tribal TANF in an amount equal to the current monthly child support obligation until the Custodial Parent, the child or children's custodian, and/or Tribal TANF debt is paid in full.

Pursuant to CCTHITA Family Responsibility, Sec. 10.03.005, order that the custodial and non-custodial parents or other party shall keep TCSU informed of and change in employer or change in address within 10 days. Service of child support actions after this date may be done by regular mail to the last address of record provided to the Tribal Child Support Unit.

Order that a hearing date be set for the court to enter an order on this motion.

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And, for such other relief as the Court deems just and equitable.

I declare under penalty of perjury under the laws of the Tlingit and Haida Indian Tribes of Alaska that the foregoing is true and correct.

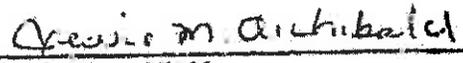
Dated: August 27, 2010

Respectfully Submitted:



Amanda Blackgoat Diehl  
Child Support Specialist

Approved for Entry:



Jessie M. Archibald  
TCSU Attorney

1 PEARSON & HANSON LLC  
2 PO Box 98 713-B Seaview Blvd.  
3 Sitka, Alaska 99835-0098  
4 Phone (907) 747-3257 Fax (907) 747-3977

5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
6 FIRST JUDICIAL DISTRICT AT SITKA

Filed in the Trial Court  
State of Alaska First District  
Sits

7 RYNE M. CALHOUN,

8 Plaintiff,

9 v.

10 EVELYN N. CALHOUN,

11 Defendant.

JUL -6 2009

12 Clerk of the Trial Court  
By J.P. Deputy

13 Case No. JSI-08-167 CI

14 INTERIM ORDERS

15 On Plaintiff's Motion For Interim Orders, Defendant having / opposed / not responded /, being fully  
16 advised, the court finds good cause for the following interim orders.

17 1. The parties shall share physical custody during the pendency of this case as follows:

18 a. The parties shall share the physical custody of the minor children by alternating  
19 weeks. The transition between homes shall take place on Fridays at 5:30 p.m., or as mutually agreed by the  
20 parents. The Father's first week under this arrangement shall start on Friday, July 10, 2009  
21 2009. During the week a parent doesn't have physical custody of the minor children, that parent shall have  
22 an evening visitation with the minor children on Wednesdays from 5:30 p.m. until 8:00 p.m., or as mutually  
23 agreed by the parents. Each parent shall pay for the childcare provider and the preschool when they have  
24 physical custody of the minor children. Each parent shall call the other parent as soon as practical and give  
25 them first option to care for the minor children when they need childcare for more than 4 hours, including  
26 when that parent is working, traveling, ill, working out of town or otherwise unable to care for the minor  
27 children. The parents shall be free to choose appropriate childcare providers.

28 ////

Interim Orders  
Calhoun v. Calhoun, Case No. JSI-08-167 CI  
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Initialed [Signature] Date 07/07/09

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EXC. 305



1 PEARSON & HANSON LLC  
2 PO Box 99 715-B Sawmill Creek Blvd.  
3 Sitka, Alaska 99835-0098  
Phone (907) 747-3237 Fax (907) 747-4977

4 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
5 FIRST JUDICIAL DISTRICT AT SITKA

Filed in the Trial Courts  
State of Alaska First District  
SITKA  
Scan filed 10/2/09  
OCT 09 2009

6 RYNE M. CALHOUN, )  
7 Plaintiff, )  
8 v. )  
9 EVELYN N. CALHOUN, )  
10 Defendant. )

Clerk of the Trial Courts  
By ATS Deputy

11 Case No. 181-05-167 CI

12 DECREE OF DIVORCE

13 This case having come before this court on September 16, 2009, with Superior Court Judge Patricia A.  
14 Collins appearing by telephone. Also, appearing by telephone was Brad Brinkman, court appointed Master and  
15 Mediator. Plaintiff was present in person. Plaintiff's attorney was present in person. Defendant was present in  
16 person. Defendant was not represented by an attorney. The parties, having successfully completed mediation earlier  
17 that day, proposed a settlement in open court, through Mr. Brinkman, concerning custody, division of property, and  
18 allocation of obligations. Testimony was elicited from the parties. The court has made and entered its Findings Of  
19 Fact And Conclusions Of Law;

20 NOW, THEREFORE, IT IS HEREBY ORDERED THAT the parties are granted an absolute Decree Of  
21 Divorce.

22 IT IS FURTHER ORDERED as follows:

23 Custody

24 1. The parties shall share the legal custody of the minor children, namely, NIKOLAS E. CALHOUN,  
25 born May 3, 2004; and CALIB S. CALHOUN, born December 10, 2007.

26 2. The parties shall share the physical custody of the minor children by alternating weeks. The  
27 transition between homes shall take place on Fridays at 5:30 p.m. or as mutually agreed by the parents. Each parent  
28 shall pay for the childcare provider and the preschool when they have physical custody of the minor children. Each

10/1/09  
10/1/09  
Decree Of Divorce  
Calhoun v. Calhoun, Case No. 181-05-167 CI  
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FAXED TO JUDGE COLLINS  
10/1/09 by ATS  
5 pages  
+ filings

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1 parent shall call the other parent as soon as practical and give them first right of refusal to care for the minor children  
2 when they need childcare for more than 4 hours, including when that parent is working, traveling, ill, or otherwise  
3 unable to care for the minor children. The parents shall be free to choose appropriate childcare providers.

4 3. The parents shall share physical custody of the minor children on holidays and birthdays as mutually  
5 agreed by the parents. If the parents are unable to agree otherwise, the parents shall share physical custody on  
6 holidays and birthdays as follows:

7 3.1 Christmas Eve and Christmas Days. The Father shall have physical custody from 12:00  
8 p.m. on Christmas Eve until 12:00 p.m. on Christmas Day on odd numbered years and the Mother shall have the  
9 same on even numbered years. The Father shall have physical custody from 12:00 p.m. on Christmas Day until  
10 12:00 p.m. the following day on even numbered years and the Mother shall have the same on odd numbered years.

11 3.2 Thanksgiving. The Father shall have physical custody from 10:00 a.m. until 3:00 p.m. on  
12 all even numbered years and the Mother shall have the same on all odd numbered years. The Father shall have  
13 physical custody from 3:00 p.m. until 8:00 p.m. on all odd numbered years and the Mother shall have the same on  
14 even numbered years.

15 3.3 Minor Children's Birthdays. The Father shall have physical custody from 10:00 a.m. until  
16 8:00 p.m. on all odd numbered years and the Mother shall have the same on all even numbered years.

17 3.4 Father's/Mother's Days. The Father shall have physical custody from 10:00 a.m. until 8:00  
18 p.m. on all Father's Days and the Mother shall have the same on all Mother's Days.

19 3.5 Father's/Mother's Birthdays. The Father shall have physical custody from 10:00 a.m. until  
20 8:00 p.m. on his birthday each year and the Mother shall have the same on her birthday each year.

21 3.6 Halloween. The parents shall equally share "trick or treating" time ( 1 1/2 hours each) every  
22 Halloween. The Father shall have physical custody during the later portion on all even numbered years and the  
23 Mother shall have the same on all odd numbered years.

24 3.7 Independence Days. The Father shall have physical custody from 10:00 a.m. until 8:00 p.m.  
25 on all odd numbered years and the Mother shall have the same on all even numbered years.

26 3.8 New Year's Eve and New Year's Days. The Father shall have physical custody from 9:30  
27 p.m. on New Year's Eve until 12:00 p.m. on New Year's Day on all even numbered years and the Mother shall have  
28 the same on all odd numbered years.



1 benefits accrued with his employers; and, all personal property in his possession or control, except as otherwise  
2 stated.

3 7.2 The Wife is awarded the following: 2002 Mitsubishi Montero; couch; love seat;  
4 entertainment center; table and chairs; wine rack; two dressers; crib; all personal effects and household effects in her  
5 possession or control; all bank accounts in her name; all benefits accrued with her employers; and, all personal  
6 property in her possession or control, except as otherwise stated.

7 8. The Husband owns a mobile home (1997 Kentwood, VIN KW4892) located at 2716 Halibut Point  
8 Road #32, Sitka, Alaska. The mobile home secures a debt with ALPS Federal Credit Union, Sitka, Alaska, of  
9 approximately \$29,000. The Husband has been and continues to be the sole obligor of that debt. The Husband is  
10 awarded the mobile home and debt secured by the mobile home.

11 9. The Husband has retirement benefits (IRA) from his employer, Sitka Boating Co., with Edward  
12 Jones, Account No. 092-92369-1-3, with a current balance of less than \$100. The Husband is awarded these  
13 retirement benefits.

14 10. The Wife has no retirement benefits.

15 11. The Husband shall pay the debts to: ALPS Federal Credit Union, Acct. Nos. 14485-01L and 14485-  
16 02L (secured by the mobile home) with current balances totaling approximately \$25,000; ALPS Federal Credit  
17 Union, Acct. No. 14485-031. (secured by the 2002 Mitsubishi Montero) with a current balance of approximately  
18 \$3,000; all credit cards and credit accounts, if any, currently in his name and/or control; and, he shall defend,  
19 indemnify and hold harmless the Wife for their payment.

20 12. The Wife shall pay the debts for all credit cards and credit accounts, if any, currently in her name  
21 and/or control; and, she shall defend, indemnify and hold harmless the Husband for their payment.

22 13. The Husband shall pay for insurance on the 2002 Mitsubishi Montero, comparable to the insurance  
23 last maintained by the Husband, for the period of one year from entry of this decree. Except, if the Husband pays in  
24 full the debt secured by the 2002 Mitsubishi Montero within 10 days of entry of this decree, the Husband may satisfy  
25 this insurance obligation by making a cash payment to the Wife of \$1,500 within 3 days of paying off the debt.

26 14. Each party shall be responsible for any debts of the marriage not specifically awarded herein which  
27 are solely in their name and/or under their control and each shall defend, indemnify and hold the other harmless for  
28 their payment.

Decree Of Divorce  
Calhoun v. Calhoun, Case No. 1SI-08-167 CI  
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EXC. 310

1 15. Each party is awarded his or her separate property and is responsible for his or her separate debts  
2 acquired before the marriage.

3 16. Each party is awarded his or her separate property and is responsible for his or her separate debts  
4 acquired subsequent to the parties' final separation on July 8, 2008.

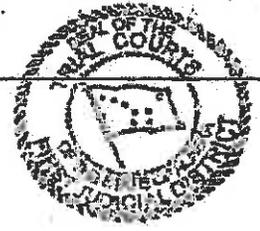
5 17. Each party shall be responsible for the debts which attach to the property awarded to them, except as  
6 provided herein, and each shall indemnify and hold the other harmless for their payment.

7 18. Neither party shall charge upon the credit of the other. Neither party shall contract any indebtedness  
8 or incur any liability for which the other may be held liable. All outstanding credit cards and charge accounts in the  
9 name of either or both parties under which the other can receive credit shall be canceled immediately.

10 19. Each party shall, within 30 days of this decree or at any and all subsequent times upon request by the  
11 other party or their legal representative, make, execute and deliver any and all such other and further instruments as  
12 may be necessary or desirable for the purpose of giving full force and effect to this decree.

13 DATED this 2nd day of October, 2009.

14 Patricia A. Collins  
15 Patricia A. Collins  
16 Superior Court Judge



17  
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19  
20 Approved as to content and form this 29<sup>th</sup> day  
of September, 2009.

Approved as to content and form this 30 day  
of September, 2009.

21  
22 By: Brian E. Hanson  
Brian E. Hanson  
Attorney for Plaintiff  
Alaska Bar No. 8505037

23 By: Elizabeth C. Gonzalez  
Defendant  
Pro Se

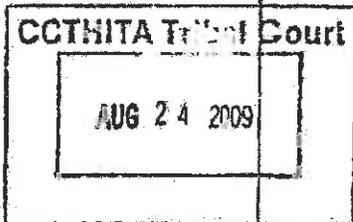
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**CERTIFICATION**  
I certify that on 5 day of October,  
a true copy of this decree was placed  
in attorney's box numbered in the following:  
B. Hanson; P. Gonzalez  
By: JWS

Decree Of Divorce  
Callahan v. Callahan, Case No. 151-02-157 CI  
Page 5 of 5

AT SITKA  
10-1-09

1 PEARSON & HANSON  
713-B Sawmill Creek Boulevard  
2 PO Box 98  
Sitka, Alaska 99835  
3 (907) 747-3257 (ph) / (907) 747-4977 (fax)



4  
5 In the Central Council Tlingit and Haida  
6 Indian Tribes of Alaska Tribal Court  
Juneau, Alaska

7 Tribal Child Support Unit,

Ex. Rel.

REPLY TO RESPONSE TO  
STATEMENT OF REASONS

8 Nikolaz & Caleb,  
9 Minor children under the age of 18

10 Evelyn N. Edenshaw,

Petitioner

Court Docket #: 09-CS-0015

11 Vs

12 Ryne M. Calhoun,

Respondent

TCSU Case #: 08-0282

13  
14  
15 REPLY TO RESPONSE TO STATEMENT OF REASONS

16 Appellant, Ryne M. Calhoun, has challenged the jurisdiction of the Tribal Court.  
17 Appellee, TCSU, responds claiming the Tribal Court does have jurisdiction, citing the  
18 CCTHITA Statute Code. Mr. Calhoun does not dispute that the Tribal Court could have  
19 jurisdiction under the CCTHITA Statute Code. Mr. Calhoun simply argues that the Tribal Court  
20 does not have jurisdiction because he filed his divorce action,<sup>1</sup> which encompasses the child  
21 support obligation, in the Superior Court for the State of Alaska before Ms. Edenshaw filed her  
22 petition for child support with the Tribal Court.

23 Mr. Calhoun filed in the Superior Court on October 2, 2008. Ms. Edenshaw was served  
24 with the summons and complaint on October 6, 2009.<sup>2</sup> Ms. Edenshaw filed her petition for child

25  
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27  
28 <sup>1</sup> See Exhibit 1 attached, which is a copy of the Complaint For Divorce, filed October 2, 2008.

<sup>2</sup> See Exhibit 2 attached, which is a copy of the Certificate Of Service By Certified Mail, filed October 13, 2009.

1 support in the Tribal Court on February 10, 2009, with full knowledge that the divorce action  
2 was filed in the Superior Court.

3 TCSU maintains they contacted the CSSD, prior to filing the petition, to inquire whether  
4 there was an existing child support order. There was none. However, TCSU should have  
5 inquired of Ms. Edenshaw whether there were any other proceedings in any other court which  
6 could effect the Tribal Court proceeding. If they would have, they would have found out about  
7 the Superior Court proceeding, assuming Ms. Edenshaw told the truth. TCSU also should have  
8 inquired of the Alaska Court System. If they had, they would have found out about the Superior  
9 Court divorce action.

10 CCTHITA Statute Code 04.01.002.D. states that the Tribal Court "shall give full faith  
11 and credit to . . . judicial proceedings and orders of other jurisdictions as they are lawfully given  
12 in that jurisdiction" (emphasis added). Since Mr. Calhoun filed in Superior Court before Ms.  
13 Edenshaw filed in Tribal Court, the Tribal Court should have given "full faith and credit" to the  
14 Superior Court. Accordingly, the Tribal Court's child support order should be dismissed.

15 DATED this 21<sup>st</sup> day of August, 2009.

16  
17 PEARSON & HANSON LLC  
Attorneys for Ryné M. Calhoun

18  
19 By: Brian E. Hanson  
20 Brian E. Hanson  
Alaska Bar No. 8505037

1 PEARSON & HANSON LLC  
2 PO Box 98 713-B Sawmill Creek Blvd  
3 Sitka, Alaska 99835-0098  
4 Phone (907) 747-3257 Fax (907) 747-4977

5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
6 FIRST JUDICIAL DISTRICT AT SITKA

7 RYNE M. CALHOUN,

8 Plaintiff,

9  
10 EVELYN N. CALHOUN,

11 Defendant.

FILED in the Trial Court  
State of Alaska, First District  
Sitka

OCT 01 2008

Clerk of the Trial Courts  
[Signature]

Case No. 1SI-08-167 CI

12  
13 COMPLAINT FOR DIVORCE

14 Plaintiff, RYNE M. CALHOUN, by and through his attorney, BRIAN E. HANSON, of PEARSON  
15 & HANSON LLC, for his action against Defendant, EVELYN N. CALHOUN, alleges as follows:

16 1. Plaintiff is a resident of the State of Alaska, First Judicial District at Sitka. Defendant is a  
17 resident of the State of Alaska, First Judicial District at Sitka.

18 2. The parties were married on or about December 6, 2007, in Sitka, Alaska, and have since  
19 that time been husband and wife. The parties have been living separate and apart since on or about July 5,  
20 2008.

21 3. The parties have two minor children born of the marriage, namely, Nikolas E. Calhoun,  
22 born May 3, 2004, and, Caleb S. Calhoun, born December 10, 2007. Defendant is not pregnant.

23 4. There is an incompatibility of temperament between the parties that makes it impossible for  
24 them to remain together as husband and wife.

25 5. There are custody and child support issues. The parties may be able to reach an agreement  
26 resolving those issues. In the event the parties are unable to reach agreement, the legal and physical  
27 custody of and child support for the minor children will require adjudication by the court.

28  
Complaint For Divorce  
Calhoun v. Calhoun, Case No. 1SI-08-  
Page 1 of 2

Page 1 of 2  
EXHIBIT 2  
PARTIAL OF 129  
1JU-10-376 CI

JUDGE ASSIGNED  
 JUDGE DAVID V. GEORGE  
Superior Court Judge  
 MAGISTRATE BRUCE E. HORTON  
Sitka Magistrate

001338

1 6. There are property issues. The parties may be able to reach an agreement resolving those  
2 issues. In the event the parties are unable to reach agreement, the property and obligations acquired by the  
3 parties during the course of their marriage will require equitable distribution by the court.

4  
5 WHEREFORE, Plaintiff prays for relief as follows:

- 6 A. That the court enter a decree of divorce dissolving the marriage of the parties;
- 7 B. For an order which awards the legal and physical custody of the minor children in  
8 accordance with the best interests of the minor children;
- 9 C. For an order establishing a child support obligation in accordance with Civil Rule 90.3;
- 10 D. For an order addressing coverage of the minor children's health care needs;
- 11 E. That the property and obligations of the parties be divided in a just and equitable manner;  
12 and
- 13 F. For such other and further relief as the court deems just and proper under the circumstances.

14 DATED this 2nd day of October, 2008.

15 PEARSON & HANSON LLC  
16 Attorneys for Plaintiff

17 By: Brian E. Hanson  
18 Brian E. Hanson  
19 Alaska Bar No. #505037

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**CCTHITA Tribal Court**  
**AUG - 7 2009**

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

|  |                   |  |
|--|-------------------|--|
| <b>Tribal Child Support Unit,</b>        | <b>Ex Rel.</b>    | <b>TEMPORARY ORDER ON PETITION<br/>TO MODIFY CHILD SUPPORT</b> |
| <b>Nikolas &amp; Celeb,</b>              |                   |  |
| <i>A minor child under the age of 18</i> |                   |  |
| <b>Evelyn N. Edenshaw,</b>               | <b>Petitioner</b> | <b>Court Docket #: 09-CS-0015</b>                              |
| <b>Vs</b>                                |                   |  |
| <b>Ryne M. Calhoun,</b>                  | <b>Respondent</b> | <b>TCSU Case #: 08-0282</b>                                    |

**FINDINGS OF FACT**

The Child Support Court for the Central Council Tlingit and Haida Indian Tribes of Alaska received a Petition to Modify Child Support on July 31, 2009.

The Court makes the following Findings of Fact:

1. On April 7, 2009, this Court issued a Default Order of Child Support following a Hearing and pursuant to a Petition filed by the Tribal Child Support Unit.
2. On May 7, 2009, the Respondent filed a Notice of Appeal and the case was referred to the CCTHITA Court of Appeals.
3. As of this date, August 6, 2009, the Court of Appeals has not made a final decision concerning the issues presented for appeal.

Order of Motion

**CCTHITA TRIBAL COURT**  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
(907) 585-1432

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**ORDER**

Upon these findings, the Child Support Court Orders the following:

1. The Child Support Court will take no action on the petition until the matter currently on review by the CCTHITA Court of Appeals has rendered a final decision.
2. No hearing will be set for the Petition to Modify Child Support, filed by the Respondent on July 31, 2009, until the CCTHITA Court of Appeals has rendered a final decision.

SO ORDERED ON THIS 7th DAY OF August, 2009.

Debra S. O'Gara  
Debra S. O'Gara, Tribal Court Magistrate

I certify that on 8/10/09, a copy of this document was mailed or personally served to the following parties:  Respondent E, R;  Petitioner R;  TCSU E;  Other \_\_\_\_\_

Marilyn Peratrovich  
Marilyn Peratrovich

R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail; E=Electronic

Order on Motion

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

CCTHITA Tribal Court

AUG - 4 2009

4:10 pm

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

Tribal Child Support Unit,

Ex Rel.

RESPONSE TO STATEMENT OF  
REASONS

Nikolas & Caleb,

A minor child under the age of 18

Evelyn N. Edenshaw,

Court Docket #: 09-CS-0015

Petitioner

Vs

TCSU Case #: 08-0282

Ryne M. Calhoun,

Respondent

ORIGINAL

RESPONSE TO STATEMENT OF REASONS

Appellee, Tribal Child Support Unit, by and through TCSU staff attorney, Jessie M. Archibald, hereby submits the following response to appellant's statement of reasons:

The Central Council Tribal Court has jurisdiction pursuant to CCTHITA Title 06.01.020 and Title 06.01.030 A. 8, which provides the Tribal court jurisdiction, "With respect to any proceeding to determine paternity or parental obligation with respect to a child that is or is eligible to be an enrolled tribal member." The children in this case are members of or eligible for membership with the CCTHITA Tribe. The Tribal Court has jurisdiction of this matter based upon the membership status of the children under 06.01.030 A. 8. See also *John v. Baker*, 982 P.2d. 786, which holds that tribal courts have jurisdiction, based on inherent sovereignty, to

RESPONSE TO STATEMENT OF REASONS-I

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

EXHIBIT 2  
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1 adjudicate child custody cases which arise outside of Indian country, involving children who are  
2 either tribal members or eligible for tribal membership. Furthermore, Title 10-Family  
3 Responsibility, Sec. 10.02.006 A. provides that, "Any parent, legal custodian, interested family  
4 member of the minor child who has custody of the child, or the Tribal IV-D program may  
5 commence a proceeding authorized under this Title or this section. "

#### 6 STATEMENT OF FACTS

7  
8 On February 10, 2009, TCSU filed a Petition to Establish Child Support for Nikolas and  
9 Caleb based upon the custodial parent, Evelyn N. Calhoun's, application for Tribal Temporary  
10 Assistance to Needy Families (TANF), and her assignment of child support rights to the Tribe  
11 to collect child support for the time period she receives TANF benefits. The Custodial Parent,  
12 Evelyn Edenshaw also known as Evelyn Calhoun filed two separate applications for TANF  
13 benefits, one on August 28, 2008, which indicated that the parties were separated as of July 2008  
14 and that she was the primary custodian of the children. See attached Exhibit 1, page 2, 3  
15 (confidential information is redacted). The second application for TANF benefits was made on  
16 May 4, 2009 (after the filing of the initial child support petition) and also indicated that she was  
17 the primary custodian and that the parties were married but separated on July 2008. See attached  
18 Exhibit 2, page 2, 3. (confidential information is redacted).

19  
20 To avoid establishing multiple orders for the same families, prior to filing a child support  
21 petition, TCSU staff verifies whether there is an existing child support order in place. The  
22 Alaska Child Support Services Division (CSSD) serves as the central registry for all Alaska child  
23 support orders. Prior to filing the Petition, TCSU staff made an inquiry as to whether there was  
24 an existing child support order for the parties and above named children; CSSD responded that  
25 there was no existing case with CSSD. See Exhibit 3, e-mail correspondence between TCSU  
RESPONSE TO STATEMENT OF REASONS-2

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

EXHIBIT 2  
PAGE 31 OF 129  
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1 and CSSD, redacted. On February 10, 2009, TCSU filed the Petition to Establish a Child  
2 Support Order for the children.

3           Appellant, Ryan Calhoun, was served via personal service with the Tribal Court  
4 Summons, Petition to Establish Child Support Order, Note for Magistrate's Calendar and  
5 Financial Affidavit. See attached Exhibit 4. The Summons-Child Support provided Mr.  
6 Calhoun with the hearing date and time of March 17, 2009 at 11:00 a.m. *Id.*

7           At the March 17, 2009 hearing, Mr. Calhoun did not appear. The custodial parent, Evelyn  
8 Edenshaw, did appear at the March 17, 2009 hearing. The court records show that this hearing  
9 was continued to April 7, 2009 at 9:30 a.m. See Exhibit 5, *CCTHITA Tribal Court Summons*.  
10 The Court clerk sent Mr. Calhoun a copy of the aforementioned CCTHITA Tribal Court  
11 Summons with a new hearing date of April 7, 2009 at 9:30 a.m.

12           On April 7, 2009, Mr. Calhoun and Ms. Edenshaw did not appear for the hearing. The  
13 Tribal Court entered a Default Order of Child Support in the amount of \$341.00 per month for  
14 one child and \$473.00 current support for two children. The TCSU child support specialist  
15 submitted a worksheet and debt calculation using TCSU records, which included the custodial  
16 parent's application for TANF benefits, which indicated Ms. Edenshaw was the primary  
17 custodian for both children. See Exhibit 6, *Debt Calculation and Child Support Percentage*  
18 *Calculation Worksheet*. The TCSU caseworker used the *CCTHITA Employment and Training*  
19 *Child Support Schedule* to calculate Mr. Calhoun's child support obligation.  
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RESPONSE TO STATEMENT OF REASONS-3

Tingit and Halda Child Support Unit  
120 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
(907) 586-1432

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CONCLUSION

Under CCTHITA Sec. 10.53.004 B., if the respondent fails to appear at a hearing upon a showing of valid service, and the IV-D program presents evidence of a legal obligation, the Court is required to enter an order of support pursuant to Title 10 - Family Responsibility and the evidence. The CCTHITA Default Order entered on April 7, 2009 entered findings that Petitioner and Respondent were served with Summons of the hearing via personal service.

The TCSU IV-D program presented testimony and evidence, including a worksheet and debt calculation, showing that Mr. Calhoun's monthly gross income was \$2,625.64 and calculated his child support obligations as indicated above. The debt calculation shows arrears owed to Tribal TANF in the amount of \$2,365.00 for the time period 9/1/2008 through 1/31/2009 (5 months x \$473.00 current support) and \$1,419.00 for arrears owed to the custodial parent for the time period 2/1/2009 through 4/30/2009 (3 months x \$473.00).

The Default Order was proper under the circumstances because both parties were provided service of the Summons, Petition and Notice of hearing dates. The Court did not error in any findings of fact or law. Therefore, the Tribal Child Support Unit requests that Mr. Calhoun's appeal be dismissed.

DATED this 4<sup>th</sup> day of August, 2009.

*Jessie M. Archibald*  
Jessie M. Archibald  
Tribal Child Support Attorney

RESPONSE TO STATEMENT OF REASONS-4

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

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CERTIFICATION

I certify that on 8/4/09, a copy of this document with attached Exhibits was mailed to the following parties:  Respondent  Petitioner

I certify that on 8/4/09, a copy of this document with attached Exhibits was faxed to Respondent's attorney of record.

  
Signature

Harold Dicks  
Printed Name

RESPONSE TO STATEMENT OF REASONS-5

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

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**Exhibit 1**

**EXHIBIT 2  
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**EXC. 323**



**CCTHITA Tribal Child Support Unit**  
**CHILD SUPPORT INFORMATION - NTANF**

11-2-202

COMPLETE A SEPARATE FORM FOR EACH NONCUSTODIAL PARENT. PLEASE PRINT IN INK.  
The information you provide will be used to establish and/or enforce child support based on a NTANF grant opening.  
Please ask caseworker for information about CCTHITA Tribal Child Support Unit.

|   |        |                   |               |   |
|---|--------|-------------------|---------------|---|
| Your Name (Last, First, Middle)<br>Edenshaw, Evelyn, Nika   |        | Previous Names    | SSN           | Date of Birth   |
| Address (PO or Street)  |        | City              | State/Zip     | Sex<br><input type="checkbox"/> M <input checked="" type="checkbox"/> F |
| Telephone (Home)  | (Work) | (Message or Cell) | Email Address |   |
| Are you an Enrolled Member or eligible to be enrolled with CCTHITA? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, enrolled with what tribe:  |        |                   |               |   |
| Are the children enrolled or eligible to be enrolled with CCTHITA? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, enrolled with another tribe: <u>None</u>                            |        |                   |               |   |
| Are you currently receiving TANF/Cash Assistance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, Where? _____  |        |                   |               |   |
| Have you ever received TANF/Cash Assistance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, When? _____<br>Where? _____  |        |                   |               |   |
| Does an attorney represent you in any matters related to the child or the parents? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide attorney's name, address, and phone: _____ |        |                   |               |   |
| Your Driver's License Issued State _____ and License _____  |        |                   |               |   |
| Are you currently employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, Where? _____ Employer Phone# _____  |        |                   |               |   |

**Important Information:** If a Tribal TANF grant has opened and TCSU has been notified by the tribe, we will continue to enforce child support for you even after the NTANF grant has closed, until such time as you submit a withdrawal from services form to TCSU. This form is not an application for child support services without notification from the tribe of an open grant.

**SUPPLYING INFORMATION TO TCSU - CONFIDENTIALITY AND SAFETY**

You are required by law to give TCSU information to get child support for a child receiving Native Temporary Assistance payments (NTANF). This means you will be asked to tell the name of the non-custodial parent and where he or she lives and works. You must help TCSU establish paternity if the child has no legal father, whether or not you are an intact family. If you are receiving NTANF, any money you receive from the non-custodial parent for child support must be given to the tribe through TCSU.

If you believe that enforcing child support will bring harm to you or your children, and you can provide support for your belief, you may claim good cause by marking the 3<sup>rd</sup> option below. You will be asked by your Tribal TANF caseworker to provide documentation to support your "Good Cause" Claim.

If you want to cooperate with TCSU in getting child support, but you are afraid that you or your children will be harmed if the non-custodial parent has your address, you may request TCSU keep your address confidential. Mark the 2<sup>nd</sup> option below. Otherwise, your address may be released to the non-custodial parent.

- I agree to cooperate with TCSU (sign below and complete the rest of this form)
- I agree to cooperate with TCSU but I want my address kept confidential (sign below and submit an "Affidavit and Request for Address Confidentiality")
- I believe I have good cause to not cooperate with TCSU (sign below and provide documentation; court order, police reports, medical reports, etc)

Cooperation with TCSU is required or you must have good cause not to cooperate. If you do not cooperate and you do not have good cause, your NTANF assistance payment may be reduced and sent to a NTANF approved third party for your family. TCSU will continue to pursue child support against the non-custodial parent, even if you DO NOT cooperate, unless the NTANF approves good cause by submitting this application. I understand that I am also applying for State IV-D services for purposes of submitting arrangements for Federal tax refund offset.

Signature Evelyn Edenshaw Date 8-28-08

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...continued with Child Support for (add pages if necessary)

Complete the following information for child who resides with you. Attach B to Application

You are the  Mother  Father  Relative \_\_\_\_\_  Legal Custodian by court order \_\_\_\_\_

| SSN        | Child Full Name    | Sex | DOB      | Place of Birth | Mother's Name   | Father's Name |
|------------|--------------------|-----|----------|----------------|-----------------|---------------|
| [REDACTED] | Nikolas E. Calhoun | M   | 5-3-04   | [REDACTED]     | Evelyn Petersen | Ryne Calhoun  |
| [REDACTED] | Caleb Calhoun      | M   | 12-10-07 | [REDACTED]     | Evelyn Petersen | Ryne Calhoun  |

RECEIVED

Is there split custody?  Yes  No If Yes what % do you have the child(ren) \_\_\_\_\_  
 Is the father is on each birth certificate of each child?  Yes  No If No, complete page 6.

**Information on Other Parent -**  Mother  Father:

|   |                      |   |                             |                             |   |
|---|----------------------|---|-----------------------------|-----------------------------|---|
| Name (Last, First, Middle)<br><b>Calhoun, Ryne, Matthew</b>   |                      | Previous/Other Names  |                             | SSN<br>[REDACTED]           | Date of Birth<br><b>12-13-84</b>  |
| Address (PO or Street)- Residential<br>[REDACTED]   |                      | City<br>[REDACTED]  | State/Zip<br>[REDACTED]     |                             | Current Address?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Address (PO or Street)- Mailing<br>[REDACTED]   |                      | City<br>[REDACTED]  | State/Zip<br>[REDACTED]     |                             | Last Known as of<br>[REDACTED]  |
| Telephone (Home)<br>[REDACTED]  | (Work)<br>[REDACTED] | Message or Call?<br>[REDACTED]  |                             | Email Address<br>[REDACTED] |   |
| Enrolled Member of GOSTMITA? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If enrolled with another tribe indicate name: _____                  |                      |   |                             |                             |   |
| Place of Birth<br>[REDACTED]  | Race<br>[REDACTED]   | Sex<br><input checked="" type="checkbox"/> M <input type="checkbox"/> F | Color of Eyes<br>[REDACTED] | Color of Hair<br>[REDACTED] | Height<br>[REDACTED]  |
| Is this person have relatives in Alaska? Who and where <b>Yes, parents here in Sitka</b>  |                      |   |                             |                             |   |
| Does this person have an attorney regarding child support? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Who? <b>Brian Hanson</b> Phone # _____ |                      |   |                             |                             |   |

3025

Is this Parent Deceased?  
 Yes  No If yes, Date of Death \_\_\_\_\_ City/State \_\_\_\_\_

Is estate in probate?  Yes  No If yes, who is Trustee? \_\_\_\_\_ Phone # \_\_\_\_\_

**Other Parent's Employer**

Usual occupation \_\_\_\_\_ Are they a Union Member?  Yes

Does this person work in Alaska currently?  Yes  No  I don't know

Did this parent used to work in Alaska?  Yes  No If Yes, when did they leave Alaska? \_\_\_\_\_

What was their last address in Alaska? \_\_\_\_\_

| Current or last Known Employer | Employer Address | Employer Phone  | Dates of Employment |
|--------------------------------|------------------|-----------------|---------------------|
| <b>Sitka Bottling</b>          |                  | <b>747-3417</b> | <b>SKILL WORKS</b>  |

|  |  |
|--|--|
| Does this Parent have Health Insurance available through Employer, Union, or Indian Health Services (IHS)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> I don't know | If yes, Type of Coverage<br><input type="checkbox"/> Medical <input type="checkbox"/> Dental<br><input type="checkbox"/> Both <input type="checkbox"/> Other _____ |
| If yes, name of Insurance Company or IHS _____   |  |
| Phc. Number of Insurance Company or IHS _____  |  |

Does this Parent have a other income?  Yes  No  
 If yes, Type of Income:  Retirement  Pensions  Social Security  Other ret. & div. from

Does this Parent have Native Shares/Dividends?  Yes  No If yes, Where: \_\_\_\_\_

Do the children receive benefits based on a disability from this Parent?  Yes  No

If yes, Source of Disability Benefit: \_\_\_\_\_ Monthly amount: \_\_\_\_\_

Does this Parent have a bank account?  Yes  No

If yes, Bank Name: WPS Federal Credit Account #: \_\_\_\_\_

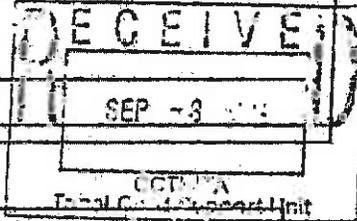
Bank Name: First National Account #: \_\_\_\_\_

Does this Parent have a vehicle?  Yes  No If yes, License #: \_\_\_\_\_

Make: Gmc Model: Silverado Year: 95 Color: Black

Does this Parent have Property?  Yes  No If yes, Where: VA

List any other information that could assist TCSU to locate this Parent (Names/Addresses/phone numbers of relatives, friends, creditors and schools attended, any known arrests, etc...)



**Relationship Between Parents (Attach documentation)**

|   |   |
|---|---|
| <input type="checkbox"/> Divorced                         | Date of Separation _____ Date of Divorce _____<br>Court Case # _____<br>City/State _____<br>Attach a complete copy of the divorce decree/order  |
| <input checked="" type="checkbox"/> Married but Separated | Marriage Date <u>12-16-67</u> City/State <u>Sitka AK</u><br>Separation Date <u>July, 08</u>   |
| <input type="checkbox"/> Divorce/Dissolution pending      | Date filed _____ Separation Date _____<br>City/State _____ Court Case # _____   |
| <input type="checkbox"/> Never Married                    | Separation date (if parents lived together) _____<br>Child: _____ Did father sign an Affidavit of Paternity <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Is the father's name on the birth certificate <input type="checkbox"/> Yes <input type="checkbox"/> No<br>In what state was the birth certificate issued _____<br>Child: _____ Did father sign an Affidavit of Paternity <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Is the father's name on the birth certificate <input type="checkbox"/> Yes <input type="checkbox"/> No<br>In what state was the birth certificate issued _____<br>Attach complete copy of the Affidavit of Paternity |
| <input type="checkbox"/> Other (explain) _____            |   |

**Child Support Information  
 EXHIBIT 2**

3  
 Custodian's Absent Parent (NTANP) Application 6-2006-0007912-008  
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Is there an order that requires payment of child support?  Yes  No

If yes, Order # \_\_\_\_\_

Type:  Court Order  Paternity  Temporary Order  Administrative Order  
 Tribal  Other \_\_\_\_\_

Was child support payment made through a third party?  Yes  No

Who:  State  Tribe  Court Clerk or Prosecutor's Office  Other \_\_\_\_\_

City/Tribe/State Name: \_\_\_\_\_ Date: \_\_\_\_\_ Phone #: \_\_\_\_\_

**Additional Monthly Costs incurred on the behalf of child(ren) (Attach documentation)**

Health Ins., how much \_\_\_\_\_ paid by \_\_\_\_\_  Dental Ins., how much \_\_\_\_\_ paid by \_\_\_\_\_  
 Education, how much \_\_\_\_\_ paid by \_\_\_\_\_  Medical, how much \_\_\_\_\_ paid by \_\_\_\_\_  
 Other \_\_\_\_\_ how much \_\_\_\_\_ paid by \_\_\_\_\_

Child support received from  Mother  Father (Please check box same as information on Other Parent)

- Check here if you have not received Child Support
- Check here if you have received child support. List in the table below the payment you have received directly.
- Check here if aren't sure how much child support you've received. List your best estimate by month and year.

| Mo./Year | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|----------|------|------|------|------|------|------|------|------|------|------|------|
| Jan.     |      |      |      |      |      |      |      |      |      |      |      |
| Feb.     |      |      |      |      |      |      |      |      |      |      |      |
| Mar.     |      |      |      |      |      |      |      |      |      |      |      |
| Apr.     |      |      |      |      |      |      |      |      |      |      |      |
| May      |      |      |      |      |      |      |      |      |      |      |      |
| June     |      |      |      |      |      |      |      |      |      |      |      |
| July     |      |      |      |      |      |      |      |      |      |      |      |
| Aug.     |      |      |      |      |      |      |      |      |      |      |      |
| Sept.    |      |      |      |      |      |      |      |      |      |      |      |
| Oct.     |      |      |      |      |      |      |      |      |      |      |      |
| Nov.     |      |      |      |      |      |      |      |      |      |      |      |
| Dec.     |      |      |      |      |      |      |      |      |      |      |      |
| TOTAL    |      |      |      |      |      |      |      |      |      |      |      |

If a child support order is already in effect, did you live with the other parent (or has the other parent had custody of the children at any time since the order was issued)?  Yes  No

If your answer is yes, explain the time periods when you lived together (or when the other parent had custody) since the child support order was issued (attach additional paper if needed). \_\_\_\_\_

**ASSIGNMENT OF SUPPORT**

4 EXHIBIT 2  
 Custodian's Absent Parent (iN)TANF) Application 6- PAGE 39 OF 139  
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to you for any month in which you receive assistance. If the non-custodial parent pays child support while you are receiving NTANF, you must make support payments over to TCSU. This is true even if there is no child support order in effect.

If TCSU sends a child support payment to you in error, they will contact you to arrange repayment of that money. If you want to repay the overpayment gradually out of future child support payments, instead of immediately in a lump sum, check this box.

I agree to tell the Tribal Child Support Unit of any new or changed information that relates to the child support case and collection/payment of child support.

I declare under penalty of perjury, under the laws and ordinances of this Tribe that the foregoing is true and correct.

Signature: Quelwyn Goldenhawk

Date: 8-28-05

**Instructions for Completion of Paternity Witness Statement - (on page 6)**

CCTHITA  
Tribal Child Support Unit

The CCTHITA Tribal Child Support Unit (TCSU) will start an action to establish paternity of the children if you checked "no" on the top of page 2 because the father is not listed on each birth record. If you are the Mother of the children, **YOU MUST** fill out the following Paternity Witness Statement for each child. **If you are a 3<sup>rd</sup> party (not Mother or Father) and are applying for services, you DO NOT need to complete this form.**

- Read each question carefully and answer all the questions as best as you can.
- Please use ink to answer each question.

After you complete the Paternity Witness Statement(s):

- Sign the form(s) in front of a "Witness". This would be an adult that watched you sign the form and verified your identification, or it could also be a Tribal TANF caseworker.
- Be sure the "Witness" completes their portion -- at the bottom of the form.

**PLEASE DO NOT FILL OUT - TANF STAFF ONLY**

IF Option 3 on page 1 was checked please fill out the following

Good Cause Granted Reason: \_\_\_\_\_  
Was Documentation received  Yes  No If Yes attach copies

Good Cause Denied Reason Claimed: \_\_\_\_\_

WDS/NDT Signature \_\_\_\_\_ Date \_\_\_\_\_

TANF Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

**PATERNITY WITNESS AFFIDAVIT**

Petitioner:

TCSU Case No: \_\_\_\_\_

5

EXHIBIT 2

Custodian's Absent Parent (NTANF) Application 6-2005-4092008

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EXC. 328

A Separate if is required for Each Child needing Established  
 (Use the back of the form if additional space is needed)

I, \_\_\_\_\_, on oath, under penalty of perjury depose and allege:

I am the natural mother of the child named below.

Child's Full Name (First, Middle, Last) \_\_\_\_\_ Child's Date of Birth \_\_\_\_\_ Child's Gender \_\_\_\_\_ Place of Birth, (City, County, State) \_\_\_\_\_

Date Mother Got Pregnant (Month, Date, Year) \_\_\_\_\_ Full Term Pregnancy  Yes  No (If no explain) \_\_\_\_\_ Where Mother Got Pregnant (City, County, State) \_\_\_\_\_

The child was conceived as a result of sexual intercourse between \_\_\_\_\_ and me during the time stated above.

a. A man is named as the father on the child's birth certificate.  Yes  No

If Yes, the man's name and address are \_\_\_\_\_

If the child was born in another state or country, you must send TCSU a copy of the birth certificate.

b. I was married at the time of this child's birth.  Yes  No. (if Yes, complete the following).

A. Husband's name (first, middle, last) and last known address: \_\_\_\_\_

B. State why husband is not the father of this child and send all appropriate documents, including divorce decree, genetic test results and prior findings of non-paternity, if any. \_\_\_\_\_

c. Genetic tests were completed to determine the father of the child.  Yes  No.

If Yes, send results, explain outcome, and list name(s) and address(es) of man/men tested. \_\_\_\_\_

2. I had sexual intercourse with another man (other than the man I am naming as the child's natural father) during the time 30 days before or 30 days after the child was conceived.  Yes  No (If Yes, complete the following).

a. The name(s) and address(es) of the other man/men: \_\_\_\_\_

b. The other man/men are biologically related to the man I am naming as the child's natural father.  Yes  No  
 If Yes, state the biological relationship (e.g., brother, cousin, uncle, etc.) \_\_\_\_\_

c. I do not believe the other man/men were the father because: \_\_\_\_\_

All of the information and facts contained in this AFFIDAVIT IN SUPPORT OF ESTABLISHING PATERNITY are true and correct to my best knowledge and belief. I agree to submit myself and, if I am the custodian, my child to genetic testing as may be necessary to establish paternity.

DATE \_\_\_\_\_

SIGNATURE (Do not sign unless you are before a witness) \_\_\_\_\_

Witness (Print Name) \_\_\_\_\_

Witness Signature \_\_\_\_\_

Date Signed \_\_\_\_\_

Address of Witness \_\_\_\_\_

Telephone # of Witness \_\_\_\_\_

**Exhibit 2**

**EXHIBIT 2  
PAGE 42 OF 129  
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**EXC. 330**



**CCTHITA Tribal Child Support Unit # 08-0283**  
**CHILD SUPPORT APPLICATION (NTANF) RECEIVED**

COMPLETE A SEPARATE FORM FOR EACH NONCUSTODIAL PARENT. PLEASE PRINT IN INK.  
 The information you provide will be used to establish and/or enforce child support based on a NTANF grant opening.  
 Please ask caseworker for information about CCTHITA Tribal Child Support Unit.

|  |                      |  |  |                              |   |
|--|----------------------|--|--|------------------------------|---|
| Your Name (Last, First, Middle)<br><b>CAROL EVELYN N</b> |                      | Previous Names<br><b>Evelyn Edovskai</b> |  | SSN<br>[REDACTED]            | Date of Birth<br>[REDACTED]   |
| Address (PO or Street)<br>[REDACTED]                     |                      | City<br>[REDACTED]                       |  | State/Zip<br>[REDACTED]      | Sex<br><input type="checkbox"/> M <input checked="" type="checkbox"/> F |
| Telephone (Home)<br>[REDACTED]                           | (Work)<br>[REDACTED] | Message or Cell<br>[REDACTED]            |  | E-mail Address<br>[REDACTED] |   |

Are you an Enrolled Member or eligible to be enrolled with CCTHITA?  Yes  No If no, enrolled with what tribe: \_\_\_\_\_

Are the children enrolled or eligible to be enrolled with CCTHITA?  Yes  No If no, enrolled with another tribe: \_\_\_\_\_

Are you currently receiving TANF/Cash Assistance?  Yes  No If yes, Where? \_\_\_\_\_

Have you ever received TANF/Cash Assistance?  Yes  No If yes, When? 2008  
 Where? same place

Does an attorney represent you in any matters related to the child or the parents?  Yes  No If yes, provide attorney's name address, and phone: \_\_\_\_\_

Your Driver's License Issued State \_\_\_\_\_ and License # \_\_\_\_\_

Are you currently employed?  Yes  No If yes, Where? \_\_\_\_\_ Employer Phone# \_\_\_\_\_

**Important Information:** If a Tribal TANF grant has opened and TCSU has been notified by the tribe, we will continue to enforce child support for you even after the NTANF grant has closed, until such time as you submit a withdrawal from services form to TCSU. This form is not an application for child support services without notification from the tribe of an open grant.

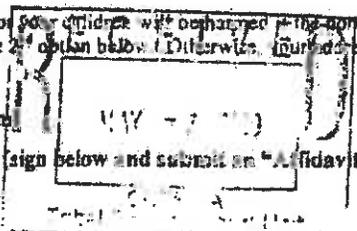
**SUPPLYING INFORMATION TO TCSU - CONFIDENTIALITY AND SAFETY**

You are required by law to give TCSU information to get child support for a child receiving Native Temporary Assistance payments (NTANF). This means you will be asked to tell the name of the non-custodial parent and where he or she lives and works. You must help TCSU establish paternity if the child has no legal father, whether or not you are an intact family. If you are receiving NTANF, any money you receive from the non-custodial parent for child support must be given to the tribe through TCSU.

If you believe that enforcing child support will bring harm to you or your children, and you can provide support for your belief, you may claim good cause by marking the 3<sup>rd</sup> option below. You will be asked by your Tribal TANF caseworker to provide documentation to support your "Good Cause" Claim.

If you want to cooperate with TCSU in getting child support, but you are afraid that you or your children will be harmed if the non-custodial parent has your address, you may request TCSU keep your address confidential. Mark the 2<sup>nd</sup> option below. Your address may be released to the non-custodial parent.

- I agree to cooperate with TCSU (sign below and complete the rest of this form)
- I agree to cooperate with TCSU but I want my address kept confidential (sign below and submit an "Affidavit and Request for Address Confidentiality")
- I believe I have good cause to not cooperate with TCSU (sign below and provide documentation; court order, police reports, medical reports, etc)



Cooperation with TCSU is required or you must have good cause not to cooperate. If you do not cooperate and you do not have good cause your NTANF assistance payment may be reduced and sent to a NTANF approved third party for your family. TCSU will continue to pursue child support against the non-custodial parent, even if you DO NOT cooperate, unless the NTANF approves good cause. By submitting this application, I understand that I am also applying for State IV-D services for purposes of submitting arrearages for Federal tax refund offset.

Signature: [Handwritten Signature] Date: 05-11-08

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Children concerned with CI Support for (add pages if necessary)

Complete the following information for each child who resides with you. Attach Birth Certificate to Application

You are the:  Mother  Father  Relative  Legal Custodian by court order

| SSN | Child Full Name | Sex | DOB      | Place of Birth | Mother's Name    | Father's Name    |
|-----|-----------------|-----|----------|----------------|------------------|------------------|
|     | Michael Phillip | M   | 5-3-11   | Sitka          | Regina Catherine | Regina Catherine |
|     | Colin           |     |          |                |                  |                  |
|     | Michael Phillip |     |          |                |                  |                  |
|     | Colin           | M   | 12-10-11 | Sitka          | Regina Catherine | Regina Catherine |

Is there split custody?  Yes  No If Yes what % do you have the child(ren) \_\_\_\_\_  
 Is the father is on each birth certificate of each child?  Yes  No If No, complete page 6.

Information on Other Parent-  Mother  Father:

|   |        |   |               |   |                           |
|---|--------|---|---------------|---|---------------------------|
| Name (Last, First, Middle)<br>Cathryn Rene M  |        | Previous/Other Names  |               | SSN   | Date of Birth<br>12/13/84 |
| Address (PO or Street) - Residential  |        | City  | State/Zip     | Current Address?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |                           |
| Address (PO or Street) - Mailing  |        | City  | State/Zip     | Last Known as of<br>2019  |                           |
| Telephone (Home)  | (Work) | Message or Cell   |               | Email Address   |                           |
| Enrolled Member of CCTHITA? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If enrolled with another tribe indicate name: _____     |        |   |               |   |                           |
| Place of Birth  | Race   | Sex<br><input checked="" type="checkbox"/> M <input type="checkbox"/> F | Color of Eyes | Color of Hair   | Height                    |
| Does this person have relatives in Alaska? Who and where Parents Sitka  |        |   |               |   |                           |
| Does this person have an attorney regarding child support? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Who? _____ Phone # _____ |        |   |               |   |                           |

Is this Parent Deceased?  
 Yes  No If yes, Date of Death \_\_\_\_\_ City/State \_\_\_\_\_  
 Is estate in probate?  Yes  No If yes, who is Trustee? \_\_\_\_\_ Phone # \_\_\_\_\_

Other Parent's Employer

Usual occupation Sitka Belling Are they a Union Member? \_\_\_\_\_  
 Does this person work in Alaska currently?  Yes  No  I don't know  
 Did this parent used to work in Alaska?  Yes  No If Yes, when did they leave Alaska? \_\_\_\_\_  
 What was their last address in Alaska? \_\_\_\_\_

| Current or last known Employer | Employer Address | Employer Phone | Dates of Employment |
|--------------------------------|------------------|----------------|---------------------|
| Sitka Belling                  |                  | 747 3417       |                     |

|  |   |
|--|---|
| Does this Parent have Health Insurance available through Employer, Union, or Indian Health Services (IHS)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> I don't know | Yes, Type of Coverage<br><input type="checkbox"/> Medical <input type="checkbox"/> Dental<br><input type="checkbox"/> Both <input type="checkbox"/> Other _____ |
| If _____ name of Insurance Company or IHS _____  |   |
| Phone number of Insurance Company or IHS _____   |   |

Does this Parent have other income?  Yes  No  
 if yes, Type of income:  Retirement  Veterans  Social Security  Other UNEMPLOYMENT BENEFITS  
 Does this Parent have Native Shares Dividends?  Yes  No If yes, Where: \_\_\_\_\_  
 Do the children receive benefits based on a disability from this Parent?  Yes  No  
 if yes, Source of Disability Benefit: \_\_\_\_\_ Monthly amount: \_\_\_\_\_  
 Does this Parent have a bank account?  Yes  No  
 if yes, Bank Name: ALPS Account #: \_\_\_\_\_  
 Bank Name: ALASKA POWER CO Account #: \_\_\_\_\_  
 Does this Parent have a vehicle?  Yes  No If yes, License #: \_\_\_\_\_  
 Make: GENIE Model: SILVERADO Year: 2005 Color: BLACK  
 Does this Parent have Property?  Yes  No If yes, Where: \_\_\_\_\_  
 List any other information that could assist TCSU to locate this Parent (Names/Addresses/phone numbers of relatives, friends, creditors and schools attended, any known arrests, etc.)  
 \_\_\_\_\_  
 \_\_\_\_\_

**Relationship Between Parents (Attach documentation)**

|   |   |
|---|---|
| <input type="checkbox"/> Divorced                         | Date of Separation _____ Date of Divorce _____<br>Court Case # _____<br>City/State _____<br>Attach a complete copy of the divorce decree/order  |
| <input checked="" type="checkbox"/> Married but Separated | Marriage Date <u>12-16-07</u> City/State <u>SITKA AK</u><br>Separation Date <u>12 July 2008</u>   |
| <input type="checkbox"/> Divorce/Dissolution pending      | Date filed _____ Separation Date _____<br>City/State _____ Court Case # _____   |
| <input type="checkbox"/> Never Married                    | Separation date (if parents lived together) _____<br>Child: _____ Did father sign an Affidavit of Paternity <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Is the father's name on the birth certificate <input type="checkbox"/> Yes <input type="checkbox"/> No<br>In what state was the birth certificate issued _____<br>Child: _____ Did father sign an Affidavit of Paternity <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Is the father's name on the birth certificate <input type="checkbox"/> Yes <input type="checkbox"/> No<br>In what state was the birth certificate issued _____<br>Attach complete copy of the Affidavit of Paternity |
| <input type="checkbox"/> Other (explain) _____            |   |

**Child Support Information**

**(Attach complete copies of orders or documents relating to custody, support and paternity.)**

Is there an order that requires payment of child support?  Yes  No

If yes, Order #: \_\_\_\_\_

Type:  Court Order  Paternity  Temporary Order  Administrative Order  
 Tribal  Other: \_\_\_\_\_

Was child support payment made through a third party?  Yes  No

Who:  State  Tribe  Court Clerk or Prosecutor's Office  Other \_\_\_\_\_

City/Tribe/State Name: SILKA TRIBE Date: \_\_\_\_\_ Phone#: \_\_\_\_\_

**Additional Monthly Costs incurred on the behalf of child(ren) (Attach documentation)**

Health Ins., how much \_\_\_\_\_ paid by \_\_\_\_\_  Dental Ins., how much \_\_\_\_\_ paid by \_\_\_\_\_

Education, how much \_\_\_\_\_ paid by \_\_\_\_\_  Medical, how much \_\_\_\_\_ paid by \_\_\_\_\_

Other \_\_\_\_\_, how much \_\_\_\_\_ paid by \_\_\_\_\_

Child support received from  Mother  Father (Please check box same as information on Other Parent)

Check here if you have not received Child Support

Check here if you have received child support. List in the table below the payment you have received directly.

Check here if aren't sure how much child support you've received. List your best estimate by month and year.

| Year  | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|-------|------|------|------|------|------|------|------|------|------|------|------|
| Jan.  |      |      |      |      |      |      |      |      |      |      |      |
| Feb.  |      |      |      |      |      |      |      |      |      |      |      |
| Mar.  |      |      |      |      |      |      |      |      |      |      |      |
| Apr.  |      |      |      |      |      |      |      |      |      |      |      |
| May   |      |      |      |      |      |      |      |      |      |      |      |
| June  |      |      |      |      |      |      |      |      |      |      |      |
| July  |      |      |      |      |      |      |      |      |      |      |      |
| Aug.  |      |      |      |      |      |      |      |      |      |      |      |
| Sept. |      |      |      |      |      |      |      |      |      |      |      |
| Oct.  |      |      |      |      |      |      |      |      |      |      |      |
| Nov.  |      |      |      |      |      |      |      |      |      |      |      |
| Dec.  |      |      |      |      |      |      |      |      |      |      |      |
| TOTAL |      |      |      |      |      |      |      |      |      |      |      |

If a child support order is already in effect, did you live with the other parent (or has the other parent had custody of the children) at any time since the order was issued?  Yes  No

If your answer is yes, explain the time periods when you lived together (or when the other parent had custody) since the child support order was issued (attach additional paper if needed). I moved back into my house, husband was still home

EXHIBIT 2  
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001363

**ASSIGNMENT OF SUPPORT**

When you receive NTANF you must sign over to the tribe any child support or spousal support payments owed to you for any month in which you receive assistance. If the non-custodial parent pays child support while you are receiving NTANF, you must turn the support payments over to TCSU. This is true even if there is no child support order in effect.

If TCSU sends a child support payment to you in error, they will contact you to arrange repayment of that money. If you want to repay the overpayment gradually out of future child support payments, instead of immediately in a lump sum, check this box.

I agree to tell the Tribal Child Support Unit of any new or changed information that relates to the child support case and collection/payment of child support.

I declare under penalty of perjury, under the laws and ordinances of this Tribe that the foregoing is true and correct.

Gwelen Carlson  
Signature

5-4-09  
Date

**Instructions for Completion of Paternity Witness Statement - (on page 6)**

The CCTHITA Tribal Child Support Unit (TCSU) will start an action to establish paternity of the children if you checked "no" on the top of page 2 because the father is not listed on each birth record. If you are the Mother of the children, **YOU MUST** fill out the following Paternity Witness Statement for each child. If you are a 3<sup>rd</sup> party (not Mother or Father) and are applying for services, you DO NOT need to complete this form.

- Read each question carefully and answer all the questions as best as you can.
- Please use ink to answer each question.

After you complete the Paternity Witness Statement(s):

- Sign the form(s) in front of a "Witness". This would be an adult that watched you sign the form and verified your identification, or it could also be a Tribal TANF caseworker.
- Be sure the "Witness" completes their portion - at the bottom of the form.

**PLEASE DO NOT FILL OUT - TANF STAFF ONLY**

IF Option 3 on page 1 was checked please fill out the following

Good Cause Granted Reason: \_\_\_\_\_  
Was Documentation received  Yes  No if Yes attach copies

Good Cause Denied Reason Claimed \_\_\_\_\_

WDS/WDT Signature \_\_\_\_\_ Date \_\_\_\_\_

TANF Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT 2

PATERNITY WITNESS AFFIDAVIT

Petitioner:
Central Council Tlingit & Haida Indian Tribes of Alaska
Tribal Child Support Unit

TCSU Case No. \_\_\_\_\_

A Separate Statement is required for Each Child needing Paternity Established
(Use the back of the form if additional space is needed)

I, \_\_\_\_\_ on oath, under penalty of perjury depose and allege:

I am the natural mother of the child named below.

Child's Full Name (First, Middle, Last) Child's Date of Birth Child's Gender Place of Birth, (City, County, State)

Date Mother Got Pregnant (Month, Date, Year) Full Term Pregnancy [X] Yes [ ] No (if no explain) Where Mother Got Pregnant (City, County, State)

The child was conceived as a result of sexual intercourse between \_\_\_\_\_ and me during the time stated above.

a. A man is named as the father on the child's birth certificate. [X] Yes [ ] No

If Yes, the man's name and address are: \_\_\_\_\_

If the child was born in another state or country, you must send TCSU a copy of the birth certificate.

b. I was married at the time of this child's birth. [ ] Yes [ ] No. (If Yes, complete the following)

A. Husband's name (first, middle, last) and last known address: \_\_\_\_\_

B. State why husband is not the father of this child and send all appropriate documents, including divorce decree, genetic test results and prior findings of non-paternity, if any. \_\_\_\_\_

c. Genetic tests were completed to determine the father of the child. [ ] Yes [ ] No

If Yes, send results, explain outcome, and list name(s) and address(es) of man/men tested: \_\_\_\_\_

2. I had sexual intercourse with another man (other than the man I am naming as the child's natural father) during the time 30 days before or 30 days after the child was conceived. [ ] Yes [ ] No (If Yes, complete the following).

a. The name(s) and address(es) of the other man/men: \_\_\_\_\_

b. The other man/men are biologically related to the man I am naming as the child's natural father. [ ] Yes [ ] No
If Yes, state the biological relationship (e.g., brother, cousin, uncle, etc.) \_\_\_\_\_

c. I do not believe the other man/men are the father because: \_\_\_\_\_

All of the information and facts contained in this AFFIDAVIT IN SUPPORT OF ESTABLISHING PATERNITY are true and correct to my best knowledge and belief. I agree to submit myself and, if I am the custodian, my child to genetic testing as may be necessary to establish paternity.

DATE \_\_\_\_\_

SIGNATURE (Do not sign unless you are before a witness)

Witness (Print Name) \_\_\_\_\_

Witness Signature \_\_\_\_\_

Date Signed \_\_\_\_\_

Address of Witness \_\_\_\_\_

Telephone # of Witness \_\_\_\_\_

EXHIBIT 2

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6

001365

**Carlene Nore**

---

**From:** Blanks, Evone D (DOR) [evone.blanks@alaska.gov]  
**Sent:** Thursday, September 25, 2008 10:49 AM  
**To:** Carlene Nore  
**Subject:** RE: TCSU TANF Application

No CSSD case for these parties.

Evone,

---

**From:** Carlene Nore [mailto:cnore@ccthta.org]  
**Sent:** Wednesday, September 24, 2008 12:28 PM  
**To:** Blanks, Evone D (DOR)  
**Subject:** TCSU TANF Application

Carlene Nore  
Tribal Child Support Unit  
320 W. Willoughby Ave. #300  
Juneau, AK 99801  
907-463-7152  
907-463-7730 Fax

Evone,

Can you please verify if the following have a CSSD case and if so, please transfer:

- Evelyn Edenshaw: [REDACTED]
- Ryne Calhoun: [REDACTED] (NCP)
- Nikolas Calhoun: [REDACTED] (CH)
- Caleb Calhoun: [REDACTED] (CH)

Thanks for your assistance,  
Cnore

**Confidentiality Notice:** This e-mail message including any attachments, is for the sole use of the intended recipient (s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

EXHIBIT 2  
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001367

EXC. 337

IN THE TRIAL COURTS FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT SITKA

1  
2 TRIBAL CHILD SUPPORT UNIT, et al, )  
3 )  
4 NIKOLAS & CALER, Minor children under )  
5 the Age of 18 years, )  
6 EVELYN EDENSLAW CALHOUN, )  
7 )  
8 )  
9 )  
10 )  
11 )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

CCTHITA Tribal Court  
MAR 3 2009

vs.

RYNE M. CALHOUN,  
Respondent)

Court Docket #: 09-CS-0015  
TCSU Case #: 08-0282

AFFIDAVIT OF SERVICE

STATE OF ALASKA )  
FIRST JUDICIAL DISTRICT ) ss.

I hereby certify that I received the following documents:

Summons - Child Support, Petition to Establish Child Support Order, Note for Magistrate's Calendar, Affidavit

I further certify that on the 2nd day of March, 2009, I personally served the above documents by handing the same to Scott Calhoun, father of Ryne Calhoun at Ryne Calhoun's request, at the Coca-Cola Plant on Halibut Point Road in Sitka, Alaska 99835. After many attempts of serving Ryne Calhoun with the above-mentioned documents, it was learned that Mr. Calhoun is out in the field frequently and my attempts at meeting up with him were unsuccessful. On this 2nd day of March, 2009, I called Ryne Calhoun at 723-2705 and advised him I was at the plant with documents to serve upon him. He advised he was out the road doing machine checks and made the request/authorization for me to leave said documents with his father. Scott Calhoun accepted the documents on Ryne Calhoun's authorization.

FURTHER AFFIANT SAYETH NAUGHT.

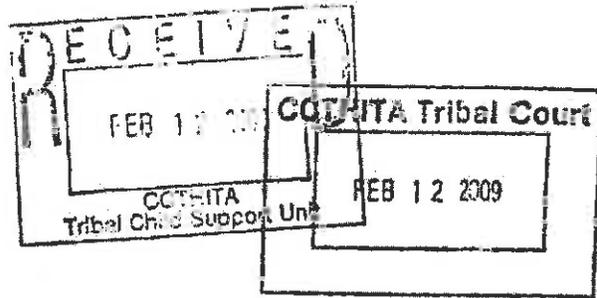
*Sharon L. Joseph*  
Sharon L. Joseph  
Sitka By the Sea Professional Services  
108 Charlie Joseph St.  
Sitka, Alaska 99835  
Phone: (907) 747-8714

SUBSCRIBED and SWORN to before me on this 3 day of March, 2009.

*Wanda...*  
NOTARY PUBLIC in and for the State of Alaska  
June 11, 2008  
Phone: 1-800-344-1432  
Toll Free: 1-800-344-1432

EXHIBIT 2  
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00 359



1  
2  
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**In the Central Council Tlingit & Haida Indian Tribes  
of Alaska Tribal Courts  
Juneau, Alaska**

|    |   |                    |   |
|----|---|--------------------|---|
| 9  | Tribal Child Support Unit                             |                    | <b>SUMMONS - CHILD SUPPORT</b>            |
| 10 |   | <b>Ex Rel.</b>     |   |
| 11 | Nikolas & Coleb,<br>A minor child under the age of 18 |                    | Court Docket #: 09-CS-0015                |
| 12 | Evelyn N. Edonshaw,                                   | <b>Petitioner:</b> | Hearing Date: March 17, 2009 @ 11:00 a.m. |
| 13 | <b>Vs</b>   |                    |   |
| 14 | Ryne M. Calhoun,                                      | <b>Respondent.</b> | TCSU Case #: 08-0282                      |

**SUMMONS**

**NOTICE TO THE RESPONDENT: Ryne M. Calhoun**

A Petition for the establishment of child support has been filed to establish a child support obligation. The Petition attached states the nature and the basis of the legal action. You must respond in writing to the Petition.

Within twenty (20) days of receiving this Summons, you must respond with a written answer to the Petition.

Send or deliver your written response to the Court:

CCHITA Tribal Court  
320 W Willoughby Ave. Suite 300  
Juneau AK 99801

Also send or deliver your written response to the Tribal Child Support Unit:

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

You must also appear in person to answer this claim. If you are unable to attend in person you must contact the Court Clerk prior to the hearing to arrange to appear telephonically.

Summons - Child Support (Revised 1/12/08)

Enclosure: Financial Affidavit

Page 1 of 2

CCHITA Tribal Court  
320 W. Willoughby Ave. Suite 300  
Juneau, AK 99801  
1-800-341-1432/907-463-7741 Fax

EXHIBIT 2  
PAGE 53 OF 129  
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001370  
ENTERED  
DISTRICT

1 The date and time of court appearance is as follows:

2 DATE: March 17, 2009  
3 TIME: 11:00 a.m.  
4 PLACE: CCTHITA Tribal Court  
358 West Willoughby Avenue  
Juneau, Alaska

5 YOU ARE HEREBY NOTIFIED that if you do not provide an answer within twenty (20)  
6 days, or fail to appear for the scheduled hearing, the Tribal Court may hold you in  
7 contempt of court and/or enter a default judgment against you. A default judgment may  
8 order you to pay child support. A judgment for money may become a lien against any real  
9 property you own now or in the future, and may also be enforced by garnishment or seizure of  
property, and interception of your tax refunds or other income.

10 If you have a disability, have questions or need help with this court action or general procedures,  
please contact the Tribal Court Clerk at 907-463-7165, or 800-344-1432, extension 7165.

11 You may have an attorney or spokesperson help or represent you. If you plan to be represented by  
12 an attorney or spokesperson, you should contact that person prior to the court hearing. Tribal  
Child Support Unit does not represent the Petitioner or the Respondent in this action and cannot  
13 provide legal advice to either party.

14 Pursuant to Sec. 10.01.005 of Title 10- Family Responsibility, all parties must keep Tribal Child  
Support Unit informed of and provide notice within ten (10) days of any change in any of address  
15 or employer.

16 YOU ARE REQUIRED, if you have not already done so, to provide the following information  
17 to Tribal Child Support Unit and the Court:

- 18 1. Tax returns for the last two (2) years and wage statements for the last six (6) weeks.  
19 2. Proof of all sources of current income.  
20 3. A completed Financial Affidavit (enclosed).

21 In Juneau, Alaska dated on 12<sup>th</sup> day of February, 2009.

22 *Marilyn L. Peratrovich*

23 Marilyn Peratrovich  
Clerk of the Court  
Tele: 907-463-7165

24 I certify that on 4/30/09, a copy of this document was mailed or personally served to the following parties:  
25  Respondent Processer;  Petitioner \_\_\_\_\_;  TCSU I;  Other: \_\_\_\_\_

26 *Marilyn L. Peratrovich*  
Marilyn L. Peratrovich

27 R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail

28 Summons - Child Support (Revised 11/24/08)

Enclosure: Financial Affidavit

Page 2 of 2

CCTHITA Tribal Court  
320 W. Willoughby Ave. Suite 300  
Juneau, AK 99801  
1-800-344-1432 / 907-463-7741 Fax

EXHIBIT 2  
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001371

EXC. 340

I certify that on 2/11/09 at 11:00 AM  
document was mailed to the following parties:  
Respondant Petitioner

Signature \_\_\_\_\_  
Printed Name: Evelyn N. Edenshaw

RECEIVED  
FEB 12 2009  
TRIBAL COURT

CHITHITA Tribal Court  
2:26 pm

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

7 Tribal Child Support Unit,  
8 Nikolas & Caleb,  
9 Minor children under the age of 18  
10 Evelyn N. Edenshaw,  
11 Petitioner,  
12 Ryne M. Calhoun,  
13 Respondent.

Ex Rel. PETITION TO ESTABLISH CHILD  
SUPPORT ORDER  
Court Docket #: 09-03-0015  
Hearing Date: 3/17/09 @ 11:00 AM  
TCSU Case #: 08-0282

PETITION  
I. Basis

Cause of Action: This is a petition for the establishment of a child support order. This  
action is brought on behalf of:

| Name of Child      | DOB:       | Resident of (City & State) |
|--------------------|------------|----------------------------|
| Nikolas E. Calhoun | 05/03/2004 | Sitka, Alaska              |
| Caleb Calhoun      | 12/10/2007 | Sitka, Alaska              |

Parties to the Action:  
Petitioner is the:  Tribal Child Support Unit  Mother  Father  
 Other  
Respondent is:  Mother  Father  
Name of Mother: Evelyn N. Edenshaw  
Name of Father: Ryne M. Calhoun

Petition to Establish Child Support Order -1

EXHIBIT 2  
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Tlingit and Haida Child Support Unit  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free (800) 344-1432  
(907) 586-1432

001372

1 Other: \_\_\_\_\_

2 **Jurisdiction:**

3 [X] The Tlingit and Haida Tribal Child Support Unit (TCSU) is a real party in interest in this  
4 case pursuant to CCTHITA Family Responsibility, Sec. 10.03.002. TCSU is providing child  
5 support enforcement services for the benefit of the minor child, who is the subject of this action  
6 pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq. (1991)). This Court  
has jurisdiction to hear and decide this matter in accordance with Title 10 Family Responsibility  
Sec. 10.01.004.

7 [X] The Petitioner is a member of or eligible for membership with the Tlingit and Haida Indian  
8 Tribes of Alaska.

9 [ ] The Respondent is a member of the Tlingit and Haida Indian Tribes of Alaska.

10 [X] The Respondent is not a member of the Tlingit and Haida Indian Tribes, but is subject to  
the Tribe's jurisdiction because the child is enrolled or eligible for enrollment with the Tribe.

11 [X] The child is a member of or eligible for membership with the Tlingit and Haida Indian  
12 Tribes of Alaska.

13 [ ] The Petitioner or Respondent is a parent who consents to the jurisdiction of the Court by  
14 participating in the proceedings and participation is not for the purpose of contesting jurisdiction.

15 [ ] The Respondent is an employee of the Tribe, its entities and business operations.

16 [X] The Respondent is a person who has a duty to and failed to support a child who is a  
member of or eligible for membership in the Tribe.

17 [X] Petitioner has received TANF assistance from the Tribe.

18 [X] The Respondent and/or Petitioner has been found to be the legal father of the above-named  
19 minor child pursuant to Paternity Affidavit/Birth Certificate. [ List order  
of presumptions].

20 [X] There is not at present time an order establishing child support.

21 [ ] There is at present time an order establishing child support.

22 \_\_\_\_\_  
23 **Child Support**

24 The child is entitled to financial support pursuant to the Tribe's Child Support Schedule and  
health insurance coverage from any parent owing a duty of child support.

25 **Current Residence of Child**

Petition to Establish Child Support Order -2

EXHIBIT 2  
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Tlingit and Haida Child Support Unit  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
(907) 586-1422

001373

1 The child currently resides with  Evelyn N. Edenshaw  (name).

2 **Reimbursement**

3 [ ] Does not apply.

4 [ ] The state of Alaska and/or \_\_\_\_\_ is entitled to reimbursement for support or assistance to the child, for expenses incurred on behalf of the child.

5 [X] Tribal TANF is entitled to reimbursement for support or assistance to the child, for expenses incurred on behalf of the child.

7  
8 **II. Relief Requested**

9 [X] Determine support for the dependent children listed in paragraph 1.1 pursuant to the Tribe's Child Support Schedule and order either or both parents to provide health coverage and/or ensure child is enrolled in Indian Health Care Services.

10  
11 [ ] Undersigned caseworker has sent letter to NCP requesting financial information to establish obligation amount order and has not received a response.

12  
13 [X] Determine the amount of any arrearages and who arrearages are owed to.

14 [X] Order that the non-custodial parent pay the current support obligation as determined pursuant to the Tribe's Child Support Schedule, plus 20% of the current support obligation to be paid towards arrearages.

15  
16 [X] Provide that the support obligation and payment shall be made through wage garnishment as a means of execution to pay the support obligation(s), or:

17  
18 [ ] Wages shall not be subject to withholding because one of the parties has demonstrated and TCSU requests that the Court find good cause not to require immediate wage withholding, or:

19 [ ] The parties have reached a written agreement that provides for an alternative arrangement for payments to be made to TCSU.

20  
21 [X] Order that payments shall be made to:

1  
2  
3  
4  
5  
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Payable to Tribal Child Support Unit

Send to Tlingit and Haida Tribal Child Support Unit  
320 West Willoughby Ave., Suite 300  
Juneau, AK 99801

[ X ] Order the Respondent, upon termination of child support payments under the terms of this order, to continue to make the above child support payment amount except said payment shall be applied to arrears, if any.

[ X ] Pursuant to CCTHITA Family Responsibility, Sec. 10.03.005, order that the custodial and non-custodial parents or other party shall keep TCSU informed of and change in employer or change in address within 10 days. Service of child support actions after this date may be done by regular mail to the last address of record provided to the Tribal Child Support Unit.

[ X ] Order the Petitioner and/or Respondent be summoned to appear in Court,

[ X ] Order the Petitioner and/or Respondent to bring with them to Court documents necessary to verify information required by the Tribal Child Support Guidelines, to determine the support provisions as the Court deems appropriate, to enter addresses of record and grant other relief requested. Such documents should include:

1. Tax returns for the last two years and wage statements for the last six weeks.
2. Proof of all sources of current income.
3. A completed Financial Affidavit (attached to this Petition).

And, for such other relief as the Court deems just and equitable.

I declare under penalty of perjury under the laws of the Tlingit and Haida Indian Tribes of Alaska that the foregoing is true and correct.

Dated: February 9, 2009

Respectfully Submitted:



Harold "Jay" Dick  
Paternity Specialist  
Tele: 907-453-7138

Petition to Establish Child Support Order -4

EXHIBIT 2  
PAGE 58 OF 129  
1JU-10-376 CI

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

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Approved for Entry:

Jessie M. Archibald  
Jessie M. Archibald  
TCSU Attorney

Petition to Establish Child Support Order -s

EXHIBIT 2  
PAGE 59 OF 129  
1JU-10-376 CI

Tingit and Hald's Child Support Unit  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
(907) 586-1432

301376

1 PEARSON & HANSON  
2 713-B Sawmill Creek Boulevard  
2 PO Box 98  
3 Sitka, Alaska 99835  
3 (907)747-3257 (ph) / (907) 747-4977 (fax)

CCTHITA Tribal Court  
JUL 31 2009

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

|  |  |   |
|--|--|---|
| 7 Tribal Child Support Unit,<br>8 Nikolai & Caleb,<br>9 Minor children under the age of 13<br>10 Evelyn N. Edenshaw,<br>11 Vs<br>12 Ryne M. Calhoun,<br>13 | Ex. Rel.<br><br>Petitioner<br><br>Respondent | PETITION TO MODIFY<br>CHILD SUPPORT<br><br>Court Docket #: 09-CS-0015<br><br>TCSU Case #: 09-0282 |
|--|--|---|

14 Respondent, by and through his attorney, hereby petitions the Tribal Court to modify its  
15 Order of Child Support, entered April 7, 2009, on the grounds that there has been a substantial  
16 change of circumstances since entry of the existing order in that the parties have equally shared  
17 custody of the minor children since July 10, 2009, pursuant to order of the Superior Court for the  
18 State of Alaska, First Judicial District at Sitka, in the case of *Ryne M. Calhoun v. Evelyn N.*  
19 *Calhoun*, Case No. 1SI-08-157 CL. A certified copy of that order is attached. Accordingly, the  
20 Tribal Court should establish a modified child support obligation based upon the requirements of  
21 Title 10, and as mandated by the CCTHITA Child Support Schedule, in light of the circumstance  
22 that the parties now equally share custody of the minor children pursuant to order of the Superior  
23 Court.

24 DATED this 20<sup>th</sup> day of July, 2009.

25 I certify that I signed this document on the following  
26 parties On July 20, 2009 by R (regular mail);  
27 C (certified mail); (information file); P (personal  
28 service); at the last known address:  
E. Edenshaw  
Ryne M. Calhoun

PEARSON & HANSON LLC  
Attorneys for Ryne M. Calhoun

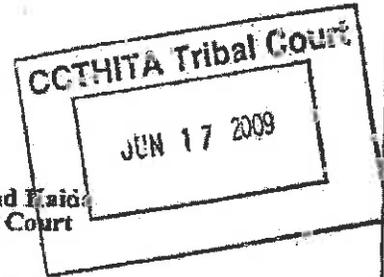
By: Brian E. Hanson  
Brian E. Hanson  
Alaska Bar No. 8505037

Petition To Modify Child Support  
Edenshaw v. Calhoun, TCSU Case #: 09-0282  
Page 1 of 1

EXHIBIT 2  
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LJU-10-376 CI

001393

1 PEARSON & HANSON  
 2 713-B Sawmill Creek Boulevard  
 3 PO Box 98  
 4 Sitka, Alaska 99835  
 5 (907)747-3257 (ph) / (907) 747-1977 (fax)



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

9 Tribal Child Support Unit,  
 10 Ex. Rei,  
 11 Nikolas & Caleb,  
 12 Minor children under the age of 18  
 13 Evelyn N. Edenshaw,  
 14 Petitioner  
 15 Vs  
 16 Ryne M. Calhoun,  
 17 Respondent

STATEMENT OF REASONS

Court Docket #: 09-CS-0015

TCSU Case #: 08-0282

STATEMENT OF REASONS

18 Appellant, Ryne M. Calhoun, pursuant to CSC 06.01.130(K)(4), by and through his  
 19 attorney of record, hereby submits his statements of reasons as follows:

20 The Tribal Court does not have jurisdiction. Appellant filed a divorce action in the  
 21 Superior Court for the State of Alaska, First Judicial District at Sitka, Case No. 1SI-08-167 CI,  
 22 on October 2, 2008, before the Tribal Court child support proceeding was started. The Superior  
 23 Court has jurisdiction over the custody of and support for the minor children. A motion for  
 24 interim shared custody and interim child support is pending before the Superior Court.

25 If the Tribal Court has jurisdiction, it failed to consider the shared custody arrangement  
 26 exercised by the parents between September 1, 2008, through April 30, 2009, which was the  
 27 period when arrears were established. Arrears should be reduced based on the parent's shared  
 28 custody arrangement exercised between September 1, 2008, and April 30, 2009.

Appellant has not obtained copies of the supporting documents that were part of the  
 Tribal Court record and, therefore, is unable to submit the same, if any, at this time. Appellant  
 hereby requests the same be provided by the Tribal Court and requests the opportunity to submit

Statement Of Reasons  
 Edenshaw v. Calhoun, Docket # 09-CS-0015, TCSU Case # 08-0282  
 Page 1 of 2

EXHIBIT 2  
 PAGE 90 OF 129  
 1JU-10-376 CI

001407

1 such supporting documents deemed relevant for this appeal within 10 days of receipt from the  
2 Tribal Court.

3  
4 DATED this 17<sup>th</sup> day of June, 2009.

5  
6 PEARSON & HANSON LLC  
Attorneys for Ryne M. Calhoun

7  
8 By: Brian E. Hanson  
9 Brian E. Hanson  
Alaska Bar No. 8505037

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Statement Of Reasons  
Edenshaw v. Calhoun, Docket # 09-CG-0915, TCSU Case # 08-9282  
Page 2 of 2

EXHIBIT 2  
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001408

1 PEARSON & HANSON  
713-B Sawmill Creek Boulevard  
2 PO Box 98  
Sitka, Alaska 99835  
3 (907)747-3257 (ph) / (907) 747-4977 (fax)  
4

CCHITA Tribal Court  
MAY 7 2009

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

|  |  |
|--|--|
| 7 Tribal Child Support Unit,<br>8 Ex. Rel.<br>9 <b>Nikolas &amp; Caleb,</b><br>Minor children under the age of 18<br>10 Evelyn N. Edenshaw,<br>11 Petitioner<br>Vs<br>12 Ryne M. Calhoun,<br>13 Respondent | NOTICE OF APPEAL<br><br>Court Docket #: 09-CS-0015<br><br>TCSU Case #: 08-0282 |
|--|--|

14  
15 NOTICE is hereby given that RYNE M. CALHOUN appeals the Tribal Court's Order of  
16 Child Support decision dated April 7, 2009.

17 DATED this 5<sup>th</sup> day of May, 2009.

18 PEARSON & HANSON LLC  
19 Attorneys for Ryne M. Calhoun

20  
21 By: Brian E. Hanson  
22 Brian E. Hanson  
23 Alaska Bar No. 8505037  
24  
25  
26  
27

Notice of Appeal  
Edenshaw v. Calhoun, TCSU Case #: 08-0282  
Page 1 of 1

I certify that I served this document on the following parties on 11/10/12, 2009 by R (regular mail), C (certified mail), F (first-class mail), P (personal delivery), at his/her last known address  
TCSU 10

R. Calhoun (R) 5/10/09  
Signed: [Signature]

EXHIBIT 2  
PAGE 101 OF 129  
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001418

INCOME WITHHOLDING FOR SUPPORT

1a  ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)  AMENDED IWO  
 1b  ONE-TIME ORDER/NOTICE - LUMP SUM PAYMENT  
 TERMINATION of IWO

Date: 4/30/09

1c  Child Support Enforcement (CSE) Agency  Court  Attorney  Private Individual/Entity (Check One)

NOTE: If you receive this document from someone other than a State or Tribal Child Support Enforcement agency or a court, a copy of the underlying order that contains a provision authorizing income withholding must be attached. Or if under State law an attorney in that State, or if under Tribal law a Tribal legal representative, may issue an income withholding order, the attorney or Tribal legal representative must include a copy of the State or Tribal law authorizing the attorney or Tribal legal representative to issue an income withholding order.

State/Tribe/Territory CCTHITA Tribal Child Support Unit  
 City/County/Dist./Tribe 320 W. Willoughby Ave. Suite 300 Juneau, AK 99801  
 Private Individual/Entity \_\_\_\_\_

Case Identifier 08-0282  
 Order Identifier 09-CS-0015

|   |  |  |
|---|--|--|
| Sitka Bottling Co.<br>Employer/Income Withholder's Name<br>1100 Halibut Point Rd<br>Sitka, AK 99835 | RE: <u>Calhoun, Ryne, M</u><br>Employee/Obligor's Name (Last, First, MI)           |  |
| Employer/Income Withholder's Address: _____   | <u>Edenshaw, Evelyn Nikole</u><br>Custodial Party/Obligee's Name (Last, First, MI) |  |
| Employer/Income Withholder's Federal EIN _____  | CCTHITA Tribal Court<br>APR 30 2009  |  |
| Child's Name (Last, First, MI)<br><u>Calhoun, Evelyn Nikolai</u><br><u>Calhoun, Caleb, Steven</u>   |  | Child's Birth Date<br><u>5/3/04</u><br><u>12/10/97</u> |
| _____<br>_____  |  | _____<br>_____   |

ORIGINAL

ORDER INFORMATION: This document is based on the support or withholding order from \_\_\_\_\_  
 You are required by law to deduct these amounts from the employee/obligor's income until further notice.

|          |           |   |
|----------|-----------|---|
| \$473.00 | Per Month | current child support   |
| \$95.00  | Per Month | past-due child support \$3784.00 Arrears greater than 12 weeks? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| \$ _____ | Per _____ | current cash medical support  |
| \$ _____ | Per _____ | past-due cash medical support   |
| \$ _____ | Per _____ | current spousal support   |
| \$ _____ | Per _____ | past-due spousal support  |
| \$ _____ | Per _____ | other (must specify) _____  |

I certify that I served this document on the following parties on 5/1/09 by R (regular mail); C (certified mail); I (international mail); P (personal service) at the (or last) known address:  
Sitka Bottling Co (C)  
320 W Willoughby Ave  
Juneau, AK 99801

For a total of \$568.00 per Month to be forwarded to the payee below:

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the Order Information. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$131.07 per weekly pay period \$284.00 per semimonthly pay period (twice a month)  
 \$252.15 per biweekly pay period (every two weeks) \$568.00 per monthly pay period

\$0.00 ONE-TIME LUMP SUM PAYMENT Do not stop any existing IWO unless you receive a termination order.

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is Sitka Bottling Co., you must begin withholding no later than the first pay period that occurs 7 days after the date of after receiving this notice. Send payment within 7 working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to 45 % of disposable income for all orders. If the employee/obligor's principal place of employment is not Sitka Bottling Co., see the ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS for limitations on withholding, applicable time requirements and any allowable employer's fees.

Document Tracking Identifier \_\_\_\_\_

For EFT/EDI instructions, contact the EFT/EDI office at the website listed below. If paying by check, make check payable to Tribal Child Support Unit (TCSU), include this Remittance Identifier with payment: 08-0282.  
Send check to: COHITA-Tribal Child Support Unit, 320 W. Willoughby Ave, Suite 300, Juneau, AK 99801

FIPS code (if necessary): SO2

Signature (if required by State or Tribal law): Debra S O'Gara

Print Name: Debra S O'Gara

Title of Issuing Official: Magistrate/Judge

28  If checked, you are required to provide a copy of this form to the employee/obligor. If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy must be provided to the employee/obligor even if the box is not checked.

#### ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS

State-specific information may be viewed on the OCSE Employer Services website located at:  
<http://www.acf.hhs.gov/programs/ocse/newhire/employer/contacts/contacts.htm>

**Priority:** Withholding for support has priority over any other legal process under State law (or Tribal law if applicable) against the same income. If a Federal tax levy is in effect, please notify the contact person listed below.

**Combining Payments:** You may combine withheld amounts from more than one employee/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

**Reporting the Pay Date:** You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.

**Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order/Notice against this employee/obligor and you are unable to fully honor all support Orders/Notices due to federal, State, or Tribal withholding limits, you must follow the State or Tribal law/procedure of the employee/obligor's principal place of employment. You must honor all Orders/Notices to the greatest extent possible, giving priority to current support before payment of any past-due support.

**Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. Contact the agency or person listed below to determine if you are required to withhold or if you have any questions about lump sum payments.

**Liability:** If you have any doubts about the validity of the Order/Notice, contact the agency or person listed below. If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State or Tribal law/procedure.

**Anti-discrimination:** You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of a child support withholding.

**Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment. Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes, Social Security taxes, statutory pension contributions and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, that 50% limit is increased to 55% and that 60% limit is increased to 65% if the arrears are greater than 12 weeks. If permitted by the State, you may deduct a fee for administrative costs. The support amount and the fee may not exceed the limit indicated in this section.

EXHIBIT 2

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OMB Expiration Date - 10/31/2010. The OMB Expiration Date has no bearing on the termination date or validity of the income withholding

15U-10-375 CI

001421

EXC. 351

Employee/Obligor's Name: Calhoun, Ryne, M  
Order Identifier: 09-CS-0015

Case Identifier: 08-0282  
Employer's Name: Sitka Bottling Co.

**Arrears greater than 12 weeks?** If the *Order Information* does not indicate whether the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers who receive a State order, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State law, you may need to take into consideration the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

**Additional Information:**

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**NOTIFICATION OF TERMINATION OF EMPLOYMENT:** You must promptly notify the Child Support Enforcement agency and/or the person listed below by returning this form to the correspondence address if:

- This person has never worked for this employer.
- This person no longer works for this employer.

Please provide the following information for the terminated employee:

Termination date: \_\_\_\_\_ Last known phone number: \_\_\_\_\_

Last known home address: \_\_\_\_\_

---

Date final payment made to the State Disbursement Unit or Tribal CSE agency: \_\_\_\_\_

Final payment amount: \_\_\_\_\_ New employer's name: \_\_\_\_\_

New employer's address: \_\_\_\_\_

---

**CONTACT INFORMATION**

**To employer:** If the employer/income withholder has any questions, contact Harold Dick by phone at (907) 463-7138, by fax at (907) 463-7730, by email or website at [hdick@ccthita.org](mailto:hdick@ccthita.org)

Send termination notice and other correspondence to:  
CCTHITA Tribal Child Support Unit, 320 W. Willoughby Ave, Suite 300, Juneau, AK 99901

**To employee/obligor:** If the employee/obligor has questions, contact Harold Dick by phone at (907) 463-7138, by fax (907) 463-7730 by email or website at Harold Dick.

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

EXHIBIT 2  
PAGE 135 OF 135  
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001422

COTHITA Tribal Court

APR - 7 2009

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

Tribal Child Support Unit,

Ex Rel.

Order of Child Support

Nikolas & Caleb,  
Minor children under the age of 18

De fault

DSO

Evelyn N. Edenshaw,

Petitioner

Court Docket #: 09-CS-0015

Vs

Ryne M. Calhoun,

Respondent

TCSU Case #: 08-0282

A Hearing was held on April 7, 2009 to consider the Petition to Establish Child Support.

The Petitioner was served with Summons of the Hearing.  personally;  by Certified,  
Return Receipt Requested mail:  by Regular mail;  Other: \_\_\_ and  appeared;   
did not appear at the hearing.

The Respondent was served with Summons of the Hearing.  personally;  by Certified,  
Return Receipt Requested mail.  by Regular mail;  Other: \_\_\_ and  appeared;   
did not appear at the hearing.

Also Present at the Hearing was Tribal Child Support Unit Staff Attorney, Jessie Archibald,  
Tribal Child Support Unit Caseworker, Harold Dick

The Tribal Child Support Unit requested the Court issue an Order of Child Support based on  
the Petition submitted on February 10, 2009, and the evidence and testimony offered on the  
record

Order of Child Support

I. BASIS

I. This order is entered pursuant to:

Order of Child Support (Revised 11/5/98)  
Page 1 of 5

COTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-800-364-1432  
(907) 586-1432

EXHIBIT 2  
PAGE 107 OF 129  
1JU-10-376 CI

001424



3. **THE PERSON RECEIVING SUPPORT IS:**

Name: Evelyn Edenshaw

4. Commencing May 1, 2009, the Respondent shall pay \$341.00 per month in child support for one child; and \$473.00 per month for two children. Respondent shall pay \$94.60 (20% of current support) each month towards arrears owed, for a total monthly obligation of \$567.60.

5. Respondent owes \$3,784.00 amount for arrears for the time period 09/01/2008 through 04/30/2009.

The breakdown for the back support is as follows:

|                                 |                          |
|---------------------------------|--------------------------|
| Owed to Tribal TANF             | \$2,365.00               |
| Owed to Petitioner:             | \$1,419.00               |
| Owed to other:                  | \$                       |
| <b>Total Child Support Debt</b> | <b><u>\$3,784.00</u></b> |

5. **STARTING DATE AND DAY TO BE PAID.**

Starting Date: May 1, 2009. Day of the month support is due: 1<sup>st</sup> day of each month.

6. Respondent to pay \$ 567.60 the total monthly obligation through income withholding:

- Voluntary wage withholding  
 Wage Garnishment  
 Property Withholding of Native Corporation Dividends (for Arrears owed to Custodial Parent)

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

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

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

8. **PERMANENT FUND DIVIDEND.**

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

9. **TERMINATION OF SUPPORT.**

Support shall be paid:

- Provided that this is a temporary order, until a subsequent order is entered by this court.  
 Until the child/ren reaches the age of 18 or as long as the child/ren remain(s) in high school, whichever occurs last.

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Pursuant to administrative or other valid court order:

**10. POST-MINORITY SUPPORT.**

- No post secondary educational support shall be required.
- Other: \_\_\_\_\_

**11. MEDICAL INSURANCE.**

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

- Mother
- Father

**12. UNCOVERED HEALTH CARE EXPENSES.**

The cost of uncovered health care expenses of the children under \$5,000.00 shall be allocated equally between the parties.

**13. REASONABLE UNCOVERED HEALTH CARE EXPENSES.**

The cost of reasonable health care expenses of the child(ren) exceeding \$5,000.00 in a calendar year will be allocated based upon the parties relative financial circumstances.

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

**15. IT IS FURTHER ORDERED THAT** if Respondent fails to pay the monthly child support obligation as ordered by this Court, the Tribal Child Support Unit may initiate enforcement and collection procedures, such as, but not limited to, a referral to the Permanent Fund Dividend or Internal Revenue Service, or submit an initial or subsequent Income Withholding Order for the Court's approval. These enforcement and collection procedures may commence without a Court Hearing as at any point the respondent is more than 30 days delinquent in his or her child support payments.

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

Disobedience of this order is punishable by contempt.

An order for support, which has past support due in the amount of \$50.00 or more, whether or not there is an order to make periodic payments, may result in the interception

1 of the payer's income tax refunds and Permanent Fund payment. It may also result in the  
2 interception of any other money due, liens against real property, or attachment of assets.

3 Presented by: [Signature]  
4 Harold Dick  
5 Paternity Specialist

6 Approved for entry:  
7 Jessie M. Archibald  
8 Jessie M. Archibald  
9 TCSU Attorney

10 Signature: Did not appear  
11 Evelyn Edenshaw

12 Signature: Did not appear  
13 Ryne M. Calhoun

14 SO ORDERED ON THIS 7<sup>th</sup> DAY OF April, 2009.

15 [Signature]  
16 Debra S. O'Gara, Tribal Court Magistrate

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

27 I certify that on 4/08/2009, a copy of this document was mailed or personally served to the  
28 following parties:  Respondent R;  Petitioner R;  TCSU E;  Other: State of AK  
29 [Signature] CSSD (R)  
30 Marilyn Peratrovich  
31 R=Regular mail; C=Certified, return receipt; P=Personal; I=inter-office mail

32 Order of Child Support (Revised 11/5/08)  
33 Page 5 of 5

34 EXHIBIT 2  
35 PAGE 111 OF 129  
36 1JU-10-376 CI

37 CCTHITA TRIBAL COURT  
38 320 West Willoughby Ave, Suite 300  
39 Juneau, Alaska 99801  
40 Phone: Toll-Free 1-(800) 344-1432  
41 (907) 586-1432

001428

For office use only: Requested: 001158320 Sent: NR 4/2/09 Case # \_\_\_\_\_  
Date Date Reinstatement/Existing/Other

**APPLICATION FOR CHILD SUPPORT SERVICES**

Please indicate which services you want. You must provide all information necessary for these services. Attach complete copies of orders or documents relating to custody, support and paternity. DO NOT SEND ORIGINALS.

- Support order establishment     Paternity establishment     Medical support order establishment  
 Enforcement of an existing order     Review, modification, and enforcement of an existing order

040517107 INFORMATION ABOUT YOU (THE APPLICANT) PLEASE PRINT

Full name Josephine K. Guthrie Birth/previous/other names \_\_\_\_\_  
Date of Birth 10/16/1980 Birthplace Ketchikan AK SSN \_\_\_\_\_  
Mailing address \_\_\_\_\_ City Ketchikan State AK Zip 99901  
Home address \_\_\_\_\_ City Ketchikan State AK Zip 99901  
Driver's license state and # \_\_\_\_\_ Home phone \_\_\_\_\_ Email address JK\_werth@yahoo.com  
Employer Ketchikan Indian Community Work phone \_\_\_\_\_ Work hours 8-5pm  
Does an attorney represent you in any matters related to the child or the other parent?  Yes  No If yes, provide the attorney's name, address, and phone \_\_\_\_\_  
Have you ever received public assistance such as ATAP (Alaska Temporary Assistance), TANF (Temporary Aid to Needy Families), AFDC, or Medicaid?  Yes  No If yes, indicate what type, when, in what state, and provide a case number if available \_\_\_\_\_

CHILDREN YOU ARE SEEKING SUPPORT FOR (add pages if necessary)

| Child's full name            | Sex      | Date and place of birth       | SSN                         | Who does this child live with? |
|------------------------------|----------|-------------------------------|-----------------------------|--------------------------------|
| <u>Gabriel James Guthrie</u> | <u>M</u> | <u>7-03-2007 Ketchikan AK</u> | <u>doesn't have one yet</u> | <u>Mother - Josephine</u>      |
|                              |          |                               |                             |                                |
|                              |          |                               |                             |                                |

**RECEIVED**  
MAR 31 2009  
CSSD - SERO

You are the  mother  father  relative \_\_\_\_\_  legal custodian by court order (explain) \_\_\_\_\_

041295845 NONCUSTODIAL PARENT YOU ARE SEEKING SUPPORT FROM

Full name Donnelly James Chaboneau Birth/previous/other names \_\_\_\_\_  
Date of Birth 3/16/1981 Birthplace \_\_\_\_\_ SSN \_\_\_\_\_  
Address  Current  Last known \_\_\_\_\_  
City Kenai State AK Zip 99611 Driver's license state and # \_\_\_\_\_  
Home phone \_\_\_\_\_ Email \_\_\_\_\_ Citizen of  U.S.  other country \_\_\_\_\_

How is the person related to the child? Gabriels biological father

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Height not sure Weight \_\_\_\_\_ Hair black Eye color \_\_\_\_\_ Race \_\_\_\_\_ Marks, scars, tattoos \_\_\_\_\_  
 Does/did the person live or work in Alaska?  Yes  No If yes, where and when? Kenai AK.  
 Does the person have relatives in Alaska? Who and where? his mother here in KTV AK.  
 Usual occupation \_\_\_\_\_ Union member? (name and local number) \_\_\_\_\_

| Current or most recent employer(s) | Employer address | Employer phone | Dates of employment |
|------------------------------------|------------------|----------------|---------------------|
| <u>not sure</u>                    |                  |                |                     |
|                                    |                  |                |                     |
|                                    |                  |                |                     |

Military Service:  None  Active  Reserve  Guard  Retired  
 Branch/unit \_\_\_\_\_ Last rank/grade \_\_\_\_\_ Yrs in service \_\_\_\_\_

Tribal or Alaska Native corporation member?  Yes  No If yes, which corporation? \_\_\_\_\_

Does this person have an attorney regarding child support?  No  Yes Who? \_\_\_\_\_

Does or did the person receive (or does the person expect future) cash gifts, settlements, or awards? no

Other information that may be helpful in obtaining support (for example, bank accounts, stocks, property, pension, or other sources of income) his address may change to a treatment center in Kenai.

RELATIONSHIP BETWEEN THE PARENTS Donnelly and I

Divorced Date of separation \_\_\_\_\_ Date of divorce \_\_\_\_\_  
 Court case number \_\_\_\_\_  
 City/County/State \_\_\_\_\_  
 Attach a complete copy of the divorce decree/order.

Married but separated Marriage date/place \_\_\_\_\_ Separation date \_\_\_\_\_

Divorce/Dissolution pending Date filed \_\_\_\_\_ Separation date \_\_\_\_\_  
 City/County/State \_\_\_\_\_ Court case number \_\_\_\_\_

Never married Separation date (if parents lived together) \_\_\_\_\_  
 Complete the following. Attach a birth certificate for each child.

- Child: Gabriel Did the father sign an Affidavit of Paternity?  Yes  No  
 Is the father's name on the birth certificate?  Yes  No\*  
 In what state was the birth certificate issued? Alaska.
- Child: \_\_\_\_\_ Did the father sign an Affidavit of Paternity?  Yes  No  
 Is the father's name on the birth certificate?  Yes  No\*  
 In what state was the birth certificate issued? \_\_\_\_\_
- Child: \_\_\_\_\_ Did the father sign an Affidavit of Paternity?  Yes  No  
 Is the father's name on the birth certificate?  Yes  No\*  
 In what state was the birth certificate issued? \_\_\_\_\_

\*If no, complete page 12

Other (explain) \_\_\_\_\_

OTHER INFORMATION

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Check here if you have been a victim of domestic violence and you want your address to be kept confidential from the other party. Please submit an "Affidavit and Request for Address Confidentiality" (see page 11).

Check here if you agree that if CSSD sends a child support payment to you in error, you want to repay the overpayment gradually out of future child support payments (instead of immediately in a lump sum). CSSD will provide child support services to you even if you don't agree to repay overpayments from future payments.

Check here if you have or have had a child support case in Alaska or another state, and explain: For which child?

\_\_\_\_\_ In what state/county? \_\_\_\_\_ Do you know the case number? \_\_\_\_\_

Check here if the child is eligible for Indian Health Service, military, or other health care coverage, and explain: Which child? Isabel G. Eligibility through which parent? Mother Josephine

Type of coverage? Indian Health Service

Transit routing number and account number (example below): \_\_\_\_\_

Check here to have support payments deposited directly into your  checking  savings account (select one).

By signing below, I authorize the State of Alaska CSSD to make necessary adjustments to the above account to correct any credit entries made in error. I understand that the state will make a reasonable effort to notify me within 24 hours when an adjustment is made. This authority remains in effect as long as I have an open child support case with the State of Alaska CSSD.



Attach a voided check or deposit slip here.

Routing # Account #

I understand that 30 days written notice is required to change financial institutions, account numbers, or account type; that I must notify CSSD if I close my account or change my address; that the name on the child support case must match the name on the account into which deposits are being made; and that direct deposit will begin only after the above information has been electronically verified.

If you are already signed up for direct deposit in another CSSD case, do not submit a second request here. Direct deposit will be automatic in this case.

**Include a complete copy of all orders relating to custody, support, and paternity.**

**Do not send original documents.**

**Complete the Statement of Support Received even if you receive no support.**

**Complete the confidentiality affidavit if you want your address withheld from the other party.**

**Your signature is required before CSSD can process this case.**

Applicant's signature Josephine Guthrie Date: 3/30/07

Return the completed application, the statement of support received, the confidentiality affidavit (if needed) and all supporting documents to:

Child Support Services Division  
550 W 7<sup>th</sup> Avenue Suite 310  
Anchorage AK 99501-6699

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STATE OF ALASKA  
DEPARTMENT OF REVENUE  
CHILD SUPPORT SERVICES DIVISION

SEAN PARNELL, GOVERNOR

Please Reply To:

CSSD, MS 42  
550 WEST 7<sup>th</sup> AVE., SUITE 310  
ANCHORAGE, AK 99501-6699

March 17, 2010

Donnelly J. Charboneau



RE: Case # 001158320  
Request for Relief

Subject: If you disagree, you have 30 days to oppose the agency's initiation of a Request for Relief.

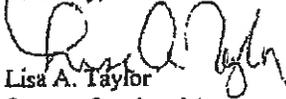
Dear Mr. Charboneau:

Enclosed is a copy of a memorandum which asks the Child Support Services Division's (CSSD) Director to grant relief from the Administrative Child Support and Medical Support Order dated August 7, 2009 based on a mistake. Also enclosed is a Notification of Correction to an Administrative Order. The purpose of these notices is to let you know that CSSD proposes to reopen the establishment process to correct a typographical error made in the support order.

CSSD calculated your child support obligation for your son at \$50 per month. When the support order was prepared, the amount of support was correctly reflected as calculated but the child's name was incorrectly reflected as "Baby Boy Werth". CSSD needs to correct the support order to show that the child's actual name is "Gabriel Guthrie". This change will not impact the amount of child support presently owed.

A party who does not want the order process reopened must file a written opposition to the agency's request within 30 days of the date of this notice but no later than *April 19, 2010*. The opposition should state any material facts you wish the agency's Director to consider, plus any disagreement you have with the facts as stated above. Please mark any attachments to your opposition beginning with Exhibit A. Your documents will be considered timely if they are postmarked on or before the due date. Send your documents to the attention of Jodie Kozloff, Child Support Specialist II at Child Support Services Division, 550 W 7<sup>th</sup> Avenue, 3rd floor, MS08 Anchorage AK 99501.

Sincerely,



Lisa A. Taylor  
Support Services Manager

Enclosures

LAT

TOLL FREE (In-state, outside Anchorage): (800) 478-3300

ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 6914

TDD machine only: (907) 269-6894 / TDD machine only, toll free (In-state, outside Anchorage): (800) 370-6894

SOUTHEAST: (907) 465-5387

FAIRBANKS: (907) 451-2830

MAT-SU: (907) 357-3530

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EXC. 361

Alaska Department of Revenue  
**Child Support Services Division**

Please Reply To:  
CSSD, MS 21  
350 W 7TH AVE STE 310  
ANCHORAGE, AK 99501-6599  
PHONE: (907)269-6900 FAX: (907)269-6813

DONNELLY J. CHARBONEAU  
a/k/a:

June 19, 2009

Case Number: 001158320  
Custodian: JOSEPHINE K. GUTHRIE  
a/k/a: JOSEPHINE K. WERTH

Child's Name  
BABY BOY WERTH

DOB  
07/03/2007

**Order Establishing Paternity**

(Alaska Statute 25.27.165 and Alaska Administrative Code 15:125.226)

IT IS HEREBY ORDERED that DONNELLY J. CHARBONEAU is established as the legal father of the above listed child born to JOSEPHINE K. GUTHRIE. DONNELLY J. CHARBONEAU is also liable to CSSD for \$212.10, which is the cost in this paternity action. CSSD will provide a copy of this order to the State of Alaska Bureau of Vital Statistics if the child was born in Alaska. This order is based on the following findings:

C  
O  
P  
Y

Basis for Paternity.

Genetic test results.

Jurisdiction is proper

The Notice of Paternity and Financial Responsibility was served on DONNELLY J. CHARBONEAU on 04/29/2009, by process serve.

All case parties reside in the State of Alaska.

The following costs were incurred by CSSD:

- \$ for travel and housing to have DNA collected.
- \$150.00 for analysis of DNA by certified laboratory.
- \$62.10 for process server costs.



Dale R. Ludwig, Child Support Manager  
Adrelia L Putman, Child Support Specialist  
(907) 269-6971

cc: JOSEPHINE K. GUTHRIE

CSSD 04-1920P (Rev 08/07/06)  
U-21/7232 C-21/7232

TOLL FREE (in-state, outside Anchorage): (800) 478-3900  
ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 6914

SOUTHEAST: (907) 465-5687  
FAIRBANKS: (907) 451-2830

MAT-SU: (907) 257-3550

TDD machine only: (907) 269-6894 / TDD machine only, toll free (in-state, outside Anchorage): (800) 370-6894

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EXC. 362

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
CHILD SUPPORT SERVICES DIVISION

Please Reply To:

CSSD, MAILSTOP 20  
350 W 7TH AVE STE 310  
ANCHORAGE, AK 99501-6699  
PHONE: (907)269-6900 FAX: (907)269-6813

JOSEPHINE K. GUTHRIE  
[REDACTED]

April 15, 2009

Case Number: 001158320  
Child: BABY BOY WERTH

PATERNITY INFORMATION LOCATE SHEET

We need more information to help establish paternity for your child.

A. Information about alleged/most likely father. This information is important to locate the correct person.

1. His full legal name (no nicknames): Donnelly James Charbonneau  
First Mid. Last
2. Any other name(s)/alias he may have used: \_\_\_\_\_
3. Social Security Number: \_\_\_\_\_
4. Race: W Weight: 170 Height: 5'11  
Color of eyes: brown Color of Hair: black  
Distinguishing marks/scars: \_\_\_\_\_  
Date of birth: 3/16/1981 Approximate Age: 28  
Place of birth (city/state): \_\_\_\_\_
5. Mailing Address: [REDACTED]  
City/State: [REDACTED] Zip \_\_\_\_\_  
Resident Address: I believe he has been transferred to  
City/State: a treatment center but not sure of the new address Zip \_\_\_\_\_  
Work telephone number: \_\_\_\_\_ Home telephone number: \_\_\_\_\_
6. Did he ever live/work in Alaska? Yes  No
7. His usual occupation: \_\_\_\_\_
8. Name of his employer: \_\_\_\_\_

B. Month, date(s) & year of your sexual relationship with this man:

From: July 06 To: Oct 06

CSSD 04-1423A (rev 04/20/04)  
U-20/7026 C-21/7232

(over)

TOLL FREE (In-state, outside Anchorage): (800) 478-3300  
ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 5814

SOUTHEAST: (907) 465-5887  
FAIRBANKS: (907) 451-2830

MAT-SU: (907) 251-2660

TDD machine only: (907) 269-6894 / TDD machine only toll free (In-state, outside Anchorage): (800) 478-3300

EXHIBIT 3

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C. Name any other men that you had sexual intercourse with during the time you became pregnant (30 days before or 30 days after the child was conceived). Attach additional pages if necessary.

1. Full Name: none  
First Mid. Last  
Address: \_\_\_\_\_  
City State Zip  
Date and Place of Birth: \_\_\_\_\_ Age: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_  
Dates of sexual relations: From \_\_\_\_\_ To: \_\_\_\_\_  
Why do you think that this man is not the father? \_\_\_\_\_

2. Full Name: \_\_\_\_\_  
First Mid. Last  
Address: \_\_\_\_\_  
City State Zip  
Date and Place of Birth: \_\_\_\_\_ Age: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_  
Dates of sexual relations: From \_\_\_\_\_ To: \_\_\_\_\_  
Why do you think that this man is not the father? \_\_\_\_\_

D. If the father of your child is unknown, explain the circumstances when you became pregnant:

N/A

E. Information about the child:

Name: Gabriel Werth Conception Date: Oct. 2006  
Date of Birth: 7/03/2007 Place of Birth: Ketchikan AK

F. Have there been any legal actions for this child? (child support orders, adoption, children's proceedings, paternity cases, divorce decree, etc.) If so, what action, where, and when? Attach copies of legal documents.

yes, I have attached copies

G. Is a father named on the child's birth certificate? Yes \_\_\_\_\_ No

Did the father sign an affidavit of paternity? Yes \_\_\_\_\_ No

If yes, DATE: \_\_\_\_\_ PLACE \_\_\_\_\_  
City State

H. Were you married when the child was born? Yes  No \_\_\_\_\_

Josephine Guthrie Josephine Guthrie 5/6/09  
Your name (PLEASE PRINT) Signature Date

Work telephone number: \_\_\_\_\_ Home number: no home phone

Your address: \_\_\_\_\_  
City State Zip

Your social security number: \_\_\_\_\_ Date of Birth: 10/16/1980

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STATE OF ALASKA  
CHILD SUPPORT SERVICES DIVISION

Case No: \_\_\_\_\_ Child: \_\_\_\_\_

PATERNITY INFORMATION LOCATE SHEET

We need more information to help establish paternity for your child.

Please give us information about the person that you think is most likely to be the father.  
This information is important to locate the correct person.

His full legal name (no nicknames): Donnelly James Charbonneau  
First Middle Last

Any other names he may have used: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth or Approx. Age: 3/16/1981

Physical description: <sup>approx.</sup> 5'10" 175 black brown W.  
Height Weight Hair Color Eye Color Race Scars/Tattoos

Mailing address: \_\_\_\_\_  
City State Zip

Residence address: \_\_\_\_\_  
City State Zip

Work telephone number: \_\_\_\_\_ Home number: \_\_\_\_\_

Did the noncustodial parent ever live or work in Alaska? No  Yes  When? \_\_\_\_\_

Place of birth: \_\_\_\_\_ Is the absent parent a citizen of the United States? Yes  No  If  
no, what is his country of citizenship? \_\_\_\_\_ When did he last live there? \_\_\_\_\_

His usual occupation: \_\_\_\_\_

Name of his current employer: \_\_\_\_\_

Month, date(s), and year of your sexual relationship with this man: From: Aug 06 To: Oct 06

Name any other man that you had sexual intercourse with around the time you became pregnant  
(30 days before or 30 days after the child was conceived). Attach additional pages if necessary.

1) Full Name: \_\_\_\_\_  
First Middle Last

Address: \_\_\_\_\_  
City State Zip

Social Security Number: \_\_\_\_\_ Date and Place of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Physical description: \_\_\_\_\_  
Height Weight Hair Color Eye Color Race

Dates of sexual relations: From \_\_\_\_\_ To \_\_\_\_\_

Why do you think that this man is not the father? \_\_\_\_\_

PLEASE COMPLETE AND SIGN THE BACK OF THIS PAGE

04-1423A (Rev 05/19/04)

TOLL FREE (In-state, outside Anchorage): (800) 478-3300

SOUTHEAST: (907) 465-5887

MAT-SU: (907) 357-3550

ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 6914

FAIRBANKS: (907) 451-2830

TDD machine only: (907) 269-6894 / TDD machine only, toll free (In-state, outside Anchorage): (800) 370-6894

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2) Full Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Date and Place of Birth: \_\_\_\_\_  
 Physical description: \_\_\_\_\_  
 Social Security Number: \_\_\_\_\_  
 Dates of sexual relations: From \_\_\_\_\_ To \_\_\_\_\_  
 Why do you think that this man is not the father? \_\_\_\_\_

If you do not know the father of your child, explain the circumstances when you became pregnant \_\_\_\_\_

Information about the child:  
 Name: Gabriel James Guthrie  Male  Female  
 Conception date Oct 2006 Social Security Number doesn't have one yet.  
 Date of Birth: 07-03-07 Place of Birth: Ketchikan

Have there been any legal actions for this child (such as child support orders, adoption, children's proceedings, paternity cases, divorce decree, etc.)? If so, what action, where, and when? Attach copies of legal documents. divorce decree

Is a father named on the child's birth certificate?  Yes  No  
 Did the father sign an affidavit of paternity?  No  Yes Place: \_\_\_\_\_

Were you married when the child was conceived or born?  No  Yes.  
 Husband's name Kenneth Worth Social Security Number \_\_\_\_\_

Your Work telephone number \_\_\_\_\_ Home telephone number: \_\_\_\_\_  
 Address: \_\_\_\_\_

Social Security Number \_\_\_\_\_ Date of Birth: 10/16/1980  
 Your Employer \_\_\_\_\_ Ketchikan AK 99901

Josephine Guthrie Josephine M. ... 3/30/09  
 Your name (PLEASE PRINT) Signature Date

THANK YOU FOR PROVIDING THIS INFORMATION

04-1423A (Rev 05/19/04)

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

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Alaska Department of Revenue  
**Child Support Services Division**

Please Reply To:  
CSSD, MS 08  
550 W 7TH AVE STE 310  
ANCHORAGE, AK 99501-6698  
PHONE: (907) 269-8900 FAX: (907) 269-8813  
www.childsupport.alaska.gov

In the Matter of:  
DONNELLY J. CHARBONEAU

August 7, 2009

Custodian: JOSEPHINE K. GUTHRIE  
Case Number: 001158320  
Child:  
BABY BOY

07/03/07

"IMAGED"  
SEP 28 2009

**Administrative Child Support  
and Medical Support Order**

(Alaska Statute 25.27.160 and Alaska Administrative Code 15:125.100)

In the matter of DONNELLY J. CHARBONEAU who is the payor, and JOSEPHINE K. GUTHRIE who is the payee in this order, the Child Support Services Division (CSSD) determined that DONNELLY J. CHARBONEAU owes a financial duty of support and is ordered to pay child support. All references to "you" or "your" in this order refer to DONNELLY J. CHARBONEAU who is the payor.

Either party has a right to challenge this order by requesting an administrative review. You must make the request in writing and send it certified mail, return receipt requested. The request for a review must be postmarked within 30 days from the date you received this notice.

If you do not request an administrative review in writing within 30 days after you were served with the order, this order automatically becomes effective 30 days after service of this notice. (Alaska Statute 25.27.160(b)(4))

I. **FINANCIAL OBLIGATION.** You are hereby ordered to provide financial support for the child listed above according to the following:

A. **MONTHLY CHILD SUPPORT.** Your ongoing child support amount of \$50.00 is due on 09/01/09 and will charge on the first of each month thereafter.

|                                     |                                     |
|-------------------------------------|-------------------------------------|
| \$50.00 for one child per month     | \$0.00 for two children per month   |
| \$0.00 for three children per month | \$0.00 for four children per month  |
| \$0.00 for five children per month  | \$0.00 for six children per month   |
| \$0.00 for seven children per month | \$0.00 for eight children per month |

If you have more than one child on this order the next support amount, if not reflected above, will be calculated through ministerial acts using the income information in the child support guidelines affidavit(s), which are incorporated as part of this order. Changes to this order require a modification, see IX.

**WARNING: If you owe arrears, your total monthly payment  
may be more than the above ongoing amount.**

CSSD 04-1902 (Rev 11/14/08)  
U-08/7047 C-08/7018

Page 1

TOLL FREE (In-state, outside Anchorage): (800) 478-3300  
ANCHORAGE: (907) 269-8900 FAX: (907) 269-8813 or 6914

SOUTHEAST: (907) 465-5367  
FAIRBANKS: (907) 451-2830

MAT-SU: (907) 357-3350

TDD machine only: (907) 269-8884 / TDD machine only, toll free (In-state, outside Anchorage): (800) 370-6894

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EXC. 367

B. **ARREARS.** You owe total past-due child support of \$300.00 for the periods: 03/01/09 to 08/31/09. This amount is due on 09/01/09.

If you do not pay the total arrears amount on the first due date, we will withhold an additional amount from your paycheck and use other collection methods such as attachment of any refund you have coming to you from IRS and your Permanent Fund Dividend in order to pay this debt.

The attached Child Support Guidelines Worksheet (CSSD Form 1905) shows how we calculated your child support for each year.

The attached Summary of Support Obligation (CSSD Form 1609) shows a detailed monthly listing of the dollar amounts that you owe for arrears.

If your Child Support Order is being established because one or more children are in state custody, the attached Child Support Guidelines worksheet (CSSD Form 1905S) shows the credit received for any children still living in your home. This credit reduces the monthly child support.

C. **INTEREST.** Interest accrues on the unpaid arrears at the end of the month, at the legally prescribed rate. Interest is child support per Alaska Statute 25.27.900 (12).

D. **FEES.** CSSD will assess you costs associated with genetic testing, process service, and attorney fees if applicable to your case. Fees are child support per Alaska Statute 25.27.900 (12).

## II. DURATION OF ORDER

This order is in effect until the youngest child reaches

A. 18 years of age, is otherwise legally emancipated; or  
B. 19 years of age, if the child

1. is unmarried, actively pursuing a high school diploma or equivalent technical or vocational training, and living with a parent, guardian, or designee as a dependent; or
2. is in state custody

## III. MEDICAL SUPPORT ORDER

(Alaska Statute 25.27.063, Alaska Statute 25.27.020,

Alaska Statute 25.27.060, Alaska Administrative Code 15:125.085). In addition to the financial duty of support, you owe a medical duty of support for the child listed above.

A. You are ordered:

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1. To include the child named in this order on any health insurance policy available to you at a reasonable cost;
  2. To provide proof of insurance within 20 days of the date of the child support order. You need to send us a copy of the insurance form and an affidavit stating the form is filed with the insurance company. If you are not covered by insurance, but it is available to you, you must send documentation regarding the available coverage;
  3. To notify CSSD in writing within 20 days after losing coverage or a change in employment resulting in a change in coverage.
- B. If you provide proof of insurance for the child, we will give you a credit against your child support obligation for half of the amount of the premium that you pay for the health insurance for the child.
- C. If the other parent buys the insurance for the child, we will bill you for half of the direct costs to cover the child named in this order.
- D. If the cost of the insurance changes, CSSD will adjust the amount of the child support obligation accordingly, without further order of the agency. CSSD will notify the case parties of any adjustment made to this part of the order. The parent purchasing the insurance shall provide documentation of the change to CSSD.
- E. **FUTURE COVERAGE.** If health insurance for the child becomes available to either parent at reasonable cost and the child is not already covered by insurance or other health care coverage, that parent must purchase the insurance and notify CSSD immediately.
1. The cost of the insurance is divided equally between the parties. Without further order of the agency, we will add half the cost of the custodial parent's health insurance premium to the monthly child support obligation of the non-custodial parent if the custodial parent pays the insurance premium. If the non-custodian pays for the cost of the insurance we will subtract 50% of the premium cost from the non-custodian's monthly support obligation.
  2. If both parents have health care coverage available and the rights of child support have not been assigned to the state, both parents will determine who will purchase the coverage for the child. However, if they disagree, they will inform the agency in writing. After receiving this information, the agency will require both parents to purchase coverage for the child and offset the cost to each parent and assess an increase or decrease in the monthly support obligation as appropriate.
  3. If both parents have health care coverage available and the rights of child support has been assigned to the state, the agency will require the noncustodial parent to provide health care coverage for the child.

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F. The parent purchasing the insurance must notify the insurance company that the other parent can apply for benefits on behalf of the child and should be reimbursed directly. The purchaser must also provide coverage information to the other parent and all forms and instructions necessary to apply for benefits.

G. UNCOVERED HEALTH CARE EXPENSES (Civil Rule 90.3(d)(2))

1. Reasonable health care expenses not covered by insurance that are less than \$5,000 shall be paid equally by both parties unless good cause is shown.
2. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days after receiving the health care bill, proof of payment, and, if applicable, a health insurance statement showing what part of the cost is uncovered.
3. If the uncovered expense is over \$5,000 the expense is to be allocated based on the parties' relative financial circumstances when the expense occurs.

H. ACCORDING TO OUR INFORMATION:

The child is eligible for health care through Indian Health Service and these services are available to the child. Therefore, no additional insurance is required while these services are available.

IV. FINDINGS OF FACT.

A. INCOME DETERMINATION:

1. We considered your total income from all sources based on actual information.
2. We do not have actual income or employment information for you. We therefore estimated your income using the calculation method listed on the bottom of the child support guidelines worksheet(s) (CSSD form 1905).
3. After considering relevant circumstances, including education, training, occupation, health, employment opportunities and the extent to which you are participating in looking for work, we find you are voluntarily unemployed or underemployed.

The attached Child Support Guidelines Worksheet(s) (CSSD form 1905) and Summary of Support Obligation (CSSD form 1609) are incorporated as part of these Findings of Fact. (The method of calculation is listed at the bottom of each worksheet.)

The calculation for 2009 is based on zero income due to incarceration and the Alaska Permanent Fund Dividend. Your child support obligation of \$60 per month is the minimum amount allowable. The calculation for 2009 reflects a deduction for the child support you paid for your prior children.

- B. We find that your monthly child support obligation is based on primary custody of the child. We based our custody finding on information provided.
- C. We find the existence of good cause to vary your child support obligation under the provisions of Alaska Administrative Code 15:125.070.  
(If checked the caseworker will list the unusual circumstances from Alaska Administrative Code 15:125.075.)
- D. We find that you have available health insurance for the child. If you have not provided insurance information please re-read the medical support order portion of this document as you are required to provide medical health support for the child.

**V. INCOME WITHHOLDING AND INTEREST (Alaska Statute 25.27.062)**

- Federal Law requires immediate wage withholding. This serves as your notice that wage withholding will start without any further notice after the child support order is set.
  - If you are employed, we will contact your employer to arrange for automatic withholding from your paychecks to cover your child support obligation once we set the order.
  - Property and Income are subject to withholding by CSSD without further action or hearing (Alaska Statute 25.27.160(b)(4) and Alaska Statute 25.27.230-270).
  - We will charge interest on payments thirty (30) or more days overdue, and checks not backed by sufficient funds (Alaska Statute 25.27.020, Alaska Statute 25.27.025). Interest and Fees are child support per Alaska Statute 25.27.900 (12).
  - If you are a member of an Alaska Native Corporation as defined under the Alaska Native Claims Settlement Act, CSSD will get a court order to attach any dividends that you receive from your Native corporation to satisfy past child support due to the custodial parent.
- VI. If the child receives public assistance or is placed in state custody, the state becomes the payee and collections are kept by the state without modification to this order.
- VII. If this order was established because the child is or has been in state custody, and the child is released from state custody and
- A. is placed with a custodian other than the payor, the payor will continue to owe a duty of support without further modification of this order.
- OR
- B. is placed in the payor's custody, the monthly support obligation will be stopped. Since the support obligation will start again if the payor is no longer the custodian of the child, it is important for a parent to get the order modified when there is a change in income.
- VIII. This order remains in effect, and support will continue to be due, until the order is modified or terminated. A parent's withdrawal from CSSD services does not terminate the order. Support will continue to accrue under this order even if CSSD is not enforcing the support obligation.

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IX. It is extremely important for a party to request a modification if there is any change in income or custody of the child or children.

X. You are required to notify us, as soon as possible, whenever your address, employer or health insurance coverage changes.

**XI. PAYMENTS THROUGH CSSD**

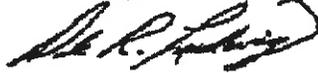
Payments are to be made by immediate wage withholding. There are certain circumstances in which non-wage withholding payments may be made. However, you must make all payments through CSSD or as directed by CSSD. Payments may be mailed to: CSSD, P.O. Box 102760, Anchorage, AK 99510-2760. Do not make payments directly to the custodian after receipt of this notice and order. The giving of gifts, clothing, or other items will not fulfill your child support obligation.

If you are unemployed or we cannot do wage withholding through your employer, you may make payments by mail, electronic funds transfer or in person to CSSD. We accept money orders, bank drafts, cashiers checks, and personal checks. Please make checks payable to CSSD. Do not send cash by mail. Include your case number, your name, and the name of the child's custodian on payments or correspondence.

Please refer to the enclosed "Explanation of the Child Support and Medical Support Order" letter for an explanation of the terms and provisions of this order.

This order serves as the notice and finding of financial responsibility required under Alaska Statute 25.27.160.

Dated August 7, 2009 in Anchorage, Alaska.



Dale R. Ludwig  
Child Support Manager

Enclosures:

CSSD Form 04-1918, Request for Administrative Review  
CSSD Form 04-1697N, Explanation Letter  
CSSD Form 04-1905, Child Support Guidelines Worksheet  
CSSD Form 04-1609, Summary of Support Obligation  
Order to Withhold Amortization Chart  
FILE: Orders Section

Alaska Department of Revenue  
**Child Support Services Division**

Please Reply To:  
CSSD, MS 08  
550 W 7TH AVE STE 310  
ANCHORAGE, AK 99501-8688  
PHONE: (907)269-6900 FAX: (907)269-5813  
www.childsupport.alaska.gov

DONNELLY J. CHARBONEAU

August 7, 2009

Re: Case Number: 001158320

**Explanation of the Child Support and Medical Support Order**  
(Alaska Statute 25.27.160 and Alaska Administrative Code 15:125.100, 15:125.105)

Enclosed is an Administrative Child Support and Medical Support Order on behalf of the children listed on the order. This order began because a parent or custodian applied for CSSD's services or the children are participants in state assistance programs such as a Public Assistance or Medicaid grant or they are in state custody.

The following information explains the Child Support and Medical Support Order. If you have any questions concerning your order, you can contact us at the above address or by calling your caseworker Rebecca L Ervin at (907) 269-6858. **REMEMBER, failure to respond to this order will result in the order becoming a legal and binding order by default. You must request an Administrative Review within 30 days of receiving this order if the enclosed order does not reflect your financial circumstances.**

The child support order has several parts. The first part includes the amount of child support due each month. This is your actual monthly support obligation. The order also includes arrears, interest, and a provision requiring health care coverage. The arrears, interest, fees, or judgments that you owe is separate from the monthly ongoing amount and could result in an actual monthly payment higher than the ongoing amount. The order also explains how we determined your income for child support purposes.

**WHAT ARE YOUR OPTIONS IN THIS ACTION?**

- If you agree with the amounts stated in the order, you do not need to ask for an administrative review.
- If you disagree with the amounts of the order or if you believe you do not owe a duty of support and are requesting genetic testing, please complete and return the enclosed Request for Administrative Review form. If a genetic test was conducted previously through a judicial or administrative procedure and the tests proved you are the father, we will not conduct a second genetic test. Your request must be postmarked within 30 days from the date you receive this notice. You must provide in writing the reasons you dispute the amounts shown in the order and you must provide documentation to support your claims when you send your Request for Administrative Review to us. You must send the following documents:
  - Completed Child Support Guidelines Affidavit(s) (CSSD Form 1901) and supporting documentation for each year in question.
  - Current pay stubs, or payroll advice, or leave and earnings statements or other employer provided documentation showing wage and income information.
  - Copies of signed tax returns - with all applicable schedules attached.
  - Documentation and verification of medical coverage for the children.

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TOLL FREE (In-state, outside Anchorage): (800) 478-3900  
ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 6814

SOUTHEAST: (907) 485-5867  
FAIRBANKS: (907) 451-2830

MAT-SU: (907) 357-3530

TDD machine only: (907) 269-6894 / TDD machine only, toll free (In-state, outside Anchorage): (800) 370-5894

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- If self-employed, your tax records and tax returns reflecting your business income and expenses.
- Documentation concerning any periodic benefits you receive (including worker's compensation, unemployment compensation, Social Security benefits that include Children's Insurance Benefits, veteran's benefits, corporate and investment interest or dividends, insurance benefits, and any in-kind compensation or monetary benefits paid by any organization).
- Verification of union dues, if paid.
- Verification of retirement account contributions.
- Any other information you want us to consider.

**DO NOT SEND ORIGINALS. They will not be returned by CSSD.**

**If you cannot provide the information within the allotted 30 days, contact your caseworker immediately to discuss an extension of time.**

**HOW DID WE CALCULATE CHILD SUPPORT?**

We calculated your support amounts based on either: 1) actual income information available to us, or 2) information we had on your current or past type of employment or job. If we did not have your actual income we referred to the Occupational Employment Statistical Index to determine a dollar amount based on the average wages earned by others in your current or previous occupation, or 3) we used the dollar amounts found in the Alaska Average Wage Index for your age and gender because we did not have any information on your past employment or occupation. Please refer to the attached "Child Support Guidelines Worksheet" (CSSD Form 1905) to see how we calculated your child support for each chargeable year.

**HOW MUCH IS YOUR TOTAL MONTHLY CHILD SUPPORT PAYMENT?**

Your total monthly payment is determined by adding the following: 1) your ongoing support obligation (paragraph I.A of the order), 2) a percentage of the arrears that you owe (paragraph I.B), 3) monthly interest accumulation on arrears (paragraph I.C), and 4) fees that you may owe (paragraph I.D). Interest accrues after child support goes unpaid, so that is why we do not state the interest amount in the order.

**DOES THIS ACTION AFFECT YOUR CREDIT RATING?**

Yes, it could if you owe arrears. CSSD is required to report child support arrears to consumer reporting agencies such as credit bureaus and lending institutions. If you presently owe past child support or if you do not pay support in the future, we will report your name and payment information to consumer reporting agencies. Once an initial report is made to a consumer reporting agency, we will report changes in status or the amount of arrears. (Alaska Statute 25.27.273, Alaska Administrative Code 15:125.418)

You are required to notify us, as soon as possible, whenever your address, job, or health insurance coverage changes.



Dale R. Ludwig  
Child Support Manager

cc: JOSEPHINE K. GUTHRIE  
FILE: EST/MODS

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U-08/7047 C-08/7018

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**Child Support Services Division**

Please Reply To:  
CSSD, MS07  
550 W 7TH AVE STE 310  
ANCHORAGE, AK 99501-9999  
PHONE: (907)269-6999 FAX: (907)787-3342  
www.childsupport.alaska.gov

In the Matter of:  
**DONNELLY J. CHARBONEAU**

June 1, 2010

Custodian: **JOSEPHINE K. GUTHRIE**  
Case Number: **001158320**  
Child:  
**GABRIEL** 07/03/2007

**"IMAGED"**

**JUN 3 2010**

**Amended Administrative  
Child and Medical Support Order**

(Alaska Statute 25.27.160 and Alaska Administrative Code 15:125.118)

- I. This order amends the Administrative Child Support Order dated 08/07/2009. It is issued because CSSD discovered a clerical error which required the original order to be amended.
  - A. Based on a review of the case, CSSD finds that DONNELLY J. CHARBONEAU owes child support.
  - B. DONNELLY J. CHARBONEAU is designated as the payor and JOSEPHINE K. GUTHRIE is the payee. All references to "you" or "your" are to the payor. Please refer to the explanation letter enclosed with the original order for an explanation of the various aspects and provisions of this order.
- II. **FINANCIAL OBLIGATION.** You are hereby ordered to provide financial support for the child listed above according to the following:
  - A. **MONTHLY CHILD SUPPORT.** Your ongoing child support amount of \$50.00 is due on 09/01/09 and will charge on the first of each month thereafter.

|                                 |                              |                            |                              |
|---------------------------------|------------------------------|----------------------------|------------------------------|
| \$50.00 for one child per month | \$                           | for two children per month |                              |
| \$                              | for three children per month | \$                         | for four children per month  |
| \$                              | for five children per month  | \$                         | for six children per month   |
| \$                              | for seven children per month | \$                         | for eight children per month |

If you have more than one child on this order the next support amount, if not reflected below, will be calculated through ministerial acts using the income information in the child support guidelines affidavit(s), which are incorporated as part of this order. Changes to this order require a modification.

**WARNING: If you owe arrears, your total monthly payment may be more than the above ongoing amount.**

- B. **ARREARS.** You owe total past-due child support of \$300.00 for the periods: 03/01/09 to 08/31/09. This amount is due on 09/01/09.

If you do not pay the total arrears amount on the first due date, we will withhold an additional amount from your paycheck and use other collection methods such as

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taking any refund you have coming to you from IRS and your Permanent Fund Dividend to get this paid.

The attached Child Support Guidelines Worksheet (CSSD Form 1905) shows how we calculated your child support for each year.

The attached Summary of Support Obligation (CSSD Form 1609) shows a detailed monthly listing of the dollar amounts that you owe for arrears.

- C. **INTEREST.** Interest accrues on the unpaid arrears balance at the end of the month, at the legally prescribed rate. Interest is child support per Alaska Statute 25.27.900 (12).
- D. **FEES.** CSSD will assess you costs associated with genetic testing, process service, and attorney fees if applicable to your case. Fees are child support per Alaska Statute 25.27.900 (12).

**III. DURATION OF ORDER**

This order is in effect until the child reaches

- A. 18 years of age, is otherwise legally emancipated; or
- B. 19 years of age, if the child
  - 1. is unmarried, actively pursuing a high school diploma or equivalent technical or vocational training, and living with a parent, guardian, or designee as a dependent; or
  - 2. is in state custody

**IV. MEDICAL SUPPORT ORDER** (Alaska Statute 25.27.063, Alaska Statute 25.27.020, Alaska Statute 25.27.060, Alaska Administrative Code 15:125.085). In addition to the financial duty of support, you owe a medical duty of support for the child listed above.

A. You are ordered:

- 1. To include the child named in this order on any health insurance policy available to you at a reasonable cost.
- 2. To provide proof of insurance within 20 days of the date of the child support order. You need to send us a copy of the insurance form and an affidavit stating the form is filed with the insurance company. If you are not covered by insurance, but it is available to you, you must send documentation regarding the available coverage.
- 3. To notify CSSD in writing within 20 days after losing coverage or a change in employment resulting in a change in coverage.

B. If you provide proof of insurance for the child, we will give you a credit against your child support obligation for half of the amount of the premium that you pay for the health insurance for the child.

C. If the other parent buys the insurance for the child, then we will bill you for half of the direct costs to cover the child named in this order.

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- D. If the cost of the insurance changes, CSSD will adjust the amount of the child support obligation accordingly, without further order of the agency. CSSD will notify the parents of any adjustment made to this part of the order. The parent purchasing the insurance shall provide documentation of the change to CSSD.
- E. **FUTURE COVERAGE.** If health insurance for the child becomes available to either parent at reasonable cost and the child is not already covered by insurance or other health care coverage, that parent must purchase the insurance coverage and notify CSSD immediately.
1. The cost of the insurance is divided equally between the parents. Without further order of the agency, we will add half the cost of the custodial parent's health insurance premium to the monthly child support obligation of the paying parent if the custodial parent pays the insurance premium. If the paying parent pays for the cost of the insurance we will subtract 50% of the premium cost from the payor's monthly support obligation.
  2. If both parents have health care coverage available and the rights of the child support have not been assigned to the state, both parents will determine who will purchase the coverage for the child. However, if they disagree, they will inform the agency in writing. After receiving this information, the agency will require both parents to purchase coverage for the child and offset the cost to each parent and assess an increase or decrease in the monthly support obligation as appropriate.
  3. If both parents have health care coverage available and the rights of child support has been assigned to the state, the agency will require the non-custodial parent to provide health care coverage for the child.
- F. The parent purchasing the insurance must notify the insurance company that the other parent or custodian can apply for benefits on behalf of the child and should be reimbursed directly. The purchaser must also provide coverage information to the other parent and all forms and instructions necessary to apply for benefits.
- G. **UNCOVERED HEALTH CARE EXPENSES (Civil Rule 90.3(d)(2))**
1. Reasonable health care expenses not covered by insurance that are less than \$5,000 shall be paid equally by both parents unless good cause is shown.
  2. A party shall reimburse the other parent for his or her share of the uncovered expenses within 30 days after receiving the health care bill, proof of payment, and, if applicable, a health insurance statement showing what part of the cost is uncovered.
  3. If the uncovered expense is over \$5,000 the expense must be allocated based on the parent's relative financial circumstances when the expense occurs.
- H. According to our information:

The child is eligible for health care through Indian Health Service and these services are available to the child. Therefore, no additional insurance is required while these services are available.

- Health insurance for the child is provided by the  
 a. payee  
 b. payor

Information regarding this credit can be found under the Findings of Fact (V) and on the Child Support Worksheet (form CSSD 1905).

- Health insurance for the child is not now available at a reasonable cost or its availability is unknown. The "Future Coverage" provisions set forth in IV. E. continue to apply.

#### V. FINDINGS OF FACT

##### A. INCOME DETERMINATION:

1. We considered your total income from all sources based on actual information.
2. We do not have actual income or employment information for you. We therefore estimated your income using the calculation method listed on the bottom of the child support guidelines worksheet(s) (CSSD form 1905).
3. After considering relevant circumstances, including education, training, occupation, health, employment opportunities and the extent to which you are participating in looking for work, we find you are voluntarily unemployed or underemployed.

The attached Child Support Guidelines Worksheet(s) (CSSD form 1905) and Summary of Support Obligation (CSSD form 1609) are incorporated as part of these Findings of Fact. (The method of calculation is listed at the bottom of each worksheet.)

The calculation for 2009 is based on zero income due to incarceration and the Alaska Permanent Fund Dividend. Your child support obligation of \$50 per month is the minimum amount allowable. The calculation for 2009 reflects a deduction for the child support you paid for your prior children. The child's name was corrected to Gabriel Werth.

- B. We find that your monthly child support obligation is based on:

- Primary custody of the child. (Civil Rule 90.3 (a))  
 Shared custody of the child. (Civil Rule 90.3 (b))  
 Divided custody of the child. (Civil Rule 90.3 (b))  
 Hybrid custody of the child. (Civil Rule 90.3 (b))  
 3rd Party custody of the child. (Civil Rule 90.3 (j))

We based our custody finding on information provided or available.

- C. We find the existence of good cause to vary your child support obligation under the provisions of Alaska Administrative Code 15:125.070.

(If checked the caseworker will list the unusual circumstances from Alaska Administrative Code 15:125.075.)

- D. We find that you have available health insurance for the child. If you have not provided insurance information please re-read the medical support order portion of this document as you are required to provide medical health support for the child.

**All other provisions of the original Administrative Child Support and Medical Support Order remain in effect except as noted in amended orders.**

Either party has a right to challenge this order by requesting an administrative review. You must make the request in writing and send it certified mail, return receipt requested. The request for a review must be postmarked within 30 days from the date you received this notice.

Dated June 1, 2010 in Anchorage, Alaska.



Dale R. Ludwig  
Child Support Manager  
Phone: (907) 269-6664  
In-state toll free at (800) 478-3300 extension 6664

**Enclosures:**

CSSD Form 04-1918, Request for Administrative Review  
CSSD Form 04-1905, Child Support Guidelines Worksheet  
if utilized see section II.B.  
CSSD Form 04-1609, Summary of Support Obligation  
Order to Withhold Amortization Chart  
**FILE: ORDERS SECTION**

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**AFFIDAVIT IN SUPPORT OF ESTABLISHING PATERNITY**

Petitioner IV-D Case:  TANF  
 IV-E Foster Care  
 Medicaid Only  
 Former Assistance  
 Never Assistance

Respondent Non-IV-D Case:

File Stamp

Responding IV-D Case No.

Initiating IV-D Case No.

Responding Tribunal No.

Initiating Tribunal No.

A Separate Affidavit Is Required for Each Child Needing Paternity Established.

**SECTION I**

1. Josephine K. Guthrie on oath, under penalty of perjury depose and allege:  
 Name (First, Middle, Last)

1. I am the  natural mother of the child named below:  
 natural father

|   |  |   |
|---|--|---|
| Child's Full Name (First, Middle, Last)<br><u>Gabriel James Guthrie</u> | Child's Date of Birth (Month, Day, Year)<br><u>07-03-2007</u>  | Place of Birth (City, County, State)<br><u>Ketchikan AK</u>             |
| Date Mother Got Pregnant (Month, Day, Year)<br><u>Oct. 2007</u>         | Full Term Pregnancy<br><input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No (If No, explain) | Where Mother Got Pregnant (City, County, State)<br><u>Ketchikan AK.</u> |

2. The child was conceived as a result of sexual intercourse between Dannelly James Charkoneau and me during the time stated above.  
 Name (First, Middle, Last)

3. a. A man is named as the father on the child's birth certificate.  Yes (Attach copy)  No  
 If Yes, the man's name and address are: Kenneth Werth.
- b. A man was married to the natural mother, and the child's birth occurred within a year of the end of the marriage.  Yes  No Date marriage ended (Month, Day, Year) 09-26-05  
 If Yes, the man's name and address are:  
Kenneth Werth is listed on B.C. because of marriage.
- c. A man acted as and presented himself to be the child's father.  Yes  No  
 If Yes, the man's name and address are:
- d. Genetic tests were completed to determine the father of the child.  Yes  No  
 If Yes, attach results.

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SECTION II (TO BE COMPLETED BY MOTHER ONLY)

1. I had sexual intercourse with another man (other than the man I am naming as the child's natural father) during the time 30 days before or 30 days after the child was conceived. [ ] Yes [X] No. (If Yes, complete the following).

- a. The name(s) and address(es) of the other man/men;
b. The other man/men are biologically related to the man I am naming as the child's natural father. [ ] Yes [ ] No. If Yes, explain the biological relationship (e.g., brother, cousin, uncle, etc.);
c. I do not believe the other man/men is/are the father because:

2. I was married at the time of this child's birth. [X] Yes [ ] No. (If Yes, complete the following).

- a. Husband's name (first, middle, last) and last known address: Kenneth Daniels Werth P.O. Box 257 Craig, AK 99521
b. Explain why the husband is not the father of this child and attach all appropriate documents, including divorce decree, blood test results and prior findings of nonpaternity, if any: divorce decrees

3. Donnelly J. Charbonneau is the father of this child. The following facts support my allegations of paternity: Name (First, Middle, Last)

- a. We lived together. [ ] Yes [ ] No Dates: \_\_\_\_\_ To: \_\_\_\_\_ Location: \_\_\_\_\_
b. I have told welfare officials that he is the father of this child. [ ] Yes [ ] No
c. I told him that he was the father of the child. [X] Yes [ ] No
d. He is named as the father on the birth certificate. [ ] Yes [ ] No [ ] Certified Copy Attached
e. He admitted being the father of the child. [X] Yes [ ] No
f. He sent cards/letters regarding the pregnancy and/or about the child. [ ] Yes [ ] No [ ] Copies Attached
g. He was present at the birth of the child. [ ] Yes [ ] No
h. He visited the child at the hospital following birth. [ ] Yes [ ] No
i. He offered to pay for an abortion/medical expenses. [ ] Yes [ ] No
j. He paid for birth related expenses. [ ] Yes [ ] No
k. He claimed the child on tax returns. [ ] Yes [ ] No [ ] Don't Know
l. He has provided food, clothing, gifts or financial support for the child. [ ] Yes [ ] No If Yes, explain in Section IV
m. He lived with the child. [ ] Yes [ ] No If Yes, explain in Section IV
n. He visited the child. [X] Yes [ ] No If Yes, explain in Section IV
o. The child resembles him. [ ] Photo attached [X] Yes [ ] No If Yes, explain in Section IV
p. There are witnesses to my relationship with him. [X] Yes [ ] No (If Yes, list names and addresses and briefly describe relevant facts known by each under Section IV)

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT KETCHIKAN  
3

4 KENNETH WERTH, JR, )

5 )  
6 Plaintiff, )

7 v. )

8 JOSEPHINE GUTHRIE, )

9 Defendant. )

Filed in the Trial Courts  
State of Alaska  
First Judicial District  
at Ketchikan

OCT 09 2009

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

10 Case No. 1KE-08-188 CI

11 MEMORANDUM AN ORDER

12 The evidentiary hearing on Mr. Werth's Motion to Modify occurred on October 9,  
13 2009. Both parties appeared. Both testified.<sup>1</sup> Neither was represented by counsel. The court  
14 took the matter under advisement.

15 I. ISSUES

16 Mr. Werth requests that the court modify custody/visitation so that he has primary  
17 custody of the parties' two children: Elijah (DOB 6/24/02) and Johanna (DOB 10/02/05) from  
18 January 1 through June each year, and Ms. Guthrie will have primary custody the remainder of  
19 the year - with the non-custodial parent to have regular unspecified visitation. Ms. Guthrie  
20 opposes his request. She has not offered an alternative. She apparently wants the court to  
21 continue the current custody order.  
22

23  
24  
25 <sup>1</sup> Mr. Werth also submitted documentary evidence into the record.

MEMORANDUM AND ORDER

Kenneth Werth, Jr. v. Josephine Guthrie, Case No. 1KE-08-188 CI

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Alaska Court System

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1 Mr. Werth requests that the court order Ms. Guthrie to reimburse him for  
2 expenses he incurred as the result of her defaulting on the Durango vehicle loan. She opposes  
3 his request.

4 Mr. Werth requests that the court do something to stop the Tlingit-Haida Tribal  
5 Court from seeking to collect child support from him for Gabriel (DOB 7/3/07). Ms. Guthrie  
6 agrees that he should not be required to pay ongoing child support for this child.

## 7 II. FACTS

8 The following findings of fact is based on the evidence presented during the  
9 October 9, 2009 hearing, and is intended to supplement the facts previously found by the court in  
10 this case.

11 Mr. Werth has resided continuously in Ketchikan since on or about March 15,  
12 2009. He has rented the same house since March 15, 2009. He continues to commercial fish. He  
13 is basically gone fishing each July, August, and September. He is out dive fishing much of the  
14 time during each October, November, and December. He works only 1 to 2 days a week the  
15 remainder of the year.

16 Ms. Guthrie is unemployed. She and the children have moved several times. She  
17 presently has an apartment. She would like to move to Juneau in a few months to pursue  
18 vocational training. She apparently has not identified or enrolled in a specific program. She has  
19 not shown how she would pay for the program or how she would subsist while enrolled. She has  
20 not made arrangements for housing in Juneau.

21 Mr. Werth has exercised visitation. But the transitions are difficult due to the  
22 parties' poor relationship. And there have been several scheduling problems. The result has  
23 been that Mr. Werth has not received all of the visitation that the parties agreed he would  
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### MEMORANDUM AND ORDER

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1 receive. There have also been occasions when Ms. Guthrie has left the children with him for  
2 longer periods than had been agreed to at the outset.

3 Ms. Guthrie has allowed Gabriel to go with Elijah and Johanna during some of  
4 their visits with Mr. Werth.

5 Mr. Werth has paid his child support each month. He has been late making some  
6 of the monthly payments. He is presently late on the October 2009 payment. There have been  
7 times in the past when he has paid ahead. He hopes to be able to do so again this fall when he is  
8 dive fishing. Ms. Guthrie plans to apply for CSSD collection services.

9 Mr. Werth and Ms. Guthrie appeared in a Tlingit-Haida Tribal Court before the  
10 divorce decree was entered in this case. Mr. Werth at that time agreed he would care for Gabriel.  
11 The Tribal Court ordered that he pay child support for Gabriel in the amount of \$50 per month.  
12 He paid the same until the divorce decree was issued in this case. In this case the parties had  
13 agreed that Gabriel is not his biological son and he would have no parental obligations with  
14 respect to Gabriel. The Tribal Court claims he is in arrears. Ms. Guthrie has taken steps to  
15 establish the paternity of Gabriel's natural father and is expecting to receive a new birth  
16 certificate. She represents that she has informed the Tribal Court of what happened in the  
17 divorce and will provide the Tribal Court with a copy of the new birth certificate.

18 The court awarded the Durango and the related loan to Ms. Guthrie in the divorce.  
19 Mr. Werth was to convey his interest in the vehicle to her and she was to take the steps necessary  
20 to have him taken off the loan. She was not able to refinance the vehicle in her own name. She  
21 could not afford the loan payments. She needed the Durango for transportation for herself and  
22 the children. The Durango was damaged while in her possession. Credit Union 1 repossessed  
23 the Durango. Mr. Werth made two monthly loan payments totaling \$680.64. He paid the \$365  
24 the Durango. Mr. Werth made two monthly loan payments totaling \$680.64. He paid the \$365  
25

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1 repossession fee. He purchased insurance for the Durango in the amount of \$805. He took  
2 possession of the Durango. He paid \$429 to repair the Durango's damaged windshield. He  
3 obtained an estimate for the remaining damages. He apparently did not pay for related repairs.  
4 Credit Union 1 has again repossessed the Durango.

5 Mr. Werth and Ms. Guthrie attempted to reconcile earlier this year. They and the  
6 children lived together in the house Mr. Werth rents. They verbally fought. They separated  
7 again. She moved into a room in her aunt's house with the children. She had no place for her  
8 belongings. So she left them at Mr. Werth's residence. He put her belongings in storage when  
9 she did not come to get them after a couple of months. She wants her belongings.

10 Mr. Werth and Ms. Guthrie continue to have a conflicted relationship.

## 11 II. DISCUSSION

### 12 a. Motion to Modify

13 The party moving to modify custody bears the burden of proving both that there  
14 has been a substantial change in circumstance since the current custody order was entered that  
15 affects the child's welfare and that the requested modification is in the child's best interest.<sup>2</sup>

#### 16 1. Substantial Change in Circumstances

17 Mr. Werth has shown that there have been three substantial changes in  
18 circumstances affecting the children's welfare since the custody order was entered. First, he has  
19 permanently relocated to Ketchikan and has shore-side housing. Second, the parties have been  
20 unable to work out his visitation between themselves. Third, Ms. Guthrie and the children have  
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25 <sup>2</sup> *Nichols v. Mandelin*, 790 P.2d 1367, 1372 (Alaska 1990); *J.L.P. v. V.L.A.*, 30 P.3d 590, 596 (Alaska 2001); AS 25.20.110(a).

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1 lived in several different residences. So the court will consider whether modification of custody  
2 and/or visitation is in the children's best interests.

### 3 2. Ms. Guthrie's Desire to Move

4 The Alaska Supreme Court has discussed how trial courts are to address a  
5 parent's move to a new community.<sup>3</sup> The Court has indicated that if the move is uncertain the  
6 court may do two best-interest determinations -- one based on the parent moving and the other on  
7 the parent staying.<sup>4</sup> If the trial court considers a parent's move it must first determine whether  
8 there is a "legitimate reason" for the move.<sup>5</sup> If there is, the court cannot consider the move itself  
9 as a negative factor against the moving parent but can consider the impacts of the move on the  
10 child under the statutory best interest factors.<sup>6</sup> If there is not a legitimate reason for the move,  
11 the court must consider the move as a negative factor against the moving party.<sup>7</sup>

12 The court is not now making a custody/visitation determination based on Ms.  
13 Guthrie's stated desire to move to Juneau to pursue vocational training for four reasons. First,  
14 she did not announce this plan until she testified during the October 9, 2009 hearing. Second, as  
15 a result, Mr. Werth has not had an adequate opportunity to address it. Third, she has no definite  
16 move plans at this point. Fourth, an such move would not occur for several months. The  
17 circumstances concerning the children's best interest may change between now and then.  
18  
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22 <sup>3</sup> See, *Moeller-Prokosch v Prokosch*, 27 P.3d 314 (Alaska 2001); *Moeller-Prokosch v.*  
23 *Prokosch*, 53 P.3d 152 (Alaska 2002); *Moeller-Prokosch v. Prokosch*, 99 P.3d 531 (Alaska  
2004).

24 <sup>4</sup> *Moeller-Prokosch*, 27 P.3d at 317 n. 8; *Moeller-Prokosch*, 53 P.3d at 155.

25 <sup>5</sup> *Moeller-Prokosch*, 53 P.3d at 157. A proposed move is legitimate if it is not primarily  
motivated by a desire to make the other parent's visitation more difficult. *Id.*

<sup>6</sup> *Moeller-Prokosch*, 27 P.3d at 317.

<sup>7</sup> *Moeller-Prokosch*, 53 P.3d at 157.

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1 3. Best Interests

2 A. Statutory Factors

3 1. AS 25.24.150(c)(1)

4 The court must consider Elijah and Johanna's physical, emotional, mental,  
5 religious, and social needs. They have the same such needs as other children their age in the  
6 community. They apparently have no special needs.

7 2. AS 25.24.150(c)(2)

8 The court must consider the capability and desire of each parent to meet the  
9 children's needs.

10 Mr. Werth acknowledged in the original divorce proceeding that Ms. Guthrie  
11 desires to and could meet the children's basic needs. He now raises valid concerns regarding the  
12 stability of her living situation and her financial ability to meet the children's needs.

13 Mr. Werth apparently desires to and has the ability to meet the children's basic  
14 needs in his current situation. Ms. Guthrie did not argue otherwise during the hearing. She did  
15 not present evidence that the children have not been adequately cared for during his visitations.  
16 He is not actually able to meet the children's basic needs on an ongoing regular basis from July  
17 through December because of his fishing schedule.

18 3. AS 25.24.150(c)(3)

19 The court must consider the children's preference if they are of sufficient age and  
20 capacity to form a preference. Neither child is of sufficient age or capacity.

21 4. AS 25.24.150(c)(4)

22 The court must consider the love and affection existing between each child and  
23 each parent. The parties have presented little evidence on this factor. The court presumes, in the  
24  
25

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1 absence of evidence to the contrary, that each child has a normal loving parent/child relationship  
2 with each parent.

3 5. AS 25.24.150(c)(5)

4 The court must consider the length of time that the children has lived in a stable,  
5 satisfactory environment and the desirability of maintaining continuity.

6 The children have not lived in a stable environment since the divorce.  
7 Continuity is desirable.

8 6. AS 25.24.150(c)(6)

9 The court must consider the willingness and ability of each parent to facilitate and  
10 encourage a close and continuing relationship between the children and the other parent.

11 The parties have a conflicted relationship. Ms. Guthrie has, on several occasions,  
12 interfered with Mr. Werth's agreed upon visitation. They have said inappropriate things about  
13 each other in front of the children.  
14

15 7. AS 25.24.150(e)(7)

16 The court must consider any evidence of domestic violence, child abuse, or child  
17 neglect in the proposed custodial household or a history of violence between the parents.

18 The court did not make a history of domestic violence finding in the divorce  
19 proceeding. The court did not place material weight on this factor in the initial custody order.  
20 The parties have not presented new evidence of DV.

21 There is no evidence of DV, child abuse, or child neglect in either parent's current  
22 household.  
23  
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8. AS 25.24.150(c)(8)

The court must consider evidence that substance abuse by either parent or other members of their household directly affects the children's emotional or physical well-being.

The court did not place material weight on this factor in the initial custody order. The parties have not presented new evidence of substance abuse.

9. AS 25.24.150(c)(9)

The court may consider other factors it deems pertinent. The court is taking into consideration the following concerning Gabriel: Ms. Guthrie has custody of Gabriel; Mr. Werth has no parental rights with respect to Gabriel; this court has no authority at this point to enter any custody or visitation orders concerning Gabriel; the court presumes, in the absence of evidence to the contrary, that Gabriel has a normal sibling relationship with his half-brother and sister (who are subject to the court's custody/visitation orders); and, Ms. Guthrie has not represented that Gabriel would go with his brother and sister when they go to Mr. Werth's house.

**B. Balancing Factors**

A change in custody/visitation is warranted because, at a minimum, the current custody order is no longer applicable to the parties' situations. The current order is based on Mr. Werth living away from Ketchikan and on his boat. It only provides for reasonable unspecified non-overnight visitation when he is in Ketchikan. Ms. Guthrie does not argue that his visitation should now be so limited. She has permitted him to have overnight visitation since he relocated to Ketchikan.

The most important best interest factors in the court's analysis are AS 25.24.150(c)(2), (5), and (9). It is in Johanna and Elijah's best interests that they spend a meaningful amount of time with each parent on a regular basis, that they not be separated from

1 either parent for a substantial period of time to the extent reasonably possible under the  
2 circumstances (Mr. Werth's fishing schedule in particular), that they have a stable and consistent  
3 visitation schedule, and, that they not be separated for substantial periods of time from their  
4 brother Gabriel.

5 The court finds that the following custody/visitation schedule is in Elijah and  
6 Johanna's best interests:

- 7 1. From January 1<sup>st</sup> through June 30<sup>th</sup> each year, Elijah and Johanna shall  
8 reside with Mr. Werth and Ms. Guthrie on a rotating weekly basis, with  
9 Mr. Werth having them the first week of the time period. The custody  
10 exchanges shall occur on Sundays at 5:00 p.m. The non-custodial parent  
11 shall be entitled to reasonable unspecified non-overnight visitation. The  
12 court contemplates that this will occur once or twice a week.
- 13 2. From July 1 through the end of each year, Elijah and Johanna shall reside  
14 with Ms. Guthrie and Mr. Guthrie shall be entitled to reasonable frequent  
15 visitation when he is in Ketchikan, including over night visits. The court  
16 cannot set specific days for visitation because the court does not know Mr.  
17 Werth's fishing schedule. He shall, as soon as he knows his schedule,  
18 provide Ms. Guthrie with a list of the dates he is requesting for visitations.  
19 The parties must cooperate with each in scheduling visitations and once  
20 visitations are set the parties shall exercise their best efforts to comply  
21 with the schedule.
- 22 3. Each parent is entitled to frequent unmonitored communication with  
23 Elijah and Johanna when they are with the other parent. The  
24 communication must be reasonable in terms of frequency, timing, content,  
25 and duration.
- 26 4. The holiday schedule (for when both are in the same community) set forth  
in the court's September 26, 2008 Memorandum and Order remains in  
effect.

27 The court also finds that the following requirements are in Elijah and Johanna's  
28 best interests and otherwise appropriate under the circumstances:

- 29 1. Neither party may say anything disparaging about the other party or the  
30 other party's family or significant other in the presence of Elijah or  
31 Johanna, and they shall not permit anybody else to do so.

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- 2. Each party shall promptly inform the other of any changes in their mailing address, employment, work phone, home phone, residence, and residence phone.
- 3. Each party shall promptly notify the other of any major developments affecting Elijah or Johanna. For example, if either child has suffered an injury or has an illness that requires medical attention, if either is the subject of an OCS report of harm, if either is the victim of a crime, and, if either wins an award or any form of special recognition.
- 4. The parties shall keep each other informed of the children's school and extra-curricular schedules.

The court is not modifying child support for Johanna and Elijah because it is not clear that Mr. Werth will be exercising at least 110 days and nights of visitation with each child per year. He will have approximately 90 overnights during the first half of each year. But he has not shown he will have at least 20 overnight visits the remainder of the year. If he can show that this fishing schedule is such that he will be able to do so he may file a motion to modify his visitation for that time period (so the court can set specific days/nights of visitation) and his child support obligation for these children.

The court is not changing the prior legal custody order, due in large part to the parties inability to cooperate in their children's best interest. Ms. Guthrie will continue to have legal custody of Elijah and Johanna. Mr. Werth is still entitled to information about the children, such as information about their education, health, and medical treatment.

**b. Gabriel**

Ms. Guthrie advises that she has taken the steps necessary to establish paternity for Gabriel's biological father, she expects to receive Gabriel's new birth certificate shortly, and she has been in contact with the Tribal Court, she will provide the Tribal Court with a copy of the birth certificate, and she will do what is reasonably necessary for the Tribal Court to recognize Gabriel's biological father as his father and stop looking to Mr. Werth for child

1 support for Gabriel. She shall promptly follow through with all of these representations and she  
2 shall keep Mr. Werth reasonably informed with respect to her efforts.

3 The court does not have the authority to retroactively reduce or eliminate any  
4 child support arrears that have accrued. The court also does not have the authority to, in effect,  
5 countermand the Tribal Court's child support order.

6  
7 **c. Durango**

8 The court ordered in the September 26, 2008 Memorandum and Order that Ms.  
9 Guthrie must "indemnify Mr. Werth with respect to any liabilities and expenses he reasonably  
10 incurs due to the Durango loan." He reasonably incurred the loan payments, repossession fee,  
11 and car insurance with respect to the loan. The loan payments were required to bring the loan  
12 current. The repossession fee was required for the bank to relinquish possession. The bank  
13 would require insurance to safeguard its security. Those costs total \$1,845.64. The repair costs  
14 were not sufficiently related to the loan. So Ms. Guthrie is obligated to pay Mr. Werth  
15 \$1,845.64.

16 Ms. Guthrie remains liable for the payment of the Durango loan, and she is  
17 required to indemnify Mr. Werth for any payments he is required to make or any related  
18 judgment entered against him on the loan.

19  
20 **d. Other**

21 Mr. Werth shall, as soon as is reasonably possible, permit Ms. Guthrie to regain  
22 possession of her personal property.

23 Elijah's motorcycle(s) shall be kept at Mr. Werth's residence per Elijah's request  
24 (as relayed during the hearing by Mr. Werth).

25  
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IT IS SO ORDERED.

Dated at Ketchikan, Alaska this 9<sup>th</sup> day of October 2009.



Trevor N. Stephens  
Superior Court Judge



CERTIFICATION  
Copies Distributed  
Date 10-12-09  
To A. FOTHERINGHAM  
V. JOSEPH  
CRSD  
By VJO

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**Central Council Tlingit & Haida Indian Tribes of Alaska**

*Tlingit and Haida Child Support Unit*

Andrew Hope Building

320 W. Willoughby Ave., Suite 300

Juneau, AK 99801-1723

Phone: 907-585-1432 Fax: 907-463-7700

Ketchikan Office: 302 Dock St., Suite #105, Ketchikan, AK 99901 / Phone: 907-243-7987

RECEIVED

MAY 07 2009

CSSD/MDC

February 2, 2009

Josephine Werth  
[REDACTED]

RECEIVED  
Paternity Section

MAY 07 2009

RE: Court Hearing: February 17, 2009 @ 1:30 p.m.

Dear Ms. Werth,

Enclosed is a copy of the Note for Magistrate's Calendar, Motion for Recognition and Enforcement of Foreign Child Order, along with attachments.

A hearing has been set on this Motion for February 17, 2009 @ 1:30 p.m. This is the only notice that will be sent out because service of all motions after the initial service of process is sent by regular mail. If you fail to appear, the court will proceed and enter a judgment without your participation.

If you have any questions, please contact your case specialist, Carlen Williams at (907) 247-7987.

Sincerely,

Carlene Nore  
Administrative Assistant

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

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4 KENNETH WERTH, JR., )  
5 )  
6 Plaintiff, )  
7 )  
8 v. )  
9 JOSEPHINE WERTH, )  
10 )  
11 Defendant. )

Filed in the Trial Courts  
State of Alaska  
First Judicial District  
at Ketchikan  
  
SEP 26 2008  
  
Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy  
  
Case No. 1KE-08-188 CI

MEMORANDUM AND ORDER

12 A divorce hearing in this case occurred on September 26, 2008. Both parties  
13 appeared. Neither was represented by counsel. Both testified. The court took the matter under  
14 advisement pending issuance of this written decision.

I. FACTS

15  
16 The parties married at Ketchikan on December 4, 2004. They have since been  
17 husband and wife. They have two children: Elijah St. Clair Werth (DOB 6/24/02) and Johanna  
18 Grace Werth (DOB 10/02/05). Ms. Werth gave birth to a third child, Gabriel Galloway Werth  
19 on July 3, 2007. There is clear and convincing evidence that Mr. Werth is not Gabriel's natural  
20 father.<sup>1</sup>

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25 <sup>1</sup> Mr. Werth asserted as much in his Complaint. Ms. Werth agreed in her Answer. Both parties testified that Mr.  
Werth is not Gabriel's natural father. There is no evidence in the record that there has been a DNA test which  
reflects that Mr. Werth is Gabriel's natural father.

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1 There has developed an incompatibility of temperament between the parties such  
2 that they can no longer live together as husband and wife. They separated on February 26,  
3 2007.<sup>2</sup>

4 Ms. Werth lives in Ketchikan. She is a full-time student. The children, including  
5 Gabriel, have resided with her since the parties separated. The children resided in Ketchikan for  
6 at least the 6 months preceding the filing of the Complaint herein.

7 Mr. Werth is a fisherman. He lives on a fishing boat. His adjusted annual income  
8 is approximately \$15,000.<sup>3</sup> He presently resides in Craig. At this point he plans to remain there  
9 for the foreseeable future.

10 The parties agree that Ms. Werth should have sole legal and primary physical  
11 custody of Elijah and Johanna. Mr. Werth requests summer visitation and that holidays be split  
12 between the parties. Ms. Werth wants the children to spend time with Mr. Werth. But she  
13 objects to their being away from her and with him for a 3 month period.

14 The parties do not own any real property. There is no evidence that they have any  
15 marital funds in a bank or outside of a bank. They do not have retirement accounts.

16 Mr. Werth owns limited entry permits. He owned them at the time of the parties'  
17 marriage.<sup>4</sup> He owes the State of Alaska some \$60,000 on the permits. Ms. Werth is an obligor  
18 on the loan(s).

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<sup>2</sup> Per Ms. Werth's Financial Declaration.

<sup>3</sup> His 903 affidavit and most recent tax return reflect that his adjusted annual income is \$13,162. He did not, however, include the PFD. He has not shown that he does not qualify for the PFD or that he does not receive PFD's. The parties disputed his income. Ms. Werth testified that it is higher. But she did not provide any specifics or related evidence. The court found Mr. Werth's evidence and related testimony credible.

<sup>4</sup> Ms. Werth apparently disputes that the permits are separate property. She did not provide any specific information to support her position or which contradicts Mr. Werth's testimony that he owned them before the parties married and she has not shown that the permits were acquired during the marriage or that they were

**MEMORANDUM AND ORDER**

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1 The parties own household furnishings, some items of personal property, and  
2 vehicles.<sup>2</sup> The vehicles are titled in Mr. Werth's name. The related values are as follows:

|    |     |                                    |         |
|----|-----|------------------------------------|---------|
| 3  | 1.  | ATV 4-wheeler                      | \$5,000 |
| 4  | 2.  | Durango                            | \$8,000 |
| 5  | 3.  | Dodge Truck                        | \$5,000 |
| 6  | 4.  | 50cc ATV                           | \$400   |
| 7  | 5.  | 50cc Honda motorcycle              | \$400   |
| 8  | 6.  | 243 rifle                          | \$400   |
| 9  | 7.  | Diamond necklace/earrings          | \$2,000 |
| 10 | 8.  | engagement ring/watch              | \$400   |
| 11 | 9.  | lap top computer                   | \$400   |
| 12 | 10. | computer                           | \$100   |
| 13 | 11. | household furnishings <sup>4</sup> | \$2,700 |
| 14 | 12. | gun safe                           | \$100   |
| 15 | 13. | pressure cooker & dehydrator       | \$400   |
| 16 | 14. | dive gear                          | \$600   |

17 The parties have marital debts,<sup>3</sup> consisting of:

|    |    |                    |          |
|----|----|--------------------|----------|
| 18 | 1. | Citibank           | \$1,800  |
| 19 | 2. | ATV 4-wheeler loan | \$3,000  |
| 20 | 3. | Durango loan       | \$10,000 |
| 21 | 4. | Dodge Truck loan   | \$5,000  |

22 The loans are all in Mr. Werth's name.

23 Ms. Werth requests that her prior last name of Gutinik be restored.

## 24 II. DISCUSSION

### 25 a. Jurisdiction

The court has jurisdiction to grant a divorce, and to adjudicate property, custody, visitation, and property issues.

transmuted into marital property during the marriage. She did not include the permits on her Financial Declaration or Debt worksheet.

<sup>2</sup> The parties' testimony concerning their property was somewhat sparse. Much of the information on values and identification of the tangible personal property herein is from Ms. Werth's Financial Declaration and Property and Debt Worksheet.

<sup>4</sup> Furniture, entertainment center, table/chairs, TV, bedroom furniture.

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**b. Divorce**

The hearing testimony reflects that it is Ms. Werth who wants the divorce. She is entitled to a decree of divorce.

**c. Former Name**

Ms. Werth is entitled to the restoration of her former last name of Guthrie.

**d. Disestablishment of Paternity**

The parties have shown by clear and convincing evidence that Mr. Werth is not the natural father of Gabriel G. Werth (DOB 7/03/07).<sup>6</sup> So his paternity is disestablished. He has not parental rights or obligations with respect to Gabriel.

The court is not herein establishing paternity for Gabriel's actual natural father. That would need to be addressed in a separate proceeding. As would issues concerning custody, visitation, and child support for Gabriel. Also, if Ms. Werth wants Gabriel's last name changed she will need to file a change of name action (forms are available at the Court Clerk's Office).

**e. Legal Custody**

The court finds that it is in the best interests of Elijah and Johanna that Ms. Werth be awarded sole legal custody for three reasons. First, the parties agree she should have sole legal custody. Second, she will have primary physical custody of these children. Third, Mr. Werth resides in a different community.

Mr. Werth continues to be entitled to receive information about these children - for example information concerning their health, welfare, and education.

<sup>6</sup> Ms. Werth listed other debts, including her student loan and a credit bureau debt, in the documents she submitted to the court but does not claim that they are marital.

001505

EXHIBIT 3  
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JLU-10-376 CI

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f. Physical Custody

The court finds that it is in Elijah and Johanna's best interest that Ms. Werth be awarded primary physical custody for three reasons. First, the parties agree that this is in their best interest. Second, Ms. Werth has had primary physical custody of the children since the parties' separated. Third, Mr. Werth acknowledges that she can meet their needs (AS 25.24.150(c)(1),(2)) better than he, and provide them stability and continuity that he cannot (AS 25.24.150(c)(5))

g. Visitation

Mr. Werth shall be entitled to frequent unmonitored communication with Johanna and Elijah. The communication must be reasonable in terms of frequency, timing, duration, and content. The parties shall keep each other informed in a timely manner of any changes in their addresses (mailing and physical) or phone numbers (work, home, cell).

Mr. Werth shall be entitled to reasonable non-overnight visitation with Elijah and Johanna in the community in which they reside. He must provide Ms. Werth with reasonable advance notice of his arrival.

Elijah is 6 and Johanna is almost 3. They should not be separated during visits. They are too young, Johanna in particular, to be away from Ms. Werth for lengthy periods of time. Also, they would be with Mr. Werth on his boat (while he is working) the entire period of visitation. They apparently were with Mr. Werth on his boat for 2 weeks last summer. Ms. Werth has not claimed that there were problems with that visitation.

\* The Alaska Supreme Court's decision in *Smith v. Smith*, 545 P.2d 1050 (Alaska 1977) reflects that the court has the authority to disestablish paternity in the context of a divorce action.

1 Mr. Werth shall be entitled to 2 weeks of summer visitation with Elijah and  
2 Johanna each of the next 2 summers - 3 weeks the following summers. The court would  
3 certainly consider longer periods of visitation if the children would not be spending the entire  
4 time on the boat. If this change occurs, Mr. Werth can move to modify visitation.

5 Mr. Werth is entitled to have Elijah and Johanna every other Christmas and  
6 Thanksgiving. He will have them for Thanksgiving in even years and Christmas on odd years.  
7 The Thanksgiving visitation will be 3 days and the Christmas visitation for 5 days if the parties  
8 are in different communities. If they are in the same community then he shall have these  
9 children from 9:00 a.m. to 8:00 p.m. The parties shall share equally the travel costs for the  
10 children, and for someone to accompany them if that is reasonably necessary.

11 The parties shall communicate and cooperate with each other with respect to  
12 scheduling Mr. Werth's summer and holiday visitations and purchasing any required tickets.

13  
14 **h. Property**

15 Property division involves a three-step process.<sup>9</sup> First, the court identifies which  
16 assets and debts are "marital" and which are not. Usually, this determination is made as of the  
17 date of the parties' separation.<sup>10</sup> Second, the court determines the fair market value of the  
18 property (debts/assets).<sup>11</sup> Usually, property is valued as of the date of trial.<sup>12</sup> Third, the court  
19 equitably divides the property between the parties. Normally, the property is divided equally.  
20  
21  
22  
23

24 <sup>9</sup> *Wanberg v. Wanberg*, 664 P.2d 568, 570 (Alaska 1983).

25 <sup>10</sup> *Foster v. Foster*, 883 P.2d 397, 399 (Alaska 1994).

<sup>11</sup> *Richmond v. Richmond*, 779 P.2d 1211, 1214 (Alaska 1989).

<sup>12</sup> *Ogard v. Ogard*, 808 P.2d 815, 819 (Alaska 1991).

**MEMORANDUM AND ORDER**

Kenneth Werth, Jr. v. Josephine Werth, Case No. IKC-98-188 CI

Page 6 of 10

Alaska Court System

001507

EXHIBIT 3  
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LJI-10-376 CI

1 between the parties.<sup>13</sup> However, the allocation must fairly allocate the economic effect of the  
2 divorce based on the considerations set forth at AS 25.24.160(a)(4)(A-I).<sup>14</sup>

3 **1. Identification**

4 The marital assets/debts are as set forth above.

5 **2. Values**

6 The values of the marital assets/debts are as set forth above.

7 **3. Allocation**

8 A somewhat uneven allocation of the marital debts and assets is appropriate for  
9 fifth reasons. First, Mr. Werth is working and owns valuable income-generating separate  
10 property (limited entry permits). Second, he has relatively few living expenses as he lives alone  
11 on his (leased) boat. Third, Ms. Werth is currently a full-time student. Fourth, she has custody  
12 of three small children. Fifth, disentangling the parties economically is appropriate and  
13 generally debts should follow assets.

14 **A. Mr. Werth**

15 **Assets**

|    |               |          |
|----|---------------|----------|
| 16 |               |          |
| 17 | ATV 4-wheeler | \$5,000  |
| 18 | Dodge Truck   | \$5,000  |
| 19 | 243 Rifle     | \$400    |
| 20 | Gun safe      | \$100    |
| 21 | Dive Gear     | \$600    |
| 22 |               | \$11,100 |

23 <sup>13</sup> *Gabaig v. Gabaig*, 717 P.2d 835, 842 (Alaska 1986).

24 <sup>14</sup> These considerations are: the length of the marriage and the parties' station in life during the marriage; the age  
25 and health of the parties; the parties' earning capacities; the parties' financial conditions (including availability/loss  
of health insurance); the conduct of the parties (i.e. did a party unreasonably deplete a marital asset); the desirability  
of awarding the family home to a party with primary physical custody; the parties' circumstances and necessities;  
the time and manner of acquisition of the property; and the income producing capacity of the property and the value  
of the property at the time of division.

**MEMORANDUM AND ORDER**

**Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI**

Page 7 of 10

Alaska Court System

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EXHIBIT 3  
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1KE-10-376 CI

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Debts

|                                |                 |
|--------------------------------|-----------------|
| ATV loan                       | \$3,000         |
| Dodge Truck loan               | \$5,000         |
| Limited Entry Permit loan(s)** | <u>\$60,000</u> |
|                                | \$68,000        |

B. Ms. Werth

Assets

|   |                |
|---|----------------|
| Durango                                     | \$10,000       |
| Remainder of personal property listed above | <u>\$6,800</u> |
|   | \$16,800       |

Debts

|              |                 |
|--------------|-----------------|
| Citibank     | \$1,800         |
| Durango loan | <u>\$10,000</u> |
|              | \$11,800        |

Mr. Werth shall convey title to the Durango to Ms. Werth within 2 weeks. She is solely responsible for the loan payments and car insurance. She shall make the related payments in a full and timely manner. She shall promptly take steps to refinance the Durango loan, if reasonably possible, so that it is in her name alone. She shall indemnify Mr. Werth with respect to any liabilities and expenses he reasonably incurs due to the Durango loan. This means, for example, that she is obligated to reimburse him if he has to make payments on the loan.

Mr. Werth shall promptly and diligently take steps to amend the permit loan(s) so that Ms. Werth is no longer an obligor. He shall make all loan payments in full in a timely manner. He shall indemnify Ms. Werth for any liabilities and expenses she may incur with

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\*\* It is not entirely clear whether this is a marital debt or not. But it is a debt owed by both parties and it is appropriate that the court consider it herein - particularly since Mr. Werth agreed to assume to it.

1 respect to the permit loan(s). This means, for example, that he is obligated to reimburse her if  
2 she has to make any payments on the loan(s).

3 Mr. Werth shall convey title to the motorcycle and smaller ATV to Ms. Werth  
4 within 2 weeks.

5 If a party possesses an asset allocated herein to the other party they shall promptly  
6 make the same available to the other party.

7 The parties shall promptly exchange necessary information and sign whatever  
8 documents are reasonably required to effectuate the above orders.

9  
10 **i. Other Orders**

11 The parties shall not say anything disparaging about the other or the other's  
12 family in the presence of either child (Elijah or Johannes) and they shall not permit anybody else  
13 to do so.

14 The parties shall not permit either child to be in the presence of persons smoking  
15 cigarettes or other tobacco products.

16 Neither party may be under the influence of alcohol while either child is in their  
17 care. The parties shall assure that neither child is in the presence of anybody under the influence  
18 of alcohol.

19 Neither party may consume, possess, or be under the influence of unlawful  
20 controlled substances, including marijuana, while either child is in their care and they shall not  
21 permit either child to be in the presence of anybody possessing, consuming, or under the  
22 influence of unlawful controlled substances, including marijuana.

23  
24 Ms. Werth shall apply for and receive both children's PFD's. She may claim both  
25 children as dependents for income tax purposes.

**MEMORANDUM AND ORDER**

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI  
Page 9 of 10 Alaska Court System

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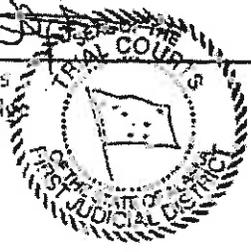
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IT IS SO ORDERED.

Dated at Ketchikan, Alaska this 26<sup>th</sup> day of September 2008.

  
Trevor M. Stephens  
Superior Court Judge



CERTIFICATION  
Copies Distributed  
Date 9/29/08  
To K. Werth  
J. Werth  
By [Signature]

I hereby certify that the annexed instrument  
is a true and correct copy of the original on  
file in my office.  
ATTEST: [Signature]  
CLERK-TRIAL COURTS  
State of Alaska  
at Ketchikan

MEMORANDUM AND ORDER  
Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI  
Page 10 of 10 Alaska Court System

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EXHIBIT 3  
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1KE-10-376 CI

JUL 9 2008

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

|  |   |   |
|--|---|---|
| Tribal Child Support Unit,<br>Mia G. Amundson,<br>A minor child under the age of 18<br>Jilliane G. Gregorioff,<br>Vs<br>Jason R. Amundson, | Ex Rel.<br><br><br><br><br><br>Petitioner<br><br><br>Respondent | ORDER ON SHOW CAUSE<br><br><br>Court Docket #: 08-CS-0008<br><br><br>TCSU Case #: 07-0032 |
|--|---|---|

FINDINGS OF FACT

A Show Cause Hearing for Jason R. Amundson was held on July 9, 2008. Present at the Hearing was Jessie Archibald, Staff Attorney for the Tribal Child Support Unit; Jilliane G. Gregorioff, Petitioner, Jason R. Amundson, Respondent and Carlen Williams, TCSU Caseworker.

Based on the facts on the record, a review of the Court's file and the testimony presented on the record in this matter, Court makes the following Findings of Fact:

1. The Respondent, Jason R. Amundson, failed to appear for a Paternity hearing for which he had proper summons.
2. The Respondent, Jason R. Amundson, claims that he had not been reminded by the Court Clerk and was likely out of town.

Order on Show Cause

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

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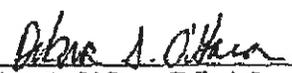
**ORDER**

The Respondent, **Jason R. Amundson**, is found to be in Contempt for failure to appear at the June 12, 2008 Hearing. Upon this finding, the Court Orders the following:

1. The Respondent, **Jason R. Amundson**, is to pay a fine of \$100.00.
2. \$50 of the \$100 fine will be suspended on condition that the Respondent, **Jason R. Amundson**, appear for an appointment with the TCSU Casework Carlen Williams at the Ketchikan TCSU office on Friday, July 11, 2008 at 8:00 am or at an alternate date and time arranged with the Caseworker, as long as the alternated date is on or before July 16, 2008.
3. The Respondent, **Jason R. Amundson**, is to provide to the Caseworker on July 11, 2008, documentation of his earned income for the last three months, verification of his current employment status and is to fully cooperate with the Caseworker with any additional information she requests.
4. The Respondent, **Jason R. Amundson**, to submit the unsuspended portion of the fine (\$50) on or before July 16, 2008 in person to the Ketchikan TCSU office or mailed to the Tribal Court addressed to:

CCTHITA Tribal Court  
320 West Willoughby Ave., Suite 300  
Juneau, AK 99801

**SO ORDERED ON THIS 9<sup>th</sup> DAY OF July, 2008.**

  
Debra S. O'Gara, Tribal Court Magistrate

I certify that on 7/09/08, a copy of this document was mailed or personally served to the following parties:  Respondent R;  Petitioner   ;  TCSU I;  Other: certified to (TCSU) (Peratrovich)

  
Marilyn Peratrovich

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

Order on Show Cause

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

001513

JUL 9 2008

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

Tribal Child Support Unit,

Ex Rel.

Mia G. Amundson,  
A minor child under the age of 18  
Jilliane G. Gregorioff,

Petitioner

Vs

Jason R. Amundson,

Respondent

ORDER ON SHOW CAUSE

Court Docket #: 08-CS-0008

TCSU Case #: 07-0032

FINDINGS OF FACT

A Show Cause Hearing for Jilliane G. Gregorioff was held on July 9, 2008. Present at the Hearing was Jessie Archibald, Staff Attorney for the Tribal Child Support Unit; Jilliane G. Gregorioff, Petitioner. Jason R. Amundson, Respondent and Carlen Williams, TCSU Caseworker.

Based on the facts on the record, a review of the Court's file and the testimony presented on the record in this matter, Court makes the following Findings of Fact:

1. The Petitioner, Jilliane G. Gregorioff, failed to appear for a Paternity hearing for which she had proper summons.
2. The Petitioner, Jilliane G. Gregorioff, claims that she forgot about the hearing.

Order on Show Cause

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

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**ORDER**

The Petitioner, **Jilliane G. Gregorioff**, is found to be in Contempt for failure to appear at the June 12, 2008 Hearing. Upon this finding, the Court Orders the following:

1. The Petitioner, **Jilliane G. Gregorioff**, is to pay a fine of \$50.00.
2. The Petitioner, **Jilliane G. Gregorioff**, to submit \$50 on or before July 16, 2008 in person to the Ketchikan TCSU office or mailed to the Tribal Court addressed to:

CCTHITA Tribal Court  
 320 West Willoughby Ave., Suite 300  
 Juneau, AK 99801

**SO ORDERED ON THIS 9<sup>th</sup> DAY OF July, 2008.**

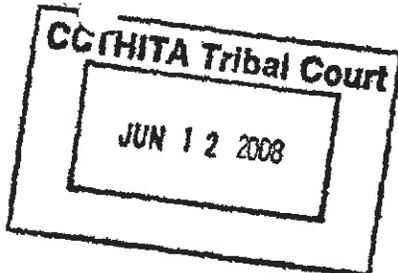
*Debra S. O'Gara*  
 \_\_\_\_\_  
 Debra S. O'Gara, Tribal Court Magistrate

I certify that on 7/10/08, a copy of this document was mailed or personally served to the following parties:  Respondent;  Petitioner R;  TCSU I;  Other: Emailed to TCSU/Carlene

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

Order on Show Cause

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



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

|   |   |   |
|---|---|---|
| Tribal Child Support Unit,<br>Mia G. Amundson<br>A minor child under the age of 18<br>Jilliane G. Gregorioff<br>Vs<br>Jason R. Amundson | Ex Rel.<br><br>Petitioner<br><br>Respondent | Proposed<br>Order of Child Support<br><br>Court Docket #:08-CS-0008<br>Hearing Date: June 12, 2008 at 9:00am<br><br>TCSU Case #: 07-0032<br><br>MOTHER: Mia G. Gregorioff<br>OBLIGOR: Jason R. Amundson<br>CUSTODIAN: |
|---|---|---|

050  
Tribal Court

Order of Child Support

I. BASIS

1. This order is entered pursuant to:
- A decree of dissolution or legal separation.
  - An order determining parentage.
  - A hearing for temporary child support.
  - Modification of a custody decree of parenting plan.
  - A Petition to Establish Child Support
  - Full Faith and Credit Granted to: \_\_\_\_\_ [name of court/jurisdiction]
2. Based on the facts declared to in the pleadings, a review of the Court's file and the testimony/documents presented on the record in this matter, Court makes the following decision(s):

II. CHILD SUPPORT WORKSHEET

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

III. ORDER

IT IS ORDERED that:

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

Order of Child Support -f

I, \_\_\_\_\_, certify that I served this document on the following parties On 6/12, 2008 by R (regular mail);  
 C (certified mail); I (interoffice mail); P (personal service); at his/her last known address  
TCSU  
 Signed [Signature]

I, \_\_\_\_\_, certify that I served this document on the following parties On 6/13, 2008 by R (regular mail);  
 C (certified mail); I (interoffice mail); P (personal service); at his/her last known address  
Gregorioff by Process Server  
Amundson by Process Server  
 Signed [Signature]  
 PAGE 7 OF 103  
 110-10-376 C1

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

I certify that I served this document on the following parties On 6/12, 2008 by R (regular mail); C (certified mail); I (interoffice mail); P (personal service); at his/her last known address  
D. Shank by Process Server

Signed [Signature]

001518



1  Pursuant to administrative or other valid court  
order:

2  
3 9. **POST -MINORITY SUPPORT.**  
4  No post secondary educational support shall be required.  
5  Other: \_\_\_\_\_

6 11. **MEDICAL INSURANCE.**  
7 The parent below shall maintain or provide health insurance coverage which is available through  
8 employment or other organization, or ensure child(ren) is/are enrolled in Indian Health Services..  
9  
10  Mother  
11  Father

12 12. **EXTRAORDINARY HEALTH CARE EXPENSES.**  
13 The obligor shall pay 50% of extraordinary health care expenses, which are those expenses over \$5,000.

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

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

19 Disobedience of this order is punishable by contempt.

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

24 Presented by: Carlen Williams  
25 Carlen Williams  
Child Support Specialist

Approved for entry:  
Jessie M Archibald  
Jessie M. Archibald  
TCSU Attorney

Signature: Not in Court  
(Name of Custodial Parent)

Signature: Not in Court  
(Name of Non-custodial Parent)

Order of Child Support -3

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

EXHIBIT 4  
PAGE 9 OF 103  
1.HJ-10-376 CI

001520

EXC. 412

1 SO ORDERED ON THIS 12<sup>th</sup> DAY OF June, 2008

2 Debra S. O'Gara  
3 Debra S. O'Gara  
Magistrate

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Order of Child Support -4

EXHIBIT 4  
PAGE 10 OF 103  
JUL-10-376 CT

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

00152

JUN 12 2008

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

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|--|--|--|
| <p>Tribal Child Support Unit,<br/><br/>Mia G. Amundson<br/>A minor child under the age of 18<br/>Jilliane G. Gregorioff<br/><br/>Vs<br/><br/>Jason R. Amundson</p> | <p>Ex Rel.<br/><br/><br/><br/><br/><br/><br/><br/><br/>Petitioner<br/><br/><br/><br/><br/><br/><br/><br/><br/>Respondent</p> | <p><b>ORDER ESTABLISHING PATERNITY</b><br/><br/>Court Docket #: 08-CS-0008<br/>Hearing Date: June 12, 2008<br/><br/>TCSU Case #: 07-0032</p> |
|--|--|--|

A Hearing was set on June 12, 2008 to consider the Petition to Establish Paternity. The Petitioner was served personally with Notice of the Hearing by a process server but failed to appear either in person or telephonically. The Respondent was served by regular mail and verbally at the last hearing with Notice of the Hearing but failed to appear either in person or telephonically.

Present at the June 12, 2008 Hearing was Tribal Child Support Unit Staff Attorney Jessie Archibald and Tribal Child Support Unit Caseworker Carlen Williams.

The Tribal Child Support Unit requested the Court issue an Order of Paternity based on the Petition submitted on January 29, 2008 and the Affidavit of Paternity signed by the Petitioner and Respondent on May 6, 2008 and filed with the Court on May 13, 2008.

**FINDINGS OF FACT**

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

**THE COURT FINDS:**

1. That the facts in the Petition are true and correct.

ORDER ESTABLISHING PATERNITY

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

- 1           2.     That the Tribal Child Support Unit represents the Central Council Tlingit and
- 2                 Haida Indian Tribes of Alaska, and does not represent any individual in this
- 3                 action.
- 4           3.     That the Tribe is a real party in interest in this case pursuant to Family
- 5                 Responsibility, Sec. 10.03.002.
- 6           4.     That the Tribal Child Support Unit provides child support enforcement services
- 7                 for the benefit of the minor child who is the subject of this action pursuant to
- 8                 Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq.).
- 9           5.     That this Court has jurisdiction to hear and decide this matter in accordance with
- 10                Article 1, Section 1-4 of the CCTHITA Constitution, in that the  Respondent;
- 11                 Petitioner;  Child are members of or eligible for enrollment with the
- 12                Central Council Tlingit and Haida Indian Tribes of Alaska and/or have accepted
- 13                the jurisdiction of this Court.
- 14           6.     That the Petitioner, **Jilliane G. Gregorioff**, is an enrolled tribal member.
- 15           7.     That the Respondent, **Jason R. Amundson**, is not an enrolled tribal member.
- 16           8.     That **Jilliane G. Gregorioff** and **Jason R. Amundson** were not legally married
- 17                but engaged in sexual intercourse during the probable period of conception, that
- 18                a minor child, **Mia G. Amundson** was born alive on **November 4, 2006**.
- 19           9.     That the above named child was born to **Jilliane G. Gregorioff** on **November 4,**
- 20                **2006**, at the **Ketchikan General Hospital** in **Ketchikan**, in the state of **Alaska**.
- 21                **Mia G. Amundson** currently resides with **Jilliane G. Gregorioff**.
- 22           10.    That the birth certificate is recorded at the Bureau of Vital Statistics for the state
- 23                of Alaska and does not reflect the name of the Respondent, **Jason R.**
- 24                **Amundson**, as the father.
- 25           11.    There is not at present time a court order establishing paternity.
12.    That the Petitioner does not desire to have paternity established for any illegal or
- fraudulent purpose.

**THE COURT FURTHER FINDS:**

1.     That Respondent, **Jason R. Amundson** has acknowledged to be the father of
- Mia G. Amundson** by signing an Affidavit of Paternity.
2.     That Respondent, **Jason R. Amundson** is the biological and legal father of minor
- child **Mia G. Amundson** born on **November 4, 2006**

**ORDER**

**IT IS HEREBY ORDERED THAT** paternity be established as follows:  
**ORDER ESTABLISHING PATERNITY**

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
          (907) 580-1432

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1. Court hereby finds the Respondent, Jason R. Amundson, to be the legal father of Mia G. Amundson, born November 4, 2006.
2. That the Bureau of Vital Statistics for the state of Alaska should change their records to reflect that the Respondent, Jason R. Amundson is the father of Mia G. Amundson, born November 4, 2006.

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

Disobedience of this order may be punishable by a finding of contempt.

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

SO ORDERED ON THIS 12<sup>th</sup> DAY OF June, 2008.

Debra S. O'Gara  
Debra S. O'Gara  
Tribal Court Magistrate

I certify that on 6/13/2008, a copy of this document was mailed or personally served to the following parties:  Respondent P;  Petitioner P;  TCSU I;  E-File None. I have scanned the document on the following dates: On 11/5 2:48 by R (regular mail), C (certified mail), I (interoffice mail), P (personal service) at the last known address.

Marilyn Peratrovich  
Marilyn Peratrovich

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

CSO - PER  
Signed [Signature]

ORDER ESTABLISHING PATERNITY

CCHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 3-14-1432  
(907) 586-1432

**CCTHITA Tribal Court**  
JUN 12 2008

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

Tribal Child Support Unit,  
**Mia G. Amundson**  
A minor child under the age of 18  
**Jillian G. Gregorioff**  
**Vs**  
**Jason R. Amundson**

**ORDER TO SHOW CAUSE**  
**Ex Rel.**  
**Petitioner**  
**Respondent**  
Court Docket #: 08-CS-0008  
Hearing Date: *July 9, 2008 @ 1:30 pm*  
TCSU Case #: 07-0032

The Court upon its own motion and declaration on the record from the Tribal Child Support Unit (TCSU) and the records herein;

**IT IS THEREBY ORDERED THAT** Jillian G. Gregorioff appear as follows:

**DATE:** July 9, 2008  
**TIME:** 1:30 pm  
**PLACE:** CCTHITA Tribal Court  
358 West Willoughby Ave.  
Juneau, AK

**Call Court Clerk at 1-800-344-1432 Extension 7165 to  
arrange to appear telephonically**

**TO SHOW CAUSE** as to why you should not be found in contempt of Court for failure to appear for the **June 12, 2008** Court Hearing for which you had notice.  
You have a right to be represented by an attorney at this hearing. Unless good cause is shown, failure to appear with an attorney will be deemed a waiver of that right.  
If you have a disability and need help in Court please call the Clerk of Court's office at (907) 463-7165.

**YOU ARE NOTIFIED** that the Court may impose one or more of the following sanctions pursuant to CCTHITA Statutes §06.21.012 and §10.03.006 (D), if you are found in contempt:

- 1. A fine of up to \$500 for each finding of contempt for failure to obey a Court Order.
- 2. Payment of money to compensate for loss resulting from the contempt and reimbursement of fees and expenses associated with bringing the action.

Order to Show Cause

**CCTHITA TRIBAL COURT**  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1432 / 907-463-7741 Fax

1 3. An order designed to ensure your compliance in the future.

2 If you have an order for child support, which has past support due in the amount, whether or not  
3 there is an order to make periodic payments, an Order may result in the interception of your  
4 wages, income tax refunds and permanent fund payments. It may also result in the interception  
of any other money due, liens against real property, or attachment of assets.

5 **IT IS ORDERED** that you shall produce at the hearing;

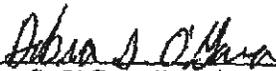
- 6 1. Proof and statements of any sources of income you received in the past three (3)  
7 months.  
8 2. A statement of any unemployment or disability benefits that you are currently  
receiving and proof of your disability.

9 **YOU ARE NOTIFIED** that you must keep Tribal Child Support Unit informed of and provide  
notice within ten (10) days of any change in any of the following:

- 10 1. Current address;  
11 2. Current source of income and any change in the income source or amount;  
12 3. Any change in availability of health insurance coverage through employment,  
including the name of the insurance company, health care organization or health  
13 maintenance organization, the policy or certificate or contract number and the  
names and birthdates of the persons for whom health coverage is maintained; and  
14 4. Any change in custody of the child for who support is ordered.

15 An address of record for service of process will be stated on the court order in this action for the  
16 non-custodial parent and may be stated for the custodian. The last address of record may be  
disclosed to a party or custodian upon request in accordance with Tribal Child Support Unit.  
17 Tribal Child Support Unit does not release home addresses if prohibited by a court order  
granted for the protection of a parent or custodian, or if the case has a Family Violence  
18 Indicator. The address of record does not have to be the same as the residence address. Service  
of child support actions after this date may be done by regular mail to the last address of record  
provided to the Tribal Child Support Unit.

19 **SO ORDERED** on this 12<sup>th</sup> day of June, 2008.

20   
21 Debra S. O'Gara, Tribal Court Magistrate

22 I certify that on 6/13/08, a copy of this document was mailed or personally served to the  
23 following parties: [ ] Respondent; [] Petitioner P; [] TCSU I; [ ] Other: \_\_\_\_\_

24 Marilyn Peratrovich  
Marilyn Peratrovich/Magistrate O'Gara

25 R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail

Order to Show Cause

Page 2 of 2

EXHIBIT 4  
PAGE 17 OF 103  
1.HI-10-376 CI

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1432 / 907-463-7741 Fax

001528

EXC. 418

**CCTHITA Tribal Court**  
JUN 12 2008

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

|  |   |  |
|--|---|--|
| Tribal Child Support Unit,<br>Mia G. Amundson<br>A minor child under the age of 18<br>Jillian G. Gregorioff<br>Vs<br>Jason R. Amundson | Ex Rel.<br><br>Petitioner<br><br>Respondent | <b>ORDER TO SHOW CAUSE</b><br><br>Court Docket #: 08-CS-0008<br><br>Hearing Date: July 9, 2008 @ 1:30 pm<br><br>TCSU Case #: 07-0032 |
|--|---|--|

The Court upon its own motion and declaration on the record from the Tribal Child Support Unit (TCSU) and the records herein;

**IT IS THEREBY ORDERED THAT Jason R. Amundson appear as follows:**

**DATE:** July 9, 2008  
**TIME:** 1:30 pm  
**PLACE:** CCTHITA Tribal Court  
358 West Willoughby Ave.  
Juneau, AK

**Call Court Clerk at 1-800-344-1432 Extension 7165 to  
arrange to appear telephonically**

**TO SHOW CAUSE** as to why you should not be found in contempt of Court for failure to appear for the **June 12, 2008** Court Hearing for which you had notice.

You have a right to be represented by an attorney at this hearing. Unless good cause is shown, failure to appear with an attorney will be deemed a waiver of that right.

If you have a disability and need help in Court please call the Clerk of Court's office at (907) 463-7165.

**YOU ARE NOTIFIED** that the Court may impose one or more of the following sanctions pursuant to CCTHITA Statutes §06.21.012 and §10.03.006 (D), if you are found in contempt:

1. A fine of up to \$500 for each finding of contempt for failure to obey a Court Order.
2. Payment of money to compensate for loss resulting from the contempt and reimbursement of fees and expenses associated with bringing the action.

Order to Show Cause

Page 1 of 2

**EXHIBIT 4**  
**PAGE 19 OF 103**  
LIT-10-376 CT

**CCTHITA TRIBAL COURT**  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1432 / 907-463-7741 Fax

1 3. An order designed to ensure your compliance in the future.

2 If you have an order for child support, which has past support due in the amount, whether or not  
3 there is an order to make periodic payments, an Order may result in the interception of your  
4 wages, income tax refunds and permanent fund payments. It may also result in the interception  
of any other money due, liens against real property, or attachment of assets.

5 **IT IS ORDERED** that you shall produce at the hearing;

- 6 1. Proof and statements of any sources of income you received in the past three (3)  
months.
- 7 2. A statement of any unemployment or disability benefits that you are currently  
receiving and proof of your disability.

8 **YOU ARE NOTIFIED** that you must keep Tribal Child Support Unit informed of and provide  
9 notice within ten (10) days of any change in any of the following:

- 10 1. Current address;
- 11 2. Current source of income and any change in the income source or amount;
- 12 3. Any change in availability of health insurance coverage through employment,  
including the name of the insurance company, health care organization or health  
13 maintenance organization, the policy or certificate or contract number and the  
names and birthdates of the persons for whom health coverage is maintained; and
- 14 4. Any change in custody of the child for who support is ordered.

15 An address of record for service of process will be stated on the court order in this action for the  
16 non-custodial parent and may be stated for the custodian. The last address of record may be  
disclosed to a party or custodian upon request in accordance with Tribal Child Support Unit.  
17 Tribal Child Support Unit does not release home addresses if prohibited by a court order  
18 granted for the protection of a parent or custodian, or if the case has a Family Violence  
Indicator. The address of record does not have to be the same as the residence address. Service  
of child support actions after this date may be done by regular mail to the last address of record  
provided to the Tribal Child Support Unit.

19 **SO ORDERED** on this 12<sup>th</sup> day of June, 2008.

20   
21 \_\_\_\_\_  
Debra S. O'Gara, Tribal Court Magistrate

22 I certify that on 6/13/08, a copy of this document was mailed or personally served to the  
23 following parties:  Respondent P;  Petitioner \_\_\_\_\_;  TCSU I;  Other: \_\_\_\_\_

24 Marilyn Peratrovich  
Marilyn Peratrovich/Magistrate O'Gara  
25 R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail

Order to Show Cause

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1452 / 907-463-7741 Fax

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CCTHITA Tribal Court  
JAN 29 2008

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

Tribal Child Support Unit,  
Mia G. Amundson  
A minor child under the age of 18  
Jilliane G. Gregorioff  
Vs  
Jason R. Amundson

Ex Rel.

Petitioner

Respondent

PETITION TO ESTABLISH PATERNITY

Court Docket #: 08-CS-0008  
Hearing Date: ~~March 4, 2008 @ 9am~~  
April 29, 2008 at 10:00 AM  
TCSU Case #: 07-0032  
MOTHER: Jilliane G. Gregorioff  
OBLIGOR: Jason R. Amundson  
CUSTODIAN:

ORIGINAL

PETITION

I. Basis

1.1 Cause of Action: This is a petition for the establishment of parentage. This action is brought on behalf of:  
Mia G. Amundson, born on 11/04/2006, a resident of Ketchikan, Alaska.

1.2 Parties to the Action  
Petitioner is the: X Tribal Child Support Unit X Mother    Alleged  
Father    Other:  
Respondent is the X Alleged Father or    Mother    Other

PETITION TO ESTABLISH PATERNITY -I

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

EXHIBIT 4  
PAGE 22 OF 103  
LII-10-376 CI

001533

1 Name of Mother: Jilliane G. Gregoriouff

2 Name of Alleged Father: Jason R. Arundson

3 **1.3 Jurisdiction**

4 The Tribe is a real party in interest in this case pursuant to CCTHITA Title 10- Family  
5 Responsibility, Sec. 10. 02.006. The Tribal Child Support Unit is providing child support  
6 enforcement services for the benefit of the minor child(ren) who is/are the subject of this action  
7 pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq.). This Court has  
8 jurisdiction to hear and decide this matter in accordance with CCTHITA Title 10-Family  
9 Responsibility, Sec. 10.02.004.

10  Petitioner is a member with the Tlingit and Haida Indian Tribes of Alaska.

11  Respondent is not eligible for enrollment with the Tlingit and Haida Indian Tribes of  
12 Alaska.

13  The child is eligible for enrollment with the Tlingit and Haida Indian Tribes of Alaska.

14  The mother and Jason R. Arundson engaged in sexual intercourse and as a result, the  
15 child may have been conceived.

16  The Respondent consents to jurisdiction as evidenced by joinder or consent to jurisdiction  
17 signed by Respondent.

18  Paternity of the child has not been established.

19  The mother alleges that the Respondent is the father of the child.

20  The Respondent alleges that he is the father of the child.

21  The birth certificate is recorded at Bureau of Vital Statistics for the State of Alaska and to  
22 the best of our knowledge, does not reflect the name of the Respondent as the father. Birth  
23 certificate request is pending from TANF office.

24  Upon information and belief no other action for determination of paternity of the child or  
25 to rebut the presumption of paternity of the child has been commenced, or is pending before any  
26 court in this jurisdiction or elsewhere.

27  Respondent has not acknowledged to be the father of the child.

28  A paternity test has not been performed.

29  A paternity test has been performed in a professional and scientific manner on samples  
30 drawn from each of the above named individuals and based upon the results of said tests, there is  
31 a probability of 99%

32  The Petitioner does not desire to have paternity established for any illegal or fraudulent  
33 purpose.

34 **1.4 Child Support**

35 PETITION TO ESTABLISH PATERNITY -2

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

EXHIBIT 4  
PAGE 23 OF 103  
1.HJ-10-376 CI

001534

EXC. 422

1 The child is entitled to financial support pursuant to the Tribe's Tribal Child Support Schedule  
2 and health insurance coverage from any parent owing a duty of child support, and it is otherwise  
3 in the child's best interest to obtain a judicial determination parentage.

4 **1.5 Current Residence of the Child**

5 The child currently resides with Jilliane G. Greorloff.

6 **1.6 Reimbursement**

7  Does not apply.

8  The CCTHITA TRIBAL TANF is entitled to reimbursement for support or assistance to the  
9 child, for expenses incurred on behalf of the child for the time periods the mother received  
10 TANF assistance.

11  Other:

12 **II. Relief Requested**

13 The court is requested to enter an order and judgment that:

14  Jason R. Amundson be declared to be the father of Mia G. Amundson.

15  The birth certificate of the child be amended to identify the father as Jason R. Amundson.

16  Child support be determined for the dependent child pursuant to the Tribe's Child Support  
17 Schedule and either or both parents ordered to maintain or provide health insurance coverage for  
18 the child.

19  The father pay past support, and other expenses incurred on behalf of the child.

20  Court costs, genetic test costs, and other reasonable fees be awarded by the court.

21  Other: Order Respondent to provide

22 1. Tax returns for the last two (2) years and wage statements for the last six (6) weeks.

23 2. Proof of all sources of current income.

24 3. A completed Financial Affidavit included with these papers.

25 Dated this 29th day of January, 2008.

I declare under penalty of perjury under the laws of the Tlingit and Haida Indian  
Tribes of Alaska that the foregoing is true and correct.

PETITION TO ESTABLISH PATERNITY -3

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

EXHIBIT 4  
PAGE 24 OF 103  
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Submitted by:

Carlen Williams

Carlen Williams  
Child Support Specialist  
Phone: 907-247-7987  
Fax: 907-225-2083

Approved for Entry:

Jessie M. Archibald  
Jessie M. Archibald  
TCSU Attorney

PETITION TO ESTABLISH PATERNITY -4

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

EXHIBIT 4  
PAGE 25 OF 103  
1.JU-10-376 CI

001536

EXC. 424



**IN THE CCTHITA TRIBAL COURT  
JUNEAU, ALASKA**

3/28/2008

Alaska State Troopers  
Attn: Lonna Murray  
7366 N. Tongass Hwy.  
Ketchikan, AK 99901

Dear Lonna Murray;

Enclosed you will find a Summons for Paternity, Petition to Establish Paternity Order and a Financial Affidavit. Also enclosed is the Return of Service form for the Alaska State Trooper to fill out and send back to the Central Council Tlingit & Haida Indian Tribes of Alaska, Tribal Court.

The Respondent, Jason R. Amundson, is possibly residing at

Jason R. Amundson  
Born: 3/31/1986  
Race: Unknown  
Male

Please don't hesitate to contact me if you have any questions concerning this matter. I can be contacted directly by phone at 907-463-7165 or Toll Free at 1-800-344-1432 extension 7165 or by e-mail at [mperatrovich@ccthita.org](mailto:mperatrovich@ccthita.org). I will provide a self addressed stamped envelope for the return of service.

Thank you,

Marilyn Peratrovich  
Clerk of Court

Enclosures

EXHIBIT 4  
PAGE 58 OF 103  
1JU-10-376 CI

001569

**EXC. 425**

**CCTHITA Tribal Court**  
MAY 14 2008

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

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| <p><b>Tribal Child Support Unit,</b><br/> <b>Mila G. Amundson</b><br/> A minor child under the age of 18<br/> <b>Jilliane G. Gregorioff</b><br/> <b>Vs</b><br/> <b>Jason R. Amundson</b></p> | <p><b>Ex Rel.</b><br/><br/><br/><br/><br/><br/><br/><br/><br/><b>Respondent</b></p> | <p><b>SUMMONS - PATERNITY</b><br/><br/> <b>Court Docket #: 08-CS-0008</b><br/> <b>Hearing Date: June 12, 2008 at 9:00 a.m.</b><br/><br/> <b>TCSU Case #: 07-0032</b></p> |
|--|---|--|

**SUMMONS**

**NOTICE TO THE PETITIONER: Jilliane Gregorioff,**

A lawsuit has been filed to establish paternity of the above named child. The Petition attached states the nature and the basis of the legal action. A Summons and this Petition has been sent to all of the above named parties. A judgment of paternity would designate the legal father of the above named child, grant parental rights to that father, create the right of inheritance for the child, create an obligation of child support for the child until the child reaches the age of age of eighteen, or until the age the child emancipates, and would make failure to pay child support punishable by contempt of court.

At any time prior to the date of the court hearing, the alleged father can voluntarily acknowledge paternity and enter into a Stipulated Agreement as to the establishment of parentage and agree to the appropriate level of support for the child. A signed voluntary stipulation shall then be submitted to the Court for approval. After the Court approves the agreement, it will be filed with the Clerk of the Court with a statement that it shall have the same force as an order issued by the Court. All stipulations require that payments be made to the child support unit for distribution and tracking.

If the alleged father contests paternity, upon his request, or of the Child Support Agency, the mother of the child, or the custodian of the child, the Court may order that the parties submit to genetic testing to establish paternity. A person who refuses to take court-ordered genetic tests may be punished for contempt of court. The Central Council Tlingit and Haida Indian Tribes of Alaska will advance the cost of the test but either or both parties may be required to repay the

SUMMONS - PATERNITY

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

1 costs. If the genetic tests show that the alleged father is not excluded as the father and that the  
2 statistical probability of him being the father is 99.0% or higher, he will be presumed to be the  
3 father.

3 **The Respondent must respond in writing to the Petition within twenty (20) days of**  
4 **receiving this Summons. Both you and the Respondent must also appear in person at the**  
5 **hearing or if you are unable to attend in person set up a telephonic appearance with the**  
6 **clerk of court.**

6 **You must also appear in person to answer this claim. The date and time of court appearance**  
7 **is as follows:**

7           **DATE:**       June 12, 2008  
8           **TIME:**       9:00 a.m.  
9           **PLACE:**     CCTHITA Tribal Court  
                          358 W Willoughby Avenue  
                          Juneau AK 99801

10 If you have a disability and need help in court please contact the Tribal Clerk of Courts at (907)  
11 463-7165.

12 You may have an attorney help or represent you. If you plan to be represented by an attorney,  
13 you should contact the attorney prior to the court appearance listed above. Tribal Child Support  
14 Unit does not represent the Petitioner or the Respondent in this action and will not provide legal  
15 advice to either party.

14 **If you fail to appear for any scheduled action, including a scheduled genetic test, the Court**  
15 **may find you in contempt of court or dismiss your Petition.**

16 Pursuant to Sec. 10.03.005 (2), all parties must keep Tribal Child Support Unit informed of and  
17 provide notice within ten (10) days of any change in any of address or change of employer.

18 In Juneau, Alaska dated this 14th day of May, 2008.

19 

20 Marilyn Peratrovich  
21 Tribal Court  
22 Tele: (907) 463-7165  
23 Fax: (907) 463-7741

24  
25 SUMMONS - PATERNITY

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

FEB 1 2008

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

Tribal Child Support Unit,

Ex Rel.

SUMMONS - PATERNITY

Mila G. Amundson

A minor child under the age of 18

Jilliane G. Gregoriouff

Petitioner

Court Docket #: 08-CS-0008

Hearing Date: March 4, 2008 at 9:00 A.M.

Vs

TCSU Case #: 07-0032

Jason R. Amundson

Respondent

SUMMONS

**NOTICE TO THE RESPONDENT:** Jason Amundson,

A lawsuit has been filed to establish paternity of the above named child. The Petition attached states the nature and the basis of the legal action. You have been named as the alleged father in a Petition to Establish Paternity. The Petition is attached to this document. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of age of eighteen, or until the age the child emancipates, and make your failure to pay child support punishable by contempt of court.

At any time prior to the date of the court hearing, you can voluntarily acknowledge paternity and enter into a Stipulated Agreement as to the establishment of parentage and agree to the appropriate level of support for the child. If you would like to voluntarily agree or stipulate to paternity, you must contact Tribal Child Support Unit for the appropriate forms. The signed voluntary stipulation shall then be submitted to the Court for approval. After the Court approves the agreement, it will be filed with the Clerk of the Court with a statement that it shall have the same force as an order issued by the Court. All stipulations require that payments be made to the child support unit for distribution and tracking.

If you contest paternity, upon your request, or of the Child Support Agency, the mother of the child, or the custodian of the child, the Court may order that the parties submit to genetic testing

SUMMONS - Paternity.Petitioner

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1432 / 907-463-7741 Fax

1 to establish paternity. A person who refuses to take court-ordered genetic tests may be punished  
2 for contempt of court. The Central Council Tlingit and Haida Indian Tribes of Alaska will  
3 advance the cost of the test but either or both parties may be required to repay the costs. If the  
4 genetic tests show that you are not excluded as the father and that the statistical probability of  
5 your being the father is 99.0% or higher, you are presumed to be the father.

6 **You must respond in writing to the Petition and you must also appear in person at the**  
7 **hearing.** The response period for your written answer and the schedule for your hearing are  
8 below.

9 **Within twenty (20) days of receiving this Summons, you must respond with a written**  
10 **answer to the Petition.**

11 Send or deliver your written response to the Court:

12 Tribal Court  
13 320 W. Willoughby Ave., Suite 300  
14 Juneau, AK 99801

15 Also send or deliver your written response to the Tribal Child Support Unit:

16 Tribal Child Support Unit  
17 320 W. Willoughby Ave., Suite 300  
18 Juneau, AK 99801

19 **You must also appear in person to answer this claim if you are unable to attend in person,**  
20 **you must set up with the clerk of court, a telephonic appearance to answer this claim. The**  
21 **date and time of court appearance is as follows:**

22 DATE: March 4, 2008  
23 TIME: 9:00 A.M.  
24 PLACE: CCTHITA Tribal Court  
25 358 West Willoughby Avenue  
Juneau AK 998091

If you have a disability and need help in court please contact the Tribal Clerk of Courts at  
(907) 463-7165.

You may have an attorney help or represent you. If you plan to be represented by an attorney,  
you should contact the attorney prior to the court appearance listed above. Tribal Child Support  
Unit does not represent the Petitioner or the Respondent in this action and will not provide legal  
advice to either party.

**If you do not provide a proper answer within twenty (20) days, or fail to appear for any**  
**scheduled action, including a scheduled genetic test, the Court may issue for your arrest or**  
**enter a default judgment against you. A default judgment against you may find you to be the**  
**father, and may order you to contribute to the minor child's support. A judgment for money**  
**may become a lien against any real property you own now or in the future, and may be enforced**  
**by garnishment or seizure of property, and interception of your tax refunds or other income.**

SUMMONS -- Paternity Petitioner

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1432 / 907-163-7711 Fax

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Pursuant to Sec. 10.03.005 (2), all parties must keep Tribal Child Support Unit informed of and provide notice within ten (10) days of any change in any of address or change of employer.

Dated this 1st day of February, 2008.



Marilyn Peratrovich  
Tribal Court  
Tele: (907) 463-7165  
Fax: (907) 463-7741

Enclosure: Petition to Establish Paternity

SUMMONS - Paternity.Petitioner

Page 3 of 3

EXHIBIT 4  
PAGE 92 OF 103  
LJU-10-376 CI

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 3-44-1432 / 907-463-7741 Fax

001603

EXC. 430

NOV - 4 2008

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

Tribal Child Support Unit,

Ex Rel.

**CORRECTED  
ORDER SUSPENDING COLLECTION OF  
CURRENT CHILD SUPPORT**

Brittney,

A minor child under the age of 18

Jennie L. Cadiente aka: Willson,

Petitioner

Court Docket #: 07-CS-0051

Vs

TCSU Case #: 07-0315

David C. Willson,

Respondent

**FINDINGS OF FACT**

Based on the facts declared to in the pleadings, a review of the Court's file and the testimony/documents presented during the hearing on October 30, 2008 in this matter, Court makes the following Findings of Fact:

1. That the facts in the Motion to Suspend Collection of Current Support Only, filed by the Tribal Child Support Unit (TCSU) on October 16, 2008, are true and correct.
2. That the Petitioner, Jennie L. Cadiente, wrote a letter, October 15, 2008, notifying the Court and TCSU that her daughter was living with Respondent, David Willson.
3. That a motion hearing was set for October 30, 2008 at 1:30 pm and Notice of the hearing was served on all parties at their last known address.
4. That the Petitioner ~~appeared~~/did not appear.
5. That the Respondent ~~appeared~~/did not appear.
6. That the TCSU Attorney, Jessie Archibald and TCSU Deputy Director, Irene Tupou, did appear.
7. The Petitioner notified TCSU and the Court that the child, Brittney, began permanently residing with the Respondent on August 26, 2008.
8. The Respondent made payments of \$352.79 for each of September and October 2008.

ORDER SUSPENDING COLLECTION OF CURRENT CHILD SUPPORT

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

- 1 9. TCSU completed distribution of the September payment, including a \$50 pass
- 2 through payment of \$50 to the Petitioner.
- 3 10. TCSU did not complete the distribution for the support payment made by the
- 4 Respondent.
- 5 11. TCSU stated it can reimburse the Respondent for the September payment in the
- 6 amount of \$302.79 and for the October payment in the amount of 352.79.

**ORDER**

**THE COURT HEREBY ORDERS AS FOLLOWS:**

- 7 1. Collection of Current Child Support is hereby suspended.
- 8 2. The TCSU shall reimburse the Respondent \$665.58 for payments that he made in
- 9 September and October 2008.
- 10 3. All other terms of the prior order shall remain in effect.

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

13 Service of child support actions after this date may be done by regular mail to the last address of  
 14 record provided to the TCSU.

Disobedience of this order is punishable by contempt.

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

18 **SO ORDERED ON THE** 30<sup>th</sup> **DAY OF** October, 2008.

19 **ORDER CORRECTED AND SIGNED ON THIS** 4<sup>th</sup> **DAY OF** November, 2008.

Debra S. O'Gara  
 Debra S. O'Gara, Tribal Court Magistrate

22 I certify that on 11/04/08, a copy of this document was mailed or personally served to the  
 following parties:

23  Respondent R;  Petitioner R;  TCSU I;  Other: \_\_\_\_\_

24 Marilyn Peratrovich

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

25 **ORDER SUSPENDING COLLECTION OF CURRENT CHILD SUPPORT**

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

CCTHITA Tribal Court

OCT 16 2008

11:00 am

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

Tribal Child Support Unit,

Ex Rel.

MOTION TO SUSPEND COLLECTION  
OF CURRENT SUPPORT ONLY

BRITTNEY,

A minor child under the age of 18

JENNIE L. CADIENTE f/k/a WILLSON,

Court Docket #: 07-CS-0051

Petitioner

Hearing Date: <sup>called October</sup> ~~November~~ 30, 2008 @ 1:30  
p.m.

Vs

TCSU Case #: 07-0315

DAVID C. WILLSON,

Respondent

Juneau Superior Court No. 1JU-00-0001 CI

MOTION

NOW COMES, the Tlingit and Haida Child Support Unit, and moves the court for an order of suspending collection of current support only for the above captioned case, and to continue enforcement of arrears owed to the Tribe.

The undersigned offers the following facts in support of this motion:

1. That Tribal Child Support Unit is providing child support enforcement services for Juneau Superior Court Child Support Order No. 1JU-00-0001 CI for the benefit of the minor child who is the subject of this action pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq. (1991)).
2. The custodial parent, Jennie Cadienite, has provided written notice that the above-named child is now residing with the non-custodial parent, David C. Willson effective August 26, 2008. A copy of this letter is attached to this Motion.

MOTION TO SUSPEND -1

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

EXHIBIT 6  
PAGE 7 OF 49  
1JU-10-376 CI

001727

ORIGINAL

- 1 3. TCSU requests the Court issue an order suspending collection of current support only, and  
2 provide for continuing collection of TANF arrears owed to the Tribe.
- 3 4. Upon payment of the balance owed to the Tribe, TCSU requests suspension of entire  
4 collection be terminated until such time the custodial parent reapplies for services with  
5 TCSU.

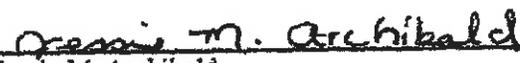
6 **THEREFORE**, Tribal Child Support Unit prays that the Court grant an order for the following  
7 relief:

8 Enter an Order Suspending collection of current support only with ongoing enforcement  
9 of the arrears owed to the Tribe until the debt is paid in full at which time the entire case  
10 will be suspended until the custodial parent reapplies for child support services.

11 Dated this 16<sup>th</sup> day of October, 2008.

12 Submitted by:

13   
14 \_\_\_\_\_  
15 Harold "Jay" Dick  
16 TCSU Case Specialist

17   
18 \_\_\_\_\_  
19 Jessie M. Archibald  
20 TCSU Attorney

21 MOTION TO SUSPEND -2

22 EXHIBIT 6  
23 PAGE 8 OF 49  
24 1.PJ-10-376 CI

25 Tingit and Haida Child Support Unit  
320 West Willoughby Ave, Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
(907) 586-1432

001728

ORIGINAL



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3. The parties will execute whatever documents are necessary to implement the terms of this Stipulation.

DATED: 1-30-08

Jessie M. Archibald  
Jessie M. Archibald, Attorney for Petitioner TCSU

DATED: 1/23/08

Deborah A. Holbrook  
Deborah A. Holbrook,  
Attorney for Respondent David C. Willson

Dated, 1-30-08

ORDER

IT IS SO ORDERED on this 31<sup>st</sup> day of January, 2008.

Debra A. O'Hara  
CCTHITA Tribal Court Judge

Deborah A. Holbrook  
ATTORNEY AT LAW  
301 E. Third Street  
Juneau, Alaska 99801  
(907) 463-2681

Alaska Department of Revenue  
**Child Support Enforcement Division**

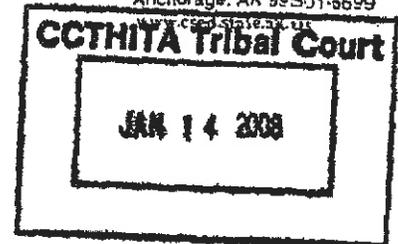
Please Reply To:  
CSED, MS 08

550 W. 7<sup>th</sup> Ave., Suite 310  
Anchorage, AK 99501-6699  
www.csed.state.ak.us

In the Matter of:  
DAVID C. WILLSON

August 23, 2001

ROAD



Case-ID: 001102389  
Custodian: JENNIE L. KNUDSON  
Child(ren): JAMES D. WILLSON 04-12-87 BRITTNEY M. WILLSON 01-17-98

**AMENDED ADMINISTRATIVE  
CHILD AND MEDICAL SUPPORT ORDER**  
(Alaska Statute 25.27.160 and Alaska Administrative Code 15:125.118)

I. This order amends the Administrative Child Support Order dated June 12, 2001. It is issued because:

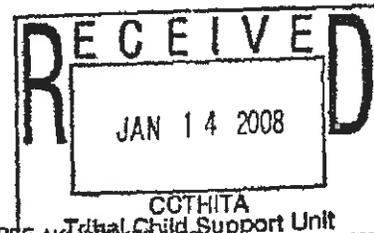
CSED held an administrative review of the original order and the findings and the decision from the review require an amendment to the original order.

A Department of Revenue Hearing Officer issued a decision to remand the original order to CSED for review and action OR a court remanded the case to CSED for review and action.

A. Based on a review of the case, CSED finds that DAVID C. WILLSON owes child support.

B. DAVID C. WILLSON is designated as the PAYOR and JENNIE L. KNUDSON is the PAYEE. All references to "you" or "your" are to the PAYOR. Please refer to the explanation letter enclosed with the original order for an explanation of the various aspects and provisions of this order.

II. **FINANCIAL OBLIGATION.** You are hereby ordered to provide financial support for the children according to the following:



CSED 04-1902A Rev. 02/23/00

TTY: (907)269-6894 / TOLL FREE AK: (800)370-6894  
ANCHORAGE OFFICE: PHONE: (907)269-6900  
FAX: (907)269-6650

TOLL FREE AK: (800)370-6894  
JUNEAU: (907)465-5867 KENAI (907)283-2900  
FAIRBANKS: (907)451-2830 WASILLA: (907)357-3550

EXHIBIT 6  
PAGE 14 OF 49  
LJU-10-376 CT

001734

**EXC. 437**

A.  **MONTHLY CHILD SUPPORT.** Your ongoing child support amount of N/A is due on 10-01-01 and will charge on the first of each month thereafter.

Your monthly support obligation is set by court order 1JU-00-0001 CI with an effective date of April 2, 2001. However, there are arrears owed either to the State of Alaska or to the custodian for child support due before the effective date of the court order. We will collect these arrears per the amount stated below in paragraph B.

\$ 0.00 for one child per month  
\$ for three children per month  
\$ for five children per month  
\$ for seven children per month

\$ 0.00 for two children per month  
\$ for four children per month  
\$ for six children per month  
\$ for eight children per month

If you have more than one child on this order and child support is no longer required (such as when a child emancipates or reaches the age of majority), CSED will set the child support amount to the next lower level for the number of children remaining on the order.

**WARNING:** If you owe arrears, your total monthly payment may be more than the above ongoing amount.

B. **ARREARS.** You owe total past-due child support of \$203.58 for the periods: 01-01-01 TO 03-31-01. This amount is due on 10-01-01.

If you do not to pay the total arrears amount on the first due date, we will withhold an additional amount from your paycheck and use other collection methods such as taking any refund you have coming to you from IRS and your Permanent Fund Dividend to get this paid.

The attached Child Support Guidelines Worksheet (CSED Form 1905) shows how we calculated your child support for each year.

The attached Summary of Support Obligation (CSED Form 1609) shows a detailed monthly listing of the dollar amounts that you owe for arrears.

C. **INTEREST.** Interest accrues on the unpaid arrears balance at the end of the month, at the legally prescribed rate.

D. **FEES.** CSED will assess you costs associated with genetic testing, process service and attorney fees if applicable to your case.

**III. MEDICAL SUPPORT ORDER** (Alaska Statute 25.27.063, Alaska Statute 25.27.020, Alaska Statute 25.27.060, Alaska Administrative Code 15:125.085). In addition to the financial duty of support, you owe a medical duty of support for the children listed above.

- A. You are ordered:
1. To include the children named on this order on any health insurance policy available to you at a reasonable cost.
  2. To provide proof of insurance within 20 days of the date of the child support order. You need to send us a copy of the insurance form and an affidavit stating the form is filed with the insurance company. If you are not covered by the insurance, but it is available to you, you must send documentation regarding the available coverage.
  3. To notify CSED in writing within 20 days after losing coverage or a change in employment resulting in a change in coverage.
- B. If you provide proof of insurance for the children, we will give you a credit against your child support obligation for half of the amount of the premium that you pay for the health insurance for the children.
- C. If the other parent buys the insurance for the children, then we will bill you for half of the direct costs to cover the children named in this order.
- D. If the cost of the insurance changes, CSED will adjust the amount of the child support obligation accordingly, without further order of the agency. CSED will notify the parents of any adjustment made to this part of the order. The parent purchasing the insurance shall provide documentation of the change to CSED.
- E. **FUTURE COVERAGE.** If health insurance for the children becomes available to either parent at reasonable cost and the children are not already covered by insurance or other health care coverage, that parent must purchase the insurance coverage for the children and notify CSED immediately.

1. The cost of the insurance is divided equally between the parents. Without further order of the agency, we will add half the cost of the custodial parent's health insurance premium to the monthly child support obligation of the paying parent if the custodial parent pays the insurance premium. If the paying parent pays for the cost of the insurance we will subtract 50% of the premium cost from the payor's monthly support obligation.
  2. If both parents have health care coverage available and the rights of the child support have not been assigned to the state, both parents will determine who will purchase the coverage for the children. However, if they disagree, they will inform the agency in writing. After receiving this information, the agency will require both parents to purchase coverage for the children and offset the cost to each parent and assess an increase or decrease in the month support obligation as appropriate.
  3. If both parents have health coverage available and the rights of child support has been assigned to the state, the agency will require the paying parent to provide health care coverage for the children.
- F. The parent purchasing the insurance must notify the insurance company that the other parent or custodian can apply for benefits on behalf of the children and should be reimbursed directly. The purchaser must also provide coverage information to the other parent and all forms and instructions necessary to apply for benefits.
- G. UNCOVERED HEALTH CARE EXPENSES (Civil Rule 90.3 (d)(2))
1. Reasonable health care expenses not covered by insurance that are less than \$5,000 shall be paid equally by both parents unless good cause is shown.
  2. A party shall reimburse the other parent or his or her share of the uncovered expenses within 30 days after receiving the health care bill, proof of payment, and, if applicable, a health insurance statement showing what part of the cost is uncovered.
  3. If the uncovered expense is over \$5,000 the expense must be allocated based on the parent's relative financial circumstances when the expense occurs.

H. ACCORDING TO OUR INFORMATION:

- The children are eligible for health care through  the Indian Health Service  military medical benefits but these services are not available in the area where the children live. Therefore, insurance must be purchased as stated above until these services become available.
- The children are eligible for health care through  the Indian Health Service  military medical benefits and these services are available to the children. Therefore, no additional insurance is required while these services are available.
- Health Insurance for the children is not now available at reasonable cost or its availability is unknown.

IV. FINDINGS OF FACT.

A. INCOME DETERMINATION:

- We considered your total income from all sources based on actual information.
- We do not have actual income or employment information for you. We therefore estimated your income using the calculation method listed on the bottom of the child support guidelines worksheet(s) (CSED form 1905).
- After considering relevant circumstances, including education, training, occupation, health, employment opportunities and the extent to which you are participating in looking for work, we find you are voluntarily unemployed or underemployed.

The attached Child Support Guidelines Worksheet(s) (CSED form 1905) are incorporated as part of these Findings of Fact. (The method of calculation is listed at the bottom of each worksheet.) We find that your monthly child support obligation is based on:

2001 Used the child support amount that was established by court order 1JU-00-0001 CI for January 2001 to March 2001.

- B.  We find that your monthly child support obligation is based on  Primary.  Shared, or  Divided custody of the children. We based our custody finding on information provided.



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CCTHITA Tribal Court

DEC 20 2007

3:21 p.m.

ORIGINAL

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

Tribal Child Support Unit,

Ex Rel.

AMENDED  
PETITION FOR RECOGNITION AND  
ENFORCEMENT OF FOREIGN CHILD  
SUPPORT ORDER

JAMES & BRITTNEY,

Children,

JENNIE L. CADIENTE,

Court Docket #: 07-CS-0051

Petitioner

Vs

DAVID C. WILLSON,

TCSU Case No. 07-0315

Foreign Order Case No: 1JU-00-0001CI  
& Alaska Administrative Order Number  
1102389

Respondent

The following Petition corrects the facts contained in the Original Petition for Recognition and Enforcement of Foreign Child Support Order. Corrections and/or additions are identified by the underlined sentences, and deletions are indicated by strikethroughs.

NOW COMES the Tribal Child Support Unit (TCSU) praying the Court, based upon the records and the pleadings below, to recognize the attached ALASKA ADMINISTRATIVE CHILD SUPPORT Order, Case No. 1102389 and Juneau Superior Court Case No. 1JU-00-0001CI for the purpose of enforcement.

(Original Petition did not contain Alaska Administrative Case Number and inadvertently described the Juneau Superior Court Case No. as an Alaska Administrative Order.)

AMENDED PETITION FOR RECOGNITION AND ENFORCEMENT  
OF FOREIGN CHILD SUPPORT ORDER -I

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

EXHIBIT 6  
PAGE 21 OF 49  
1JU-10-376 CI

001741

1 In support of this Petition to Recognize and Enforce Foreign Order the Court is informed as  
2 follows:

3 1. That Petitioner is and Respondent is not an enrolled member of Central Council  
4 Tlingit and Haida Indian Tribes of Alaska, and subject to the jurisdiction of the Court in this  
5 matter. The above child is enrolled or eligible to be enrolled in the Central Council Tlingit and  
6 Haida Indian Tribes of Alaska. (This section corrects the original Petition which stated that  
7 Respondent is an enrolled T & H member. Respondent is not enrolled in CCTHITA.)

8 2. That if the Court accepts the Petition, any action for enforcement and/or  
9 modification by the TCSU against the Respondent would be enforceable through Central Council  
10 Tlingit and Haida's Tribal Court.

11 3. That pursuant to CCTHITA Family Responsibility, Sec. 10.05.001, the TCSU  
12 may enforce the order through an order to show cause and civil contempt, issuance of an income  
13 withholding order, execution of the order or attachment of assets.

14 4. That based upon the attached records of Alaska Administrative Case No.  
15 1102389 and Juneau Superior Court Case Case No. 1JU-00-0001 CI, Respondent has been  
16 ordered to pay the amount of \$476.26 352.79 per month; per month for the support of the  
17 party's minor child(ren), BRITTNEY. (JAMES, DOB: 4/17/87 has reached the age of majority  
18 and the original amount of \$476.26 has been adjusted pursuant to Alaska Civil Rule 90.3 for one  
19 child, rather than two children).

20 5. The State of Alaska has agreed to transfer 225 identified child support cases  
21 where the custodial parent was receiving tribal TANF through Tlingit and Haida. However, the  
22 Alaska Department of Law also believes that there are still some serious jurisdictional issues that  
23 still need to be resolved, including jurisdiction over non-members and the Tribe's ability to  
24 modify a state child support order. Both the Department of Law and the state's representative  
25 have indicated that these cases are being transferred to the Tribal child support agency. Alaska  
CSSD director, John Mallonee, has authorized State CSSD worker, Denise Shanklin to be the  
state contact person and Ms. Shanklin states that when she is providing a copy of the  
administrative order, and the financial printouts, the State is "officially transferring" cases to  
TCSU. See attached copy of e-mail from Denise Shanklin.

26 6. The undersigned declares that the attached copy of ADMINISTRATIVE  
27 CHILD SUPPORT ORDER 1102389 and Juneau Superior Court Case No. 1JU-00-0001  
28 CI, and ~~is one of the~~ are copies that Ms. Shanklin has provided to TCSU for transfer.

29 7. TCSU respectfully requests that the Court approve a waiver of the requirement  
30 that the copy of the foreign order be a certified copy. TCSU has repeatedly requested that the  
31 State CSSD provide certified copies of orders and the State has not honored this request.

32 AMENDED PETITION FOR RECOGNITION AND ENFORCEMENT  
33 OF FOREIGN CHILD SUPPORT ORDER -2

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

EXHIBIT 6  
PAGE 22 OF 49  
1JU-10-376 CI

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8. Based upon the above information, TCSU respectfully requests that the CCTHITA Tribal Court accept this uncertified copy of foreign orders ALASKA ADMINISTRATIVE CHILD SUPPORT Case No. 1102389 and Juneau Superior Court Case No. 1-JU-00-0001 for registration and/or enforcement and/or modification by TCSU through the CCTHITA Tribal Court.

Dated this 17th day of December, 2007 .

Jessie M. Archibald  
Jessie M. Archibald  
TCSU Attorney

AMENDED PETITION FOR RECOGNITION AND ENFORCEMENT  
OF FOREIGN CHILD SUPPORT ORDER -3

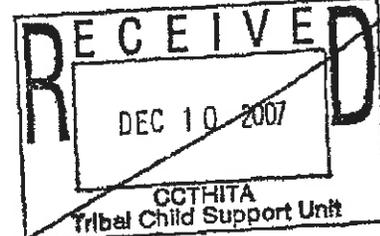
Tlingit and Haida Child Support Unit  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
(907) 586-1432

EXHIBIT 6  
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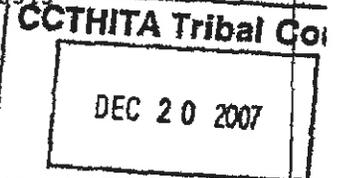
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1 IN THE CENTRAL COUNCIL TLINGIT & HAIDA INDIAN TRIBES OF ALASKA  
2 TRIBAL COURTS  
3 JUNEAU, ALASKA

4 Tribal Child Support Unit, )  
5 Ex Rel.)  
6 JAMES & BRITTNEY, )  
7 A minor child under the age of 18 )  
8 JENNIE L. CADIENTE, f/k/a WILLSON, )  
9 petitioner, )  
10 v. )  
11 DAVID C. WILLSON, )  
12 respondent. )



13 Court Docket#: 07-CS-0051  
14 Foreign Order Case No. 1JU-00-0001 CI  
15 TCSU Case #: 07-0315



16 **RESPONDENT'S LIMITED APPEARANCE AND OPPOSITION TO PETITION FOR**  
17 **RECOGNITION AND ENFORCEMENT OF FOREIGN CHILD SUPPORT ORDER**

18 Respondent David C. Willson, by and through counsel, files this limited appearance to  
19 contest jurisdiction and answers TCSU's Petition for Recognition and Enforcement of Foreign  
20 Child Support Order as follows:

- 21 1. Respondent denies the allegations contained in paragraphs 1, 2 and 4 of the Petition.
- 22 2. Paragraph 3 of the Petition contains an allegation of law to which no response is  
23 required.
- 24 3. Respondent is presently without sufficient information to admit or deny the  
25 allegations contained in paragraphs 5, 6, 7 and 8 of the Petition, and therefore denies the same.

26 **AFFIRMATIVE DEFENSES**

1. Petitioner TCSU has failed to state a claim upon which relief can be granted.

Deborah A. Holbrook  
ATTORNEY AT LAW  
301 E. Third Street  
Juneau, Alaska 99801  
(907) 463-2681

Deborah A. Holbrook  
ATTORNEY AT LAW

301 E. Third Street  
Juneau, Alaska 99801  
(907) 465-2681

1 2. The CCTH Tribal Court does not have jurisdiction over the respondent and the  
2 respondent does not consent to any jurisdiction of the CCTH Tribal Court over him.

3 Respondent is not an Alaska Native.

4 3. The Alaska Superior Court at Juneau has continuing jurisdiction over this child  
5 support matter.

6 4. The Alaska Superior Court at Juneau has a long history and familiarity with this case  
7 having most recently denied petitioner Jennie Cadiente's motion to modify child support and  
8 custody on June 20, 2006.

9 5. A Guardian ad Litem appointed by the Alaska Superior Court at Juneau and  
10 supervised by the Office of Public Advocacy has worked with this family for several years.

11 WHEREFORE, respondent respectfully requests that the April 2, 2001 Foreign Order  
12 not be accepted or recognized by the Tribal Court and that the Petition be dismissed

13 DATED: 12/7/07

14 Deborah A. Holbrook  
15 Deborah A. Holbrook,  
16 Attorney for Respondent David C. Willson

17  
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23  
24 This is to certify that a copy of this Limited Appearance and Opposition was mailed to  
25 CCTHITA Tribal Child Support Unit, 320 W. Willoughby Ave., Suite 300, Juneau, Alaska  
26 99801 on this 7<sup>th</sup> day of December, 2007. Deborah A. Holbrook

Denise Linz/CMT

Person Submitting Proposed Order:

Name: Denise Linz / Tom Wilson Date 4/9/07 Telephone No. \_\_\_\_\_

Address: \_\_\_\_\_

Attorney for defendant & plaintiff  Pro Se (not represented by an attorney) **RECEIVED** APR 05 2001

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
AT Juneau

Jennie L. Willson,  
plaintiff

v.

David C. Willson,  
defendant.

**RECEIVED**  
NOV 13 2007  
CGTHITA  
Tribal Child Support Unit

**CSED/MDC**

STATE OF ALASKA  
FIRST JUDICIAL DISTRICT  
AT JUNEAU

APRIL 2, 2001

BY: TV

CASE NO. 1 JV-00-0001 CI

CHILD SUPPORT ORDER

Interim  Final

1. Children. Custody and support are ordered for the following minor child(ren):

| Full Names of Children        | Birth Dates    | Social Security No. |
|-------------------------------|----------------|---------------------|
| <u>James Dale Willson</u>     | <u>4/17/87</u> |                     |
| <u>Brittney Marie Willson</u> | <u>1/17/88</u> |                     |
| _____                         | _____          | _____               |
| _____                         | _____          | _____               |

2. Father

Full Name: David C. Willson DOB: 12/9/46 SSN: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Residence Address: \_\_\_\_\_

Most Recent Employer: Kennecott Greens Creek Mine

Employer's Address: Vint

Mother

Full Name: Jennie L. Knudson DOB: 6/28/51 SSN: \_\_\_\_\_

Mailing Address: P.O. Box

Residence Address (if different): \_\_\_\_\_

Most Recent Employer: K-mart

Employer's Address: Juneau, AK

Custodian (if not a parent)

Full Name: \_\_\_\_\_ Birth Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Residence Address (if different): \_\_\_\_\_

3. Legal custody of the child(ren) named above is awarded to: the father and the mother

4. Physical Custody and Child Support. Civil Rule 90.3(f).

a. Primary Physical Custody For Child Support Purposes. The child(ren) shall reside primarily with \_\_\_\_\_. The other parent shall have physical custody less than 30% of the year.

The obligor, \_\_\_\_\_, shall pay child support as follows:

| <u>Number of Children</u> | <u>Basic Monthly Amount Owed</u> | <u>Health Insurance Adjustment (16)</u> | <u>Total Monthly Amount Owed</u> |
|---------------------------|----------------------------------|---|----------------------------------|
| _____                     | _____                            | _____                                   | _____                            |
| _____                     | _____                            | _____                                   | _____                            |
| _____                     | _____                            | _____                                   | _____                            |

As each child reaches the age of 18, is otherwise legally emancipated or dies, the amount of support will change to the next lower amount, unless the following box is checked:

Support shall continue while each child is 18 years old if the child is (1) unmarried, (2) actively pursuing a high school diploma or equivalent level of technical or vocational training, and (3) living as a dependent with the obligee parent or guardian or a designee of the parent or guardian.

The first payment is due no later than \_\_\_\_\_. Subsequent payments are due no later than the \_\_\_\_\_ 1st day of each month thereafter.

Extended Visitation Credit. The obligor parent shall have physical custody of the child(ren) for the following periods of over 27 consecutive days:

\_\_\_\_\_

If this visitation is exercised, child support is reduced for the above period(s) as follows:

\_\_\_\_\_

(This reduction may not exceed 75% of the amount owed for the period.)

If this visitation is not exercised, child support is not reduced. [Civil Rule 90.3(a)(3)]

- b. Shared Physical Custody For Child Support Purposes [i.e., children reside with each parent for a specified period of at least 30% of the year].

The child(ren) shall reside with \_\_\_\_\_ during the following periods: 1/2 with each parent alternate weeks and support adjustment date March 31, 2001  
and with \_\_\_\_\_ during the following periods:

The obligor, David C. Wilson, shall pay child support as follows:

| Number of Children | Basic Monthly Amount Owed | Health Insurance Adjustment (%6) | Total Monthly Amount Owed |
|--------------------|---------------------------|----------------------------------|---------------------------|
| <u>2</u>           | <u>\$ 555.26</u>          | <u>- 79.00</u>                   | <u>\$ 476.26</u>          |
| _____              | _____                     | _____                            | _____                     |
| _____              | _____                     | _____                            | _____                     |

As each child reaches the age of 18, is otherwise legally emancipated or dies, the amount of support will change to the next lower amount, unless the following box is checked:

- Support shall continue while each child is 18 years old if the child is (1) unmarried, (2) actively pursuing a high school diploma or equivalent level of technical or vocational training, and (3) living as a dependent with the obligee parent or guardian or a designee of the parent or guardian.

The first payment is due no later than April 2, 2001. Subsequent payments are due no later than the 1st day of each month thereafter.

Failure to take physical custody of the child(ren) at least 30% of the year is grounds for modification of this support order. However, denial of visitation by the custodial parent is not cause to increase child support. Civil Rule 90.3(b)(5)

5. Application of Civil Rule 90.3 Formula

- a. The above child support amounts were calculated using the formula in Civil Rule 90.3 (a) or (b).  Yes  No
- b. If not, the reason for the variation is: \_\_\_\_\_

The amount of support which would have been required by the formula is:  
\$ \_\_\_\_\_ for \_\_\_\_\_ children per month to be paid by the  Mother  Father.  
Estimated value of any property conveyed instead of monetary support: \$ \_\_\_\_\_.

6. Medical Support Order. AS 25.27.060(c) and Civil Rule 90.3(d)(1). This order concerns health insurance for the child(ren) covered by this child support order. It does not concern health insurance for any other children or for the parents.

a. Current Coverage.

The  obligor  obligee must purchase health insurance for the child(ren) because such insurance is available at reasonable cost through his/her employer, union or otherwise. Name and address of employer/union through which insurance will be purchased: Brown Creek Mine (Klamath)

The insurance cost (currently \$ 158.00 per month) will be divided between the parties equally unless a different division of the cost is ordered.

The child support calculation in paragraph 4 includes:

a credit of \$ 79.00 per month (50% of the cost to the obligor) for health insurance purchased for the child(ren) by the obligor. If the obligor fails to purchase the insurance, the monthly child support obligation will increase by this amount, without further order of the court, until the obligor purchases the insurance and provides proof of the purchase to the other parent and to the Child Support Enforcement Division (CSED) if CSED is handling collections.

an extra \$ \_\_\_\_\_ per month (50% of the cost to the obligee) for health insurance purchased for the child(ren) by the obligee. If the obligee fails to purchase the insurance, the monthly child support obligation will decrease by this amount, without further order of the court, until the obligee purchases the insurance and provides proof of the purchase to the other parent and to the Child Support Enforcement Division (CSED) if CSED is handling collections.

If the cost of the insurance changes, the amount of the child support obligation will be adjusted accordingly, without further order of the court. The parent purchasing the insurance shall provide documentation of the change to the other parent and to the Child Support Enforcement Division (CSED) if CSED is handling collections. If either parent believes the cost of the insurance has become unreasonable, that parent may file a motion asking the court to suspend the requirement that insurance be purchased.

The children are eligible for services through  the Indian Health Service  military medical benefits but these services are not available in the area where the children live. Therefore, insurance must be purchased as stated above until these services become available.

The children are eligible for services through  the Indian Health Service  military medical benefits and these services are available to the children. Therefore, ~~no additional insurance is required while these services are available.~~

Health insurance for the child(ren) is not now available at reasonable cost or its availability is unknown.

9. **INCOME WITHHOLDING ORDER.** Unless one of the following boxes is checked (or CSED later authorizes an exemption for one of these reasons), the obligor, any employer of the obligor and any person, political subdivision, department of the State, or other entity possessing property of the obligor, including any corporation created by the Alaska Native Claims Settlement Act, shall immediately withhold from the obligor's income and any other money due the obligor the amount of child support due pursuant to AS 25.27.062 and shall pay this amount to the Child Support Enforcement Division.

The parties have agreed on the alternative arrangement described in the attached document signed by both parties.

The court finds good cause not to require immediate income withholding because it would not be in the best interests of the child(ren) for the following reason:

The obligor is receiving social security or other disability compensation that includes regular payments to the child(ren) at least equal to the support owed each month. To the extent these payments to the child(ren) do not satisfy the monthly amount owed, the remaining amount due shall be withheld from the obligor's income pursuant to AS 25.27.062.

Even if one of the above boxes is checked, exempting the obligor from immediate income withholding, such withholding may be initiated under AS 25.27.062(c) through the court or through CSED.

10. **CSED Services.** All child support payments must be made to the Child Support Enforcement Division (CSED) if one of the parties applies for the services of CSED. In addition, if the above income withholding order is served on the obligor's employer or anyone holding money belonging to the obligor, the money withheld pursuant to the order must be paid to CSED.

An application for CSED services <sup>will be</sup> has been made.

No application for CSED services has been made at the time of this order.

When payments are made through CSED:

- a. Payments must include the case number and names of both parties and must be made payable to the CHILD SUPPORT ENFORCEMENT DIVISION, PO Box 102760, Anchorage, Alaska 99510-2760. CSED shall disburse the payments as required by law after deducting any fee required by law.
- b. CSED shall maintain a record of support payments.
- c. Interest will be imposed in accordance with AS 25.27.020 on payments which are 10 or more days overdue or if payment is made by a check backed by insufficient funds. No interest will be charged, except on arrearages more than 30 days past due, if payments are made under an income withholding order.

In addition, the obligor has agreed to keep the obligee (or CSED if CSED is enforcing the order) informed of the obligor's current employer and the availability of employment-related health insurance coverage for the children until the support order is satisfied.

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DR-300 (12/00)(cs)

CHILD SUPPORT ORDER

EXHIBIT 6

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JUL-10-376 CI

AS 25.27.020, .062, .080

AS 25.24.230(a)

EXC. 452

- d. The parties shall notify CSED, in writing, of any change in their mailing or residence addresses within 5 days after any such change.
  - e. The obligor shall keep CSED informed of the name and address of his or her current employer. Whenever employment changes, the obligor must notify CSED in writing within 20 days. This employment information must be given to the obligee instead of CSED if CSED is not enforcing the order.
  - f. The party ordered to provide insurance shall provide to CSED proof of medical insurance coverage for the children within 20 days of this order. If insurance becomes unavailable, that party shall notify CSED within 20 days. When insurance again becomes available, that party must, within 20 days, give CSED proof that the children are insured. The above proof and notice of insurance must be given to the other party instead of CSED if CSED is not enforcing the order.
  - g. If a party applies for CSED services:
    - (1) CSED shall take whatever enforcement action is deemed legally proper, including recommending contempt proceedings against the party ordered to pay support. Failure to pay support as ordered may result in execution against the property of the obligor or arrest of the obligor.
    - (2) Either party may ask CSED to review the amount of child support if it has been at least 12 months since the support order was last reviewed or modified. CSED may require that the request be made in writing on a form specified by CSED. The parties shall provide income information requested by CSED in connection with a review of the amount of child support within 20 days after the date the request is mailed.
    - (3) CSED may issue a withholding order, pursuant to AS 25.27.062 or AS 25.27.250, to attach funds owed to the obligor by any corporation created by the Alaska Native Claims Settlement Act (ANCSA). Upon service of such an order, the obligor's dividends, distributions and/or other periodic monetary benefits of ANCSA stock shall be transferred to the child support obligee pursuant to the terms of the withholding order. The ANCSA corporation shall pay the funds so transferred to CSED for distribution to the child support obligee.
11. Effect of Assignment of Right to Child Support to State. This order does not bind the Child Support Enforcement Division of Alaska or of any other state to the child support herein ordered if the person receiving child support is receiving or has currently applied for welfare benefits and assigns his or her rights to child support to the state. AS 25.27.120 - .130. If child support rights are assigned to the state, any alternative arrangement for immediate income withholding will not be allowed unless approved by CSED.

12. Additional Information. The parties are hereby notified that:

- a. Payment of support must be made as ordered herein, and the giving of gifts, clothing, or other in-kind payments will not fulfill the obligation.
- b. Payment of support must be made as it becomes due, and failure to secure or denial of rights of visitation is not an excuse for nonpayment, but the aggrieved party must seek relief from the court as otherwise provided by law.
- c. The payment of support takes priority over payment of debts and other obligations.
- d. A party who marries or otherwise accepts additional obligations of support does so with the full knowledge of prior obligations under this proceeding and will be given no consideration for those additional obligations in subsequent proceedings for alleged failure to make the payments as ordered herein.
- e. It is the responsibility of a person with seasonal employment to budget income so that payments are made regularly throughout the year as ordered.

Recommended for approval on

|                       |                            |        |
|-----------------------|----------------------------|--------|
|                       |                            |        |
| Date                  | <i>[Signature]</i>         | 4/2/11 |
| Superior Court Master | Superior Court Judge       | Date   |
|                       | <i>Larry P. Weeks</i>      |        |
|                       | Type or Print Judge's Name |        |

I certify that on APRIL 2, 2011  
 a copy of this order was sent to:  
 CSED\*\*  
 Administrative Director of the Court System (if 5.a. is no)  
 Employer of \_\_\_\_\_ (with DR-330 Notice)\*\*\*  
 Both Parties:  
 Attorneys: *D. Hollbrook + T. Wagner by CTBCK*  
 Clerk: *[Signature]*

\*\* Also send CSED (1) any application for CSED services and (2) a copy of the dissolution petition and amendments or the child support guidelines affidavit (DR-305).

\*\*\* A copy of the order and the DR-330 Notice to Employer Re: Children's Medical Insurance must be sent to the employer of the party ordered to purchase insurance for the children if that party is eligible for family health care coverage through his/her employer. AS 25.27.063(b).



Deborah A. Kolbrook  
ATTORNEY AT LAW  
301 E. Third Street  
Juneau, Alaska 99801  
(907) 462-2662

1 majority, the child support shall be recalculated in accordance with Civil Rule 90.3 for Brittney  
2 alone.

3 3. The parties are granted joint legal custody and shared physical custody of their  
4 children James and Brittney. The terms of the Child Custody and Support Agreement dated  
5 March 30, 2001, are in the best interests of the children, James and Brittney, and are  
6 incorporated into this Decree as if fully set forth herein.

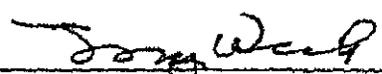
7  
8 4. The terms of the Property Agreement dated March 30, 2001, fairly allocate the  
9 economic effects of this divorce between the plaintiff and the defendant, and are incorporated  
10 into this Decree as if fully set forth herein. Each of the parties shall execute any and all transfer  
11 documents that are necessary to accomplish the terms of their property agreement within 30  
12 days of the date of the divorce decree.

13  
14 5. That the plaintiff's last name is restored to Knudson;

15 6. That the court shall issue a QDRO accomplishing the transfer of the designated  
16 portion of the defendant's Kennecott retirement accumulation plan to the plaintiff.

17 7. Each of the parties shall bear his or her own attorney's fees and costs.

18 DATED this 21st day of April, 2001.

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22 \_\_\_\_\_  
23 Larry R. Weeks, Superior Court Judge



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6. You may have an attorney help or represent you. If you plan to be represented by an attorney, you should contact the attorney prior to the court appearance listed above. Tribal Child Support Unit does not represent the Petitioner or the Respondent in this action and will not provide legal advice to either party.

Dated this 28<sup>th</sup> Day of November, 2007.

  
Marilyn L. Peratrovich  
Clerk of the Court  
Tribal Court  
Tele: (907) 463-7165  
Toll free: 800-344-1432  
Fax: (907) 463-7741

NOTICE – Foreign Support Order

Page 2 of 2

CCTHFTA Tribal Child Support Unit  
320 W. Willoughby Ave, Suite 300  
Juneau, AK 9980  
1-800-344-1432 / 907-463-7741 Fax

EXHIBIT 6  
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EXC. 458

**CCTHITA Tribal Court**  
**MAY 13 2008**

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

**Tribal Child Support Unit,**

**Ex Rel.**

**Order of Child Support**

**Gabriel G. Werth,  
A minor child under the age of 18  
Josephine K. Werth,**

**Petitioner**

**Court Docket #: 08-CS-0038**

**Vs**

**TCSU Case #: 07-0083**

**Kenneth D. Werth, Jr.,**

**Respondent**

**Order of Child Support**

**I. BASIS**

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

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

**II. ORDER**

**IT IS ORDERED that:**

Order of Child Support

certify that I served this document on the following parties on 10/22/08 by R (regular mail), C (certified mail), I (interoffice mail), P (personal delivery) at their last known address  
CSO (R) Cert Copy

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

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

Gabriel G. Werth                      July 3, 2007  
Name    Date of Birth

2. THE PERSON PAYING SUPPORT (OBLIGOR) IS:

Name: Kenneth D. Werth, Jr.  
 Monthly Gross Income: \$ \_\_\_\_\_  
 The income of the obligor is imputed at \$ \_\_\_\_\_ because  
 The obligor's income is unknown.  
 The obligor is voluntarily unemployed.  
 The obligor is voluntarily underemployed.  
 Other: \_\_\_\_\_

3. THE PERSON RECEIVING SUPPORT (OBLIGEE) IS:

Name: Josephine K. Werth  
 Monthly Gross Income: \$ \_\_\_\_\_  
 The income of the obligor is imputed at \$ \_\_\_\_\_ because  
 The obligor's income is unknown.  
 The obligor is voluntarily unemployed.  
 The obligor is voluntarily underemployed.  
 Other: \_\_\_\_\_

4. Commencing June 1, 2008, the Respondent, Kenneth D. Werth, Jr. shall pay \$50 per month in child support. This amount represents \$50 current child support and \$0 towards back child support in the amount of \$0.

The breakdown for the back support is as follows:

|                                 |            |
|---------------------------------|------------|
| Owed to the State of Alaska     | \$0        |
| Owed to Petitioner              | \$0        |
| <b>Total Child Support Debt</b> | <b>\$0</b> |

5. STARTING DATE AND DAY TO BE PAID.

Starting Date: June 1, 2008  
Day(s) of the month support is due: the first day of each month

6. Respondent to pay the total monthly obligation through income withholding:  
Not covered by this Court at this time.

- Voluntary wage withholding
- Wage Garnishment

7. HOW SUPPORT PAYMENTS SHALL BE MADE.

Payments are to be made payable and mailed as follows:

CCTHITA Tribal Child Support Unit

Order of Child Support:

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

320 W. Willoughby Ave. Suite 300  
Juneau, AK 99801  
1-800-344-1432

8. **TERMINATION OF SUPPORT.**

Support shall be paid:

- Provided that this is a temporary order, until a subsequent order is entered by this court.
- Until the child/ren reach(es) the age of 18.
- Until the child reaches the age of 18 or as long as the child remains in high school, whichever occurs last.
- Pursuant to administrative or other valid court order: \_\_\_\_\_

9. **POST-MINORITY SUPPORT.**

Not covered by this Court at this time.

- No post secondary educational support shall be required.
- Other: \_\_\_\_\_

10. **MEDICAL INSURANCE.**

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

Not covered by this Court at this time.

- Mother
- Father

11. **EXTRAORDINARY HEALTH CARE EXPENSES.**

Not covered by this Court at this time.

The Respondent shall pay \_\_\_\_\_ % of extraordinary health care expenses.

12. **INCOME TAX EXEMPTIONS.**

Not covered by this Court at this time.

- Does not apply.
- Tax exemptions for the child/ren shall be allocated as follows:

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

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

Order of Child Support

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

1 Disobedience of this order is punishable by contempt.

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

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

15 SO ORDERED ON THIS 13<sup>th</sup> DAY OF May, 2008.

16 Debra S. O'Gara  
17 Debra S. O'Gara  
18 Tribal Court Magistrate

19 I certify that on May 14, 2008, a copy of this document was mailed or personally served to the  
20 following parties:  Respondent  Petitioner  TCSU  Other: \_\_\_\_\_

21 Marilyn Peratrovich  
22 Marilyn Peratrovich

23 R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail

24 Order of Child Support

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

**CCTHITA Tribal Court**  
MAY 13 2008

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

|   |                                     |   |
|---|-------------------------------------|---|
| <b>Tribal Child Support Unit,</b><br><b>Gabriel G. Werth</b><br>A minor child under the age of 18<br><b>Josephine K. Werth</b><br><b>Vs</b><br><b>Kenneth D. Werth, Jr.,</b><br>Presumed Father,<br><b>Donnelly J. Charboneau,</b><br>Alleged Father. | <b>Ex Rel.</b><br><b>Petitioner</b> | <b>ORDER ESTABLISHING PATERNITY</b><br><br>Court Docket #: 08-CS-0038<br><br>TCSU Case #: 07-0083 |
|---|-------------------------------------|---|

**FINDINGS OF FACT**

Based on testimony taken on May 13, 2008 at a hearing attended by Jessie Archibald, Tribal Child Support Unit Attorney; Carlen Williams, Tribal Child Support Caseworker; Josephine K. Werth, Petitioner and mother; Kenneth D. Werth, Jr., Respondent and Presumed father; and Donnelly J. Charboneau, Respondent and Alleged father; the facts declared to in the pleadings; a review of the Court's file and the documents presented on the record in this matter, Court makes the following decision(s):

**THE COURT FINDS:**

1. That the facts in the Petition are true and correct.
2. That the Tribal Child Support Unit represents the Central Council Tlingit and Haida Indian Tribes of Alaska, and does not represent any individual in this action.
3. That the Tribe is a real party in interest in this case pursuant to Family Responsibility, Sec. 10.03.002.
4. That the Tribal Child Support Unit provides child support enforcement services for the benefit of the minor child(ren) who is/are the subject of this action pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq.).

ORDER ESTABLISHING PATERNITY

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

- 1 5. That this Court has jurisdiction to hear and decide this matter in accordance with  
2 Article 1, Section 1-4 of the CCTHITA Constitution, in that the Petitioner and  
3 Child are members of or eligible for membership in the Central Council Tlingit  
4 and Haida Indian Tribes of Alaska.  
5 6. That the Petitioner, Josephine K. Werth, is an enrolled tribal member.  
6 7. That the Respondents, Kenneth D. Werth, Jr. and Donnelly J. Charboneau,  
7 are not enrolled tribal members.  
8 8. That Josephine K. Werth and Kenneth D. Werth, Jr. were legally married  
9 and engaged in sexual intercourse during the probable period of conception, that  
10 a minor child, Gabriel G. Werth was born alive on 7/3/07.  
11 9. That the above named child was born to Josephine K. Werth on 7/3/07, in the  
12 Ketchikan, Alaska. Gabriel G. Werth currently resides with Josephine K.  
13 Werth.  
14 10. That the birth certificate is recorded at the Bureau of Vital Statistics for the state  
15 of Alaska and does contain the name of the Respondent, Kenneth D. Werth,  
16 Jr., as the father.  
17 11. There is not at present time a court order establishing paternity.  
18 12. That the Petitioner does not desire to have paternity established for any illegal or  
19 fraudulent purpose.  
20 13. The Tribal Child Support Unit has incurred the following costs in pursuit of this  
21 action:  paternity test fees or  expert witness fees.

22 **THE COURT FURTHER FINDS:**

- 23 1. That Respondent, Kenneth D. Werth, Jr. has acknowledged to be the father of  
24 minor child, Gabriel G. Werth by signing a Paternity Statement;  
25 2. That Respondent, Donnelly J. Charboneau, the alleged father withdrew his  
request for a Genetic test and acknowledged on the record that Kenneth D.  
Werth, Jr. was the father of the Child Gabriel G. Werth;

**ORDER**

**IT IS HEREBY ORDERED THAT paternity be established as follows:**

1. Court hereby finds the Respondent, Kenneth D. Werth, Jr., to be the legal  
father of Gabriel G. Werth, born 7/3/07;

ORDER ESTABLISHING PATERNITY

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

- 1           2.     That Respondent, **Donnelly J. Charboneau**, is not the legal father of **Gabriel G. Werth**, born on 7/3/07; and
- 2
- 3           3.     That Respondent, **Donnelly J. Charboneau**, is no longer a party in this matter.

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

7 Disobedience of this order may be punishable by a finding of contempt.

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

17 SO ORDERED ON THIS 13<sup>th</sup> DAY OF MAY, 2008.

18  
19 Debra S. O'Gara  
20 Debra S. O'Gara  
Tribal Court Magistrate

22 I certify that on May 14, 2008, a copy of this document was mailed or personally served to the following parties:  Respondent R;  Petitioner R;  TCSU I;  Other: Charboneau.

23 Marilyn Peratrovich  
24 Marilyn Peratrovich

R=Regular mail; C=Certified, return receipt; P=Personal; I=interoffice mail

25 ORDER ESTABLISHING PATERNITY

I certify that I served this document on the following parties on 11/5 2008 by R (regular mail); C (certified mail); I (interoffice mail); P (personal service), at his/her last known address.

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

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Signed ESD - CRT  
**EXHIBIT 8**

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**CCTHITA Tribal Court**  
FEB - 2 2009

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

|   |   |   |
|---|---|---|
| <p>Tribal Child Support Unit,<br/><br/>Gabriel G. Werth,<br/><br/>Josephine K. Werth,<br/><br/>Va<br/><br/>Kenneth D. Werth, Jr.,</p> | <p>Ex Rel.<br/><br/>Child<br/><br/>Petitioner<br/><br/>Respondent</p> | <p><b>MOTION FOR RECOGNITION AND<br/>ENFORCEMENT OF FOREIGN CHILD<br/>ORDER</b><br/><br/>Court Docket #: 08-CS-0038<br/><br/>TCSU Case No. 07-0083<br/><br/>Foreign Order Case# 1KE-08-188 CI</p> |
|---|---|---|

**ORIGINAL**

**NOW COMES** the Tribal Child Support Unit (TCSU) praying the Court, based upon the records and the pleadings below, to recognize the attached **ALASKA ADMINISTRATIVE OR COURT CHILD SUPPORT Order, Case No. 1KE-08-188 CI** for the purpose recognition.

In support of this Petition to Recognize and Enforce Foreign Order the Court is informed as follows:

1. That Petitioner is and Respondent is not an enrolled member of Central Council Tlingit and Haida Indian Tribes of Alaska, and subject to the jurisdiction of the Court in this matter because the above child is enrolled or eligible to be enrolled in the Central Council Tlingit and Haida Indian Tribes of Alaska.

PETITION FOR RECOGNITION AND ENFORCEMENT  
OF FOREIGN ORDER -1

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

EXHIBIT 8  
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1           2.     That if the Court accepts the Petition, any action for enforcement and/or  
2 modification by the TCSU against the Respondent would be enforceable through Central Council  
Tlingit and Haida's Tribal Court.

3           3.     That pursuant to CCTHITA Family Responsibility, Sec. 10.05.001, the TCSU  
4 may enforce the order through an order to show cause and civil contempt, issuance of an income  
withholding order, execution of the order or attachment of assets.

5           4.     That based upon the attached records of ALASKA COURT ORDER Case No. :  
6 IKE-08-188 CI, paternity of Gabriel G. Werth, has been disestablished by the Ketchikan  
Superior Court on September 26, 2008. Based upon this disestablishment of paternity, the  
7 Respondent no longer owes a duty of child support for Gabriel G. Werth, effective on the  
date that paternity was disestablished.

8           5.     The Respondent Kenneth Werth was found to be the legal father of Gabriel G.  
9 Werth pursuant to a CCTHITA Paternity Order entered on May 13, 2008 where the parties  
provided testimony and evidence that Mr. Werth was the father to Gabriel G. Werth.

10          6.     Based upon the establishment and disestablishment of paternity for Gabriel G.  
11 Werth, the Respondent does owe a duty of child support for the months that the CCTHIA Court  
12 ruled that he was the child's biological father, to wit: May 13, 2008 - September 26, 2008 when  
the Ketchikan Superior Court disestablished paternity.

13          7.     Based upon the above information, TCSU respectfully requests that the  
14 CCTHITA Tribal Court accept this certified copy of foreign order for registration appropriate  
entry of a final order.

15           Dated this 2<sup>nd</sup> day of February, 2009.

16           Submitted by:

17 Carlen Williams  
18 Carlen Williams  
19 Child Support Specialist

20           Approved for Entry:

21 Jessie M. Archibald  
22 Jessie M. Archibald  
23 TCSU Attorney

24  
25 PETITION FOR RECOGNITION AND ENFORCEMENT  
OF FOREIGN ORDER -2

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

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EXC. 467

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT KETCHIKAN

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4  
5 KENNETH WERTH, JR., )

6 Plaintiff, )

7 v. )

8 JOSEPHINE WERTH, )

9 Defendant. )

Filed in the Trial Courts  
State of Alaska  
First Judicial District  
at Ketchikan.

SEP 26 2008

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

Case No. 1KE-08-188 CI

10 DIVORCE DECREE

11 A divorce hearing herein occurred on September 26, 2008. The parties appeared.  
12 Both testified. The court has entered herewith findings of fact and conclusions of law. Based  
13 upon the same, the court finds that Ms. Werth is entitled to an absolute decree of divorce from  
14 Mr. Werth and orders that the bonds of matrimony previously existing between the parties are  
15 hereby irrevocably severed. Further, the court finds that Ms. Worth is entitled to have her prior  
16 last name of Guthrie restored, and the same is ordered.  
17

18 IT IS SO ORDERED.

19 Dated at Ketchikan, Alaska this 26<sup>th</sup> day of September 2008.

20  
21 CERTIFICATION:

22 Copies Distributed

23 Date 9/29/08

24 To K. Werth

J. Werth

25 By OK

*Treyor N. Stephens*  
Treyor N. Stephens  
Superior Court Judge



I hereby certify that the annexed instrument  
is a true and correct copy of the original on  
file in my office. *DP*

ATTEST: \_\_\_\_\_  
CLERK-TRIAL COURTS  
State of Alaska  
at Ketchikan

DIVORCE DECREE

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI  
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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT KETCHIKAN  
3

4 KENNETH WERTH, JR., )  
5 )

6 Plaintiff, )

7 v. )

8 JOSEPHINE WERTH, )  
9 )

10 Defendant. )

Filed in the Trial Courts  
State of Alaska  
First Judicial District  
at Ketchikan

SEP 26 2008

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

Case No. 1KE-08-188 CI

11 MEMORANDUM AND ORDER

12 A divorce hearing in this case occurred on September 26, 2008. Both parties  
13 appeared. Neither was represented by counsel. Both testified. The court took the matter under  
14 advisement pending issuance of this written decision.

15 I. FACTS

16 The parties married at Ketchikan on December 4, 2004. They have since been  
17 husband and wife. They have two children: Elijah St. Clair Werth (DOB 6/24/02) and Johanna  
18 Grace Werth (DOB 10/02/05). Ms. Werth gave birth to a third child, Gabriel Galloway Werth  
19 on July 3, 2007. There is clear and convincing evidence that Mr. Werth is not Gabriel's natural  
20 father.<sup>1</sup>  
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25 <sup>1</sup> Mr. Werth asserted as much in his Complaint. Ms. Werth agreed in her Answer. Both parties testified that Mr. Werth is not Gabriel's natural father. There is no evidence in the record that there has been a DNA test which reflects that Mr. Werth is Gabriel's natural father.

MEMORANDUM AND ORDER

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI

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Alaska Court ~~EXHIBIT~~

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1 There has developed an incompatibility of temperament between the parties such  
2 that they can no longer live together as husband and wife. They separated on February 26,  
3 2007.<sup>2</sup>

4 Ms. Werth lives in Ketchikan. She is a full-time student. The children, including  
5 Gabriel, have resided with her since the parties separated. The children resided in Ketchikan for  
6 at least the 6 months preceding the filing of the Complaint herein.

7 Mr. Werth is a fisherman. He lives on a fishing boat. His adjusted annual income  
8 is approximately \$15,000.<sup>3</sup> He presently resides in Craig. At this point he plans to remain there  
9 for the foreseeable future.

10 The parties agree that Ms. Werth should have sole legal and primary physical  
11 custody of Elijah and Johanna. Mr. Werth requests summer visitation and that holidays be split  
12 between the parties. Ms. Werth wants the children to spend time with Mr. Werth. But she  
13 objects to their being away from her and with him for a 3 month period.

14 The parties do not own any real property. There is no evidence that they have any  
15 marital funds in a bank or outside of a bank. They do not have retirement accounts.

16 Mr. Werth owns limited entry permits. He owned them at the time of the parties'  
17 marriage.<sup>4</sup> He owes the State of Alaska some \$60,000 on the permits. Ms. Werth is an obligor  
18 on the loan(s).

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22 <sup>2</sup> Per Ms. Werth's Financial Declaration.

23 <sup>3</sup> His 90.3 affidavit and most recent tax return reflect that his adjusted annual income is \$13,162. He did not  
24 however, include the PFD. He has not shown that he does not qualify for the PFD or that he does not receive PFD's.  
25 The parties disputed his income. Ms. Werth testified that it is higher. But she did not provide any specifics or  
related evidence. The court found Mr. Werth's evidence and related testimony credible.

<sup>4</sup> Ms. Werth apparently disputes that the permits are separate property. She did not provide any specific  
information to support her position or which contradicts Mr. Werth's testimony that he owned them before the  
parties married and she has not shown that the permits were acquired during the marriage or that they were

**MEMORANDUM AND ORDER**

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KF-08-188 CI

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1 The parties own household furnishings, some items of personal property, and  
2 vehicles.<sup>5</sup> The vehicles are titled in Mr. Werth's name. The related values are as follows:

|    |     |                                    |         |
|----|-----|------------------------------------|---------|
| 3  | 1.  | ATV 4-wheeler                      | \$5,000 |
| 4  | 2.  | Durango                            | \$8,000 |
| 5  | 3.  | Dodge Truck                        | \$5,000 |
| 6  | 4.  | 50cc ATV                           | \$400   |
| 7  | 5.  | 50cc Honda motorcycle              | \$400   |
| 8  | 6.  | 243 rifle                          | \$400   |
| 9  | 7.  | Diamond necklace/earrings          | \$2,000 |
| 10 | 8.  | engagement ring/watch              | \$400   |
| 11 | 9.  | lap top computer                   | \$400   |
| 12 | 10. | computer                           | \$100   |
| 13 | 11. | household furnishings <sup>6</sup> | \$2,700 |
| 14 | 12. | gun safe                           | \$100   |
| 15 | 13. | pressure cooker & dehydrator       | \$400   |
| 16 | 14. | dive gear                          | \$600   |

17 The parties have marital debts,<sup>7</sup> consisting of:

|    |    |                    |          |
|----|----|--------------------|----------|
| 18 | 1. | Citibank           | \$1,800  |
| 19 | 2. | ATV 4-wheeler loan | \$3,000  |
| 20 | 3. | Durango loan       | \$10,000 |
| 21 | 4. | Dodge Truck loan   | \$5,000  |

22 The loans are all in Mr. Werth's name.

23 Ms. Werth requests that her prior last name of Guthrie be restored.

## 24 II. DISCUSSION

### 25 a. Jurisdiction

The court has jurisdiction to grant a divorce, and to adjudicate property, custody, visitation, and property issues.

transmuted into marital property during the marriage. She did not include the permits on her Financial Declaration or Debt worksheet.

<sup>5</sup> The parties' testimony concerning their property was somewhat sparse. Much of the information on values and identification of the tangible personal property herein is from Ms. Werth's Financial Declaration and Property and Debt Worksheet.

<sup>6</sup> Furniture, entertainment center, table/chairs, TV, bedroom furniture.

## MEMORANDUM AND ORDER

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI  
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EXHIBIT 8  
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**b. Divorce**

The hearing testimony reflects that it is Ms. Werth who wants the divorce. She is entitled to a decree of divorce.

**c. Former Name**

Ms. Werth is entitled to the restoration of her former last name of Guthrie.

**d. Disestablishment of Paternity**

The parties have shown by clear and convincing evidence that Mr. Werth is not the natural father of Gabriel G. Werth (DOB 7/03/07).<sup>8</sup> So his paternity is disestablished. He has not parental rights or obligations with respect to Gabriel.

The court is not herein establishing paternity for Gabriel's actual natural father. That would need to be addressed in a separate proceeding. As would issues concerning custody, visitation, and child support for Gabriel. Also, if Ms. Werth wants Gabriel's last name changed she will need to file a change of name action (forms are available at the Court Clerk's Office).

**e. Legal Custody**

The court finds that it is in the best interests of Elijah and Johanna that Ms. Werth be awarded sole legal custody for three reasons. First, the parties agree she should have sole legal custody. Second, she will have primary physical custody of these children. Third, Mr. Werth resides in a different community.

Mr. Werth continues to be entitled to receive information about these children for example information concerning their health, welfare, and education.

<sup>7</sup> Ms. Werth listed other debts, including her student loan and a credit bureau debt, in the documents she submitted to the court but does not claim that they are marital.

**MEMORANDUM AND ORDER**

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI

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**f. Physical Custody**

The court finds that it is in Elijah and Johanna's best interest that Ms. Werth be awarded primary physical custody for three reasons. First, the parties agree that this is in their best interest. Second, Ms. Werth has had primary physical custody of the children since the parties' separated. Third, Mr. Werth acknowledges that she can meet their needs (AS 25.24.150(c)(1),(2)) better than he, and provide them stability and continuity that he cannot (AS 25.24.150(c)(5))

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**g. Visitation**

Mr. Werth shall be entitled to frequent unmonitored communication with Johanna and Elijah. The communication must be reasonable in terms of frequency, timing, duration, and content. The parties shall keep each other informed in a timely manner of any changes in their addresses (mailing and physical) or phone numbers (work, home, cell).

Mr. Werth shall be entitled to reasonable non-overnight visitation with Elijah and Johanna in the community in which they reside. He must provide Ms. Werth with reasonable advance notice of his arrival.

Elijah is 6 and Johanna is almost 3. They should not be separated during visits. They are too young, Johanna in particular, to be away from Ms. Werth for lengthy periods of time. Also, they would be with Mr. Werth on his boat (while he is working) the entire period of visitation. They apparently were with Mr. Werth on his boat for 2 weeks last summer. Ms. Werth has not claimed that there were problems with that visitation.

\* The Alaska Supreme Court's decision in *Smith v. Smith*, 845 P.2d 1090 (Alaska 1993) reflects that the court has the authority to disestablish paternity in the context of a divorce action.

**MEMORANDUM AND ORDER**

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI  
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1 Mr. Werth shall be entitled to 2 weeks of summer visitation with Elijah and  
2 Johanna each of the next 2 summers - 3 weeks the following summers. The court would  
3 certainly consider longer periods of visitation if the children would not be spending the entire  
4 time on the boat. If this change occurs, Mr. Werth can move to modify visitation.

5 Mr. Werth is entitled to have Elijah and Johanna every other Christmas and  
6 Thanksgiving. He will have them for Thanksgiving in even years and Christmas on odd years.  
7 The Thanksgiving visitation will be 3 days and the Christmas visitation for 5 days if the parties  
8 are in different communities. If they are in the same community then he shall have these  
9 children from 9:00 a.m. to 8:00 p.m. The parties shall share equally the travel costs for the  
10 children, and for someone to accompany them if that is reasonably necessary.

11 The parties shall communicate and cooperate with each other with respect to  
12 scheduling Mr. Werth's summer and holiday visitations and purchasing any required tickets.

#### 13 h. Property

14 Property division involves a three-step process.<sup>9</sup> First, the court identifies which  
15 assets and debts are "marital" and which are not. Usually, this determination is made as of the  
16 date of the parties' separation.<sup>10</sup> Second, the court determines the fair market value of the  
17 property (debts/assets).<sup>11</sup> Usually, property is valued as of the date of trial.<sup>12</sup> Third, the court  
18 equitably divides the property between the parties. Normally, the property is divided equally  
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24 <sup>9</sup> *Wanberg v. Wanberg*, 664 P.2d 568, 570 (Alaska 1983).

25 <sup>10</sup> *Foster v. Foster*, 883 P.2d 397, 399 (Alaska 1994).

<sup>11</sup> *Richmond v. Richmond*, 779 P.2d 1211, 1214 (Alaska 1989).

<sup>12</sup> *Ogard v. Ogard*, 808 P.2d 815, 819 (Alaska 1991).

#### MEMORANDUM AND ORDER

Kenneth Werth, Jr. v. Josephine Werth, Case No. IKE-08-188 CI

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Alaska Court ~~EXHIBIT 2~~

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1 between the parties.<sup>13</sup> However, the allocation must fairly allocate the economic effect of the  
2 divorce based on the considerations set forth at AS 25:24.160(a)(4)(A-I).<sup>14</sup>

3 **1. Identification**

4 The marital assets/debts are as set forth above.

5 **2. Values**

6 The values of the marital assets/debts are as set forth above.

7 **3. Allocation**

8 A somewhat uneven allocation of the marital debts and assets is appropriate for  
9 fifth reasons. First, Mr. Werth is working and owns valuable income-generating separate  
10 property (limited entry permits). Second, he has relatively few living expenses as he lives alone  
11 on his (leased) boat. Third, Ms. Werth is currently a full-time student. Fourth, she has custody  
12 of three small children. Fifth, disentangling the parties economically is appropriate and  
13 generally debts should follow assets.  
14

15 **A. Mr. Werth**

16 **Assets**

|    |               |          |
|----|---------------|----------|
| 17 | ATV 4-wheeler | \$5,000  |
| 18 | Dodge Truck   | \$5,000  |
| 19 | 243 Rifle     | \$400    |
| 20 | Gun safe      | \$100    |
| 21 | Dive Gear     | \$600    |
| 22 |               | \$11,100 |

23 <sup>13</sup> *Gabaig v. Gabaig*, 717 P.2d 835, 842 (Alaska 1986).

24 <sup>14</sup> These considerations are: the length of the marriage and the parties' station in life during the marriage; the age  
25 and health of the parties; the parties' earning capacities; the parties' financial conditions (including availability/cost  
of health insurance); the conduct of the parties (i.e. did a party unreasonably deplete a marital asset); the desirability  
of awarding the family home to a party with primary physical custody; the parties' circumstances and necessities;  
the time and manner of acquisition of the property; and the income-producing capacity of the property and the value  
of the property at the time of division.

**MEMORANDUM AND ORDER**

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI  
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Debts

|  |                 |
|--|-----------------|
| ATV loan                                   | \$3,000         |
| Dodge Truck loan                           | \$5,000         |
| Limited Entry Permit loan(s) <sup>15</sup> | <u>\$60,000</u> |
|  | \$68,000        |

B. Ms. Werth

Assets

|   |                |
|---|----------------|
| Durango                                     | \$10,000       |
| Remainder of personal property listed above | <u>\$6,800</u> |
|   | \$16,800       |

Debts

|              |                 |
|--------------|-----------------|
| Citibank     | \$1,800         |
| Durango loan | <u>\$10,000</u> |
|              | \$11,800        |

Mr. Werth shall convey title to the Durango to Ms. Werth within 2 weeks. She is solely responsible for the loan payments and car insurance. She shall make the related payments in a full and timely manner. She shall promptly take steps to refinance the Durango loan, if reasonably possible, so that it is in her name alone. She shall indemnify Mr. Werth with respect to any liabilities and expenses he reasonably incurs due to the Durango loan. This means, for example, that she is obligated to reimburse him if he has to make payments on the loan.

Mr. Werth shall promptly and diligently take steps to amend the permit loan(s) so that Ms. Werth is no longer an obligor. He shall make all loan payments in full in a timely manner. He shall indemnify Ms. Werth for any liabilities and expenses she may incur with

<sup>15</sup> It is not entirely clear whether this is a marital debt or not. But it is a debt owed by both parties and it is appropriate that the court consider it herein - particularly since Mr. Werth agreed to assume to it.

MEMORANDUM AND ORDER

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI  
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Alaska Court System  
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1 respect to the permit loan(s). This means, for example, that he is obligated to reimburse her is  
2 she has to make any payments on the loan(s).

3 Mr. Werth shall convey title to the motorcycle and smaller ATV to Ms. Werth  
4 within 2 weeks.

5 If a party possesses an asset allocated herein to the other party they shall promptly  
6 make the same available to the other party:

7 The parties shall promptly exchange necessary information and sign whatever  
8 documents are reasonably required to effectuate the above orders.

9  
10 **i. Other Orders**

11 The parties shall not say anything disparaging about the other or the other's  
12 family in the presence of either child (Elijah or Johanna) and they shall not permit anybody else  
13 to do so.

14 The parties shall not permit either child to be in the presence of persons smoking  
15 cigarettes or other tobacco products.

16 Neither party may be under the influence of alcohol while either child is in their  
17 care. The parties shall assure that neither child is in the presence of anybody under the influence  
18 of alcohol.

19 Neither party may consume, possess, or be under the influence of unlawful  
20 controlled substances, including marijuana, while either child is in their care and they shall not  
21 permit either child to be in the presence of anybody possessing, consuming, or under the  
22 influence of unlawful controlled substances, including marijuana.

23 Ms. Werth shall apply for and receive both children's PFD's. She may claim both  
24 children as dependents for income tax purposes.  
25

**MEMORANDUM AND ORDER**

Kenneth Werth, Jr. v. Josephine Werth, Case No. 1KE-08-188 CI

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**CCTHITA Tribal Court**  
**FEB 17 2009**

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

|  |  |
|--|--|
| <p><b>Tribal Child Support Unit,</b><br/><br/> <b>Gabriel G. Werth,</b><br/>         A minor child under the age of 18.<br/> <b>Josephine K. Werth (AKA: Guthrie),</b><br/>         Petitioner<br/>         Vs.<br/> <b>Kenneth D. Werth, Jr.,</b><br/>         Respondent</p> | <p><b>Order on Motion</b><br/><br/>         Court Docket #: 08-CS-0038<br/>         Hearing Date: February 17, 2009<br/><br/>         TCSU Case #: 07-0083</p> |
|--|--|

A Hearing was held on February 17, 2009 to consider the Motion for Recognition and Enforcement of Foreign Child Support Order.

The Petitioner was served with the Motion and Note for Magistrate's Calendar  personally;  by Certified, Return Receipt Requested mail;  by Regular mail;  Other: \_\_\_\_\_ and  appeared;  did not appear at the hearing.

The Respondent was served with the Motion & Note for Magistrate's Calendar  personally;  by Certified, Return Receipt Requested mail;  by Regular mail;  Other: \_\_\_\_\_ and  appeared;  did not appear at the hearing.

Also Present at the Hearing was Tribal Child Support Unit Staff Attorney, Jessie Archibald, Tribal Child Support Unit Caseworker, Carlen Williams.

The Tribal Child Support Unit requested the Court issue an Order of Recognition and Enforcement of the Foreign Order, Case No. 1KI-08-188 CI, based on the Petition submitted on February 2, 2009 and the Testimony offered on the record.

Order on Motion  
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CCTHITA TRIBAL COURT  
 320 West Willoughby Ave. Suite 200  
 Juneau, Alaska 99801  
 Phone: Toll-Free 1-(800) 541-1352  
 (907) 586-1352

**EXHIBIT 8**  
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**FINDINGS OF FACT**

Based upon the Motion for Recognition and Enforcement of Foreign Child Support Order filed in this matter, and the Courts review of the records and files herein, the COURT makes the following Findings of Fact and Conclusions of Law:

1. On February 2, 2009, the Tribal Child Support Unit (TCSU) filed a Motion for Recognition and Enforcement of Foreign Child Support Order, requesting this Court to recognize the Child Support Orders, Case No. 1 KI-08-188 CI, for the purpose of recognition.
2. The child is enrolled or eligible for enrollment with Central Council Tlingit and Haida Indian Tribes of Alaska, subject to the jurisdiction of the Court.
3. The Petitioner is an enrolled member of Central Council Tlingit and Haida Indian Tribes of Alaska, subject to the jurisdiction of the Court.
4. The Respondent is not an enrolled member of Central Council Tlingit and Haida Indian Tribes of Alaska, however Respondent is subject to the jurisdiction of the Court because he is a parent or guardian of a child enrolled or eligible for enrollment with the Tribe.
5. On April 8, 2008, TCSU filed a Petition to Establish Paternity for Gabriel G. Werth naming as Respondents the presumed father, Kenneth D. Werth, Jr. and the alleged father, Donnelly J. Charboneau.
6. A Hearing was set for May 13, 2008; all parties were served with notice of the hearing and a copy of the Petition to Establish Paternity.
7. On April 15, 2008, the alleged father, Donnelly Charboneau filed with the Court a hand written and signed note stating "... I agree that I had sexual relations with Josephine Werth around the time of conception of Gabriel. I am unsure if I am the biological father of Gabriel Werth. I believe we are in need of a paternity test to determine the father of Gabriel Werth. . ."
8. On May 2, 2008, the presumed father, Kenneth D. Werth, Jr., filed with the Court a Paternity Statement which he signed and asserted the following:
  - a. The mother and I lived together;
  - b. The mother told me I am the father of the child;
  - c. I am named as the father on the birth certificate;
  - d. I offered to pay for abortion/medical expenses;
  - e. I paid for birth related expenses;
  - f. I claimed the child on tax returns;
  - g. I have provided food, clothing, gifts or financial support for the child;
  - h. I lived with the child;
  - i. I visited the child; and
  - j. There are witnesses to my relationship with the child's mother.

Order on Motion  
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CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
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(907) 586-1432

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2 9. The Paternity Statement filed by Kenneth D. Werth also contained the following hand  
written statement:

3 "I am/was Josephine's husband at the time of conception and  
4 birth. I have been a father to Gabriel since birth. He  
5 knows me as his father. I have two older children with  
6 Josephine who are Gabriel's brother and sister. I will be  
7 supporting and have custody of them for/in the future. I  
would like to include Gabriel in this family unit. I offer  
to take all financial and parental responsibilities for this  
child. I feel that it is in the best interest of Gabriel that I  
be allowed to remain on his birth certificate as father."

8 10. On May 13, 2008, the Hearing to Establish Paternity was held and all parties  
9 appeared; all parties were sworn in and the following testimony was taken:

- 10 a. The mother, Josephine K. Werth, testified that she was married to and living with  
Kenneth D. Werth at the time of the child's birth; and that both she and Kenneth  
11 D. Werth told the child that Kenneth D. Werth was his father.
- 12 b. The presumed father, Kenneth D. Werth, testified that he did fill out and signed the  
Paternity Statement; that all the assertions in the Paternity Statement were true;  
13 that he lived with the mother at the time of the child's birth; that he has treated the  
child as his own; and that he is the named father on the child's birth certificate.
- 14 c. The alleged father, Donnelly J. Charboneau, testified that he has only met or visited  
15 with the child a few times; that he will be incarcerated until 2012; and after hearing  
the previous testimony he withdrew his request for a DNA Genetic Paternity test;  
16 and acknowledged that the presumed father was and should be allowed to continue  
being the father for the child.

17 11. On May 13, 2008, this Court issued an Order Establishing Paternity finding Kenneth  
D. Werth to be the father of Gabriel G. Werth.

18 12. On May 13, 2008, this Court issued an Order of Child Support finding that Kenneth D.  
19 Werth shall owe an obligation of \$50 per month towards the support of Gabriel G.  
Werth beginning June 1, 2008.

20 13. On February 17, 2009, a Hearing on the Motion to Recognize and Enforce a Foreign  
21 Child Support Order, Case No. 1KI-08-188 CI was held; the mother, Josephine K.  
Werth, was served notice of the hearing but failed to appear and offered no evidence;  
22 the father, Kenneth D. Werth, Jr., was served notice of the hearing but failed to appear  
and offered no evidence; the Tribe's evidence was a copy of the Superior Court  
23 Divorce Decree issued on September 26, 2008.

24 14. The September 26, 2008 Superior Court Order disestablishes paternity of Kenneth  
Werth, Jr., stating that he "has not parental rights or obligations with respect to  
Gabriel; the Court's order further states that the parties showed by clear and  
25

Order on Motion  
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CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
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convincing evidence that Kenneth Werth, Jr. is not the father of Gabriel.

15. The September 26, 2008 Superior Court Order is silent and does not appear to have considered or have knowledge of the May 13, 2008 CCTHITA Tribal Court Order establishing Kenneth Werth, Jr. to be the father of Gabriel based on sworn testimony, signed paternity statement and acknowledgement in open court by the mother, presumed father and alleged father that Kenneth Werth, Jr. was the father of Gabriel.

**Order**

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

1. That the Tribal Child Support Unit represents the Central Council Tlingit and Haida Indian Tribes of Alaska, and does not represent any individual in this action.
2. That the Tribe is a real party in interest in this case pursuant to Family Responsibility, Sec. 10.03.002.
3. That the Tribal Child Support Unit provides child support enforcement services for the benefit of the minor child(ren) who is/are the subject of this action pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq.).
4. That this Court has jurisdiction to hear and decide this matter in accordance with Article 1, Section 1-4 of the CCTHITA Constitution, and the Family Responsibility Statute, Sec. 10.01.004 in that the Petitioner, Josephine K. Werth,  is or  is not a member of or is eligible for enrollment with the Tlingit and Haida Indian Tribes of Alaska and the Respondent, Kenneth D. Werth, Jr.,  is or  is not a member of or is eligible for enrollment with the Tlingit and Haida Indian Tribes of Alaska but the Respondent is subject to the jurisdiction of the Tribe because the child is a member of or eligible for enrollment with the Tlingit and Haida Indian Tribes of Alaska.

**IL ORDER**

**IT IS ORDERED** that:

1. The Tribe's Motion for Recognition and Enforcement of a Foreign Child Support Order is DENIED.
2. The Paternity and Child Support Orders issued by this Court on May 13, 2008 remain in force.

Order on Motion  
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**CCTHITA TRIBAL COURT**  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
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(907) 586-1432

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1 3. The Respondent, Kenneth D. Werth, Jr., having been ordered to pay \$50.00 per month  
2 beginning on June 1, 2008, and having paid \$50 each for the months of June and July  
2008 is now \$350 in arrears (August 2008 through February 2009).

3 4. The Respondent, Kenneth D. Werth, Jr., shall pay \$60.00 per month in child support.  
4 This amount represents ~~\$50.00~~ current child support and \$10.00 (20% of the monthly  
5 child support) towards back child support in the amount of amount of \$350.00 for time  
6 period August 2008 through February 2009. The child is in the custody of Josephine  
K. Werth and is owed current support. A copy of this order shall be provided to both  
parties.

7 The breakdown for the back support is as follows:

|                                 |                 |
|---------------------------------|-----------------|
| 8 Owed to Tribal TANF           | \$              |
| 9 Owed to Petitioner:           | \$350.00        |
| Owed to other:                  | \$              |
| <b>Total Child Support Debt</b> | <b>\$350.00</b> |

10 5. The Respondent, Kenneth D. Werth, Jr., is to pay \$60.00 monthly obligation through  
11 income withholding:  
12  Voluntary wage withholding  
13  Wage Garnishment  
 Property Withholding of Native Corporation Dividends (for Arrears owed to  
Custodial Parent)

14 6. The Respondent, Kenneth D. Werth, Jr., is to make payments payable to:  
15 Tribal Child Support Unit and mailed to:

16 CCTHITA Tribal Child Support Unit  
17 320 W. Willoughby Ave. Suite 300  
Juneau, AK 99801

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

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

23 9. **IT IS FURTHER ORDERED THAT** if Respondent fails to pay the monthly child  
24 support obligation as ordered by this Court, the Tribal Child Support Unit may initiate  
enforcement and collection procedures, such as, but not limited to, a referral to the  
Permanent Fund Dividend or Internal Revenue Service, or submit an initial or subsequent

25 Order on Motion  
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CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
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Income Withholding Order for the Court's approval. These enforcement and collection procedures may commence without a Court Hearing as at any point the respondent is more than 30 days delinquent in his or her child support payments.

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

Disobedience of this order is punishable by contempt.

An order for support, which has past support due in the amount of \$50.00 or more, whether or not there is an order to make periodic payments, may result in the interception of the payer's income tax refunds and Permanent Fund payment. It may also result in the interception of any other money due, liens against real property, or attachment of assets.

SO ORDERED ON THIS 17<sup>th</sup> DAY OF February, 2009.

Debra S. O'Gara  
Debra S. O'Gara, Tribal Court Magistrate

I certify that on 2/19/09, a copy of this document was mailed or personally served to the following parties:  Respondent C, R;  Petitioner R;  TCSU T;  Other: Craig Harbor master & Kenneth Werth Jr  
Marilyn Peratrovich  
R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail  
(c)

Order on Motion  
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CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
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ORIGINAL

CETHITA Tribal Court

MAY - 2 2008

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

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In Re the Parentage of: ) Court Docket Number 08-C-0038  
)  
) Paternity Statement - Father  
DOB: )  
)  
)  
Gabriel Galloway Weath TCSU Case Number: 07-0083

I, Kenneth D Weath Jr, declare under penalty of perjury that the following is true and correct:

I am the natural father of the child named below.

Child's Full Name: \_\_\_\_\_  
First, Middle, Last

Child's Date of Birth 7/3/07 Place of Birth: Ketchikan City,  
County, State: Alaska  
Where Mother Got Pregnant: Ketchikan  
City, County, State

The child was conceived as a result of sexual intercourse between  
See Attached and me.

The following facts support my belief and statements that I am the father of this child:

- a. The mother and I lived together.  Yes  No
- b. The mother told me I am the father of the child.  Yes  No
- c. I am named as the father on the birth certificate.  Yes  No
- d. I signed an acknowledgment of paternity.  Yes  No
- e. I was present at the birth of the child.  Yes  No

Paternity Statement - Father  
Page 1

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

EXHIBIT 8  
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001025

ORIGINAL

- 1 f. I visited the child at the hospital following birth.  Yes  No
- 2 g. I offered to pay for abortion/medical expenses.  Yes  No
- 3 h. I paid for birth related expenses.  Yes  No
- 4 i. I claimed the child on tax returns.  Yes  No
- 5 j. I have provided food, clothing, gifts or financial support for the child.  Yes  No
- 6 k. I lived with the child.  Yes  No
- 7 l. I visited the child.  Yes  No
- 8 m. The child resembles me.  Yes  No
- 9 n. There are witnesses to my relationship with the Child's mother.  Yes  No

10 If yes, list names and addresses and briefly describe relevant facts known by each:

11 I wish my child's birth to be re-registered to include my name as his/her natural father.  
12 I hereby acknowledge my legal duty to provide support for my child and authorize this statement to be used  
13 as evidence in any court proceeding involving paternity or support for my child or any probate proceeding of  
14 my estate.

15 All of the information and facts contained in this Declaration are true and correct to the best of my  
16 knowledge and belief. If requested, I agree to submit myself to genetic testing as may be necessary to  
17 establish paternity.

18 For completion of the new birth certificate, I submit the following personal data:

19 Complete Name: Kenneth D Worth Jr

20 Color or Race: CAUCAS

21 Birth Date: 2/10/65

22 Birth Place: Gainesville Fla

23 Occupation at time of birth: Commercial Fisherman

24 Dated this 2 day of MAY, 2008

25 [Signature]

Kenneth D Worth Jr

Signature

Printed Name

Witness (Print Name): \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Paternity Statement - Father

Page 2

Tlingit and Haida Child Support Unit  
330 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1432  
(907) 586-1432

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ORIGINAL

1 Address of Witness: \_\_\_\_\_  
2 Telephone # Witness: \_\_\_\_\_

3 I AM/WAS JOSEPHINE'S HUSBAND AT THE TIME OF  
4 CONCEPTION AND BIRTH. I HAVE BEEN A FATHER TO GABRIEL  
5 SINCE BIRTH. HE KNOWS ME AS HIS FATHER. I HAVE TWO  
6 OLDER CHILDREN WITH JOSEPHINE WHO ARE GABRIEL'S BROTHER  
7 & SISTER. I WILL BE SUPPORTING & HAVE CUSTODY OF THEM  
8 FOR/IN THE FUTURE. I WOULD LIKE TO INCLUDE GABRIEL  
9 IN THIS FAMILY UNIT. I OFFER TO TAKE ALL FINANCIAL  
10 AND PARENTAL RESPONSIBILITIES FOR THIS CHILD. I  
11 FEEL THAT IT IS IN THE BEST INTEREST OF GABRIEL  
12 THAT I BE ALLOWED TO REMAIN ON HIS BIRTH CERTIFICATE  
13 AS FATHER. ~~II~~

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24 Paternity Statement - Father  
25 Page 3

Tlingit and Haida Child Support Unit  
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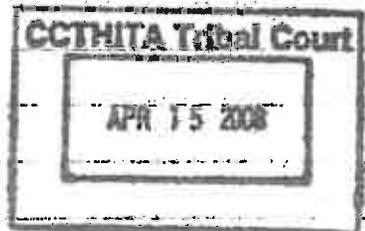
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To whom it may concern.

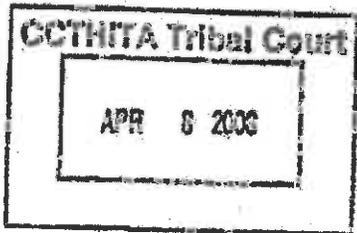
4/11/08

I am writing in response to the summons for testimony of GARRILL. I recall that I had social relations with [redacted] and [redacted] around the time of conception of GARRILL. I am sure of it on the basis of [redacted] of [redacted]. I believe we are in need of a document to determine the [redacted] of GARRILL. Thank you for your [redacted].

Sincerely,  
[redacted]  
[redacted]



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

|                                   |                     |   |
|-----------------------------------|---------------------|---|
| Tribal Child Support Unit,        |                     | <b>PETITION TO ESTABLISH PATERNITY</b>        |
|                                   | Ex Rel.             |   |
| Gabriel G. Werth                  |                     |   |
| A minor child under the age of 18 |                     |   |
| Josephine K. Werth                | Petitioner          | Court Docket #: <i>08-CS-0038</i>             |
|                                   |                     | Hearing Date: <i>May 13, 2008 at 9:00 AM.</i> |
| <b>Vs</b>                         |                     | TCSU Case #: <i>07-0063</i>                   |
| Kenneth D. Werth Jr.              | Presumed Father,    | <b>MOTHER: Josephine K. Werth</b>             |
| Donnelly J. Charboneau            | Alleged Father,     |   |
|                                   | <b>Respondents.</b> |   |

**PETITION**

**I. Basis**

**1.1 Cause of Action:** This is a petition for the establishment of parentage. This action is brought on behalf of:

Gabriel G. Werth (Name of Child), born on 7/03/2007(date), a resident of Ketchikan, Alaska (City and State).

**1.2 Parties to the Action**

Petitioner is the: X Tribal Child Support Unit      Mother      Alleged Father      Other

Name of Mother: Josephine K. Werth

PETITION TO ESTABLISH PATERNITY -1

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

**EXHIBIT 8**  
**PAGE 40 OF 77**  
**1JU-10-376 CI**

**ORIGINAL**

1 Name of Presumed Father: Kenneth D. Werth Jr.

2 Name of Alleged Father: Donnelly J. Charboneau

3  
4 **1.3 Jurisdiction**

5 The Tribe is a real party in interest in this case pursuant to CCTHITA Title 10- Family  
6 Responsibility, Sec. 10. 02.006. The Tribal Child Support Unit is providing child support  
7 enforcement services for the benefit of the minor child(ren) who is/are the subject of this action  
8 pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq.). This Court has  
9 jurisdiction to hear and decide this matter in accordance with CCTHITA Title 10-Family  
10 Responsibility, Sec. 10.02.004.

11  Petitioner is a member of Tlingit and Haida Indian Tribes of Alaska.

12  Presumed Father is not eligible for enrollment with the Tlingit and Haida Indian Tribes of  
13 Alaska, but is subject to jurisdiction because the child is enrolled or eligible for enrollment with  
14 the Tlingit and Haida Indian Tribes of Alaska.

15  Alleged Father is not eligible for enrollment with the Tlingit and Haida Indian Tribes of  
16 Alaska, but is subject to jurisdiction because the child is enrolled or eligible for enrollment with  
17 the Tlingit and Haida Indian Tribes of Alaska.

18  The child is eligible for enrollment with the Tlingit and Haida Indian Tribes of Alaska.

19  The mother and Donnelly J. Charboneau (Name) engaged in sexual intercourse and as a  
20 result, the child may have been conceived.

21  The Respondent consents to jurisdiction as evidenced by joinder or consent to jurisdiction  
22 signed by Respondent.

23  Presumed father is listed on the child's birth certificate, but mother wishes to rebut the  
24 presumption of paternity because she alleges that the presumed father is not the child's biological  
25 father.

The mother alleges that the Alleged Father is the father of the child.

The Alleged Father does not deny paternity but seeks to confirm paternity with DNA  
testing.

The birth certificate is recorded at Bureau of Vital Statistics for the State of Alaska and  
does not reflect the name of the Alleged Father as the father.

Upon information and belief no other action for determination of paternity of the child or  
to rebut the presumption of paternity of the child has been commenced, or is pending before any  
court in this jurisdiction or elsewhere.

Respondent Donnelly J. Charboneau has written a letter requesting establishment of  
paternity and is requesting a paternity test to find out if he is the biological father of Gabriel  
Werth.

PETITION TO ESTABLISH PATERNITY -2

Tlingit and Haida Child Support Unit  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800) 344-1433  
(907) 586-1433

EXHIBIT 8  
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1 [ X ] A paternity test has been performed at the request of the presumed father. However, the  
2 DNA test report indicated that the samples were not collected under a strict chain of custody by a  
third neutral party so the laboratory was not able to verify the origin of the samples

3 [ X ] The Petitioner does not desire to have paternity established for any illegal or fraudulent  
4 purpose.

5 [X] Based upon written request of alleged father, TCSU requests DNA testing be conducted  
6 at the request of the alleged father. TCSU does not request presumed father participate in the  
DNA testing to exclude him as the father. TCSU requests that the only the alleged father,  
7 mother and child participate in the genetic testing.

#### 7 1.4 Child Support

8 The child is entitled to financial support pursuant to the Tribe's Tribal Child Support Schedule  
9 and health insurance coverage from any parent owing a duty of child support, and it is otherwise  
in the child's best interest to obtain a judicial determination parentage.

#### 10 1.5 Current Residence of the Child

11 The child currently resides with Josephine K. Werth (name).

#### 13 1.6 Reimbursement

14 [ ] Does not apply.

15 [ ] The state of Alaska and/or \_\_\_\_\_ is entitled to reimbursement  
for support or assistance to the child, for expenses incurred on behalf of the child.

16 [ X ] Other: TCSU reserves the right to collect for any TANF benefits incurred on behalf of the  
child.

### 18 II. Relief Requested

19 The court is requested to enter an order and judgment that:

20 [ X ] Should DNA test results show that the alleged father is the child's biological father,  
21 petitioner requests that the alleged father be declared to be the father of Gabriel G. Werth  
(Name of child).

22 [ X ] The birth certificate of the child be amended to identify the father.

23 [ X ] Child support be determined for the dependent child pursuant to the Tribe's Child Support  
24 Schedule and either or both parents ordered to maintain or provide health insurance coverage for  
the child.

25 [ X ] The father pay past support, and other expenses incurred on behalf of the child.

PETITION TO ESTABLISH PATERNITY -J

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

EXHIBIT 8  
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- 1 [ ] Court costs, genetic test costs, and other reasonable fees be awarded by the court.  
2 [ X ] Other: If alleged father is found to be the biological father, order alleged father to  
provide  
3 1. Tax returns for the last two (2) years and wage statements for the last six (6) weeks.  
4 2. Proof of all sources of current income.  
5 3. A completed Financial Affidavit included with these papers.

6  
7 Dated this 7<sup>th</sup> day of April, 2008.

8 I declare under penalty of perjury under the laws of the Tlingit and Haida Indian  
Tribes of Alaska that the foregoing is true and correct.

9 Submitted by:

10  
11 See Sax signature

12 Carlen Williams  
13 Child Support Specialist  
14 Phone 907-247-7987  
15 Fax 907-247-2083

16 Approved for Entry:

17 Jessie M. Archibald  
18 Jessie M. Archibald  
19 TCSU Attorney  
20  
21  
22  
23  
24  
25

PETITION TO ESTABLISH PATERNITY -4

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

EXHIBIT 8  
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6/8/09 UM  
Ken Wirth

8  
objections to order of 2/17/09  
wants hearing.

Please call back

CCTHITA Tribal Court

APR 8 2008

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

Tribal Child Support Unit,

Ex Rel.

SUMMONS - PATERNITY

Gabriel G. Werth,

A minor child under the age of 18

Josephine K. Werth,

Petitioner:

Court Docket #: 08-CS-0038

Hearing Date: May 13, 2008 at 9:00 a.m.

Vs

TCSU Case #: 07-0083

Kenneth D. Werth, Jr.

(Presumed Father)

Donnelly J. Charboneau

(Alleged Father),

Respondent

U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only - No Insurance)

7004 0550 0001 2353 2704

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
Donnelly Charboneau

COMPLETE THIS SECTION ON DELIVERY

A. Signature  
 Recipient  
 Agent  
 Addressee  
 B. Received by (Printed Name)  
 V. Armstrong  
 C. Date of Delivery  
 4/11/08  
 D. Is delivery address different from 1?  Yes  
 If YES, enter delivery address below:  No

2. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  G.O.D.  
 3. Restricted Delivery? (Rate Fee)  Yes

7004 0550 0001 2353 2704

PS Form 3811, February 2004  
Domestic Return Receipt

voluntary stipulation shall then be submitted to the Court. After the Court approves the agreement, it will be filed with the Clerk of the Court with a statement that it shall have the same force as an order issued by the Court. All stipulations require that payments be made to the child support unit for distribution and tracking.

The Petition attached as the alleged father in a suit. A judgment of paternity rights to you, create the child support unit when the child reaches the age of 18. Your failure to pay child

acknowledge paternity and agree to the child support unit forms. The signed stipulation shall then be submitted to the Court. After the Court approves the agreement, it will be filed with the Clerk of the Court with a statement that it shall have the same force as an order issued by the Court. All stipulations require that payments be made to the child support unit for distribution and tracking.

SUMMONS - Paternity Petitioner

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(907) 344-1432 / 907-463-7741 Fax

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1 If you contest paternity, upon your request, or of the Child Support Agency, the mother of the  
2 child, or the custodian of the child, the Court may order that the parties submit to genetic testing  
3 to establish paternity. A person who refuses to take court-ordered genetic tests may be punished  
4 for contempt of court. The Central Council Tlingit and Haida Indian Tribes of Alaska will  
5 advance the cost of the test but either or both parties may be required to repay the costs. If the  
6 genetic tests show that you are not excluded as the father and that the statistical probability of  
7 your being the father is 99.0% or higher, you are presumed to be the father.

8 **You must respond in writing to the Petition and you must also appear in person at the**  
9 **hearing.** The response period for your written answer and the schedule for your hearing are  
10 below.

11 **Within twenty (20) days of receiving this Summons, you must respond with a written**  
12 **answer to the Petition.**

13 **Send or deliver your written response to the Court:**

14 Tribal Court  
15 320 W. Willoughby Ave., Suite 300  
16 Juneau, AK 99801

17 **Also send or deliver your written response to the Tribal Child Support Unit:**

18 Tribal Child Support Unit  
19 320 W. Willoughby Ave., Suite 300  
20 Juneau, AK 99801

21 **You must also appear in person to answer this claim if you are unable to attend in person,**  
22 **you must set up with the clerk of court, a telephonic appearance to answer this claim.** The  
23 date and time of court appearance is as follows:

24 DATE: May 13, 2008  
25 TIME: 9:00 a.m.  
26 PLACE: CCTHITA Tribal Court  
27 358 West Willoughby Avenue  
28 Juneau AK 998091

29 **If you have a disability and need help in court please contact the Tribal Clerk of Courts at**  
30 **(907) 463-7165.**

31 **You may have an attorney help or represent you. If you plan to be represented by an attorney,**  
32 **you should contact the attorney prior to the court appearance listed above. Tribal Child Support**  
33 **Unit does not represent the Petitioner or the Respondent in this action and will not provide legal**  
34 **advice to either party.**

35 **If you do not provide a proper answer within twenty (20) days, or fail to appear for any**  
36 **scheduled action, including a scheduled genetic test, the Court may issue for your arrest or**  
37 **enter a default judgment against you. A default judgment against you may find you to be the**

38 **SUMMONS - Paternity Petitioner**

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1432 / 907-463-7741 Fax

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EXC. 495

1 father, and may order you to contribute to the minor child's support. A judgment for money  
2 may become a lien against any real property you own now or in the future, and may be enforced  
3 by garnishment or seizure of property, and interception of your tax refunds or other income.

4 Pursuant to Sec. 10.03.005 (2), all parties must keep Tribal Child Support Unit informed of and  
5 provide notice within ten (10) days of any change in any of address or change of employer.

6 In Juneau, Alaska dated this 8th day of April, 2008.

7   
8 Marilyn Peratrovich  
9 Marilyn Peratrovich  
10 Tribal Court  
11 Tele: (907) 463-7165  
12 Fax: (907) 463-7741

13 Enclosure: Petition to Establish Paternity  
14  
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SUMMONS - Paternity Petitioner

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
1-(800) 344-1432 / 907-463-7741 Fax

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EXHIBIT 3  
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APR 3 2009

3:35 pm

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

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Tribal Child Support Unit,  
Ex Rel.  
Thomas Teal,  
  
A minor child under the age of 18  
  
Trina Hostetler,  
  
Petitioner,  
  
Charles Teal,  
  
Respondent.

PETITION TO ESTABLISH CHILD  
SUPPORT ORDER  
  
Court Docket #: 09-CS-0047  
  
Hearing Date: May 5, 2009 @ 9:30 am  
  
TCSU Case No. 08-0030

ORIGINAL

PETITION

I. Basis

Cause of Action: This is a petition for the establishment of a child support order. This action is brought on behalf of:

Name of Child: Thomas Teal      DOB: 05/22/2007      Resident of (City & State): Ketchikan, AK

Parties to the Action:

Petitioner is the:  Tribal Child Support Unit  Mother  Father  
 Other

Respondent is:  Mother  Father

Name of Mother: TRINA HOSTETLER  
Name of Father: Charles Teal  
Other: \_\_\_\_\_

**Jurisdiction:**

[X] The Tlingit and Haida Tribal Child Support Unit (TCSU) is a real party in interest in this case pursuant to CCTHITA Family Responsibility, Sec. 10.03.002. TCSU is providing child support enforcement services for the benefit of the minor child, who is the subject of this action pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq. (1991)). This Court has jurisdiction to hear and decide this matter in accordance with Title 10 Family Responsibility Sec. 10.01.004.

[ X ] The Petitioner is an Alaska Native who is member of Ketchikan Indian Community Tribe, and has assigned her rights to TCSU to collect child support based upon her receipt of TANF benefits from the Central Council Tlingit and Haida Indian Tribes of Alaska.

[ X ] The Respondent is not a member of the Tlingit and Haida Indian Tribes of Alaska.

[ X ] The child is a not a member of the Tribe; it is unknown whether the child is eligible for membership with the Tlingit and Haida Indian Tribes of Alaska.

[ X ] The Respondent is a person who has a duty to pay child support for Thomas Teal.

[ X ] Petitioner has received TANF assistance from the Tribe.

[ X ] The Respondent is listed on the certificate issued by a "A Woman's Place Inc." certifying that Thomas Walter Melvin Teal was born to Trina Hostetler and Charles Teal.

[ X ] There is not at present time an order establishing child support.

**Child Support**

The child is entitled to financial support pursuant to the Tribe's Child Support Schedule and health insurance coverage from any parent owing a duty of child support.

**Current Residence of Child**

The child currently resides with Petitioner and Respondent (name).

**Reimbursement**

[ ] Does not apply.

[ X ] Tribal TANF is entitled to reimbursement for support or assistance to the child, for expenses incurred on behalf of the child.

**II. Relief Requested**

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

Petition to Establish Child Support Order  
Page 2 of 4

EXHIBIT 10  
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1 [ X ] Determine support for the dependent children listed in paragraph 1.1 pursuant to the  
2 Tribe's Child Support Schedule and order either or both parents to provide health coverage  
and/or ensure child is enrolled in Indian Health Care Services.

3 [ X ] Determine the amount of any arrearages and who arrearages are owed to.

4 [ X ] Order that the non-custodial parent pay the current support obligation as determined  
5 pursuant to the Tribe's Child Support Schedule, plus 20% of the current support obligation  
to be paid towards arrearages.

6 [X] Provide that the support obligation and payment shall be made through wage  
7 garnishment  
as a means of execution to pay the support obligation(s), or:

8 [ ] Wages shall not be subject to withholding because one of the parties has  
9 demonstrated and TCSU requests that the Court find good cause not to require immediate  
wage withholding, or:

10 [ ] The parties have reached a written agreement that provides for an alternative  
11 arrangement for payments to be made to TCSU.

12 [ X ] Order that payments shall be made to:

13 Payable to Tribal Child Support Unit  
14 Send to Tlingit and Haida Tribal Child Support Unit  
15 320 West Willoughby Ave., Suite 300  
Juneau, Alaska 99801

16 [ X ] Order the Respondent, upon termination of child support payments under the terms of  
17 this order, to continue to make the above child support payment amount except said  
18 payment shall be applied to arrears, if any.

19 [ X ] Pursuant to CCTHITA Family Responsibility, Sec. 10.03.005, order that the custodial  
20 and non-custodial parents or other party shall keep TCSU informed of and change in  
21 employer or change in address within 10 days. Service of child support actions after this  
date may be done by regular mail to the last address of record provided to the Tribal Child  
Support Unit.

22 [ X ] Order the Petitioner and/or Respondent be summoned to appear in Court;

23 [ X ] Order the Petitioner and/or Respondent to bring with them to Court documents  
24 necessary to verify information required by the Tribal Child Support Guidelines, to  
determine the support provisions as the Court deems appropriate, to enter addresses of  
25 record and grant other relief requested. Such documents should include:

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

1. Tax returns for the last two years and wage statements for the last six weeks.  
2. Proof of all sources of current income.  
3. A completed Financial Affidavit (attached to this Petition).

And, for such other relief as the Court deems just and equitable.

I declare under penalty of perjury under the laws of the Tlingit and Haida Indian Tribes of Alaska that the foregoing is true and correct.

Dated: April 03, 2009

Respectfully Submitted:

Amanda Blackgoat Diehl

Amanda Blackgoat Diehl,  
Child Support Specialist  
Tele: 907-463-

Approved for Entry:

Jessie M. Archibald

Jessie M. Archibald  
TCSU Attorney

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

Petition to Establish Child Support Order  
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EXC. 500

CCTHITA Tribal Court

MAY 6 2009

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

Tribal Child Support Unit,

Ex Rel.

Order of Child Support

Thomas,

A minor child under the age of 18

Trina Hostetler,

Petitioner

Court Docket #: 09-CS-0047

Hearing Date: May 5, 2009

Vs:

TCSU Case #: 08-0030

Charles Teal,

Respondent,

MOTHER: Trina Hostetler

OBLIGOR: Charles Teal

A Hearing was held on May 5, 2009 to consider the Petition to Establish Child Support.

The Petitioner was served with Summons of the Hearing,  personally;  by Certified,  
Return Receipt Requested mail;  by Regular mail;  Other: \_\_\_\_\_ and  appeared;   
did not appear at the hearing. *telephonically*

The Respondent was served with Summons of the Hearing,  personally;  by Certified,  
Return Receipt Requested mail;  by Regular mail;  Other: \_\_\_\_\_ and  appeared;   
did not appear at the hearing. *telephonically*

Also Present at the Hearing was Tribal Child Support Unit Staff Attorney, Jessie Archibald,  
Tribal Child Support Unit Caseworker, Barbara Laman and

The Tribal Child Support Unit requested the Court issue an Order of Child Support based on  
the Petition submitted on April 3, 2009 and the evidence, records, files, herein, and testimony  
offered:

Order of Child Support

Order of Child Support (Revised 11/5/08)  
Page 1 of 3

CCTHITA TRIBAL COURT  
320 West Willoughby Ave. Suite 300  
Juneau, Alaska 99801  
Phone: Toll-Free 1-(800)-344-1132  
(907) 586-1422

EXHIBIT 10  
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001922

EXC. 501

I. BASIS

1. This order is entered pursuant to:
- An order determining parentage.
  - A hearing for temporary child support.
  - A Petition to Establish Child Support
2. Based on the facts declared to in the pleadings, a review of the Court's file and the testimony/documents presented on the record in this matter, Court makes the following decision(s):
- a. That the Tribal Child Support Unit represents the Central Council Tlingit and Haida Indian Tribes of Alaska, and does not represent any individual in this action.
  - b. That the Tribe is a real party in interest in this case pursuant to Family Responsibility, Sec. 10.03.002.
  - c. That the Tribal Child Support Unit provides child support enforcement services for the benefit of the minor child(ren) who is/are the subject of this action pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 301 et seq.).
  - d. That this Court has jurisdiction to hear and decide this matter in accordance with Article 1, Section 1-4 of the CCTHITA Constitution, and the Family Responsibility Statute, Sec. 10.01.004 in that the Petitioner,  is or  is not a member of or is eligible for enrollment with the Tlingit and Haida Indian Tribes of Alaska but is an Alaska Native who is a member of the Ketchikan Indian Community Tribe and consents to the Tribe's jurisdiction because she has assigned her rights to TCSU to collect child support owed to Tribal TANF, and the Respondent,  is or  is not a member of or is eligible for enrollment with the Tlingit and Haida Indian Tribes of Alaska; that Respondent is subject to the jurisdiction of the Tribe based upon Petitioner's assignment of rights; Respondent is subject to the jurisdiction of the Tribe because he owes a duty of child support based upon Petitioner's assignment of rights.

II. ORDER

IT IS ORDERED that:

1. **THE CHILD/REN FOR WHO SUPPORT IS REQUIRED:**  
 Thomas Walter Melvin Teal                      DOB: 04/25/2007
2. **THE PERSON PAYING SUPPORT IS:**  
 Name: Charles Teal  
 Monthly Gross Income: \$  
 The income of the obligor is imputed at \$ 2,856.95 .  
 The obligor's income is unknown.

Order of Child Support (Revised 11/5/08)  
Page 2 of 5

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

EXHIBIT 10  
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- 1  The obligor is voluntarily unemployed.
- 2  The obligor is voluntarily underemployed.
- 3  The obligor is entitled to Permanent Fund Dividend disbursements.
- 4  Other: Respondent has not provided updated financial information.

5 **3. THE PERSON RECEIVING SUPPORT IS:**

6 Name: **Trina Hostetler**

7 **4. Commencing June 1, 2009, the Respondent shall pay \$371.00 per month in child support. The Respondent owes back child support for the time period 7/01/07 through 3/31/08.**

8 The breakdown for the back support is as follows:

|    |                                 |                          |
|----|---------------------------------|--------------------------|
| 9  | Owed to Tribal TANF             | <b>\$2,597.00</b>        |
| 10 | Owed to Petitioner:             | <b>\$ 742.00</b>         |
|    | Owed to other:                  | <b>\$ _____</b>          |
|    | <b>Total Child Support Debt</b> | <b><u>\$3,339.00</u></b> |

11 **5. STARTING DATE AND DAY TO BE PAID.**

12 Starting Date: **June 1, 2009**; Day of the month support is due: **1<sup>st</sup> day each month.**

13 **6. Respondent, Charles Teal to pay \$371.00 the total monthly obligation through income withholding:**

- 14  Voluntary wage withholding
- 15  Wage Garnishment
- 16  Property Withholding of Native Corporation Dividends (for Arrears owed to Custodial Parent)

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

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

19 **CCTHITA Tribal Child Support Unit**  
 20 320 W. Willoughby Ave. Suite 300  
 21 Juneau, AK 99801

22 **8. PERMANENT FUND DIVIDEND**

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

24 **9. TERMINATION OF SUPPORT.**

25 Support shall be paid:

- Provided that this is a temporary order, until a subsequent order is entered by this court.

- 1           Until the child/ren reaches the age of 18 or as long as the child/ren remain(s)  
2       in high school, whichever occurs last.  
3           Pursuant to administrative or other valid court order:

4   10.   **POST-MINORITY SUPPORT.**

- 5           No post secondary educational support shall be required.  
6           Other: \_\_\_\_\_

7   11.   **MEDICAL INSURANCE.**

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

- 11           Mother  
12           Father

13   12.   **UNCOVERED HEALTH CARE EXPENSES.**

14       The cost of uncovered health care expenses of the children under \$5,000.00 shall be  
15       allocated equally between the parties.

16   13.   **REASONABLE UNCOVERED HEALTH CARE EXPENSES.**

17       The cost of reasonable health care expenses of the child(ren) exceeding \$5,000.00 in a  
18       calendar year will be allocated based upon the parties relative financial circumstances.

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

23   15.   **IT IS FURTHER ORDERED THAT** if Respondent fails to pay the monthly child  
24       support obligation as ordered by this Court, the Tribal Child Support Unit may initiate  
25       enforcement and collection procedures, such as, but not limited to, a referral to the  
26       Permanent Fund Dividend or Internal Revenue Service, or submit an initial or subsequent  
27       Income Withholding Order for the Court's approval. These enforcement and collection  
28       procedures may commence without a Court Hearing as at any point the respondent is  
29       more than 30 days delinquent in his or her child support payments.

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

32       Disobedience of this order is punishable by contempt.

33       An order for support, which has past support due in the amount of \$50.00 or more,  
34       whether or not there is an order to make periodic payments, may result in the interception

35   Order of Child Support (Revised 11/5/08)  
Page 4 of 5

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

EXHIBIT 10  
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001925

1 of the payer's income tax refunds and Permanent Fund payment. It may also result in the  
2 interception of any other money due, liens against real property, or attachment of assets.

3 Presented by: Appeared telephonically  
Barbara Laman

4 Approved for entry:  
5 Jessie M. Archibald  
6 Jessie M. Archibald  
TCSU Attorney

7 Signature: Appeared telephonically  
8 Trina Hostetler

9 Signature: Appeared telephonically  
10 Charles Teal

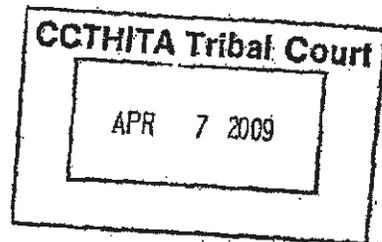
11 SO ORDERED ON THIS 5<sup>th</sup> DAY OF May, 2009.  
12 Debra S. O'Hara  
13 Debra S. O'Gara, Tribal Court Magistrate

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

24 I certify that on 5/06/09, a copy of this document was mailed or personally served to the  
25 following parties:  Respondent R;  Petitioner R;  TCSU E;  Other: State of AK  
Marilyn Peratrovich CSSD(R)  
R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail

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

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**In the Central Council Tlingit & Haida Indian Tribes  
of Alaska Tribal Courts  
Juneau, Alaska**

|                                  |  |  |
|----------------------------------|--|--|
| <b>Tribal Child Support Unit</b> | <b>Ex Rel</b>                            | <b>SUMMONS - CHILD SUPPORT</b>               |
| <b>Thomas Teal,</b>              | <b>A minor child under the age of 18</b> | <b>Court Docket #: 09-CS-0047</b>            |
| <b>Trina Hostetler,</b>          | <b>Petitioner</b>                        | <b>Hearing Date: May 5, 2009 @ 9:30 a.m.</b> |
| <b>Vs</b>                        |  | <b>TCSU Case #: 08-0030</b>                  |
| <b>Charles Teal,</b>             | <b>Respondent.</b>                       |  |

**SUMMONS**

**NOTICE TO THE PETITIONER: Trina Hostetler**

A Petition for the establishment of child support has been filed to establish a child support obligation. The Petition attached states the nature and the basis of the legal action. A Summons and this Petition has been sent to all of the above named parties. A judgment of child support would create an obligation of child support for the child until the child reaches the age of eighteen, or until the child graduates from high school or becomes emancipated. Failure to pay child support may be punishable by contempt of court.

At any time prior to the date of the court hearing, the non-custodial parent may voluntarily enter into an agreed order setting the appropriate level of support for the child. This order would then be submitted to the Court for approval. All stipulations require that payments be made to the child support unit for distribution and tracking.

**The Respondent must respond in writing to the Petition within twenty (20) days of receiving this Summons.**

Summons - Child Support (Revised 11/24/08)

CCTHITA Tribal Court  
320 W. Willoughby Ave, Suite 300  
Juneau, AK 99801  
1-800-344-1432 / 907-463-7741 Fax

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EXHIBIT 10  
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EXC. 506

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Both you and the Respondent must also appear in person at the hearing. If you are unable to attend in person you must contact the Court Clerk prior to the hearing to arrange to appear telephonically.

The date and time of court appearance is as follows:

DATE: May 5, 2009  
TIME: 9:30 a.m.  
PLACE: CCTHITA Tribal Courts  
358 W Willoughby Avenue  
Juneau, Alaska

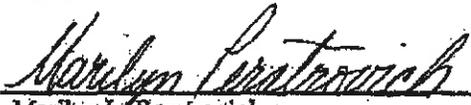
If you have a disability, have questions or need help with this court action or general procedures, please contact the Tribal Court Clerk at 907-463-7165, or 800-344-1432, extension 7165.

You may have an attorney or spokesperson help or represent you. If you plan to be represented by an attorney or spokesperson, you should contact that person prior to the court hearing. Tribal Child Support Unit does not represent the Petitioner or the Respondent in this action and cannot provide legal advice to either party.

If you fail to appear for any scheduled action, the Court may find you in contempt of court or dismiss your Petition.

Pursuant to Sec. 10.03.005 (2), all parties must keep Tribal Child Support Unit informed of and provide notice within ten (10) days of any change in any of address or change of employer.

In Juneau, Alaska on this 7<sup>th</sup> day of April, 2007.

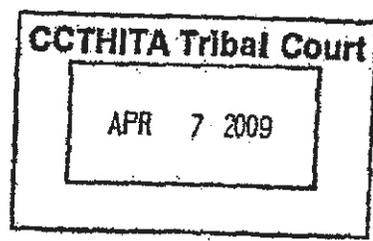
  
Marilyn L. Peratrovich  
Clerk of the Court  
Tribal Court

I certify that on 4/7/09, a copy of this document was mailed or personally served to the following parties:  
 Respondent;  Petitioner P;  TCSU E;  Other: \_\_\_\_\_

  
Marilyn L. Peratrovich

R=Regular mail; C=Certified, return receipt; P=Personal; I=interoffice mail; E=Electronic

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**In the Central Council Tlingit & Haida Indian Tribes  
of Alaska Tribal Courts  
Juneau, Alaska**

|  |                    |  |
|--|--------------------|--|
| <b>Tribal Child Support Unit</b>         |                    | <b>SUMMONS - CHILD SUPPORT</b>               |
|  | <b>Ex Rel.</b>     |  |
| <b>Thomas Teal,</b>                      |                    | <b>Court Docket #: 09-CS-0047</b>            |
| <b>A minor child under the age of 18</b> |                    |  |
| <b>Trina Hostetler,</b>                  | <b>Petitioner</b>  | <b>Hearing Date: May 5, 2009 @ 9:30 a.m.</b> |
| <b>Vs</b>                                |                    |  |
| <b>Charles Teal,</b>                     | <b>Respondent.</b> | <b>TCSU Case #: 08-0030</b>                  |

**SUMMONS**

**NOTICE TO THE RESPONDENT: Charles Teal**

A Petition for the establishment of child support has been filed to establish a child support obligation. The Petition attached states the nature and the basis of the legal action. You must respond in writing to the Petition.

Within twenty (20) days of receiving this Summons, you must respond with a written answer to the Petition.

Send or deliver your written response to the Court:

CCTHITA Tribal Court  
320 W Willoughby Ave. Suite 300  
Juneau AK 99801

Also send or deliver your written response to the Tribal Child Support Unit:

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

You must also appear in person to answer this claim. If you are unable to attend in person you must contact the Court Clerk prior to the hearing to arrange to appear telephonically.

Summons - Child Support (Revised 11/24/08)

Enclosure: Financial Affidavit

Page 1 of 2

CCTHITA Tribal Court  
320 W. Willoughby Ave. Suite 300  
Juneau, AK 99801  
1-800-344-1432 / 907-463-7741 Fax

EXHIBIT 10  
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The date and time of court appearance is as follows:

DATE: May 5, 2009  
TIME: 9:30 a.m.  
PLACE: CCTHITA Tribal Court  
358 West Willoughby Avenue  
Juneau, Alaska.

**YOU ARE HEREBY NOTIFIED** that if you do not provide an answer within twenty (20) days, or fail to appear for the scheduled hearing, the Tribal Court may hold you in contempt of court and/or enter a default judgment against you. A default judgment may order you to pay child support. A judgment for money may become a lien against any real property you own now or in the future, and may also be enforced by garnishment or seizure of property, and interception of your tax refunds or other income.

If you have a disability, have questions or need help with this court action or general procedures, please contact the Tribal Court Clerk at 907-463-7165, or 800-344-1432, extension 7165.

You may have an attorney or spokesperson help or represent you. If you plan to be represented by an attorney or spokesperson, you should contact that person prior to the court hearing. Tribal Child Support Unit does not represent the Petitioner or the Respondent in this action and cannot provide legal advice to either party.

Pursuant to Sec. 10.03.005 of Title 10- Family Responsibility, all parties must keep Tribal Child Support Unit informed of and provide notice within ten (10) days of any change in any of address or employer.

**YOU ARE REQUIRED**, if you have not already done so, to provide the following information to Tribal Child Support Unit and the Court:

1. Tax returns for the last two (2) years and wage statements for the last six (6) weeks.
2. Proof of all sources of current income.
3. A completed Financial Affidavit (enclosed).

In Juneau, Alaska dated on 7<sup>th</sup> day of April, 2009.

*Marilyn Petrovich*  
Marilyn Petrovich  
Clerk of the Court  
Tele: 907-463-7165.

I certify that on 4/07/09, a copy of this document was mailed or personally served to the following parties:  
 Respondent;  Petitioner;  TCSU E;  Other: \_\_\_\_\_

*M*  
Marilyn L. Petrovich

R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail; E=Electronic

Summons-- Child Support (Revised 11/24/08)

Enclosure: Financial Affidavit

Page 2 of 2

CCTHITA Tribal Court  
320 W. Willoughby Ave. Suite 300  
Juneau, AK 99801  
1-800-344-1432 / 907-463-7741 Fax

EXHIBIT 10  
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EXC. 509

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CCTHITA Tribal Court

JUN 16 2009

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

Tribal Child Support Unit,

Ex Rel.

ORDER ON SHOW CAUSE

Tavin,

A minor child under the age of 18

Avena L. Aceveda,

Petitioner

Court Docket #: 07-CS-0011

Vs

Douglas R. Chilton,

Respondent

TCSU Case #: 07-0033

FINDINGS OF FACT

The Tribal Child Support Unit (TCS) filed a Motion and a Hearing on the Motion for an Order to Show Cause for Respondent's Failure to Pay Child Support. The Hearing was held on June 16, 2009.

Present at the Hearing was:

Jessie Archibald, TCSU Staff Attorney;

, Respondent;

, Petitioner;

Harold Dick, TCSU Caseworker

Based on the facts declared to in the motion, a review of the Court's file and the testimony presented on the record in this matter, Court makes the following Findings of Fact:

1. That the facts in the Motion are true and correct.
2. The Respondent was served with notice of the Hearing and a copy of the Motion for Show Cause Order by regular mail completed by the TCSU Caseworker

Order on Show Cause

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

Page 1 of 3

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001990

EXC. 510

- 1           3.    The Respondent failed to appear at the hearing.
- 2           4.    The Respondent has failed to provide any child support payments as ordered by  
this Court on February 14, 2008.
- 3           5.    On February 14, 2008, this Court issued an Order of Child Support, setting  
4           payments in the amount of \$139.00 per month for the above named minor child;  
Tavin.
- 5           6.    The Respondent has failed to submit payment of \$139.00 per month for current  
6           support and \$14.00 per month for arrears due on the first of each month beginning  
on March 1, 2008.

**ORDER**

The TCSU Motion for an Order to Show Cause Re Contempt is granted and the Respondent is found to be in Contempt for failure to pay \$153.00 per month towards current and arrears child support in accordance with the February 14, 2008 Court Order. Upon this finding, the Court Orders the following:

1.    The Respondent is to pay a fine of \$150.00, due within one week of the date of this Order.
2.    The Respondent to submit \$150.00 to the Tribal Court and once this fine has been paid, \$50 of this fine shall be passed through to the child's custodial parent.
3.    The Respondent shall send payment of this fine to:  
CCTHITA Tribal Court, 320 West Willoughby Ave., Suite 300, Juneau, AK 99801
4.    The Respondent is further ordered to immediately begin making monthly child support payments of \$153.00, due on the first of each month and sent to:  
Tribal Child Support Unit, 320 West Willoughby Ave., Suite 300, Juneau, AK 99801
5.    All other terms of the February 14, 2008 Order of Child Support not specifically modified in this Order shall remain in effect.

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

Service of child support actions after this date may be done by regular mail to the last address of record provided to the TCSU.

Disobedience of this order is punishable by contempt.

Order on Show Cause

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

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

5 **SO ORDERED ON THIS 16<sup>th</sup> DAY OF June, 2009.**

6 Debra S. O'Gara  
7 Debra S. O'Gara, Tribal Court Magistrate

8 I certify that on 06/17/09, a copy of this document was mailed or personally served to the  
9 following parties:  Respondent R;  Petitioner R;  TCSU E;  Other: \_\_\_\_\_

10 Marilyn Peratrovich  
11 Marilyn Peratrovich

12 R=Regular mail; C=Certified, return receipt; P=Personal; I=Interoffice mail; E=Electronic

25 Order on Show Cause

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

**Gwichyaa Zhee Gwich'in TRIBAL COURT**

Fort Yukon, ALASKA

In the Matter of: )  
M [REDACTED] J [REDACTED] )  
DOB [REDACTED] )  
Minor Tribal Member(s) )

Case No. 2010-07-27

Tribal Court Phone Number:  
(907) 662-3625 or 662-2113

Tribal Court Case No. 2010-07-27

**Gwichyaa Zhee Gwich'in TRIBAL COURT ORDER**

**ORDER**

**TO: STATE OF ALASKA CHILD SUPPORT**

YOU ARE HEREBY ORDERED TO issue to Gwichyaa Zhee Gwich'in Tribal Court at PO Box 10 Fort Yukon, AK 99740 the Child Support Payment check(s) of the minor child M [REDACTED] J [REDACTED] (DOB: [REDACTED]).

DATED this 8th day of October 2010.



*Yvonda Zilda*  
Tribal Judge



ALASKA LEGAL SERVICES CORPORATION  
JUNEAU OFFICE

RECEIVED LAW AGO ANC  
SEP 20 2010 PM 12:45

419 SIXTH STREET, SUITE 322  
JUNEAU, ALASKA 99801-1096  
TELEPHONE (907) 586-6425  
FAX (907) 586-2449

Sept. 17, 2010

Stacy Steinberg  
Office of the Attorney General  
1 031 W. 4th Ave, Suite 200  
Anchorage AK 99501  
*via US Mail and Email*

Mary Ann Lundquist  
Office of the Attorney General  
100 Cushman St., Suite 400  
Fairbanks AK 99701

Re: Central Council v. State of Alaska, et al.

Dear Stacy and Mary,

I am writing in response to your letter of Sept. 8, 2010.

Regarding Requests for Production 7 & 11, there is a typo. The reference should have been to Request for Production 6, not 7.

For RFP 27, if the Tribe did not produce certificates of enrollment for individuals, those individuals are not enrolled members of the Tribe. All of the enrolled individuals were enrolled at the time of their court proceedings.

For Interrogatory 27, the Tribe maintains its objection. Notwithstanding this objection, the Tribe has identified enrolled members of the Tribe through its response to RFP 27. As indicated in the orders already provided to the state, Wyatt Kadake, Gabriel Werth and Mia Amundson are all eligible for membership in the Tribe. It is not known to the Tribe whether Kenneth D. Werth, Jr., Donnelly J. Charboneau or Jason R. Amundson are eligible for membership in the Tribe.

Regarding copies of tribal court files, the Tribe said in its discovery response that "Plaintiff refers the State to the relevant court file available to the public at the CCTHITA Tribal Court, 358 West Willoughby Avenue, Juneau AK."

Accordingly, tribal court clerk Marilyn Peratrovich made arrangements with Jennifer Ditcharo to pull files for review and copying. Ms. Ditcharo and a law clerk came to the tribal court on September 3. The tribal court clerk provided the files to them to identify which documents needed to be copied -- much like the Alaska state court system. Ms. Peratrovich offered that if they marked the pages they wanted copied, copies could be made while they waited. As with the state court system, tribal court clerks are not supposed to allow other people to remove documents from court files, which would risk the integrity of the file.

002389

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PAGE 1 OF 2  
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Ms. Ditcharo did not want to wait for the copies and instead made arrangements for pickup at a later date, which was accomplished. There was one file — the Edenshaw/Calhoun file — that was not immediately available because the case is on appeal. Copies of the non-confidential documents in that file have since been provided to the state. Hopefully this clears up any misunderstanding about the state being denied direct access to the Tribe's public court files.

Finally, I would like to follow up on our letter to you dated March 29, 2010. This letter requested clarification of your response to Interrogatory No. 14 and provided the additional information needed for you to respond to Interrogatories 15 and 16. Your response to these interrogatories indicated that upon providing that information, the State would respond. A response to our letter would be appreciated.

Many thanks,



Holly Handler

cc: Jessie Archibald  
Marilyn Peratrovich

002390

EXHIBIT 31  
PAGE 2 OF 2  
1JU-10-376 CI



# Federal Register

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Tuesday,  
March 30, 2004

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Part II

## Department of Health and Human Services

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Administration for Children and Families

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45 CFR Parts 286, 302, 309, and 310  
Tribal Child Support Enforcement  
Programs; Final Rule

002409

EXHIBIT 37  
PAGE 1 OF 46  
1.JU-10-376 CI

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

45 CFR Parts 288, 302, 309 and 310

RIN 0970-AB73

**Tribal Child Support Enforcement Programs**

**AGENCY:** Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** ACF is issuing final regulations to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (IV-D) programs meeting requirements contained in the statute and established by the Secretary of HHS by regulation. These regulations address these requirements and related provisions, and provide guidance to Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal IV-D programs.

**DATES:** This rule is effective March 30, 2004. For Tribes and Tribal organizations not operating a Tribal IV-D program under 45 CFR part 310, these regulations are applicable March 30, 2004. For Tribes operating a Tribal IV-D program under the Interim Final Rule, 45 CFR part 310 will apply until no later than October 1, 2004. Tribes operating under 45 CFR part 310 must comply with these final regulations (45 CFR part 309) no later than October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Paige Biava, Policy Specialist, OCSE Division of Policy, (202) 401-5635.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 from Monday through Friday between the hours of 8 a.m. and 7 p.m., Eastern Time.

**SUPPLEMENTARY INFORMATION:**

**Statutory Authority**

This final regulation implements section 455(f) of the Act, as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105-33). This final regulation is also issued under the authority granted

to the Secretary of HHS (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Section 455(f) of the Act, as amended, reads as follows: "The Secretary may make direct payments under this part to an Indian Tribe or Tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible for a grant under this subsection."

**Scope of This Rulemaking**

On August 21, 2000, a Notice of Proposed Rulemaking (NPRM) and Interim Final Rule were published (65 FR 50800 and 65 FR 50796, respectively). The NPRM set forth the proposed rules for direct funding to Tribal IV-D agencies. The rulemaking process is ordinarily a lengthy process. A number of Tribes expressed concern that efforts they had under way would be unduly delayed or disrupted if the regulatory process had to run its ordinary course before funds could be made available under section 455(f). The Interim Final Rule allowed Tribes and Tribal organizations currently operating comprehensive Tribal IV-D programs comprising the five mandatory elements listed in section 455(f) and meeting the requirements specified in the interim rule to apply for, and if approved, receive direct funding to operate a Tribal IV-D program.

This rulemaking is intended to establish the minimum requirements that must be satisfied by an Indian Tribe or Tribal organization to be eligible for direct funding under title IV-D of the Social Security Act. The final regulation establishes application procedures, child support enforcement plan requirements, funding provisions, and accountability and reporting requirements. OCSE is planning a series of conferences across the country to explain, discuss, and respond to questions on the final regulation. Additional information about those conferences will be forthcoming.

The national Child Support Enforcement Program was initially established in 1975 under title IV-D of

the Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV-D program) is to ensure that all parents financially support their children. The IV-D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

We believe the promulgation of these regulations is not only consistent with the commitment of the Department to the government-to-government relationship with Indian Tribes, but also with a productive partnership of the Office of Child Support Enforcement in all dealings with Tribes.

**Tribal Child Support Enforcement**

Prior to enactment of PRWORA, title IV-D of the Act placed authority to administer the delivery of IV-D services solely with the States. However, within much of Tribal territory, the authority of State and local governments is limited or non-existent. The Constitution, numerous court decisions, and Federal law clearly reserve to Indian Tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes including domestic relations cases, to tax, and to license. Consequently, States have been limited in their ability to provide IV-D services on Tribal lands and to establish paternity and establish and enforce child support orders and Indian families have had difficulty getting IV-D services from State IV-D programs. Some child support enforcement services have been provided through cooperative agreements between Tribes and States and have helped bring child support services to some Indian and Alaska Native families.

Prior to enactment of PRWORA, Federal funding under title IV-D of the Act was limited to funding State child support enforcement programs and there was no direct Federal funding to Tribes for child support enforcement activities. Federal funding was only available indirectly to Tribes through States for eligible expenditures of Tribes pursuant to cooperative agreements with States under which the State delegated functions of the IV-D program to the Tribal entity. The Tribal entity was required to comply with all aspects of title IV-D of the Act applicable to the function or functions delegated to the Tribe. Only under these circumstances was Federal reimbursement under title IV-D available to the State for costs incurred by the Tribal entity for performing IV-D functions.

002410

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PAGE 2 OF 46  
I.II-10-376 CT

For the first time in the history of the title IV-D program, PRWORA authorized direct funding of Tribes and Tribal organizations for operating child support enforcement programs. The Department recognizes the unique relationship between the Federal government and Federally-recognized Indian Tribes and acknowledges this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to administer their own IV-D programs to meet the needs of children and their families.

#### Principles Governing Regulatory Development

Essential to the Federal-State-Tribal effort to ensure that noncustodial parents support their children is coordination and partnership, especially in the processing of inter-jurisdictional cases. Therefore, we believe that all IV-D programs must be administered under a basic framework to ensure that the objectives of title IV-D are successfully implemented. This common title IV-D framework does not mean that Indian Tribes are subject to the same regulations as States are. However, this regulation sets forth the minimum core requirements that must be met in order for a Tribe or Tribal organization to receive direct funding for IV-D programs.

#### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments, not considered small entities under the Act.

#### Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. The regulations are required by PRWORA and represent the requirements governing direct funding to Tribal IV-D agencies that demonstrate the capacity to operate a IV-D program, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the

public with meaningful participation in the regulatory process. ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this final rule. Consultations included a series of six Nation-to-Nation meetings held across the country. In addition, a toll free "800" number was created to allow for additional comments and input from Tribes and Tribal organizations and more in-depth individual consultations also occurred.

This rule is considered a "significant regulatory action" under 3(f) of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

#### Executive Order 13175

Executive Order 13175 (65 FR 6724, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." The purpose of consultation is to strengthen the United States government-to-government relationship with Indian Tribes and to reduce the imposition of unfunded mandates upon Indian Tribes. ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this final rule. Consultations included a series of six Nation-to-Nation meetings in Albuquerque, New Mexico; Portland, Oregon; Nashville, Tennessee; Fairbanks, Alaska; Washington, DC; and Prior Lake, Minnesota on the Shakopee Indian Reservation. Each of the consultations lasted for two and a half days and further follow up was conducted on an individual level. In addition, a toll free "800" number was created to allow for additional comments and input by Tribes and Tribal organizations. The consultations were successful in eliciting a wide range of questions, issues, and suggestions.

#### Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that

achieves the objectives of the rules and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that the rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. The following are estimated Federal annual expenditures under the Tribal IV-D Program: FY 2004—\$18.0 million; FY 2005—\$38.0 million; FY 2006—\$53.0 million; FY2007—\$57.4 million. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

#### Congressional Review

This rule is not a major rule as defined in 5 U.S.C. Chapter 8.

#### Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1993 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this regulation may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This rule is responsive to the needs of Tribes and Tribal organizations and provides them the opportunity to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal IV-D programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

#### Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct

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Federally-recognized Tribes, as published in the Federal Register pursuant to 25 U.S.C. 479a-1.

**Response:** Consistent with the government-to-government relationship between the Federal government and Indian Tribes, eligibility for direct IV-D funding of Tribal IV-D programs is extended to all Federally-recognized Indian Tribes. The list of such Tribes is found in the annual list of Federally-recognized Indian Tribes, which the Secretary of the Interior publishes in the Federal Register pursuant to 25 U.S.C. 479a-1. Any Tribe that successfully completes the Federal recognition process is eligible to apply for direct funding, regardless of its status at the time of publication of this final rule. If a Tribe is not Federally-recognized at the time of the publication of the final rule, but is subsequently recognized, we will consider such Tribe eligible to apply for direct funding.

**3. Comment:** Two Tribal commenters criticized the proposed regulations as significantly different from the document drafted by the joint Tribal/Federal workgroup.

**Response:** We worked in close consultation with Tribes prior to publication of the NPRM. The proposed regulation was the result of a significant amount of effort which included not only input from the joint Tribal/Federal workgroup, but also consultation from other stakeholders (including Tribes) and from within the Department. While the draft document submitted by the Tribal/Federal workgroup was significant to the development of the proposed regulation, the Department's obligation to fulfill its statutory mandate to efficiently administer the IV-D program necessarily required broader consultation. The NPRM published in August 2000 reflected wide consultation and collaboration. This final regulation reflects that input as well as careful consideration of all relevant comments received in response to the proposed rule. The end result reflects the Federal government's determination of the minimum requirements necessary for the successful administration of child support programs capable of meeting the objectives of title IV-D.

**Section 309.05—What Definitions Apply to This Part?**

**1. Comment:** One State commented that IV-D services as defined by the NPRM do not include services that a program may provide in addition to those listed in the definition. The State also stated that the definition does not include services that may be prohibited.

**Response:** It is not the intention of this final regulation to set forth an

exhaustive list of specific services that may be provided under the IV-D program; thus, we do not list in the regulation every service that may be provided and attributed to child support enforcement. However, §§ 309.145, 309.150, and 309.155 establish parameters for allowable costs that may be submitted for funding at the established rate. We believe the regulations establish an appropriate framework for Tribal child support enforcement services that may be provided under title IV-D.

**2. Comment:** One State commenter noted that "competent jurisdiction" is used in the definition of "child support order" and "child support obligation" but is not defined.

**Response:** As used in the definition, competent jurisdiction is used in its common legal sense and refers to the legal authority to take actions in child support matters.

**3. Comment:** One State commenter suggested that because the definition of "location" refers to "other sources of income and assets," a definition of "assets" should be added to indicate assets would include "in-kind" child support.

**Response:** We believe the definition of "location" appropriately describes the term as it is used in the context of child support enforcement and that the word "assets" does not require additional elaboration. In-kind support is not within the meaning of assets.

**4. Comment:** One State commented that the definition of child support order and child support obligation is incorrect when it says it includes " \* \* \* a judgment \* \* \* for the support and maintenance of a child \* \* \* or of the parent with whom the child is living." The commenter noted that the definition would conform to the Full Faith and Credit for Child Support Orders Act (FFCCSOA) by deleting "of the parent with whom the child is living."

**Response:** We disagree that the regulatory definitions are incorrect. The proposed definitions track the definition of support found in 45 CFR part 301 governing State IV-D plans and do not conflict with any provision of FFCCSOA. We have therefore retained such definitions in the final regulation.

**5. Comment:** One Tribe thought the definition of "Indian" found in the Indian Civil Rights Act would alleviate confusion that enrollment might be required. Another thought the Pub. L. 93-638 definition of Indian Tribes and Tribal organizations should be used.

**Response:** This final Tribal child support enforcement regulation does not in any way link the definition of

"Indian" to any Federal standard or rule governing Tribal enrollment. The regulatory definition of "Indian" is not intended to affect a Tribe's inherent ability to determine enrollment standards or to affect the ability of any other Federal agency to appropriately exercise authority in this area. We agree that enrollment and membership are internal Tribal matters and not the concern of the Federal Office of Child Support Enforcement. The final rule defines "Indian" as a person who is a member of an Indian Tribe. "Indian Tribe" and "Tribe" mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally-recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. 479a-1. We have determined that this definition of "Indian" is sufficient and reference to the Indian Civil Rights Act is not necessary.

Eligibility for direct IV-D funding under section 455(f) of the Act is limited to Federally-recognized Indian Tribal governments because child support enforcement necessarily requires at least delegated governmental authority. Because the definition of "Indian Tribe" in Pub. L. 93-638 includes some entities that are not Tribal governments, to avoid confusion we have not adopted that definition of "Indian Tribe."

**6. Comment:** One State commenter thought the definition of Tribe was insufficient in defining persons and circumstances that fall under the jurisdiction of Tribes.

**Response:** We disagree. For purposes of these final regulations, we have determined that it is not appropriate or necessary to define "Tribe" in terms of the limits of Tribal jurisdiction. The regulatory definition of "Tribe" is appropriately related to Federal recognition of governmental entities eligible for Federal funds. Such definition is not intended to have any effect on the exercise of Tribal or State jurisdiction.

**7. Comment:** One State commenter suggested that definitions for "Tribal resident," "reservation" and "Indian Country" be added. A Tribal commenter suggested that the regulations overlooked the special circumstances of Alaska's Tribes when employing the term "Indian Country."

**Response:** We have determined that it is not appropriate or necessary in this regulation to define the territorial limits of a Tribe's authority by defining "Tribal resident" or "reservation." The parameters of "Tribal resident" and "reservation" are more appropriately

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determined by Tribal law, the jurisdiction of the Tribe's courts or administrative process and by applicable Federal law, not by child support enforcement regulations.

We are aware of the special circumstances in Alaska related to the term "Indian country" as a consequence of the Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). For clarification, except where specifically noted, throughout the preamble "Indian country" is replaced with the term "Tribal territory" in consideration of the special circumstances in Alaska. The final regulatory definition of "Indian Tribe and Tribes" encompasses all Indian Tribes and Alaska Native entities enumerated in the Department of the Interior's listing of Federally-recognized entities such that each is eligible to apply for direct IV-D funding.

**8. Comment:** One Tribal commenter suggested that the term "agency" is likely to be misunderstood because "agency" refers to a geographical entity delineated by a Department of the Interior Administration area.

**Response:** We believe the context of these regulations make the definition of Tribal IV-D agency clearly distinguishable from any other type of agency and will not result in confusion.

**Section 309.10—Who Is Eligible To Apply for Federal Funding To Operate a Tribal IV-D Program?**

**1. Comment:** Twenty-nine Tribal and State commenters opposed the requirement that a Tribe have at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe to be eligible to apply for direct funding.

**Response:** The main purpose of establishing the 100-child minimum is to assure that Tribal IV-D programs will be cost effective. We also believe this threshold eligibility requirement is a reasonable indication of necessary IV-D program infrastructure. Any Tribe that has at least 100 children subject to its jurisdiction clearly meets this requirement. However, in response to comments received, we have amended the final rule to permit waiver of the requirement that a Tribe has at least 100 children under the age of majority subject to its jurisdiction to be eligible for direct funding. Section 309.10(c) has been added and specifies that a Tribe or Tribal organization with less than 100 children subject to its jurisdiction may apply for direct funding provided it can make the required showing. The new subsection requires justification for

waiver of the § 309.10(a) requirement to ensure that a Tribe or Tribal organization has the required administrative capacity to undertake a child support enforcement program.

**Subpart B—Tribal IV-D Program Application Procedures**

Section 309.15 describes what must be included in a Tribal IV-D application; §§ 309.20–309.30 establish procedures for submitting an application for funding; § 309.35 describes procedures for approval of applications and Tribal IV-D plan amendments; and §§ 309.40–309.50 describe procedures related to disapproval actions.

**1. Comment:** We received comments from two Tribal entities suggesting that provision be made in the regulation for voluntary retrocession of a IV-D program similar to the retrocession provisions in the Tribal TANF and Indian Self-Determination and Education Assistance Act (ISDEA) regulations.

**Response:** The concept of "retrocession" relates to transferring authority from one governmental authority to another and is not appropriate for these Tribal child support enforcement program regulations. In the case of both the Tribal TANF program and contracts under the ISDEA, retrocession describes the process under which a Tribe voluntarily terminates its administration of a program and cedes back (or returns) the program to the State or Federal government. If a Tribe or Tribal organization administering a Tribal IV-D program decides not to continue to operate a child support enforcement program, it may not cede back the program to either a State or to the Federal government. Therefore we have determined that retrocession provisions are incompatible with the Tribal child support enforcement program. If a Tribe or Tribal organization decides not to continue administration of a Tribal IV-D program, it is not required to do so. Under the statute, administration of Tribal IV-D programs is undertaken voluntarily by Tribes and Tribal organizations. Should they decide to do so, applicants on Tribal lands can apply for IV-D services from the State as they always could.

**Section 309.15—What Is a Tribal IV-D Program Application?**

**1. Comment:** One commenter stated that the use of existing forms SF 424 and SF 424 A was helpful as Tribes are already familiar with those forms.

**Response:** We appreciate that comment. We have attempted to use

existing procedures to ease the application process and alleviate undue administrative burden.

**Section 309.20—Who Submits a Tribal IV-D Program Application and Where?**

We received no comments on this section.

**Section 309.25—When Must a Tribe or Tribal Organization Submit a Tribal IV-D Application?**

We received no comments on this section. The requirements in this section were moved to § 309.16, "What rules apply to start-up funding?"

**Section 309.30—Where Does the Tribe or Tribal Organization Submit the Application?**

We received no comments on this section. This section was combined with § 309.20.

**Section 309.35—What Are the Procedures for Review of a Tribal IV-D Program Application, Plan and Plan Amendment?**

**1. Comment:** One Tribal commenter stated that the application process and requirements should be the same as those outlined in the Indian Self-Determination and Education Assistance Act (ISDEA), (Pub. L. 93–638).

**Response:** The differences between programs eligible for contracting under Pub. L. 93–638 and child support enforcement programs funded under title IV-D are so significant that we have determined it would be inappropriate to adopt similar substantive requirements. Programs are eligible for contracting under Pub. L. 93–638 because they are programs, services, or functions otherwise provided by the Federal government under Federal statute. The ISDEA is fundamentally different from Tribal IV-D programs which are operated by Tribal governmental entities under section 455(f) of the Social Security Act. In addition, we have determined that an effective program that efficiently delivers needed child support services to all families, including the effective processing of inter-jurisdictional cases, must be governed by the requirements and objectives of the IV-D program rather than those of Indian-related programs.

**2. Comment:** One Tribal commenter objected to § 309.35(a), stating that allowing the Secretary or designee to "determine whether the Tribal IV-D program application or plan amendment conforms to the requirements of approval" subjects the applications to arbitrary standards.

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*Response:* We disagree that Tribal IV-D applications or plan amendments are subject to arbitrary standards by requiring such applications and plan amendments to conform to section 455(f) and final Tribal child support enforcement regulations. We believe we have established in these regulations appropriate and balanced standards for the administration and operation of Tribal child support enforcement programs that are responsive to the needs of Tribes and Tribal organizations. The statute states clearly that the Secretary must "promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization" to be eligible for a direct grant under title IV-D. These final regulations establish such requirements and are the standards against which all applications will be considered. The rule is also issued under the authority granted to the Secretary by section 1102 of the Act authorizing the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act. The Tribal child support enforcement regulations are the product of a deliberative and collaborative process under which all relevant input was fully considered. The result is a final regulation that we believe is necessary for the efficient administration of the national child support enforcement program; one which balances the needs of Tribes and Tribal organizations with the need for a predictable administrative framework.

3. *Comment:* Four Tribal respondents stated that the regulations should provide a 45-day approval time rather than the 90-day timeframes. One Tribal respondent stated that the Federal timeframe for response to Tribal IV-D plans is appropriate.

*Response:* We have decided to retain the 90-day deadline for review of applications, plans and plan amendments with an additional 45 days to consider all additional necessary information requested from the applicant. We have reviewed Tribal IV-D applications under 45 CFR part 310 and have determined, based on this experience, that the 90-day deadline assures that due consideration is given to every Tribal IV-D application. Our experience in reviewing Tribal IV-D applications under the Interim Final regulations demonstrated that the complexity of the documents, the technical assistance that was required, the coordination of requests for additional information, and the consideration of such information required a realistic timeframe. Every

Tribal IV-D application submitted to the Department under 45 CFR part 310 was unique and many raised complex issues requiring consideration. For these reasons, we decided that 90 days was a realistic timeframe to complete application and plan amendment review with an additional 45 days to consider all necessary information requested from the applicant.

4. *Comment:* One State suggested that copies of approved Tribal IV-D plans be provided to the State. Another State commenter suggested that States be notified of Tribal IV-D plan approval where the Tribes may be using a State's automated system to provide services.

*Response:* While we will not routinely provide copies of approved Tribal IV-D plans to States or Tribes, we will notify IV-D Directors of newly approved Tribal IV-D programs in the form of a Dear Colleague Letter. We encourage Tribes and States to stay in communication with one another because such communication is essential to the successful delivery of IV-D services to children and families. In support of that goal, we are available to provide technical assistance.

*Section 309.40—What Is the Basis for Disapproval of a Tribal IV-D Program Application, Plan or Plan Amendment?*

1. *Comment:* One Tribal commenter criticized the proposed rule as not providing specific grounds for plan disapproval.

*Response:* We have revised § 309.40 to clarify the specific grounds upon which Tribal IV-D plans will be disapproved. We believe the final regulation adequately specifies requirements which will ensure that the objectives of title IV-D are met. These regulations balance the needs of Tribes and Tribal organizations with the need for a predictable administrative framework so that Tribal child support programs successfully accomplish the outcomes specified in the statute. Section 309.40 makes clear that Tribal IV-D applications, IV-D plans, and plan amendments will be disapproved if applicable statutory and regulatory requirements are not met, required procedures are not in place, or the plan amendment is incomplete.

2. *Comment:* Five Tribal commenters stated that the proposed rule imposes requirements not included in section 455(f) of the Act. The added elements are not required by statute and should be deleted.

*Response:* Section 455(f) of the Act authorizes direct funding for Tribal IV-D programs which have the capacity to "operate a child support enforcement program meeting the objectives of this

part." "[T]his part" refers to part D of title IV of the Social Security Act. The statute specifies the mandatory objectives of title IV-D programs: establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents. While the statute specifies mandatory objectives, it is left to the Secretary to promulgate Tribal regulations necessary to accomplish these objectives. We have determined that these final regulations fulfill the statutory mandate to "promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible" for direct IV-D funding. After consideration of all issues raised in comments, we have established the minimum requirements which we have determined are necessary to reasonably support the statutory objectives of Tribal child support enforcement programs.

3. *Comment:* Eleven Tribal commenters stated that § 309.40(a)(2) goes beyond the statute by specifying that the Secretary review the Tribe's laws, code, regulations and procedures. Some also stated that although a Tribe may be required to submit a copy of its laws, approval of a Tribal IV-D plan or plan amendment should not be based on the Secretary's approval of such laws.

*Response:* In response to Tribes' requests for clarification, we have revised § 309.40(a)(2) to more clearly reflect that Tribal IV-D plans and plan amendments may be disapproved if required laws, code, regulations, and procedures are not in effect. While it is necessary to ensure that the appropriate statutes and laws are in place, we do not intend to ratify or otherwise approve Tribal law. While the Secretary is not approving the Tribal laws, Tribal IV-D plans must contain enough information so that the Secretary can determine that relevant required Tribal law, regulations and procedures are in place to operate a IV-D program.

4. *Comment:* Four Tribal commenters stated the proposed regulations provide that an application will be disapproved under certain circumstances. The section should provide flexibility by replacing "will" with "may."

*Response:* Section 309.40 establishes the bases for disapproval of an application. We have not adopted the suggestion to replace "will" with "may." As a practical matter, deficiencies in Tribal IV-D plans do not inevitably lead to formal Tribal IV-D plan disapproval under these regulations. An incomplete plan, for example, is not automatically disapproved. Instead, we will communicate with Tribal applicants

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and request needed information. We added § 309.40(c) to clarify that if the application or plan amendment is incomplete and does not provide sufficient information for HHS to make a determination to approve or disapprove, HHS will request additional information. However, at some point, final action must be taken on a Tribal IV-D plan or plan amendment and § 309.40 specifies the circumstances under which an application, plan or plan amendment will be disapproved.

**Section 309.45—When and How May a Tribe or Tribal Organization Request Reconsideration of a Disapproval Action?**

1. *Comment:* Two Tribal commenters recommended that the Tribe, not the Secretary, should have the option to request a meeting. One commenter stated that conference calls and face-to-face meetings provide a critical forum for interaction, communication and dialogue and another endorsed the reconsideration process.

*Response:* Tribes have the option to request a meeting. However, we have amended the language at § 309.45(c) by deleting "at the Department's discretion," to eliminate any confusion.

**Section 309.50—What Are the Consequences of Disapproval of a Tribal IV-D Program Application, Plan or Plan Amendment?**

We received no comments on this section.

**Subpart C—Tribal IV-D Plan Requirements**

**Section 309.55—What Does This Subpart Cover?**

1. *Comment:* One Tribal commenter stated that the Tribal IV-D plan requirements go beyond the specific requirements in the statute and that they are overly burdensome to Tribal governments.

*Response:* Section 455(l) of the Act requires the Secretary to determine the minimum requirements necessary for the administration of Tribal child support programs capable of meeting the objectives of title IV-D. The objectives of title IV-D include the establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. We have promulgated regulations that we believe contain the minimum procedures and processes necessary for successful administration of IV-D programs, which are capable of establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents.

We recognize that Tribal IV-D programs are in the early stages of development. In Subpart C we have established requirements for Tribal IV-D programs which accommodate the unique characteristics and circumstances of Tribes. At the same time these regulations incorporate a framework which has proven effective in delivering needed child support services to families.

2. *Comment:* Five State commenters stated that the proposed regulations did not sufficiently address issues of standardization and coordination between Tribes and States. They suggested that the lack of comparability among Tribal and State IV-D programs could limit the ability of these programs to effectively and efficiently provide IV-D services to families.

*Response:* We address these comments more fully in the discussion of § 309.120, which deals with intergovernmental coordination and cooperation. We recognize that Tribal and State child support programs necessarily will interact with one another and may do so through a variety of mechanisms. Subpart C is intended to establish Tribal IV-D program requirements, which will enhance these interactions and inter-jurisdictional effectiveness. While Tribal IV-D programs are not required to meet all requirements that apply to State IV-D programs, nothing precludes them from adopting any and all of the techniques proven successful for States. In fact, we encourage them to do so, but remain convinced that additional mandates at this time are inappropriate.

**Section 309.60—Who Is Responsible for Administration of the Tribal IV-D Program Under the Tribal IV-D Plan?**

1. *Comment:* Several State commenters suggested that the regulation clarify a State's responsibility in complying with the provisions of approved Tribal IV-D plans under agreements where a State is providing services under an approved Tribal IV-D plan.

*Response:* Both §§ 309.60(c) and 309.145(a)(3) authorize Tribal IV-D programs to enter into cooperative arrangements with States. Under these provisions, child support enforcement services must be provided in accordance with the approved Tribal IV-D plan in order for Tribes to be eligible for Federal reimbursement. Rules governing the negotiation of agreements between Tribes and States and other entities are not the subject of this regulation. However, § 309.60(c) makes clear that Tribes, not States, will be held accountable for the proper operation of

Tribal IV-D programs, including all actions undertaken on behalf of such programs. The language at § 309.60(c) clearly states that if the Tribe or Tribal organization delegates any of the functions of operating a program to another Tribe, State or any other agency, the Tribe is responsible for compliance with the approved Tribal IV-D plan.

2. *Comment:* One commenter stated that contracting with the State would be viable for many individual Alaska Tribes, rather than delegating functions to a regional consortium.

*Response:* The unique circumstances and challenges faced by child support enforcement programs in the State of Alaska require recognition and accommodation so that arrangements may be made for the provision of needed services. Alaska and Alaska Native Tribal entities are encouraged to find local solutions to meet the challenges they face. Contracting with the State or with other Native entities is one mechanism for delivery of IV-D services on terms that are in accordance with title IV-D requirements and which will enable families to receive needed support.

**Section 309.65—What Must a Tribe or Tribal Organization Include in a Tribal IV-D Plan in Order To Demonstrate Capacity To Operate a Tribal IV-D Program?**

Section 309.65(a) establishes requirements under which a Tribe or Tribal organization may receive direct funding by submitting a Tribal IV-D plan which meets specified criteria. We received many comments from Tribes and States—some of them general and some specific—on this provision which raised many complex and cross-cutting issues.

1. *Comment:* Tribal and State commenters provided positive comments on this portion of the rule establishing Tribal IV-D plan requirements. They stated that the rule clearly allows for Tribal values, customs and traditions. Two Tribal commenters stated that the rule is simple and provides needed flexibility.

*Response:* We appreciate the acknowledgment of the responsiveness to the needs of Tribes and Tribal organizations in these first regulations for Tribal IV-D programs and are encouraged by the positive response to our efforts to accommodate the unique circumstances of Indian Tribes.

2. *Comment:* One Tribal commenter stated that during the early years of the IV-D program, the specifications for State programs were recommendations, not requirements and it should be the same for new Tribal IV-D programs. The

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commenter suggested this rule is much more prescriptive than those initially promulgated for States.

*Response:* We disagree. The final rule implementing the Initial Child Support Enforcement program established by Part B of Pub. L. 93-647 was published in the Federal Register on June 28, 1975. This publication added 45 CFR Parts 301 (State Plan Approval and Grant Procedures), 302 (State Plan Requirements), 303 (Standards for an Effective Program) and 304 (Federal Financial Participation). These are not recommendations. States are required to operate child support enforcement programs under a specific statutory and regulatory framework. As State programs evolved, requirements were expanded. With this rule we have set forth minimum requirements for Tribes to ensure effective Tribal IV-D programs that are capable of delivering child support enforcement services to families.

*3. Comment:* One Tribal commenter stated that OCSE must encourage Tribes to develop their own policies to achieve program directives, defer to Tribes to establish standards and limit the imposition of Federal standards in deference to Tribal authority.

*Response:* We believe these initial regulations implementing the Tribal IV-D program provide the appropriate recognition of Tribal sovereignty and culture. Tribes may develop culturally-appropriate policies to conform to the requirements of these regulations and are encouraged to do so. We have established a minimum administrative framework for all Tribal IV-D programs. We recognize that individual Tribes may establish IV-D programs within this framework through various means.

*4. Comment:* One State commenter stated that it is not reasonable to expect Tribes to be immediately accountable for the many requirements that have evolved over 25 years for State IV-D programs, but that it is reasonable to expect that State and Tribal IV-D programs will move in the same direction.

*Response:* We agree that State and Tribal IV-D programs should move in the same direction. As stated earlier, title IV-D has been amended over the years to mandate specific case processing actions and timeframes for State action as the program has evolved and become more automated. We have determined that it is premature to consider such specific requirements with respect to Tribal IV-D programs. Like States, Tribes need adequate time to develop their programs and determine appropriate approaches, levels of automation, and processes for

delivering services before it would be appropriate to consider the need for more specific requirements. Tribes need to have sufficient time to operate and automate programs and we need to understand how much time it takes Tribal IV-D programs to carry out various functions before we can consider specific actions, timeframes and processing standards or whether such standards are necessary. These regulations strike a balance between including requirements for specific, proven, and critical components and aspects of a child support program, while leaving implementation details up to the Tribes.

*5. Comment:* One State commenter stated that each Tribe should be required to have a Central Registry and use CSENet (an automated system for interstate case processing), or as an alternative, be required to adopt the Uniform Interstate Family Support Act (UIFSA). Another State commenter appreciated the efforts to allow Tribes flexibility to develop and administer programs consistent with Tribal laws and traditions, but thinks that the lack of comparability among Tribal and State programs will limit efficiency and effectiveness.

*Response:* The specific State requirements raised by the commenter related to the Central Registry and CSENet evolved over time and were not among the initial set of State IV-D regulatory requirements. This Tribal regulation will allow Tribes to begin planning for building appropriate automated data processing systems and procedures over time and does not mandate links to systems to which Tribes do not presently have access.

As previously stated, we have begun consideration of appropriate minimum Tribal systems automation specifications with stakeholders.

Where needed for effective and efficient programs, we have established Tribal IV-D requirements that are comparable with State IV-D requirements while bearing in mind that the statutory provision authorizing direct funding to Indian Tribes was enacted to provide much-needed services where, historically, no services were available. As to the suggestion that Tribes be required to adopt UIFSA, we address this issue in the discussion of § 309.120.

*6. Comment:* Twenty-three Tribal commenters objected to this section stating that the regulations do not match the statute and impose unnecessary burdens. They stated that the 14 elements in § 309.65(a) far exceed the five core functions listed in the statute at section 455(f) and that Tribes should

not have to include procedures for each of the 14 criteria.

*Response:* We agree with the commenters that section 455(f) of the Act specifies five core program objectives. However, we disagree that the elements enumerated in § 309.65(a) go beyond these objectives. The statute specifies functions which must be performed and explicitly delegates to the Secretary of HHS the authority to promulgate regulations "establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible" for funding under title IV-D. While, as a matter of law, the Secretary is not limited in the number of requirements which may be promulgated, these regulations in fact establish only the minimum requirements we have determined necessary for the operation of Tribal child support enforcement programs meeting the objectives of title IV-D. Every element specified at § 309.65(a) was determined to be necessary to the operation of Tribal IV-D programs capable of meeting the specific program objectives enumerated in the statute. This determination was made after careful and deliberate consideration of comments received on the proposed regulation as well as experience administering Tribal IV-D programs under the interim final regulation.

*7. Comment:* One Tribal commenter stated that the regulations will not facilitate establishment and collection of support for Native American children because they are too process-oriented and prescriptive for Tribal entities to achieve over the short term.

*Response:* These regulations establish only the minimum requirements we have determined necessary for the operation of Tribal child support enforcement programs meeting the mandatory objectives of title IV-D: establishing paternity, establishing, modifying and enforcing support orders, and locating noncustodial parents. Every requirement established by this rule as a condition for Federal funding is intended to ensure that Tribal IV-D programs meet the objectives of title IV-D while at the same time recognizing the unique status and circumstances of Indian Tribes.

*8. Comment:* Five Tribal commenters stated that there are too many requirements in the rule and these prevent Tribes from designing programs to meet their needs. The design and implementation of Indian programs by Indian Tribes has proven that the most effective way to deliver services is with programs designed by the Tribes themselves.

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*Response:* While this regulation is responsive to the needs of Tribes and Tribal organizations, the statute itself limits the scope of this flexibility. The authorization for direct Federal IV-D funding of Indian Tribes requires that Tribes demonstrate to the satisfaction of the Secretary a capacity for accomplishing specific IV-D program objectives. As we have stated in response to other comments, every element specified at § 309.65(a) was determined to be necessary to the operation of Tribal IV-D programs capable of meeting the program objectives enumerated in the statute. In this rule we have worked hard to ensure flexibility and recognize the status of Indian Tribes and accommodate the operational realities faced by Tribes. We agree that section 455(f) of the Act allows for flexibility, but such flexibility must be exercised within the parameters established in the statute. Under this regulation we are confident that Tribes will be able to design and implement Tribal IV-D programs that meet local needs.

9. *Comment:* Nine Tribal commenters stated that, while IV-D regulations should have some areas of commonality, respect for Tribal sovereignty and recognition of the unique aspects of Indian Tribes require accommodation for such characteristics and appropriate flexibility in Federal regulations. These commenters suggested that forcing Tribal IV-D programs into the existing State model violates the law recognizing the unique legal status of Indian Tribes and generally stated that Tribes were not States and should not be forced to function as States.

*Response:* We agree that the final regulation should accommodate the unique status of Indian Tribes and incorporate as much flexibility as possible while ensuring effective and efficient Tribal IV-D programs. In particular, we emphasize that one of the key underlying principles of these final Tribal IV-D regulations is recognition of and respect for Tribal sovereignty and the unique government-to-government relationship between Indian Tribes and the Federal government. We have determined that the statute does not mandate that requirements imposed on Tribal IV-D programs be the same as those imposed on State IV-D programs as prerequisites for funding. Moreover, there is nothing to suggest either in the original authorization for Tribal IV-D programs or in a subsequent amendment, that Congress intended to limit the Secretary's rulemaking discretion to the rules already established for State IV-D programs. While Tribal IV-D programs must

assure that assistance in obtaining child support is available to all who request services or are referred to the Tribal IV-D program, the rules for such programs must also take into account the unique legal status of such Tribes. We believe that these final Tribal IV-D regulations strike the appropriate balance.

10. *Comment:* One State commenter stated that current IV-D regulations do not allow States to refuse services to particular applicants, no matter where they reside. If the State where the request for services is made had no jurisdiction, the State can refer the applicant to an agency in the appropriate jurisdiction. The same commenter suggested that a referral process be specified in Federal regulation for case referral among Tribes and between States and Tribes.

*Response:* Under these regulations, Tribes are not permitted to refuse services to any applicant. Tribal IV-D programs must take all applications and open a case for each application. We know there may be circumstances under which the only appropriate service will be to request assistance from another Tribal or State IV-D program with the legal authority to take actions on the case. We address these comments more fully in the discussion of § 309.120, which deals with intergovernmental coordination and cooperation.

11. *Comment:* One commenter stated that Tribes should be permitted to develop their own program operation criteria and service areas.

*Response:* As stated above, the statute authorizing direct IV-D funding for Tribal programs limits the flexibility that can be established to permit Tribes to individually create program requirements. The authorization for direct Federal IV-D funding of Indian Tribes requires that Tribes demonstrate to the satisfaction of the Secretary a capacity for accomplishing specific IV-D objectives. We have determined that every element specified at § 309.65(a) is necessary to the operation of Tribal IV-D programs capable of meeting the objectives enumerated in the statute.

Section 309.65(a)(2) requires evidence that a Tribe or Tribal organization has in place procedures for accepting all applications for IV-D services and providing IV-D services as required by law and regulation. A Tribe, when describing the population subject to its laws, may include geographical descriptions of the area over which such authority is exercised. However, as noted above, Tribal IV-D programs must take all applications and open cases for each application, and there may be instances in which the appropriate services will be to request assistance

from another Tribal or State IV-D program. Since these regulations provide for reimbursement of all allowable costs of administering a Tribal IV-D program at the appropriate match rate, it is expected that a Tribe will exercise authority over Tribal members and others on Tribal lands to the maximum extent legally permitted and that Tribes will also provide services to all applicants.

12. *Comment:* One Tribal commenter stated that Tribes are not public agencies and access to Tribal IV-D services should be limited to reservation residents and Tribal members.

*Response:* As stated earlier in the preamble, these final regulations require that Tribal child support agencies accept all applications for services and require that the child support agency provide all appropriate services. This is to ensure that IV-D services are available to all who need them.

13. *Comment:* One Tribal commenter suggested that the wording in § 309.65(a)(2) be changed to allow Tribal IV-D agencies to refer customers without having to go through the application process. Two other Tribal commenters stated that ensuring access to services is not a requirement of the statute and should be removed from the regulation.

*Response:* As a practical matter, we think the instances in which a Tribal IV-D agency has no authority to take action in a particular case will be few, but in those instances the Tribal IV-D agency will refer the case to the appropriate IV-D agency. There will be instances in which States and Tribes must work together to ensure families receive the support they deserve. Under these regulations Tribes are not permitted to refuse services to any applicant. Taking all applications, determining what services are needed or may be provided and providing those services either directly or through another IV-D agency are activities that are included in categories of costs eligible for Federal reimbursement at the appropriate funding rate. We require that all IV-D programs accept all applications so that families receive assistance in reaching the appropriate IV-D program and no family is denied services which are legally available.

Tribes may not merely refer someone to another IV-D agency without accepting an application because everyone needs to be served. However, we recognize that as Tribal IV-D programs begin to operate, States and Tribes may need to work out cooperative agreements to deal with cases in specific instances, e.g., a Tribe has authority to provide certain services

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while only a State IV-D agency may provide others. We will provide guidance governing referral of cases in specific instances, as needed.

14. *Comment:* One State commenter recommended that we provide Federal guidance to ensure that an individual does not apply for IV-D services at both the local State IV-D program office and the Tribal IV-D program office. The commenter suggested that this portion of the rule be rewritten to clarify that services by a Tribal IV-D program can only be provided to an individual who is not receiving services from a State IV-D program.

*Response:* There is nothing to preclude an individual from applying for and receiving services from more than one IV-D agency. The fact that a custodial parent and child may reside within a Tribe's jurisdiction while the noncustodial parent may reside or work within a State's jurisdiction highlights the importance of Tribal-State communication and coordination. We encourage States and Tribes to work together to provide needed services and coordinate those services.

15. *Comment:* One State commenter asked if the Tribal IV-D program must charge an application fee as is required of State programs.

*Response:* Application fees are not required of Tribal IV-D programs at this time. However, Tribes may, at their option, provide that an application fee will be charged to individuals who apply for services under the Tribal IV-D plan (with stated exceptions). We have added paragraph (e) to § 309.75, governing administrative and management procedures, which reflects this option and which provides that any application fee charged must be uniformly applied, be a flat amount not to exceed \$25.00, or be an amount based on a fee schedule not to exceed \$25.00. This is the same cap placed on State IV-D programs.

16. *Comment:* One Tribal commenter stated that it was unclear what "due process" means in § 309.65(a)(3). This language offended another Tribal commenter who stated that Tribes provide due process. Two other Tribal commenters stated that assuring due process is not a requirement of the statute and should be removed.

*Response:* The term "due process" in the context of § 309.65(a)(3) refers to legal proceedings according to rules and principles which have been established by the Tribe or Tribal organization for the protection and enforcement of individual rights. The required statement of assurance is intended to ensure that the procedural and substantive protections of individuals

are in place and is not meant to suggest that Tribes do not provide due process. Requiring this assurance is not indicative of a judgment as to whether a Tribe's due process is adequate. While we do not define for Tribes what due process is, we have determined that all IV-D programs should have due process protections in place and we require an assurance to that effect.

17. *Comment:* Three Tribal commenters stated that because the statute does not require it, OCSE may only suggest that a Tribe include performance targets in its plan. Another Tribal commenter stated that some Tribes do not utilize standard performance measurements and that measuring success by numerical or monetary targets does not allow for intangible successes to be taken into account (such as family reconciliation.)

*Response:* The Federal statute specifically authorizes the Secretary to establish requirements which must be met in order to be eligible for funding under title IV-D. We have determined that in order to fulfill our responsibility to ensure the effective and efficient administration of Federally-assisted Tribal child support enforcement programs, it is essential that Tribes and Tribal organizations consider and articulate performance targets or goals for their programs. In response to comments, we have revised § 309.65(a)(14) to clearly reflect that the performance targets should be based on the particular needs and circumstances of Tribal IV-D programs. In addition to submission of targets for paternity and support order establishments, targets on total amount of current collections, and targets on total amount of past due collections, we encourage Tribes and Tribal organizations to include Tribally-defined measures of success that go beyond numerical or monetary description. These optional measures could include, for example, family reconciliation or other indications of improved quality of life for Indian families. We believe that performance targets are essential for ensuring that Tribes focus on maintaining efficient and effective child support services because such targets assist us and Tribes in ensuring that Tribal IV-D programs can increase their efficiency and effectiveness over time.

18. *Comment:* One Tribal commenter objected to the imposition of a performance-based incentive and penalty system for Tribal grantees. Another asked if we were proposing to withhold sanctions from Tribal and State programs while performance standards are sorted out and one commenter said that heavy penalties for

failure to meet program requirements will drive away a lot of Tribes.

*Response:* The proposed rule did not impose a performance-based incentive or penalty system for Tribal IV-D grantees and we have not imposed such systems in this final regulation. Tribal IV-D plans must include performance targets, but funding is not contingent upon the targets being met. In the statistical and narrative reports required under § 309.170, grantees must report on their success in reaching their performance targets. We are not setting performance targets because we believe that Tribes are in the best position to set performance targets in the initial years of the Tribal IV-D program and to estimate the targets that they can reasonably attain. Tribal IV-D performance targets have no effect on State IV-D programs.

#### *Sections 309.15 and § 309.65(b)—Start-Up Funding*

1. *Comment:* Thirteen Tribal commenters stated that a two-year start-up time frame is not sufficient. Some suggested that extensions be permitted.

*Response:* We were persuaded by commenters to re-evaluate the regulatory framework for start-up funding and have added a new § 309.16 to reflect provisions related to applications and approval of start-up funding. Section 309.16(a) lays out the requirements for an application for start-up funding including the standard application forms SF 424, "Application for Federal Assistance", and SF 424A, "Budget Information—Non-Construction Programs", a quarter-by-quarter estimate of expenditures for the start-up period, notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and an election of a method to calculate estimated indirect costs, and a narrative justification for each cost category on the form. If the Tribe or Tribal organization requests funding for indirect costs as part of the application for start-up funds, estimated costs may be submitted either by a documentation of the dollar amount of indirect costs allocable to the IV-D program, including the methodology used to arrive at the amounts, or submission of the current indirect costs rate negotiated with the Department of the Interior and a dollar amount of estimated indirect costs. The amount of indirect costs must be included within the \$500,000 limit for start-up funds. The Tribe or Tribal organization must also submit a description of the requirements a Tribe currently meets and, if the Tribe does not currently meet the requirements in § 309.65(a), a program development

plan detailing actions to be taken to meet the Tribal plan requirements. Section 309.16(c) describes under what circumstances the Secretary may consider extending the period of time during which start-up funding will be available or increasing the amount of start-up funding provided. An unfavorable decision to extend the period of time during which start-up funding is available or to increase the amount of start-up funding provided is not subject to an administrative appeal.

Based on the experience of Tribes of varying sizes and circumstances that are currently operating IV-D programs, we believe that the amount of time specified at § 309.16(a)(5) will provide Tribes and Tribal organizations with reasonable and necessary support to complete the start-up phase necessary for comprehensive child support enforcement programs. However, in extraordinary circumstances, we will consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization or increasing the amount of start-up funding provided.

**2. Comment:** One commenter stated that "demonstrate satisfactory progress" towards a fully operational Tribal IV-D program in proposed § 309.65(c) is vague and suggested that it be more clearly defined.

**Response:** The language at proposed § 309.65(c) has been reworded and moved to 309.16(a)(5) for clarity. Under § 309.16(a)(5), Tribes must develop a program development plan which demonstrates to the satisfaction of the Secretary that the Tribe or Tribal organization will have a IV-D program meeting the requirements of § 309.65(a) within a specific period of time, not to exceed two years. In order to demonstrate satisfactory progress toward a fully operational Tribal IV-D program, a Tribe would have to show it is meeting specific goals established in the program development plan within the timeframes established in the plan. In response to comments, we have revised § 309.65(b) to make clear that the Secretary may terminate start-up funding if the Tribe or Tribal organization fails to satisfy any provision or milestone described in its program development plan within the timeframe specified in the plan. A decision to terminate start-up funding is not subject to administrative appeal.

**Section 309.65(d)—Delayed Program Requirements**

**1. Comment:** Thirty-nine Tribal and State comments were received on this section that outlined future requirements for Tribal IV-D programs.

While a few of the commenters thought that the requirements for enforcement services should be the same for Tribes as for States, the majority of the commenters recommended eliminating § 309.65(d). Most expressed concern about how Tribes will access the Federal automated systems. They also stated that if Tribes are mandated to enter into cooperative agreements with States to access these systems, it would infringe on Tribal sovereignty.

**Response:** Based on comments, we are persuaded that it is not appropriate at this time to impose future requirements for additional procedures which Tribes and Tribal organizations must implement within two years after the Secretary issues guidelines for these requirements. These requirements were removed from the final rule. If, after experience and consultation, additional regulations become necessary, we will propose rules at that time. Some of the advanced child support enforcement techniques require a minimal level of automation, and it would not be appropriate to mandate the phase-in of such techniques in advance of understanding more clearly the issues related to Tribal IV-D automation. We have begun consideration of appropriate minimum Tribal systems automation specifications with stakeholders.

**Section 309.65(e)—Certification of Compliance With the 100-Child Minimum Requirement**

**1. Comment:** One commenter suggested the requirement to certify compliance with the 100-child minimum be deleted except for initial applications or when a member Tribe drops out of a consortium.

**Response:** One of the basic eligibility requirements—that a Tribe is eligible to apply for funding if it has at least 100 children under the age of majority in the population subject to its jurisdiction is found at § 309.10(a). This requirement may be subject to a waiver under § 309.10(c). We deleted the language from proposed § 309.65(e) and moved it to § 309.70. The Tribe must certify that there are at least 100 children under the age of majority in the population subject to its jurisdiction. The requirement that a consortium demonstrate authorization of two or more Indian Tribes with at least 100 children under the age of majority subject to its jurisdiction remains applicable even if a member of the consortium drops out. If, during the funding cycle, a member of a consortium drops out, the assurance that the consortium will continue to serve at least 100 children must be resolved by the beginning of the next funding cycle.

**Section 309.70—What Provisions Governing Jurisdiction Must a Tribe or Tribal Organization Include in a Tribal IV-D Plan?**

**1. Comment:** Seven Tribal commenters supported the fact that the regulation did not address jurisdiction. Several State commenters stated that jurisdiction is not adequately addressed in the regulation and that guidance is needed.

**Response:** Jurisdiction is the legal authority which a court or administrative agency has over particular persons and over certain types of cases. Issues related to jurisdiction are central to intergovernmental cooperation for the provision of child support enforcement services to families. Without proper jurisdiction, a tribunal cannot proceed to establish, enforce, or modify a support order or determine paternity. The legal authority to undertake these functions is essential to the ability of both State and Tribal child support enforcement programs to meet the statutory objectives of title IV-D of the Social Security Act. Lack of jurisdiction does not excuse a Tribal IV-D program from the responsibility of providing services when asked, including seeking assistance from another IV-D program.

**Section 309.75—What Administrative and Management Procedures Must a Tribe or Tribal Organization Include in a Tribal IV-D Plan?**

**1. Comment:** One commenter suggested that the word "promptly" should be replaced with a 20-calendar day time frame for opening a case as required for State IV-D agencies by 45 CFR 303.2(b).

**Response:** We disagree that it is necessary at this time to require a specific time frame for opening a Tribal IV-D case. We are satisfied that § 309.65(a)(2) is sufficient to ensure that all applications for IV-D services are accepted and acted upon. We expect that all applications for Tribal IV-D services will be acted upon in a prompt and efficient manner. A Tribal IV-D agency must open a case for each application. In some of these cases, the proper action will be to refer the case for enforcement by a State or another Tribe with access to enforcement tools the Tribe may not access directly, e.g. State income tax refund offset; in others it will be to refer the case to a State or another Tribe because the Tribe has no jurisdiction over the parties. We have eliminated the language originally proposed in § 309.75(c) related to opening IV-D cases since it was duplicative of language in § 309.65(a)(2).

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

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

Plaintiff,

v.

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

Defendants.

Case No. 1JU-10-376 CI

AFFIDAVIT OF JOHN MALLONEE

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, John Mallonee, being first duly sworn, do depose and state:

1. I am the Director of the Child Support Service Division (CSSD), Department of Revenue, State of Alaska. I have worked for CSSD since 1993. I have been the director since 2004.
2. The Alaska legislature created CSSD in 1976 initially under the Department of Health and Social Services and the next year the legislature moved CSSD to the Department of Revenue, its current home today. CSSD is a "IV-D" state child support agency under the federal IV-D Social Security Act. This means that CSSD qualifies for federal funding (currently 66% plus incentives) and requires CSSD to comply with its state child support plan and federal regulations to continue receiving federal funds. In its first year of operation, CSSD had 7 employees and 8,800 child support cases. The agency's powers and efficiencies have significantly increased over the past 34 years.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1081 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

Affidavit of John Mallonee  
*CCTHITA v. State of Alaska, et al.* 1JU-10-376CI  
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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

3. CSSD runs a comprehensive child support program. CSSD has administrative authority to establish paternity, establish child support orders, modify agency child support orders, enforce agency and court support orders, and locate parents. CSSD currently has 231 employees divided into different work groups: intake and paternity establishment; order establishment; order modification, domestic enforcement; interstate enforcement; customer service; complaint resolution; formal hearings-Office of Administrative Hearing appeals; accounting, audits and adjustments; internal audits; disbursement unit; IT programming and support; investigations; outreach/tribal cases; client service managers and assistants; division accounting; forms and federal and web liaison; file center and mail room; director's office and staff.
4. The primary mission of CSSD is to collect and distribute child support. In federal fiscal year 2009 (FFY 09) (October 1, 2008-September 30, 2009), CSSD collected and distributed over \$96.5 million. Of that amount, \$83 million was distributed to families; \$13.5 million was retained by the State and federal government for recouprment of public assistance benefits.
5. For FFY 2009, CSSD had about 44,000 child support cases. The cases may be roughly divided into two groups. In one group of cases, CSSD is establishing or collecting support for the primary custodians of children from an obligor parent. About 39,500 such cases exist. The remaining cases are public assistance cases established to recoup public assistance paid on behalf of the minor child. In these cases, the state is paying public assistance to the custodial parent on behalf of the minor child. The custodial parent assigns his or her right to child support to the State in exchange for public assistance. See AS 25.27.130. The State also has an independent right to the child support payments in public assistance cases. See AS 25.27.120. The State is entitled to recoup the public assistance benefits paid on the child's behalf from child support accrued during that time period.
6. CSSD directly touches the lives of roughly 1 out of every 6 Alaskans. CSSD's establishment and enforcement activity effects roughly 115,000 Alaskans. CSSD provides child support services to all Alaskans including Native and non-Natives.
7. One federal measure of child support funding is the "cost effectiveness" which is the amount of child support collected compared to the cost of the program. This measures the effectiveness and efficiency of a child support program. In FFY 2009, CSSD collected \$4.49 for every \$1 spent. In contrast, according to the OCSE FY 2009 Preliminary Report, CCTHITA's expenditures were \$877,385 and its total distributed collections were \$111,363. See attached Tables P-37 and P-39 from the FY 2009 Preliminary Report by the federal Office of Child Support Enforcement. This would amount to a recovery of 13 cents for every \$1 spent.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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8. CSSD strives to improve its operations and collections each year. In FFY 2009, CSSD exceeded all but one of the federal compliance benchmarks in the federal regulations. There are 9 federal compliance categories: case closure; paternity/establishment (establishing paternity and child support orders in cases); expedited processes within 6 months (establishing a child support order within 6 months); expedited processes within 12 months (establishing a child support order within 12 months); enforcement of child support orders; disbursement of child support; medical support enforcement; review and adjustment of support orders; and interstate services (cases CSSD initiates to other child support agencies and cases CSSD is enforcing for other child support agencies) . CSSD Self-Assessment Review FFY 2009, required by 45 CFR 308, is attached.
9. The federal regulations do not require 100% compliance with the federal benchmarks. The federal child support regulations set forth specific categories of child support activities and set minimum acceptable compliance percentages for each category. CSSD exceeded all but one of the federal required benchmarks. Each category is listed below with the federal minimum standard and CSSD's compliance:

|   | <u>Federal Minimum</u> | <u>CSSD</u> |
|---|------------------------|-------------|
| Case Closure  | 90%                    | 100%        |
| Paternity &<br>Order Establishment                              | 75%                    | 79%         |
| Expedited Processes   |                        |             |
| 6 months  | 75%                    | 79%         |
| 12 months   | 90%                    | 89%         |
| Enforcement   | 75%                    | 93%         |
| Disbursement  | 75%                    | 96%         |
| Medical Support Enf<br>Review & Adjustment<br>Of Support Orders | 75%                    | 89%         |
| Interstate Services   | 75%                    | 93%         |

10. In FFY 2009, CSSD had the second highest percentage nationwide for cases with enforceable child support orders. This is a very high and important mark; CSSD cannot begin collecting support for the custodial parent until a child support order is established.
11. CSSD has an extensive customer service and outreach program. In FFY 2009, the Anchorage Customer Service reception area and phone bank handled 66,517 phone calls and over 10,500 walk ins. CSSD field offices in Juneau, Fairbanks and Wasilla handled about 15,700 phone calls plus 10,000 walk ins. The agency takes or makes around 140,000 phone calls per year. In addition, the Anchorage customer service has extended hours for parents.

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DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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12. CSSD also has an outreach program. Pursuant to this outreach program, staff travel to communities without an established CSSD office. If necessary, the CSSD representative can also take genetic test samples for paternity cases. In FFY 2009, a CSSD representative visited the following communities: Barrow; Dillingham; Fairbanks; Homer; Juneau; Kenai & Soldotna; Kotzebue; Kodiak; and Nome.
13. The State could suffer direct financial harm if the 229 tribes in Alaska began issuing child support orders. One direct financial harm is limiting the State's ability to recoup public assistance benefits. For example, if an Alaska tribe issued a tribal child support order, the tribe's child support order would limit the amount of money the State could recoup from the obligor for payment of public assistance. See AS 25.27.120 & .130. If the tribe had continuing jurisdiction over its order under UIFSA (AS 25.25.611) and did not operate a IV-D tribal child support program, the State would not have an available remedy to modify the tribe's order and minimize its harm. Another situation could arise when the obligor requests public assistance on behalf of the minor child. Sometimes parents do not follow the court custody order and the parent required to pay support, the obligor, is caring for the child. For example, a common scenario is the court grants the mother custody of the child and the father is ordered to pay child support. In this scenario, the mother is the "obligee," the parent receiving child support, and the father is the "obligor," the parent ordered to pay child support. If the child begins living with his father and the father applies and qualifies for public assistance, the court child support order must be changed to order the mother to pay child support so the State can recoup the public assistance it is paying on behalf of the child. If the tribe issued the original child support order requiring the father (who is now caring for the child and receiving public assistance) to pay support, the State would not be able to recoup any public assistance benefits paid for the child because the State could not modify the tribe's order to require the mother, the custodian pursuant to the court order, to pay support if the tribe had continuing jurisdiction over its order under UIFSA. Again, all 50 states and the US territories operate IV-D child support programs and must process child support modification requests from CSSD such as the modification that would be necessary to collect public assistance benefits in these situations; currently only one of the 229 federally recognized tribes in Alaska operate a IV-D child support program.
14. The State could also suffer direct financial harm when the State takes custody of a child through a Child In Need of Aid case or a juvenile delinquency proceeding. If there is an existing child support order, the State, as the child's custodian, is limited to the amount of child support specified in the order. The same limitations addressed in the paragraph above would apply. This situation has already occurred. In the Jerome Dennis case, CCTHITA issued a child support order for Mr. Dennis to pay support and the child was in the custody of

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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2 the State pursuant to a court order. See attached CCTHITA child support order.  
3 First, since the child is in State custody and the State is not a consenting  
4 nonmember, the State should set the child support order. Second, the Tribe set  
5 support at a mere \$25 per month; under the State's child support guidelines, the  
6 minimum child support amount is \$50 per month. Thus, the State directly loses  
7 \$25 per month. While this may appear to be a minimal amount in this case, over  
8 the course of time and many cases, limits in tribal support orders could amount  
9 to thousands of dollars.

- 10 15. CSSD and Alaska families could be detrimentally impacted if the 229 tribes in  
11 Alaska began issuing child support orders. If CSSD could not, for whatever  
12 reason, enforce the tribal order it would have to close its case and would be  
13 unable to collect support for the custodian. For example, if the tribe issued an  
14 in-kind order (i.e. providing goods or services instead of a monetary amount of  
15 support) CSSD would be unable to enforce the order and would be unable to  
16 modify the support order under UIFSA (see AS 25.25.611). If the order was  
17 unenforceable, CSSD would have to close its case and would be unable to  
18 provide child support enforcement services to the custodian.
- 19 16. CSSD could also encounter other enforcement problems that would impact  
20 families who request enforcement services from the State. Even in the current  
21 state court system, sometimes CSSD has questions about the court's intent and  
22 must seek clarification of the child support order. For example, sometimes child  
23 support orders will not include all of the parties' children or it will contain  
24 conflicting child support amounts. While CSSD can directly file a motion with  
25 the state court to seek clarification of the court's child support order, CSSD has  
26 no authority to file motions in tribal court, a completely separate and distinct  
sovereign. As a separate sovereign, a tribe can set its own rules on who can  
submit motions to the tribal court and who can practice before the tribal court.  
CSSD would be left completely at the whim of the tribal court. Again, CSSD  
would most likely be forced to close its case if the order is unclear or  
unenforceable as written leaving the custodial parent without child support.
17. Through its tribal child support order, the tribe could direct CSSD's  
enforcement actions. Often times, the parents return to the issuing tribunal when  
enforcement disputes arise. The issuing tribunal can clarify its order and  
determine amounts paid, thus directing CSSD to change its records of the child  
support balance. Ultimately, the tribe would direct CSSD on how much is owed  
and whether a parent is entitled to a credit. Subsequent tribal orders affecting  
the child support balance and changing the arrears could result in an  
overpayment of child support to the custodial parent. In overpayment cases, the  
tribe might order CSSD to return the overpaid funds to the obligor even when  
CSSD no longer has the funds. For example, if the tribe ordered a parent to pay  
\$50 per month in child support and CSSD collected 6 months of child support  
and distributed \$300 (\$50 x 6 months) to the custodial parent, a subsequent tribal

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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2 order changing the child support to \$25 for past time frames will require CSSD  
3 to adjust its records and the custodial parent will have received a \$150 (\$25 x 6  
4 months) overpayment of child support.

5 18. It is highly likely that CSSD would become involved in enforcement of a large  
6 majority of tribal child support orders because oftentimes a parent does not pay  
7 child support. In fact, the failure of parents to support their children was a  
8 driving factor behind the federal funding of state child support agencies in the  
9 1970s under the Social Security Act. Although CCTHITA has its own IV-D  
10 tribal child support program, it already requests CSSD to provide enforcement  
11 services against obligors living in Alaska. CSSD can provide certain  
12 enforcement services that a tribe cannot provide. CSSD enforcement authority  
13 would likely be necessary in the following situations:

14 (1) While tribes can issue income withholding orders to an Alaskan  
15 employer of an obligor, the failure of a non-tribal employer to comply with the  
16 withholding order can only be enforced through the state law and most likely the  
17 tribe would request CSSD assistance to obtain the employer's compliance with  
18 the income withholding order.

19 (2) The tribe would also need the assistance of CSSD to garnish the PFD  
20 of a delinquent obligor; CSSD processes PFD garnishments for state and tribal  
21 child support agencies.

22 (3) The tribe would need the assistance of CSSD to garnish Alaska  
23 unemployment and Alaska workers compensation benefits.

24 (4) The tribe would need the assistance of CSSD to suspend a delinquent  
25 obligor's Alaska drivers or Alaska occupational license.

26 (5) The tribe would need the assistance of CSSD or another state IV-D  
agency to intercept delinquent obligor's IRS tax refunds or submit the delinquent  
obligor's name to the federal government for denial or revocation of his or her  
passport. Current federal tax laws do not permit tribes to directly participate in  
the federal offset program. Also, CCTHITA does not have the technical  
capability to submit information on delinquent obligors to the federal  
government for these federal offset programs. Although current federal  
regulations do not require CSSD to provide federal tax intercept services to a  
tribal IV-D agency, CSSD has discussed with CCTHITA entering a cooperative  
agreement to provide this service.

In short, a broad array of situations will require State assistance enforcing tribal  
child support orders and CCTHITA has already requested CSSD enforcement  
assistance. The volume of tribal child support orders from potentially 229 tribes

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 268-5100

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- 2 in Alaska is, of course, difficult to predict. However, processing orders
- 3 involving up to 229 separate sovereigns within Alaska with different procedures
- 4 on establishing child support orders and some with no procedures or form child
- 5 support orders at all will necessarily be more complicated than centralizing
- 6 operations within CSSD and uniform procedures within the state courts.
- 7 19. CSSD could also become involved in enforcing a tribal child support order
- 8 because any parent can request CSSD's assistance, regardless of who issued the
- 9 order. CSSD is required by statute to provide services to any person that
- 10 applies and requests its help in establishing or collecting child support. *See AS*
- 11 *25.27.100*. As I state above, the level of impact this might have on CSSD's
- 12 operations is not clear, but it could have detrimental effects on CSSD's
- 13 operations and ability to provide services as well as detrimental effects for
- 14 custodial parents.
- 15 20. Under its IV-D plan, CSSD is required to maintain an electronic registry of all
- 16 child support orders issued in the state and transmit this information to the
- 17 federal government for child support purposes. *See 42 USC § 654A(e)*. This
- 18 registry is called the State Case Registry. The purpose of the registry is to
- 19 improve child support establishment, collection and disbursement through
- 20 sharing, comparing and receiving information from other databases and
- 21 information comparison services. This includes furnishing information on child
- 22 support cases to the Federal Case Registry of Child Support Orders, exchanging
- 23 information with the Federal Parent Locator Services, exchanging information
- 24 with State agencies administering programs funded under Title IV-A and
- 25 programs operated under a State plan approved under Title XIX, and exchanging
- 26 information with other state agencies as necessary and appropriate to carry out
- the state plan for child support. The registry must include each child support
- order established or modified in the State of Alaska, including tribal child
- support orders. Although CSSD is required to maintain the state case registry,
- CSSD does not have any control over tribes and cannot require tribes to submit
- their tribal child support orders to CSSD. Failure of tribes to submit child
- support orders to CSSD would defeat one of the purposes of the state case
- registries—sharing of information for child support purposes. This could also
- result in conflicting child support orders by different jurisdictions including
- different tribes. For example, if a tribe with jurisdiction to issue a child support
- order sets child support and does not send the order to the State Case Registry,
- another tribunal such as another tribe, CSSD, the court or another state may
- issue a conflicting child support order violating provisions of UIFSA and the
- federal Full Faith and Credit for Child Support Orders Act.
21. Tribal child support orders can affect the State's interest in uniform child
- support awards and enforcement for all of Alaska's children and parents. If the
- 229 tribes in Alaska each begin issuing child support orders, the State would be
- left with a patchwork of 229 different child support guidelines (assuming the

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tribes adopt uniform child support guidelines). If the tribes are not also IV-D tribal child support agencies, it is possible that the tribes would not even adopt child support guidelines and would set child support on an ad hoc basis. Under either scenario, similarly situated Alaska parents and children, some living next door to each other, could have widely different child support orders depending on whether the state or one of the 229 different tribes issued the child support order.

22. I have outlined above different scenarios the State may encounter if 229 Alaska tribes begin issuing child support orders. Although it is difficult to quantify the financial costs to the State, the State may suffer direct and indirect financial consequences. At minimum, the State may suffer direct financial losses in public assistance and State custody cases. Also, CSSD will incur additional administrative costs dealing with orders from 229 different tribes and most likely will not be able to maintain the same level of child support services to parents and children at our current funding.

*John T. Mallonee*  
John Mallonee

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of October 2010



State of Alaska  
Notary Public  
Sandy P. McDermott  
My commission expires with office

*S. McDermott*  
Notary Public, State of Alaska  
My Commission Expires: with office

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
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**Table P-39: Tribal Program - Expenditures (Outlays) for Three Consecutive Fiscal Years**

| TRIBES                          | 2007                | 2008                | 2009                |
|---------------------------------|---------------------|---------------------|---------------------|
| CHEROKEE NATION                 | \$396,785           | \$1,796,510         | \$1,700,066         |
| CHICKASAW NATION                | 3,279,303           | 2,577,446           | 2,058,113           |
| CHIPPEWA CREE (Rocky Boys Res.) | NA                  | NA                  | NA                  |
| COMANCHE NATION                 | NA                  | NA                  | 358,411             |
| CONFEDERATE TRIBE OF COLVILLE   | NA                  | NA                  | NA                  |
| FOREST COUNTY POTAWATOMI        | 432,278             | 484,227             | 641,509             |
| KAW NATION                      | NA                  | 52,921              | 355,834             |
| KEWEENAW BAY                    | NA                  | 61,265              | 228,693             |
| KICKAPOO                        | NA                  | NA                  | 380,678             |
| KLAMATH                         | NA                  | 283,610             | 338,621             |
| LAC DU FLAMBEAU                 | 379,260             | 370,016             | 404,106             |
| LUMMI NATION                    | 732,504             | 944,398             | 1,013,251           |
| MENOMINEE                       | 742,376             | 769,219             | 791,000             |
| MESCALERO APACHE                | NA                  | NA                  | 357,055             |
| MODOC                           | NA                  | 448,748             | 2,305,413           |
| MUSCOGEE NATION                 | NA                  | 20,375              | 773,977             |
| NAVAJO NATION                   | 4,787,986           | 4,402,380           | 4,171,646           |
| NEZ PERCE                       | NA                  | NA                  | 270,067             |
| HOOKSACK                        | NA                  | NA                  | 765,642             |
| NORTHERN ARAPAHO                | NA                  | NA                  | 1,128,468           |
| ONEIDA NATION                   | NA                  | 56,049              | 417,922             |
| OSAGE NATION                    | NA                  | 444,662             | 462,576             |
| PENOBSCOT NATION                | NA                  | 177,861             | 528,858             |
| PONCA                           | NA                  | 100,806             | 450,065             |
| PORT GAMBLE S'KLALLAM           | 871,439             | 846,576             | 915,981             |
| PUEBLO OF ZUNI                  | NA                  | NA                  | 81,586              |
| PUYALLUP                        | 568,205             | 1,130,175           | 1,103,936           |
| QUINULT NATION                  | NA                  | 539,593             | 698,590             |
| RED LAKE BAND                   | NA                  | 180,559             | 418,476             |
| SISSETON WAHPETON AYATE         | 630,786             | 680,090             | 701,313             |
| TLINGIT AND HAIDA               | 658,075             | 966,703             | 877,385             |
| THREE AFFILIATED                | NA                  | 242,994             | 622,011             |
| TULALIP                         | NA                  | NA                  | 285,778             |
| UMATILLA                        | NA                  | 93,413              | 301,024             |
| WHITE EARTH NATION              | NA                  | 148,457             | 352,782             |
| WINNEBAGO                       | NA                  | NA                  | 271,617             |
| <b>TOTAL</b>                    | <b>\$13,478,997</b> | <b>\$17,819,053</b> | <b>\$26,532,450</b> |

Source: Standard Form 269A, line 10a.

NA - Not Available.

Four Tribes became comprehensive in FY 2009: Chippewa Cree (Rocky Boys Res), Confederate Tribe of Colville, Nez Perce, and Tulalip.

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**Table P-37: Tribal Program - Total Distributed Collections for Three Consecutive Fiscal Years**

| TRIBES                          | 2007                | 2008                | 2009                |
|---------------------------------|---------------------|---------------------|---------------------|
| CHEROKEE NATION                 | \$20,855            | \$2,714,439         | \$3,842,545         |
| CHICKASAW NATION                | 4,611,206           | 4,862,590           | 3,151,378           |
| CHIPPEWA CREE (Rocky Boys Res.) | NA                  | NA                  | NA                  |
| COMANCHE NATION                 | NA                  | NA                  | 23,146              |
| CONFEDERATE TRIBE OF COLVILLE   | NA                  | NA                  | NA                  |
| FOREST COUNTY POTAWATOMI        | 1,597,007           | 1,847,618           | 1,986,797           |
| KAW NATION                      | NA                  | 4,892               | 63,849              |
| KEWEENAW BAY                    | NA                  | 20,872              | 77,466              |
| KICKAPOO                        | NA                  | NA                  | 3,129               |
| KLAMATH                         | NA                  | NA                  | 184                 |
| LAC DU FLAMBEAU                 | 485,520             | 618,501             | 560,029             |
| LUMMI NATION                    | 225,992             | 300,529             | 293,701             |
| MENOMINEE                       | 1,116,537           | 1,345,323           | 1,372,789           |
| MESCALERO APACHE                | NA                  | NA                  | NA                  |
| MODOC                           | NA                  | NA                  | NA                  |
| MUSCOGEE NATION                 | NA                  | NA                  | 61,544              |
| NAVAJO NATION                   | 6,915,711           | 7,306,610           | 6,667,804           |
| NEZ PERCE                       | NA                  | NA                  | NA                  |
| NOOKSACK                        | NA                  | NA                  | 11,846              |
| NORTHERN ARAPAHO                | NA                  | NA                  | NA                  |
| ONEIDA NATION                   | NA                  | NA                  | 2,911               |
| OSAGE NATION                    | NA                  | NA                  | NA                  |
| PENOBSCOT NATION                | NA                  | NA                  | 2,147               |
| PONCA                           | NA                  | 15,690              | 38,557              |
| PORT GAMBLE S'KLALLAM           | 74,467              | 108,297             | 97,744              |
| PUEBLO OF ZUNI                  | NA                  | NA                  | 13,652              |
| PUYALLUP                        | 122,528             | 139,053             | 128,215             |
| QUINULT NATION                  | NA                  | 8,883               | 84,413              |
| RED LAKE BAND                   | NA                  | NA                  | 12,687              |
| SISSETON WAHPETON               | 493,910             | 552,562             | 539,665             |
| TLINGIT AND HAIDA               | 252                 | 27,696              | 111,363             |
| THREE AFFILIATED                | NA                  | NA                  | 82,881              |
| TULALIP                         | NA                  | NA                  | 3,750               |
| UMATILLA                        | NA                  | NA                  | 16,487              |
| WHITE EARTH NATION 3            | NA                  | NA                  | 39,263              |
| WINNEBAGO                       | NA                  | NA                  | NA                  |
| <b>TOTAL</b>                    | <b>\$15,663,985</b> | <b>\$19,873,555</b> | <b>\$19,289,942</b> |

Source: Form OCSE-34A - Part 1, line B.  
NA - Not Available.

Four Tribes became comprehensive in FY 2009: Chippewa Cree (Rocky Boys Res), Confederate Tribe of Colville, Nez Perce, and Tulalip.

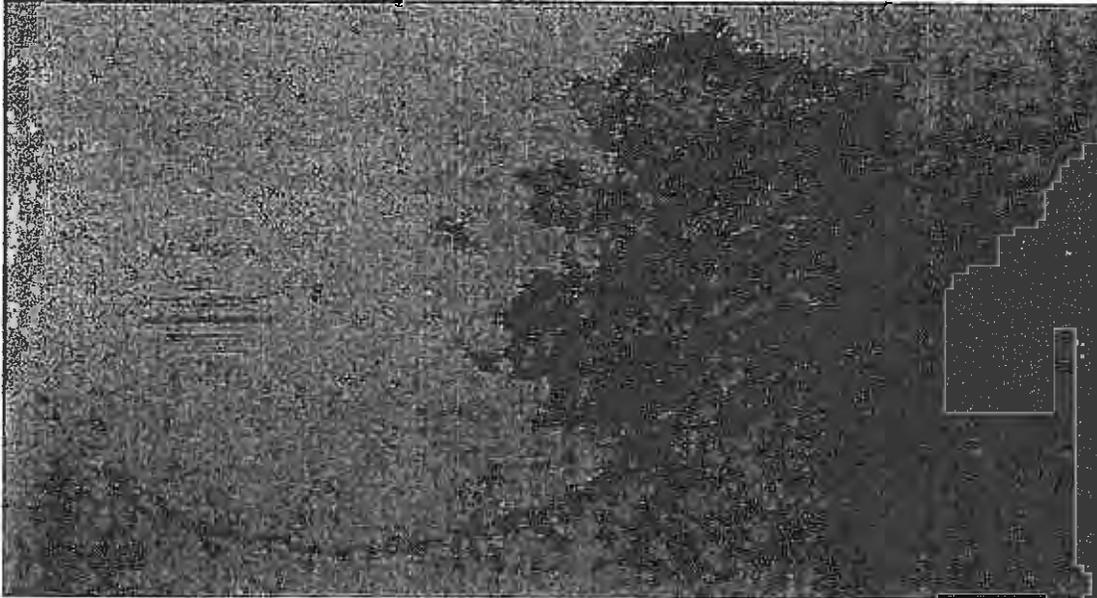
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**State of Alaska  
Department of Revenue  
Child Support Services Division**

**Self-Assessment Review  
FFY 2009**

**March 30, 2010**

**John Mallonee, Director**

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**EXC. 537**

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## Executive Summary

This Self Assessment Review measures the division's compliance with the Code of Federal Regulations (CFR) for federal fiscal year 2009.

CSSD exceeded federal compliance requirements for all measured criteria except Expedited Processes at the 12-month tier. Even so, that criterion's score is within the 6% margin of error. The greater worry is that performance in Expedited Processes has been trending downward for three years.

A stable level of performance was found in most areas measured. The declines in Establishment and Expedited Processes were statistically significant and will need a plan to correct their downward trend in performance.

Based on the previous years' results we do not think the small decline in Review and Adjustment is a problem.

Staff vacancies, training for new employees and turnover continued to create some problems (primarily in the establishment of orders), just as in 2008. Our agency-wide vacancy rate for the year was 9.1%, which was 3.4 points lower than in 2008. Our prior year's expectation to see general improvement for establishment of orders in Expedited Processes was not realized and our performance in reviewing and modifying orders also declined. We expected fewer people leaving our employment and anticipated a stable or slightly improved performance for 2009, and saw our vacancy rate decline slightly but performance among the caseworker teams was mixed.

Using statistics from the OCSE-157 Report, CSSD's active IV-D caseload shrank in size from 44,554 to 43,915 (1.4% smaller than in FFY 2008). The number of open cases with orders dropped to 92% (down 1%, which indicates a growing backlog). The agency

distributed \$99.5 million in child support in FFY 2009. This is about \$3.7 million less than last year, but that decline was expected. In FFY 09 we did not see the federal economic stimulus payout or Alaska's Energy Rebate and we had a significantly smaller Permanent Fund Dividend. These events boosted the 2008 numbers by about \$9 million.

The audit review period was October 1, 2008 through September 30, 2009. It included a detailed review of 505 cases (including the hard files). The sample was determined seeking a 90% confidence level and a +/- 2% maximum error of estimate. The review was conducted in accordance with 45 CFR 308.

The following table depicts the percent of cases in compliance by category:

| Criterion                            | Cases That Required Action | Cases Compliant With Time Frames | Efficiency Rate: 2009 | Federal Minimum Standard | Last Year: 2008 |
|--------------------------------------|----------------------------|----------------------------------|-----------------------|--------------------------|-----------------|
| Case Closure                         | 21                         | 21                               | 100% (+/- 7%)         | 90%                      | 100%            |
| Paternity/Establishment              | 58                         | 46                               | 79% (+/- 4%)          | 75%                      | 88%             |
| Expedited Processes within 6 months  | 29                         | 23                               | 79% (+/- 6%)          | 75%                      | 80%             |
| Expedited Processes within 12 months | 28                         | 25                               | 89% (+/- 6%)          | 90%                      | 93%             |
| Enforcement                          | 429                        | 397                              | 93% (+/- .7%)         | 75%                      | 93%             |
| Disbursement                         | 343                        | 330                              | 96% (+/- 1%)          | 75%                      | 96%             |
| Medical Support Enforcement          | 82                         | 73                               | 89% (+/- 3%)          | 75%                      | 86%             |
| Review and Adjustment                | 280                        | 249                              | 89% (+/- 1%)          | 75%                      | 92%             |
| Interstate Services, Overall         | 129                        | 120                              | 93% (+/- 3%)          | 75%                      | 91%             |
| Initiating Interstate                | 80                         | 74                               | 93% (+/- 4%)          | 75%                      | 89%             |
| Responding Interstate                | 49                         | 46                               | 94% (+/- 5%)          | 75%                      | 96%             |
| TOTAL CASES                          | 505                        |                                  |                       |                          |                 |

Details of the case results are in the subsequent report text. In addition, we are submitting the optional report categories titled, Program Direction and Program Service

Enhancements. Note that overall audit results have a margin of error of +/- 2%, with a 90% confidence level.

## Introduction

The Alaska Child Support Enforcement Agency (CSEA) was created under the Department of Health and Social Services (H&SS) on July 1, 1976. In its first year of operation, seven employees managed a caseload of 8,800 child support cases. All support orders were established through judicial process. A year later, the agency was moved from H&SS to the Department of Revenue where it remains today. In 1978, the CSEA was empowered with administrative enforcement capabilities. In April 1981 CSEA was renamed the Child Support Enforcement Division (CSED). In 2004, the name changed again to Child Support Services Division (CSSD). Today, CSSD has 231 full time employees who manage 43,915 active IV-D child support cases, of which 40,300 cases have support orders. In FFY 2009 CSSD distributed \$99.5 million (as reported on OCSE Form 157), of which about \$15.8 million was from the state's annual Permanent Fund Dividend (PFD).

The PFD is a significant part of the Alaskan economy, paying about \$820 million dollars to the population in FFY 2009 (about \$1305 per applicant). With the economic recovery proceeding slowly, we expect the FFY 2010 PFD to be approximately the same. The PFD itself helps all families, and for those people owing child support, it helps them pay their child support with money that does not come directly from their paychecks. The money the PFD contributes to the economy significantly affects CSSD's annual collections as it filters through local businesses and turns up as wages and assets for nearly every resident. By matching CSSD information with the data kept by the Permanent Fund Dividend Division we are also able to locate many people who owe or are owed child support.

## Sampling Methodology

In accordance with 45 CFR 308, we extracted a systematic random sample of the statewide caseload. This sample gives a 90% confidence level with a +/- 2% margin of error. We perform one self assessment review per year and it is oriented on the federal fiscal year. CSSD employs two internal auditors who perform the review. Automated review tools are not used. All records are maintained by CSSD. The auditors report to the IV-D director.

We did not omit any segment of the IV-D universe from the sampling process. The population, numbering 45,484, consisted of every IV-D case that was open as of September 30, 2009, and included every IV-D case closed during the audit period, October 1, 2008 through September 30, 2009. For this review, we excluded all Non-IV-D cases in the population, and those interstate-limited enforcement cases associated with simply intercepting the annual PFD (instead of receiving full services).

A minimum sample of 318 cases was required. To improve our statistical accuracy we took a sample of 505 cases. The skip interval was 90. We used Microsoft Excel to generate a random starting number between 1 and 90. A system programmer extracted the audit sample from the online caseload. Of the 505 cases reviewed, 25 had no measurable actions or were excluded for other reasons. The exclusion rate was 5%.

## Scope of the Review

We performed the audit in compliance with 45 CFR 308. As in the past, we held Interstate Initiating to a more restrictive standard. We did so because the CFR only requires that a case be initiated within 20 days of receiving the information needed to complete the interstate forms. It does not set any standards for soliciting that information from the

custodian of the children or answering their questions. We determined that we should measure this preliminary process as a way of determining the quality of the service we provide to the public. The following additional criteria provide a more accurate assessment of the agency's provision of Interstate services:

- A General Testimony packet, or a Registration of Foreign Order packet, should be sent to the custodial parent within a reasonable amount of time (30 days), if it is required to initiate a case.
- Follow-up actions should occur until we receive the information needed to process the case. (Such actions will include contacting the custodial parent about returning the initial paper work, or supplying any other information if the case was already initiated to another state). The time allowed for these follow up actions varies from 30 to 90 days based on whether the case was already initiated and what type of follow up action can reasonably be expected to produce a positive result.
- Timely responses should be made to other states and case parties to facilitate customer service, not just to meet CFR requirements. The CFR sets a response timeframe for Status Requests and for information requests from other states. We expanded this requirement to include contacts with case parties and attorneys, allowing up to 30 days to reply or forward a query to the other state.

The internal auditors reviewed case record information from both online case records and physical case files. We recorded our findings in a Microsoft Access database.

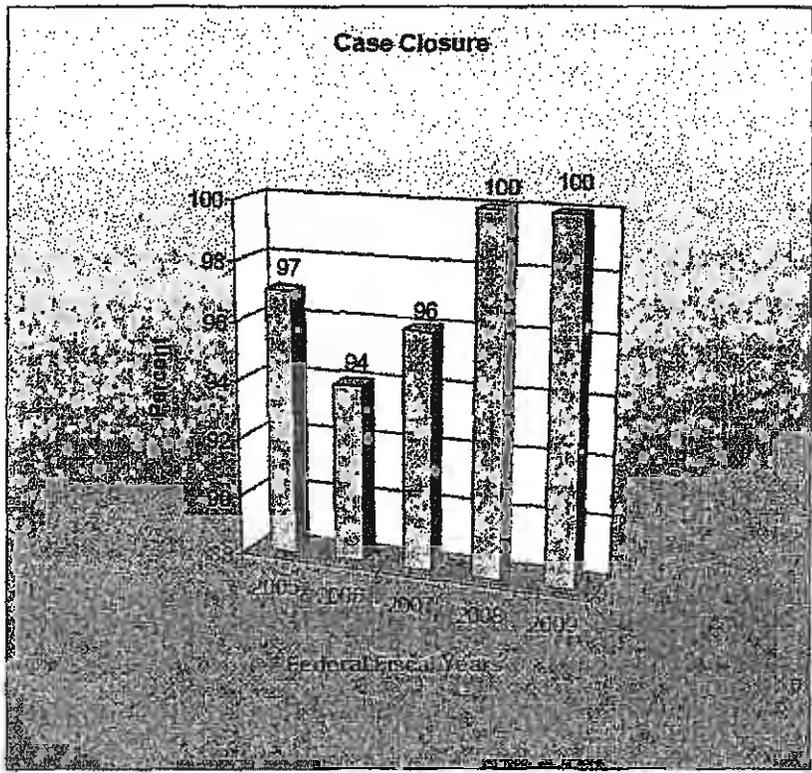
### Category 1: Program Compliance

#### Review Criteria in Compliance

We calculated all percentages by dividing the number of cases that had no measurable errors into the total-cases-measured for the criterion. Fractional numbers were rounded up when the fraction equaled .5 or greater, and were rounded down if it was .4 or less. The charts show five-year histories to better illustrate overall performance.

**Case Closure:** 100% (Minimum Acceptable: 90%)

There were no errors in the 21 cases measured. This criterion remained compliant. The five-year average efficiency rate was 97%.



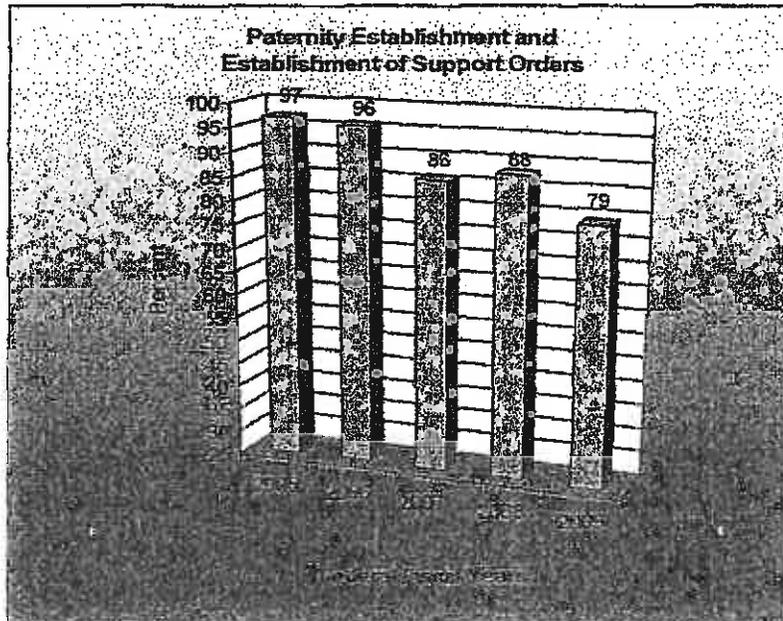
**Paternity and Support Order Establishment:** 79% (Minimum Acceptable: 75%)

There were twelve errors in the 58 cases measured. This criterion remained compliant with federal guidelines. The five-year average efficiency rate was 89%.

The efficiency rate has declined 9% since last year, and 17% from three years ago (FFY 06). Division staff must closely examine the training and casework of the establishment teams in order to reverse the downward trend in accuracy and timeliness. Staffing levels must also be evaluated to see if extra workers will be needed to eliminate the growing backlog of cases awaiting order establishment.

The total number of new orders established for the year was 1,160 (a decline of 25% from FY 08's 1550). The prior year showed that we had 93% of our open cases with orders, but for this year, we fell by one point. Alaska has the highest percentage nationwide of cases with orders (narrowly edging out South Dakota, according to statistics provided by Policy Studies Institute of Colorado).

The division will aim to reach an 85% efficiency rate for FFY 2010, as well as working to achieve the 94% goal for "Cases with Orders" (Line 2 on the OCSE 157).



**Expedited Processes:** Within 6 months: 79%; within 12 months: 89%.  
(Minimum Acceptable: 75% and 90% respectively)

The 6-month criterion was compliant with CFR, but the 12-month was marginal.

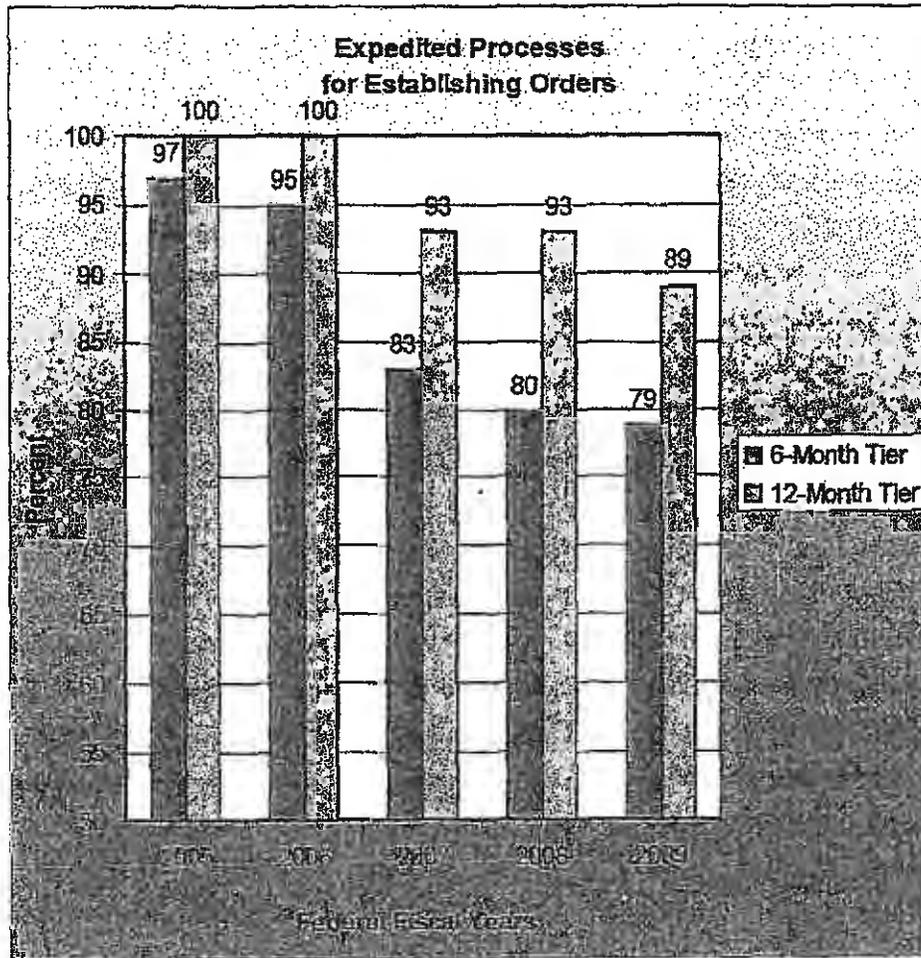
Altogether, we measured 29 cases for expedited processes. We measured 29 cases for the 6-month timeframe and 28 cases for the 12-month timeframe. At the 6-month tier, there were 6 errors. We did not meet our goal of 83% efficiency. At the 12-month tier, we found 3 errors. We did not reach our goal of 94% efficiency.

The five-year average for the 6-month tier was 87% (the same as last year). For FFY 2010 we will set the goal of 81% compliance, with 1% annual increases thereafter.

The five-year average for the 12-month tier was 95%. Management will conduct refresher training for paternity staff and emphasize meeting the timelines set in 45 CFR 303.5 and 303.101. The current efficiency rate was within the margin of error, but was likely below the minimum threshold of 90%. The likelihood of failure in this criterion is so high that we must closely examine our processes and correct the problems causing the decline in performance. As part of the process to identify the problems, the internal auditors will perform a focused audit on expedited processes in the first half of 2010.

*Note: The Expedited Processes criterion measures the time allowed under the CFR to establish child support orders. The timeframe measured begins with the initial service of documents on the noncustodial parent and ends with the establishment of a child support order. At least 75% of the cases must have an order established within 6 months of serving the noncustodial parent with a notice of a paternity complaint or of a duty to support a child. A minimum of 90% of the cases must have an order established within 12 months.*

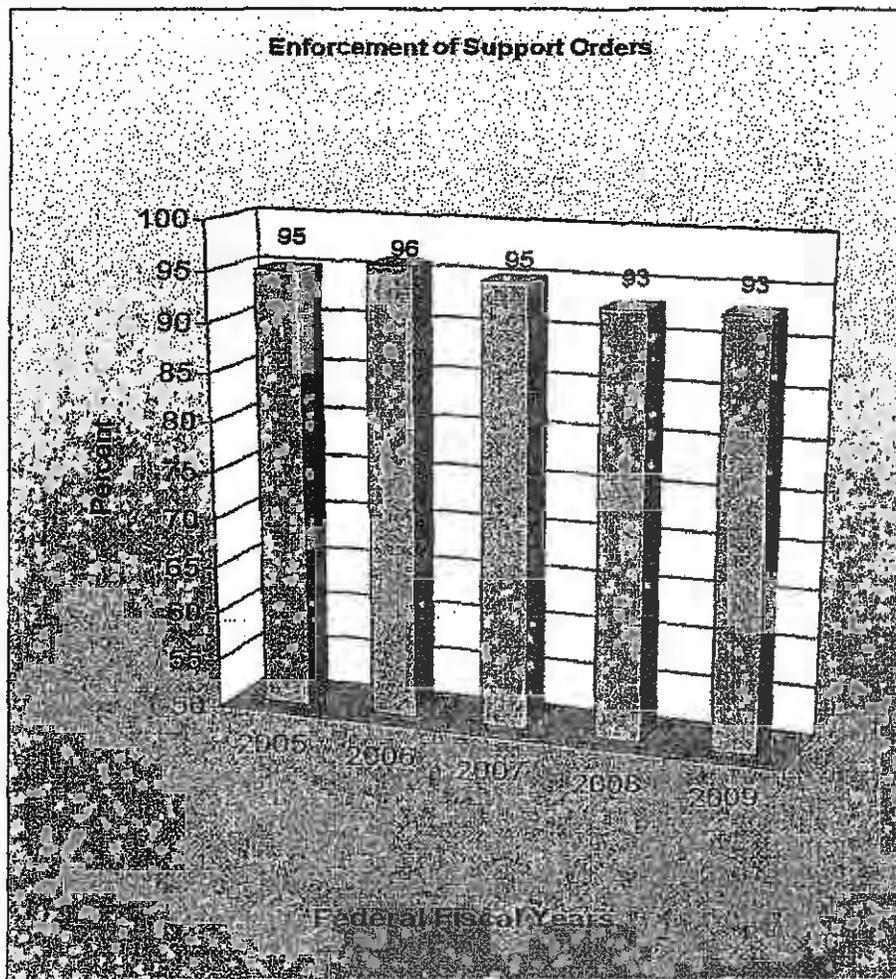
[Chart follows]



**Enforcement:** 93% (Minimum Acceptable: 75%)

There were 32 errors in the 429 cases measured.

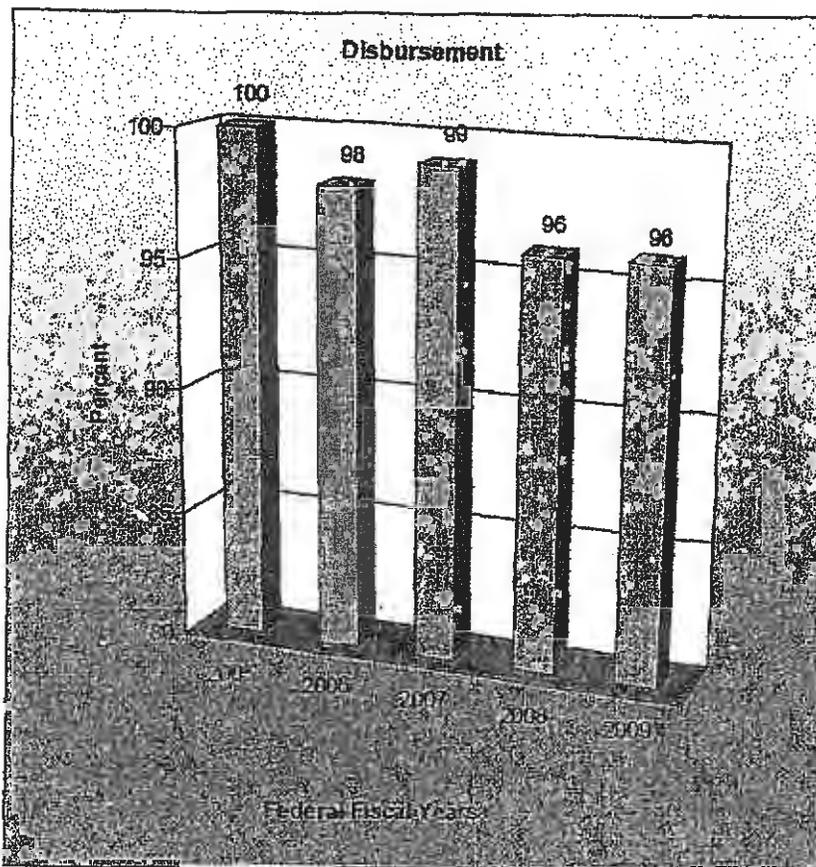
This criterion remained compliant. The five-year average performance was 94%. The enforcement teams will work to maintain this level of efficiency.



**Disbursement:** 96% (Minimum Acceptable: 75%)

There were 13 errors in the 343 cases measured.

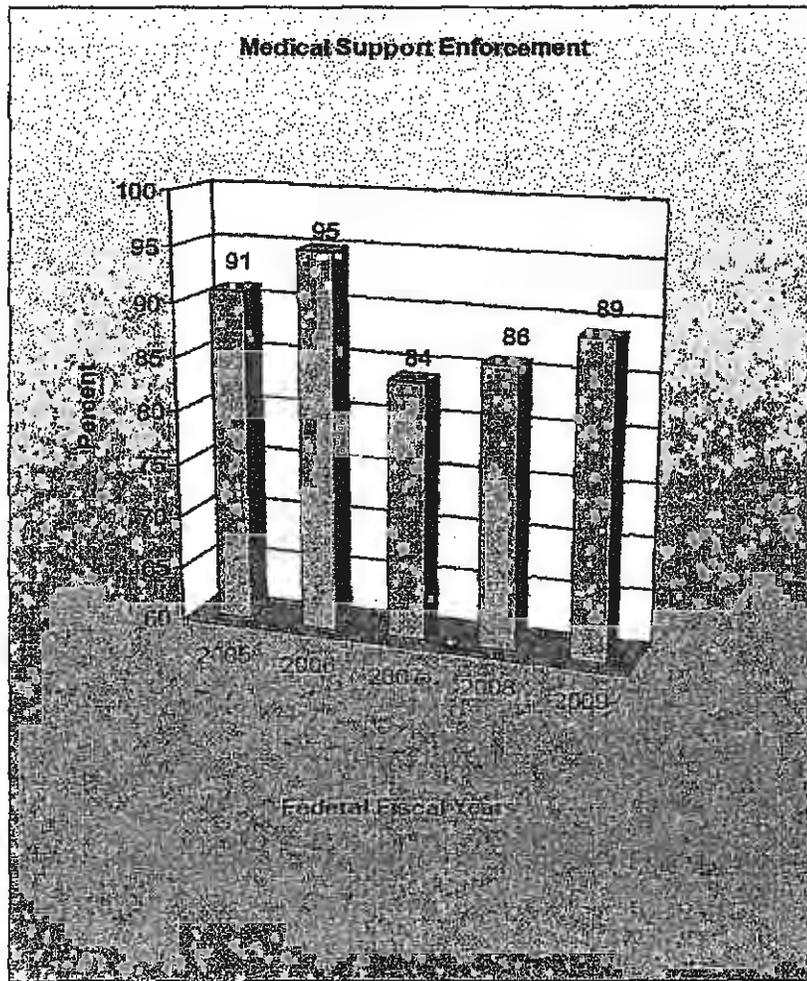
This criterion remained compliant. The five-year average performance was 98%.  
The agency will work to maintain this level of efficiency.



**Medical Support Enforcement: 89% (Minimum Acceptable: 75%)**

There were 9 errors in the 82 cases measured.

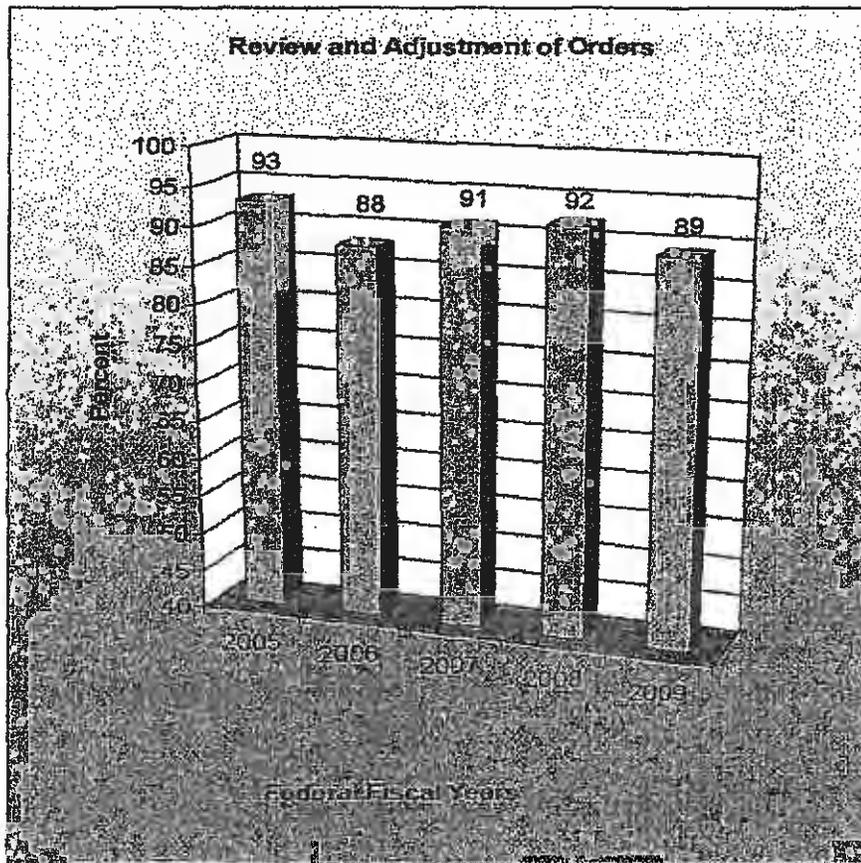
This criterion remained compliant. The five-year average performance was 89%. Management will continue training for caseworkers to ensure incoming information is reviewed and NSTAR is updated with any new information concerning insurance coverage. A goal of 90% efficiency is the target for FFY 2010.



**Review and Adjustment of Support Orders: 89% (Minimum Acceptable: 75%)**

There were 31 errors in the 280 cases measured.

This criterion remained compliant. The five-year average performance remained 91%. Performance remained consistent. The agency's target for next year is 90%.



**Interstate Services:** 93% (Minimum Acceptable: 75%)

There were 9 errors in the 129 cases we measured. This criterion remained compliant. Ninety-two percent was a performance composite for Central Registry, Initiating and Responding actions. Interstate performance remained stable.

The Initiating subcategory was 93% in compliance. There were 80 cases measured. Six had errors. The errors were as follows:

- Two errors were because we took too long to initiate the case to another state.
- In three cases, we did not provide new, important, information to the other state.
- In one case, we did not forward a case party's request for review within 20 days.

The Responding subcategory was 94% in compliance. Of the 49 cases measured, we found three errors.

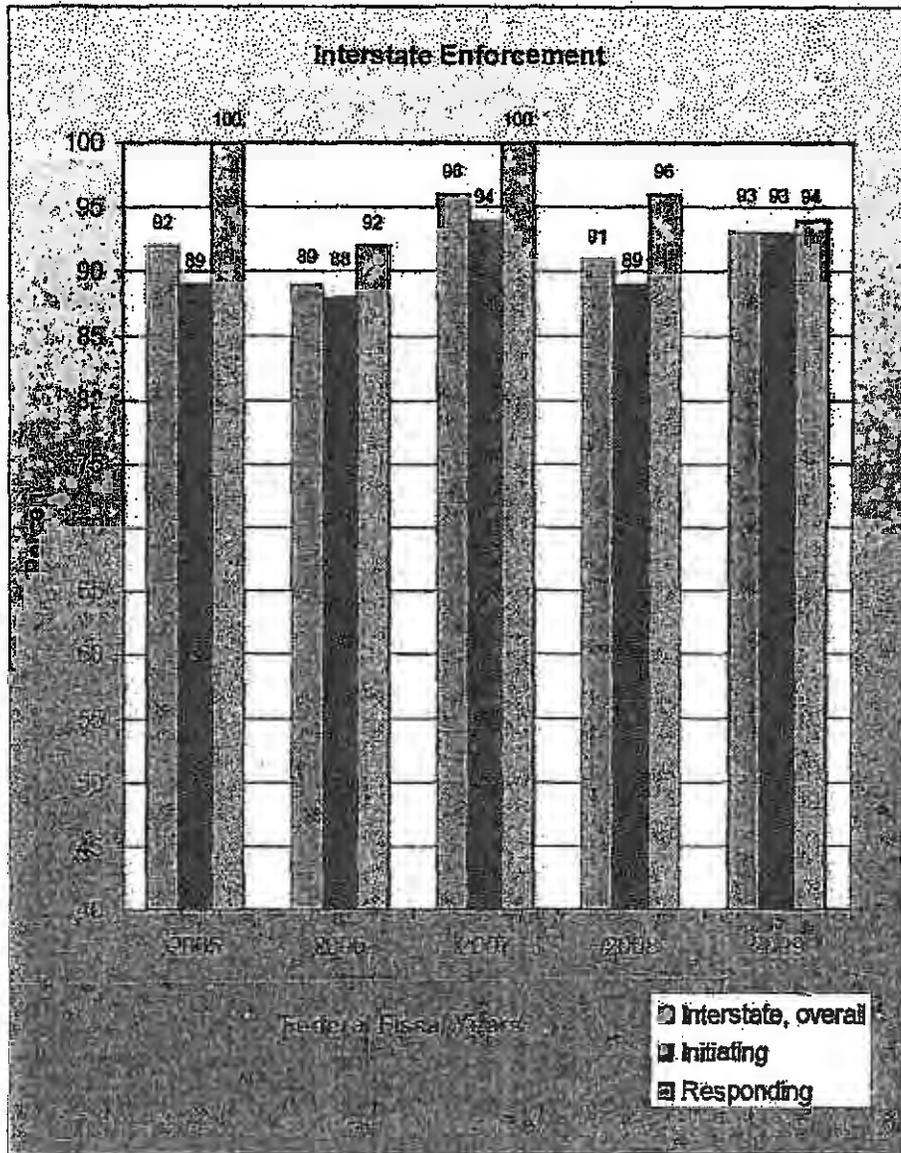
- In one case, we did not acknowledge receipt of a referral within 10 days.
- In two cases, we did not reply to a status request within 5 days.

The five-year averages for interstate were:

- Overall – 92%
- Initiating – 90%
- Responding – 96%

The goals for the interstate teams will be to remain current with incoming mail, and to ensure necessary information is requested in a timely manner so cases can be worked as soon as possible. More details are in the Program Direction comments in part 2 of this report.

[Chart Follows]



## Category 2: Program Direction

### Introduction

A detailed discussion of each review criterion follows. We include the level of performance, prior audit findings and the current audit findings in this section. Goals and targets are also laid out here. In the event a criterion falls below the mandated minimums, a corrective action plan will also be included here.

With the economic downturn, we had to deal with a hiring freeze, potential budget cuts, and strict control of spending on normal expenses. Vacancy rates declined from 2008, but we still had to authorize substantial overtime for caseworkers to meet our basic requirements. These challenges detracted from our efforts to improve the collection of child support, but we continue to look for ways to automate functions and use technology to work smarter.

**Case Closure:** 100%.

(Minimum Acceptable: 90%)

Of 21 cases measured, there were no errors.

**Prior Audit Findings.** We will continue periodic training in order to maintain the present compliance level. Supervisors will ensure that all employees are aware of the importance of performing these actions correctly.

**Current Audit Findings.** The division will work to maintain this level of compliance. Supervisors will ensure that all employees are aware of the importance of performing these actions correctly.

**Paternity and Order Establishment: 79%. (Minimum Acceptable: 75%)**

Of 58 cases measured, twelve had errors.

Four teams make up the Establishment Section: Intake, Paternity, Support Order Establishment and Modification. The Section did not keep up with the number of cases needing order establishment. A backlog of cases developed that was not addressed until late in 2009 and early 2010. A corrective action plan is currently being developed. The steps taken so far focus on getting new IV-A referrals reviewed and their cases setup within the prescribed time frame. All IV-A referrals are logged in and tracked for case set up, additional review and completion. Once the case setup is completed, it is moved from the intake team to the paternity or order establishment teams. The establishment process is under review by management to determine an effective method of dealing with the backlog. We are presently reviewing all incoming mail to determine the volume of work staff faces, as well as the staffing levels. 2009 saw a 6-month hiring freeze for state workers in the middle of the review period, but it was rescinded in time for us to hire and start training a number of new employees. Our vacancy factor for the Establishment section reached 22% during the year. Although that number is quite high, it is slightly lower than the 26% level we found in FY 08. By the end of the review period the section was fully staffed, though they still had about 17-18% of their workers in training. The full corrective action plan will not be ready by the time this report is published. Further comments will be included in our next report. In FYs 05-06, we addressed backlogs by temporarily reassigning staff and authorizing overtime until the problem was resolved. By FY 08, the compliance rate was back to a historical norm. We will consider this course of action again. Our two-year goal is to raise our current 79% efficiency rate to the five-year average of 88%. For the current year, our goal is a more modest 84% (which is in line with our average performance when the "high-output" years of 2005-06 are excluded).

In spite of the current setback in order establishment, Alaska can report that we ranked first in the nation for FY 2008. Our overarching goal will be to recover that position in the upcoming year.

| Paternity and Support Order Establishment  |                            |                  |                    |
|--|----------------------------|------------------|--------------------|
| Reason for Error   | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Over 20 days to open case  | 1                          | 8%               | 8%                 |
| Exceeded 90 day limit to serve Obligor; original order modification not involved | 10                         | 83%              | 92%                |
| Failed to perform locate per CFR 303.3   | 1                          | 8%               | 100%               |
| TOTAL  | 12                         | 100%             |                    |

**Prior Audit Findings.** Our accuracy and timeliness for order establishment improved 2%. Staff vacancies had a negative impact on the time needed to obtain an order, but a larger percentage of the cases measured this year obtained a final order for support. A breakdown of the measured actions is as follows:

- 48% of all the cases with any measured actions had an order established during the audit review period. In 2007, only 35% of the measured cases had new orders.
- Four errors occurred because we did not open a case within 20 days
- We had three errors because we did not serve a notice of financial responsibility within 90 days
- There were no errors for performing locate functions

Last year's finding that welfare cases were taking longer than 20 days to open was still a problem, but some progress was made. We will find ways to reduce the time needed to open a new case when public assistance or foster care is involved. In the next review, the auditors will examine the effectiveness of the new interface between CSSD and the Office of Children's Services and determine if it improves the speed with which foster care cases are opened. The establishment section has set a goal of 90% for the next year's efficiency rate.

**Current Audit Findings.** The establishment section failed to meet our goal of 90% set in last year's report. Our accuracy and timeliness for order establishment declined 9%.

A breakdown of the measured actions is as follows:

- 41% of all the cases with any measured actions had an order established during the audit review period. In 2008, we saw 48% with orders established, while 2007 had only 35% of the measured cases had new orders.
- One error occurred because we did not open a case within 20 days.
- We had ten errors because we did not serve a notice of financial responsibility within 90 days (this is seven more than last year and amounts to 17% of the measured establishment cases). This directly resulted in the agency's poor performance in the expedited processes criteria.
- There was one error for not performing locate functions within 75 days.

The finding that welfare cases were taking longer than 20 days to open was reported in 2007 and 2008. During the current review, we found the problem had grown worse and cases were taking 3-6 months to be set up. Initial review of the problem indicates the slowdown may be the result of procedures used by the intake team. Management is presently reconsidering the process and the duties of the intake staff. A cursory review of the results of the new interface with the IV-E agency (Office of Children's Services) showed that the interface is substantially more effective than the old "manual search & query" method, but it still requires substantial caseworker knowledge and effort to incorporate the information into our database. A small number of issues were reported for programming "fixes" and other work to improve the interface is ongoing.

**Expedited Processes:** 6-Month Tier 79%; 12-Month Tier 89%.  
(Minimum Acceptable: 75% and 90% respectively)

CSSD may have passed both criteria in this audit, but statistical margin for error is great enough that we must find the agency compliant at the 6-month tier but marginal at the 12-month tier. We measured 29 cases for the 6-month timeframe and 28 for the 12-month timeframe. This sample is small and has a +/-6% margin of error. The agency auditors will perform a focused audit in 2010 to determine a more reliable measurement.

**Prior Audit Findings.** Of the eight total errors, one was caused by delays in a court action. Of the seven errors under the control of the agency, five errors could have been avoided if caseworkers had used online information (in NSTAR) to speed up the location and service of documents. In the remaining two cases, one appeared to be caseworker error and the other was caused by the noncustodial parent avoiding service. It appears that most of these errors were due to vacancies or inadequately trained employees. The establishment section has 44 authorized fulltime employees and supervisors, of which 11 new employees were hired during the year, three required extensive leave, and two were promoted. With 36% of the staff not performing at full capability during the year, this decline in performance was expected. In addition, the section supervisors will develop training and procedures so caseworkers will review certain morning mail messages to facilitate process service.

**Current Audit Findings.** Of the nine total errors in six cases, two errors on one case were the result of not getting an order at all. That case was a federal foster care case undergoing our administrative process to obtain an order. The reason for the delay is not apparent, so we ascribe it to caseworker error and not extenuating circumstances. One error was due to the length of time it takes to proceed through the courts when the parties file the initial action and both paternity disestablishment and establishment are added to the divorce process. We had four administrative cases with six total errors. One case saw a long delay (11 months) after the service of paternity paperwork when the parent avoided service of later documents. Two cases saw delays of 8 months and 10 months to commence the establishment process; these must be counted as worker errors, with a possible mitigating factor being the growing backlog of cases.

It appears that most of these errors were due to vacancies or inadequately trained employees. The establishment section has 44 authorized fulltime employees and supervisors, and like 2008 there were a large minority of staff in training, on loan to another Section, or on leave. In all, the vacancy factor for 2009 was about 22% while in 2008 it was about 26%.

The five-year average for performance at the 6-month tier was 87% and at the 12-month tier it was 95%. The primary goal for the team should be to eliminate the backlog of

cases awaiting initial service of process and those cases awaiting reissue of the order documents. The secondary goal should be to improve the efficiency rate 4% in each criteria to 83% and 93%. This level of performance has been shown to be achievable and sustainable in the past.

#### 6-Month Tier Analysis

We examined the 6-month tier to see if a broader pattern existed. In FFY 2008 our ability to establish an order within six months diminished to the lowest level since 2001, and now 2009 is lower yet. The downtrend is certain. Management should continue the process review; it may be necessary to either reassign staff on a long-term basis or change the duties and workflow for the staff in the establishment section.

Three of the six cases with errors failed primarily because of mishandled files or the long delays between an unserved notice's return and the reissue for process service. In one case, we started to take action after three months, but then stopped for 8 months before resuming. In one case, we served the paternity paperwork but had trouble serving the child support order for 11 months. The court case was an action filed by the parties to disestablish paternity, reestablish paternity and then get a divorce with support order was understandable and unavoidable (at 10 months start to finish, we may characterize that case as having a rather quick resolution, considering what the parents tried to accomplish).

It was apparent from the large number of files waiting to be reissued for service or the new files waiting their turn to have original paperwork prepared, that delays of 6-7 months (as of the end of the review period) were the norm. In January of 2010 a count of the cases still waiting for action dated back to early August, 2009 and numbered approximately 700. Though most (about 80%) of the cases were new or had recently had paternity established, many were waiting for a caseworker to reissue them for process service or service by certified mail.

| Expedited Processes 6-Month Tier   |                            |                  |                    |
|--|----------------------------|------------------|--------------------|
| Reason for Error   | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Lack of action in a timely manner  | 4                          | 67%              | 67%                |
| Paternity service was followed by an evasive NCP who delayed the final order | 1                          | 17%              | 84%                |
| Court case took 10 months to resolve   | 1                          | 16%              | 100%               |
| TOTAL  | 6                          | 100%             |                    |

#### 12-Month Tier Analysis

All three errors measured under the 12-month criterion were due to mishandling the cases. Delays introduced by caseworkers, which might also be described as the backlog, show that it is common for 3-6 months to pass from first receiving a case until positive action is taken to issue the notices and serve them. Those cases not served by certified mail on the first attempt are then destined for the file cabinets where they await reissue, locate or process service; a wait that increased from about 4 months to 6 months over the course of the review period.

| Expedited Processes 12-Month Tier                                      |                            |                  |                    |
|--|----------------------------|------------------|--------------------|
| Reason for Error   | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Files waited extended periods of time to have notices issued or served | 3                          | 100%             | 100%               |
| TOTAL  | 3                          | 100%             |                    |

For 2008 the section saw about 36% of the staff either new or only partially trained. By the end of the 2009 audit period, only four staff members were still in training (about 9%). This factor alone should allow the teams to reduce the back log of cases awaiting service of process.

*Note: The Expedited Processes criterion measures the time allowed under the CFR to establish child support orders. The timeframe measured begins with the initial service of documents on the noncustodial parent and ends with the establishment of a child support order. At least 75% of the cases must have an order established within 6 months of serving the noncustodial parent with notice of a paternity complaint or of a duty to support a child. A minimum of 90% of the cases must have an order established within 12 months.*

**Enforcement:** 93%. (Minimum Acceptable: 75%)

We measured 429 cases, and found 32 errors. Performance was stable compared to the past 5 years. Average performance over the past 5 years remained at 94%. 138 cases "passed" due to wage withholding payments during the last quarter and an additional 132 passed as a result of non-wage withholding collections during the review period.

| Enforcement of Support Orders                            |                            |                  |                    |
|--|----------------------------|------------------|--------------------|
| Reason for Error   | Number of Cases With Error | Percent of Total | Cumulative Percent |
| Locate- failed to initiate address locate                | 9                          | 28%              | 28%                |
| Case not submitted for Federal Offset/IRS                | 9                          | 28%              | 56%                |
| No withholding order issued to incarcerated Obligor      | 4                          | 13%              | 69%                |
| Withholding order not issued to employer within two days | 3                          | 9%               | 78%                |
| Failed to complete asset/employer locate                 | 6                          | 19%              | 97%                |
| Over 20 days to open case                                | 1                          | 3%               | 100%               |
| <b>TOTAL</b>   | <b>32</b>                  | <b>100%</b>      |                    |

**Prior Audit Findings.** Principle findings for FFY 2008 remain the same as last year. Automated locate, employer reporting and withholding order issuance systems continue to perform the bulk of normal enforcement tasks. Issues to resolve this year fall

into two areas: caseworkers not checking their Morning Mail to find non-custodial parents who were recently incarcerated (our interface with the Dept. of Corrections runs weekly) and failing to update our system so cases can be submitted to the Federal Offset Program for tax refund offsets. Both of these areas have seen consistent rates of errors in the past three years, but it appears there is a simple way to correct them in the normal course of casework.

Training and vacancy issues also affected the enforcement teams. Out of 53 caseworkers and supervisors, they had 8 new hires, two promotions, nine departures and ended the year with six vacancies. About 30% of their positions were either in training or vacant for most of the year.

Managers and supervisors will develop training for staff that shows them how to quickly check the IRS and Morning Mail screens to find key information that requires their attention.

For the review period, we found one error in opening a case within 20 days of receiving an application. It appears the use of updated case-opening checklists is helping the case workers keep up with their assigned priorities.

Last year we reported that our growth in collecting ongoing monthly support obligations (MSO) is stagnant. Between 2002 and 2007, our MSO collections increased from 54% and 57%. For 2008, our collection rate was 58%. We expect the new distribution rules will have a positive impact on MSO collections in FFY 2010. The size of the impact remains to be seen, especially in light of the current economic situation. It may be two more years before we see net gains in collecting ongoing support.

**Current Audit Findings.** Locate issues were again the biggest factor in case failures; 15 errors this year compared to 12 last year. Other criteria saw failure rates common to recent years. The second most common error was miscoding a case and preventing a submission to the IRS for tax refund offset. In third position was failing to issue a withholding order within two days. This last problem is only partially the result of order processing delays from the establishment section.

The most common reason for the locate errors appeared to be that the caseworker did not recognize that locate was needed or the Morning Mail (a system-based reminder that

prompts the worker to look at a case) reminders had been closed out so nothing prompted the worker to resume locate efforts. In one case the locate reminder was assigned to an inactive/vacant position so no one checked the morning mail. Locate errors accounted for 47% of all the errors in the enforcement category. It seems likely the only way to reduce this error rate is to provide additional refresher training to staff.

Of the seven cases that failed the requirement to issue a withholding order in two days, one was because of delays getting the new order set up and transferred to the enforcement team. The other six were the result of caseworkers not taking action or having the reminder coded wrong so morning mail did not prompt a follow-up action. Overall, the error rate is not worrisome, but it might be reduced if management provides refresher training to caseworkers regarding address and asset locate as well as reviewing cases where the noncustodial parent is incarcerated.

**Disbursement:** 96%. (Minimum Acceptable: 75%)

We measured 343 cases, and found 13 errors. Average performance over the past 5 years was 98%.

| Disbursement  |                            |                  |                    |
|---|----------------------------|------------------|--------------------|
| Reason for Error  | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Hold because receipt amount is less than \$5.00. Not cost effective to cut a check. | 4                          | 31%              | 31%                |
| Obligor had multiple cases. Proper distribution was uncertain pending research      | 4                          | 31%              | 62%                |
| Incorrect TANF coding prevented disbursement within 2 days.                         | 2                          | 15%              | 77%                |
| Miscellaneous   | 3                          | 23%              | 100%               |
| <b>TOTAL</b>  | <b>13</b>                  | <b>100%</b>      |                    |

**Prior Audit Findings.** We have no new findings to report in this review. The accounting staff is handling the agency's financial matters adequately. The amount of money on hold as of September 30, 2008 was \$797,000. The \$370,000 increase over FFY 2007 was due to receipt of about \$2 million from the Economic Stimulus Package in June/July, and then the receipt of \$6.5 million from our PFD/Energy Rebate intercepts. This large sum of money could not be fully processed in the short time available (or in the case of the stimulus money, some of it had to hold for 6 months). Although this is an increase over 2007, it is still below historic highs from 2004 and earlier. Accounting staff addressed the money on hold after the end of the fiscal year.

CSSD continues to increase the use of Electronic Funds Transfer (EFT). More information will be found under Program Service Enhancements, later in this report.

**Current Audit Findings.** We have no new findings to report. In reviewing our disbursements as reported on our annual 157 report, we do note, however, that the agency is maintaining its efficiency rating even as the amount of money collected has grown from \$92 million in 2004 to nearly \$100 million in 2009.

Money on hold was \$415,000. This is an acceptable amount and is being managed properly by accounting staff.

EFT accounted for about 55% of dollars collected and disbursed. For individual transactions (payments) the incoming numbers show that EFT was slightly less than half, while nearly 58% of transactions outbound were via EFT. About 2400 employers send money to us by EFT. 2873 people currently collect their support via a debit card.

**Medical Support Enforcement:** 89% (Minimum Acceptable: 75%)

We measured 82 cases, and found 9 errors. Average performance over the past 5 years was 89%.

| Medical Support Enforcement  |                            |                  |                    |
|--|----------------------------|------------------|--------------------|
| Reason for Error   | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Did not determine availability of insurance (failed to issue the NMSN) | 9                          | 100%             | 100%               |
|  |                            |                  | 100%               |
| <b>TOTAL</b>   | <b>9</b>                   | <b>100%</b>      |                    |

**Prior Audit Findings.** With 92 cases measured and only 13 errors, we saw a 2% improvement in efficiency. Errors were caused by three things: not following up on known information, not issuing the National Medical Support Notices (NMSN) and not telling the custodian when insurance was obtained. The main problem was not following up on information at hand (6 errors). In four cases we had issued the NMSN and received some information back; however we did not follow up on positive "hits." (In two of the four we knew that the person would be eligible for insurance in the future.) In two other cases we had information on the court order stating one or both parties had insurance through their employers but we did not follow up to confirm or update our system. The final two errors were for not informing the custodian that we had obtained insurance information for the child.

Since eight of the thirteen errors were due to case work not being performed, management will implement refresher training on handling medical information for all caseworkers. A goal of 90% efficiency is the target for FFY 2009.

**Current Audit Findings.** Procedures put into effect in 2007 appear to be working as intended. Steady improvement in compliance is shown for the past 3 years. All errors this year were due to not issuing the national medical support notice. Seven of the nine errors appear to be directly attributable to caseworkers not reviewing case facts and taking action; two errors were due to exclusionary "flags" or codes on the case that prevented the NMSN from being issued or prevented the caseworker from getting a prompt to review the case for medical support action.

The goal for the agency in 2010 should be to attain an efficiency rate of 91%.

**Review and Adjustment:** 89%. (Minimum Acceptable: 75%)

Of 280 cases measured, there were 31 errors (27 for the failure to send Notices of Rights to Request a Review triennially - (NRRR)). Twenty-six of these were due to exclusion codes left on cases from past years, and one was an error in coding the order as "expired" when it wasn't. The exclusion codes preventing the NRRR notices is a repeat finding. Previously we reported that this type of error should be declining as years advance and old case-codings are corrected; however, a new cause of the errors has been observed. The new cause is the result of modifying orders which did not include the NRRR language. The form used for the modified order does not include the NRRR language either, and our automated system skips over the "new order" as it is less than 3 years old, therefore no NRRR is generated. This is a programming issue or a problem with the content of the original and modified order documents. We are examining the best way to address the problem. At present the priority is fairly low since the Review category is substantially compliant with federal regulations. Since we are planning a focused audit of this area, we'll look more closely at the issue of older orders that lack the NRRR language and modification orders that also lack the language.

The number of errors found this year has increased over last year, but is still within the historical range of 20-35 errors out of similar sized samples. We still see this as a manageable problem requiring no special action.

Average performance over the last five years was 91%.

| Review and Adjustment of Orders   |                            |                  |                    |
|---|----------------------------|------------------|--------------------|
| Reason for Error  | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Failed to issue Notice of Right to Request Review every three years   | 27                         | 87%              | 87%                |
| Modification requested by case party but not completed within 180 days (review period expired prior to modification of order) | 2                          | 7%               | 94%                |
| Failed to perform locate as needed  | 2                          | 6%               | 100%               |
| <b>TOTAL</b>  | <b>31</b>                  | <b>100%</b>      |                    |

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**Prior Audit Findings.** Overall errors are down again this year, with a cumulative decrease of about 38% since FFY 2006. The problem with old exclusion codes is decreasing as predicted. Current efficiency is acceptable.

Thirty of the 304 cases measured had orders modified or reviews conducted that resulted in denials of a modification. Twenty-two of the 30 cases (73%) were modified, or denied a modification, in 180 days or less (as required by 45 CFR 303.8). Of note here though is that 18 of the 30 actions took place in court (60%), which is far more than FFY 2007 (36%). This high percentage of court actions in 2008 appears to explain the decrease in orders modified within 180 days. (Court actions, on average, take about 83 days longer than administrative actions.) The auditors will look at this aspect of performance again next year to see if a negative trend is developing.

**Current Audit Findings.** Current efficiency is acceptable.

Nineteen of the 280 cases measured had orders modified or reviews conducted that resulted in denials of a modification. Twelve of the 19 cases (63%) were modified, or denied a modification, within 180 days (as required by 45 CFR 303.8). In order to validate these findings and research the delays found in the review process, the agency will perform a focused audit on review and adjustment cases during 2010. We had nine administrative and three court cases that were completed within 180 days of the request; three administrative and four court cases required from 7 to 15 months to reach resolution.

**Interstate Services:** 93%. (Minimum Acceptable: 75%)

Ninety-three percent is the performance composite for Central Registry, Initiating and Responding cases. Of the 129 cases measured, 9 had errors.

| Initiating Interstate                               |                            |                  |                    |
|---|----------------------------|------------------|--------------------|
| Reason for Error                                    | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Failed to initiate to other state within 20 days    | 2                          | 33%              | 33%                |
| New information not provided to other state         | 3                          | 50%              | 83%                |
| Did not forward a request for review within 20 days | 1                          | 17%              | 100%               |
| <b>TOTAL</b>  | <b>6</b>                   | <b>100%</b>      |                    |

| Responding Interstate                  |                            |                  |                    |
|--|----------------------------|------------------|--------------------|
| Reason for Error                       | Number of Cases with Error | Percent of Total | Cumulative Percent |
| Over 10 days to acknowledge referral   | 1                          | 33%              | 33%                |
| Over 5 days response to status request | 2                          | 67%              | 100%               |
| <b>TOTAL</b>                           | <b>3</b>                   | <b>100%</b>      |                    |

For the review period, we found no errors in issuing general testimonies to custodians, nor soliciting necessary information from case parties.

**Prior Audit Findings.** The Interstate Section suffered vacancies as did other parts of the agency. The section has 25 caseworkers and three supervisors, but about half of the staff was not fully trained for the duration of the year. All three supervisors were newly promoted in the review period. Among the caseworkers about ten positions were vacant for a substantial period and, once filled, remained in training throughout the remainder of the fiscal year. In addition, six caseworkers were on extended leave during the year. This

appears to be the reason for the declines reported in this review. Performance in FFY 2007 was significantly better than in 2008. During the next review, we will compare vacancy rates and examine whether training is completed in 2009.

**Current Audit Findings.** Overall performance is acceptable and improving, and the interstate teams should make efforts to maintain this level of performance. For 2010, the agency should set the goal of 93% compliance for the interstate category. The prior year's goal of 90% was met. The five-year average for all interstate actions was 92%.

#### **Initiating Interstate Analysis**

This subcategory was 93% in compliance. This five-year average was 91%.

Of the 80 cases measured, 6 had errors. The errors can be attributed to case handling errors. Management should remind staff of the tight timeframes associated with the CFR requirements for interstate cases.

#### **Responding Interstate Analysis**

This subcategory was 94% in compliance. This five-year average was 96%.

Forty-nine cases were measured. Three errors occurred as noted above. Performance in this area is highly acceptable and consistent with past years.

In addition to the criteria in 45 CFR 308, we measured actions that are necessary to process an initiating case successfully. Such actions include sending appropriate documents (such as the General Testimony, and Paternity Affidavits) to the custodial parent within a reasonable timeframe (30 days is considered a reasonable span of time to take such actions). The team must also provide follow up support as necessary, and respond to inquiries from case parties to facilitate customer satisfaction. Responding interstate caseworkers will strive to maintain current level of performance.

## Management Issues:

CSSD resolved all management issues from prior audits.

The Deficit Reduction Act mandated changes to distribution. Those programming changes were made and we are ready to report on them for the 2010 federal fiscal year.

We are currently considering ways to improve data reliability for medical support enforcement. One benefit is that we will be better able to enforce medical support orders and obtain insurance for children. This is an ongoing process and we anticipate reporting on it in the future. Even though the issue of auditing medical coverage cases for data reliability is on hold, we are working to clean up our data and continue enforcing the CFR requirements.

Management must decide the best way to approach the backlogs in the Establishment section and to increase compliance for the establishment or modification of orders in a timely manner. A corrective action plan is being developed at this time, but we have not yet completed our research into the nature and all the causes of the problems.

The biggest impact on division-wide performance appears to be the 9.1% vacancy rate for the year. Vacancies have declined but are still above normal, anticipated numbers. A more normal vacancy rate would be 4-7%.

### Category 3: Program Service Enhancements

CSSD took several steps to improve services to child support clients:

- During FFY 2009 our Anchorage Customer Service Reception area and our Phone Bank handled 66,517 phone calls and over 10,500 walk-ins. Our field offices in Juneau, Fairbanks and Wasilla handled approximately 15,700 phone calls plus 10,000 walk-ins. Division wide (including all of our caseworkers not already counted above) we normally take or make around 140,000 phone calls per year. CSSD continues to offer extended hours for our Anchorage Customer Service Center. This includes sample collection for genetic testing, in-house process service and notarization of state documents. Improved customer service should increase the number of orders served on noncustodial parents and decrease the time it takes to get a final support order.
- People within the Division who speak, read or write foreign languages, and are willing to volunteer their skills, were organized into an in-house translation service (for informal needs, not for court testimony). At present, we have 7 people who can communicate in German, Hindi, Polish, Russian, Samoan, Tagalog, Ukrainian, and Vietnamese.
- Our Outreach Program is still in place and working well. CSSD staff traveled to nine communities and met with people who have little or no opportunity to meet a caseworker. Staff traveled approximately 6,500 miles (4,800 miles were by air) to visit these towns. Outreach is especially valuable in Alaska where cultural differences and isolation make it harder to help case parties. In past years we visited more than a dozen remote towns and villages, and will serve many of them again in 2010. Our representative also takes genetic test samples for paternity cases which saves CSSD money because we do not have to fly the families to a hub city for testing.

- The towns visited in FFY 2009 were:
  - ⇒ Barrow
  - ⇒ Dillingham
  - ⇒ Fairbanks
  - ⇒ Homer
  - ⇒ Juneau
  - ⇒ Kenai & Soldotna
  - ⇒ Kotzebue
  - ⇒ Kodiak
  - ⇒ Nome
  
- CSSD's outreach program is our first point of contact for all 236 federally recognized tribes in Alaska, and for all Tribal Programs that affect child support. CSSD presently has two people working outreach to remote areas. They are the primary face we show to many of our clients, some of whom have little contact with modern life and may speak English poorly or not at all. This type of direct contact is far more effective with village residents than trying to do business over the phone or by mail. We are presently offering our assistance, as needed, to the following tribal entities.
  - ⇒ Bristol Bay Native Association, Cook Inlet Tribal Corporation, Tanana Chief's Conference, Central Council Tlingit-Haida, Association of Village Council Presidents and Kodiak Area Native Association operate Tribal TANF programs.
  - ⇒ Federal funding was granted for comprehensive IV-D program operation by Central Council Tlingit-Haida. Cooperation between CSSD and this tribe is improving and we referred over 700 cases to them by the end of 2009.
  - ⇒ Aleutian-Pribilof Island Association was approved for their 2-year startup funding. They are still working on the process.
  - ⇒ The Association of Village Council Presidents and Tanana Chief's Conference are still considering IV-D programs.
  - ⇒ Tribal Courts - We track tribal child support orders that affect our cases and we serve as the central registry for their orders.

- Our outreach team works on tribal child support cases. Communication between the tribes and CSSD is mainly done through email and written transmittals. Currently we have provided information on over 700 cases (an increase of over 100 compared to last year). Information provided includes supplying copies of court and administrative orders, current financial information and employer information. Services we provide include locating obligors, sending withholding orders to the Alaska Permanent Fund Dividend and adding tribal orders to the State Central Registry.
  
- Recurring local outreach meetings in and near Anchorage help address the needs of civic and military organizations, and case parties in Alaska's core population area. The primary places we target for outreach services are:
  - ⇒ Brother Francis Homeless Shelter
  - ⇒ Operation Stand Down (for veterans who need help)
  - ⇒ Alaska Federation of Natives annual Conference (in Fairbanks)
  - ⇒ Rural Small Business Conference
  - ⇒ Family Care Court (focusing on women and their children)
  - ⇒ AWAIC (for women in crisis) – we provide indirect assistance as requested
  - ⇒ Alaska Family Law Self Help Center (where the public gets help with child support matters without needing an attorney)
  - ⇒ Matanuska Susitna Family Services Fair
  - ⇒ Cook Inlet Tribal Council's (Correctional Center) Bridge to Success Reentry Program
  - ⇒ Cook Inlet Tribal Council's Fatherhood Program
  - ⇒ Office of Children's Services
  - ⇒ Veterans Administration Domiciliary
  - ⇒ Victims for Justice – we provide indirect assistance as requested

- In FFY 2009 CSSD maintained partnerships with agencies and individuals in the private sector to present "Town Hall" clinics in rural areas and around Anchorage. Getting more of our stakeholders involved in their child support cases and making them aware of the vital issues is critical to improving services to the many children of those parents.

The following are partners with CSSD:

- ⇒ Alaska Native Justice Center
  - ⇒ Disability Law Center of Alaska
  - ⇒ Alaska Legal Services
  - ⇒ Alaska Business Development Center
  - ⇒ Veteran's Administration Domiciliary (for homeless or in-need veterans)
  - ⇒ Various local shelters for people in need
  - ⇒ Various private attorneys who deal in Family Law
- 
- State correctional facilities are on our list of places to visit as often as is practicable (which may be once per year or once every other year):
    - ⇒ Anvil Mountain in Nome
    - ⇒ Fairbanks Correctional Center
    - ⇒ Lemon Creek in Juneau
    - ⇒ Palmer Correctional Center in Palmer
    - ⇒ Highland Mountain Women's Facility in Eagle River
    - ⇒ Cook Inlet Correctional Complex in Anchorage
    - ⇒ Point MacKenzie Correctional Farm at Pt. MacKenzie
    - ⇒ Matanuska-Susitna Pre-Trial Facility
    - ⇒ Wildwood Correctional Center in Kenai
    - ⇒ Yukon Kuskokwim Correctional Center
  
  - We advertised our outreach efforts via local newspapers, radio shows, responding to open radio forums, public service announcements, flyers to other government offices and our website.

- CSSD continues to circulate specialized booklets, brochures and a video for the public.

Most were revised during 2007-08. Materials distributed include:

- ⇒ Child Support for Children in State Custody
  - ⇒ OCSE DVD explaining paternity establishment (provided to hospitals & birthing centers)
  - ⇒ Video produced by Alaska CSSD: "Building a Healthy, Happy Child"
  - ⇒ Electronic Funds Transfer for Employers
  - ⇒ Child Support If You Are Incarcerated
  - ⇒ Employers' Guide to Wage Withholding (including a special section on the National Medical Support Notice)
  - ⇒ Judicial Reference Guide for Judges, Magistrates and Masters in Alaska Courts
  - ⇒ Direct Deposit of Child Support, For Individuals
  - ⇒ Review and Adjustment of Orders (including the forms to make a request for a modification)
  - ⇒ How to contact and do business with CSSD (by phone, on line or in person)
  - ⇒ Brochures about establishing paternity and why it is important to children
  - ⇒ Child Support a Guide for Parents
  - ⇒ New Hire Reporting Informational Guide (for employers)
  - ⇒ How noncustodians can make child support payments via Western Union
  - ⇒ Child Support Services FAQ and list of contacts
- CSSD and the Alaska Court System continued to maintain the *pro se* support order modification service, which we implemented in 2001. This collaboration enables the public to take a more direct hand in getting their support orders modified in court. The court system maintained their customer service center in order to help people help themselves. Anecdotal evidence indicates the public continues to be very happy with this service.

- In 2009 the Alaska Supreme Court was ready for final testimony on the revision to our support guidelines. Final testimony has not been heard as of this writing however. Revisions are expected in FFY 2010.
- CSSD cooperates with state and local police agencies to get child support collections from people who are arrested. Following the arrest, and if the person is carrying cash, the police contact CSSD to see if a child support debt exists. Then CSSD serves a withholding order on the police department for the money being held. In FFY 2009 over \$67,900 was collected via cash and property withholding orders, which is down \$22,000 from last year, but we made up the loss in passport revocation.
- The division has three investigators who work on criminal and difficult to enforce cases. Eight cases were successfully prosecuted. The investigators processed 87 cases for passport "releases" and were able to compel parents to pay over \$260,000 – an increase of \$43,000 over FY 08.
- Currently 2873 individuals use debit cards issued by JP Morgan as their means to receive child support payments (an increase of almost 27% from last year). In 2004 a few more than 100 individuals used debit cards. Employers sending payments by Electronic Funds Transfer (EFT) increased almost 18% to 2,373. EFT and the banking system's Automated Clearing House (ACH) are the preferred methods for accepting and issuing payments. We continue to advocate wider use of EFT in our daily contacts with the public and those employers with whom we deal. For FFY 2009, outgoing EFT/ACH transactions were 55.3% of our total disbursements and incoming transactions were 55.2% EFT/ACH. Upside is payments are disbursed within CFR guidelines. Downside is custodial parents' loss of contact since the money is sent directly to a bank account instead of an address.

- In 2008 the agency proceeded with enhancements to the Stellent imaging system, and in 2009 we added to its functionality and the variety of forms being imaged instead of stored in a hard file. The usefulness of this technology continues to grow and staff is adjusting to it well. Stellent allows orders and other documents to be scanned and then viewed online by all caseworkers. It is still too early to place a dollar value on the expected savings but we have already found substantial benefits when dealing with customers in person or on the phone. We are instantly able to access numerous imaged documents during our conversations with an individual.
  
- CSSD maintains a web site with numerous features including:
  - ⇒ Links to state and federal web sites
  - ⇒ A directory of employees to help clients contact us by fax or email
  - ⇒ A summary of CSSD services
  - ⇒ News covering child support related events and issues
  - ⇒ Online forms availability where numerous forms, including an application for services, may be ordered from a home computer
  - ⇒ A support guidelines calculator (to estimate child support)
  - ⇒ Recent case payment information (individuals may inquire on their own case)
  - ⇒ Information for employers about new Hire Reporting, child support laws and income withholding orders
  - ⇒ Frequently asked questions
  - ⇒ Employer information
  - ⇒ Press releases
  - ⇒ CSSD regulations
  - ⇒ CSSD publications
  - ⇒ News about CSSD staff visiting remote towns and villages

Our web site, <http://childsupport.alaska.gov>, continually evolves to provide more and better service to the public and to agency workers. On January 8, 2008, we changed

internet-tracking software to Google Analytics. It currently gets about 70,000 page views per month. From July 1, 2008 to June 30, 2009 (State of Alaska's Fiscal Year) we had 563,907 visitors with over 841,705 page views. A total of 128 countries or territories visited the website. In March we began providing online child support financial statements. At the time we only advertised this resource on our CSSD home page. From July 1, 2008 to June 30, 2009 we reported 8,419 views of the child support statements page. Having online statements available for clients to obtain payment information themselves may be a reason the number of customer service phone calls decreased.

- We also have an Intranet Homepage for our staff to use in downloading work related information and news, as well as an online employee phone directory. The page also has a link to CSSD policies and regulations. This intranet asset helps answer questions that would otherwise go to administrative staff or system support workers.

## Conclusion

Alaska's Child Support Services Division can once again report that it has substantially met the federal requirements for basic performance. The self assessment review also shows improvements in some areas but declines in others. For those categories where we did not meet our goals, the division will review our processes and work to correct the shortcomings.

**CCTHITA Tribal Court**

DEC 19 2007

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

|  |                   |                                   |
|--|-------------------|-----------------------------------|
| <b>Tribal Child Support Unit,</b>        | <b>Ex Rel.</b>    | <b>FINAL</b>                      |
| <b>Nevach,</b>                           |                   | <b>Order of Child Support</b>     |
| <b>A minor child under the age of 18</b> |                   | <b>AMENDED</b>                    |
| <b>Tribal Child Support Unit</b>         | <b>Petitioner</b> | <b>Court Docket #: 07-CS-0003</b> |
| <b>Vs</b>                                |                   | <b>TCSU Case #: 07-0075</b>       |
| <b>Jerome Charles Dennis,</b>            | <b>Respondent</b> |                                   |

**AMENDED  
Order of Child Support**

**I. BASIS**

- This order is entered pursuant to:
  - A decree of dissolution or legal separation.
  - An order determining parentage.
  - An order for modification of child support.
  - A hearing for temporary child support.
  - A petition for adjustment.
  - Modification of a custody decree of parenting plan.
  - A Petition to Establish Child Support
  - Full Faith and Credit Granted to: \_\_\_\_\_ [name of court/jurisdiction]
- On December 4, 2007, the CCTHITA Tribal Court issued a FINAL Child Support Order that contained a typographical error - support payments were ordered to commence in January 2008; however the written order states payment are to commence March 2007. This error is corrected by this Amended Order.

AMENDED  
Order of Child Support  
12/19/2007 CC To:  
TCSU (interdepartment)  
Jerome Dennis (mail)

EXHIBIT 38  
PAGE 53 OF 57  
1JU-10-376 CI

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

102507

I, \_\_\_\_\_, Clerk of the Court, do hereby certify that this is a true and correct copy of the original as filed in the Court records.  
 Witness my hand and the seal of the Court this 19th day of December, 2007.  
 \_\_\_\_\_  
 Clerk of the Court

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

### 4 II. JURISDICTION

5 The Tribal Court has jurisdiction pursuant to the following factors:

- 6 1. The Mother, Kerin Moore (AKA: Kerin Bean), is an enrolled member of the Central  
7 Council Tlingit and Haida Indian Tribes of Alaska.
- 8 2. The Father, Jerome Dennis, is an enrolled member of the Central Council Tlingit and  
9 Haida Indian Tribes of Alaska.
- 10 3. The Child is enrolled or eligible to be enrolled in the Central Council Tlingit and Haida  
11 Indian Tribes of Alaska.
- 12 4. A petition to establish paternity on behalf of the child was filed in CCTHITA Tribal  
13 Court on June 4, 2007. At that time, the Court was informed that TCSU staff had  
14 contacted the State CSSD and the State indicated that it did not have a child support  
15 order for this child, and therefore, did not have jurisdiction of the case.
- 16 5. On August 27, 2007, the CCTHITA Tribal Court established paternity of the child to be  
17 Jerome Charles Dennis.
- 18 6. On October 17, 2007, the CCTHITA Tribal Court established a temporary child support  
19 obligation for each parent in the amount of \$25.00 per month.

### 20 III. ORDER

21 IT IS ORDERED that:

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

| 23 Name       | 24 Date of Birth |
|---------------|------------------|
| Nevaeh Dennis | 2/12/07          |

#### 25 2. THE PERSON PAYING SUPPORT (OBLIGOR) IS:

Name: Jerome Charles Dennis

- Monthly Gross Income: \$ \_\_\_\_\_
- The income of the obligor is imputed at \$ \_\_\_\_\_ because
- The obligor's income is unknown.
- The obligor is voluntarily unemployed.

AMENDED  
Order of Child Support

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

EXHIBIT 38  
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- The obligor is voluntarily underemployed.
- Other: The Respondent is unemployed and has applied for disability benefits

**3. THE PERSON RECEIVING SUPPORT (OBLIGEE) IS:**  
 Name: **State of Alaska Office of Children Services**

**4. Commencing January 2008, the Respondent shall pay 28.00 per month in child support. This amount represents \$25.00 current child support and \$3.00 (10% of the monthly child support) towards back child support in the amount of \$75.00 for time period September 2007, October 2007 and December 2007. (November 2007 obligation wa paid)**

The breakdown for the back support is as follows:

|                                 |                |
|---------------------------------|----------------|
| Owed to the State of Alaska     | <b>\$75.00</b> |
| Owed to Petitioner              | <b>\$ 0.00</b> |
| <b>Total Child Support Debt</b> | <b>\$75.00</b> |

**5. STARTING DATE AND DAY TO BE PAID.**  
 Starting Date: **January 2008**  
 Day(s) of the month support is due: **1<sup>st</sup> of the month**

- 6. Respondent, Jerome Charles Dennis, to pay \$28.00 the total monthly obligation through income withholding:**
- Voluntary wage withholding
  - Wage Garnishment
  - Permanent Fund and/or Alaska Native Corporation distribution garnishment

**7. HOW SUPPORT PAYMENTS SHALL BE MADE.**  
 Payments are to be made payable and mailed as follows:

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

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

AMENDED  
 Order of Child Support

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

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**PAGE 55 OF 57**  
**1JU-10-376 CI**

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**9. TERMINATION OF SUPPORT.**

Support shall be paid:

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

**10. POST -MINORITY SUPPORT.**

- No post secondary educational support shall be required.
- Other: \_\_\_\_\_

**11. MEDICAL INSURANCE.**

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

- Mother
- Father

**12. EXTRAORDINARY HEALTH CARE EXPENSES.**

The Respondent shall pay 50% of extraordinary health care expenses, which are those expenses over \$5,000.

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

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

Disobedience of this order is punishable by contempt.

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

AMENDED  
Order of Child Support

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

SO ORDERED ON THIS 19<sup>th</sup> DAY OF December, 2007

Debra S. O'Gara  
Debra S. O'Gara  
Tribal Court Magistrate

The undersigned hereby certifies that this is a true and correct copy of a court document.  
10/27/08  
Clerk / Magistrate

AMENDED  
Order of Child Support

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EXHIBIT 38  
PAGE 57 OF 57  
1JU-10-376 CI

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

002511

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

|  |   |
|--|---|
| CENTRAL COUNCIL OF TLINGIT                     | ) |
| AND HAIDA INDIAN TRIBES OF                     | ) |
| ALASKA, on its own behalf and as               | ) |
| <i>parens patriae</i> on behalf of its members | ) |
|  | ) |
| Plaintiff,                                     | ) |
|  | ) |
| v.   | ) |
|  | ) |
| STATE OF ALASKA, PATRICK S.                    | ) |
| GALVIN, in his official capacity of            | ) |
| Commissioner of the Alaska Department          | ) |
| of Revenue and JOHN MALLONEE,                  | ) |
| in his official capacity of Director of the    | ) |
| Alaska Child Support Services Division         | ) |
|  | ) |
| Defendants.                                    | ) |

FILED  
JUN 24 AM 11:42  
JUNIOR COURT  
BY            DEPUTY

Case no. 1JU-10-376 CI

**REPLY BRIEF IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

The Alaska Constitution directs the Child Support Services Division to serve all Alaskans.<sup>1</sup> Contrary to this mission, CSSD denies enforcement services to children and families who have Central Council child support orders. The State argues that all of these orders are presumptively invalid and thus denies services required by the Uniform Interstate Family Support Act (UIFSA) and Title IV-D. Central Council seeks to remedy this problem through an order finding that it possesses concurrent jurisdiction to adjudicate child support for tribal children, as part of its inherent jurisdiction over domestic relations. Central Council also seeks an order compelling the State to follow the procedures spelled out under UIFSA and Title IV-D to enforce the Tribe's child support orders.

REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
*Central Council of Tlingit and Haida Indian Tribes of Alaska v. State of Alaska, et al.*, 1JU-10-376 CI  
Page 1 of 17

LAW OFFICES OF  
**ALASKA LEGAL SERVICES CORPORATION**  
419 SIXTH STREET, SUITE 322  
JUNEAU, ALASKA 99801-1098  
(907) 586-6428  
FAX (907) 586-2449

0325

## I. INHERENT JURISDICTION

### A. THE TRIBE'S JURISDICTION TO ADJUDICATE CHILD SUPPORT DERIVES FROM ITS INHERENT JURISDICTION OVER DOMESTIC RELATIONS — NOT TITLE IV-D OR UIFSA OR ICWA

The powers possessed by Indian tribes stem from three sources: federal statutes, treaties, and inherent sovereignty.<sup>2</sup> Central Council's authority over child support derives from its inherent sovereignty, specifically its core sovereignty over domestic affairs. The critical issue in this case is whether child support fits beside child custody, visitation, guardianship, and paternity in the category of "internal domestic affairs."<sup>3</sup>

Child support, like child custody, is not a *per se* tribal issue but it is one of the pillars of domestic relations. In fact, family support is one of the first sections of the Alaska Statutes' "Parent and Child" chapter.<sup>4</sup> In the main jurisdictional analysis of *John v. Baker*, the court finds several reasons why custody falls under "internal domestic affairs," which all apply to child support.<sup>5</sup> The court cites Congress' recognition that "a tribe has a strong interest in preserving and protecting the Indian family as the wellspring of its future."<sup>6</sup> Ensuring the financial support of children is at least as important in preserving and protecting the family as deciding custodial arrangements. The court's subsequent references to "internal relations," "domestic disputes between members," and "internal domestic matters," equally encompass child support as well as child custody.<sup>7</sup>

<sup>1</sup> Alaska Const. art. VII § 4.

<sup>2</sup> See *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 173 (U.S. 1982)

<sup>3</sup> *John v. Baker*, 982 P.2d 738, 751 (Alaska 1999).

<sup>4</sup> AS 25.20.030 (Duty of parent and child to maintain each other).

<sup>5</sup> *John v. Baker*, 982 P.2d at 751-59.

<sup>6</sup> *Id.* at 752.

<sup>7</sup> *Id.* at 752, 753, 754.

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The Court's cite to the U.S. Supreme Court's decision *Merrion v. Jacarillo Tribe* in its analysis is telling.<sup>8</sup> The *Merrion* court lists custody as one of many examples of traditional membership-based tribal authority:

The Court has been careful to protect the tribes from interference with tribal control over their own members. The Court has recognized that tribes have the power to prosecute members for violations of tribal criminal law, and that this power is an inherent attribute of tribal sovereignty. The tribes also retain the power to create substantive law governing internal tribal affairs. Tribes may define rules of membership, and thus determine who is entitled to the benefits of tribal citizenship; establish rules of inheritance, which supersede applicable state law; and determine rights to custody of a child of divorced parents of the tribe, and thus pre-empt adoption proceedings brought in state court.<sup>9</sup>

The *Merrion* court goes on to explain that tribal sovereignty over members is even greater than the States' powers over their own citizens.<sup>10</sup> This reference to *Merrion* recognizes a broad scope of membership-based jurisdiction over domestic affairs, not just a narrow custody exception to a general rule disfavoring tribal jurisdiction. *Merrion* also recognizes that membership-based jurisdiction predates the existence of reservations and is hardly new.<sup>11</sup>

<sup>8</sup> *Id.* at 755.

<sup>9</sup> *Merrion*, 455 U.S. at 170, citing *United States v. Wheeler*, 435 U.S. 313 (1978), *Roff v. Burney*, 168 U.S. 218 (1897), *Jones v. Meehan*, 175 U.S. 1, 29 (1899), and *Fisher v. District Court*, 424 U.S. 382 (1976).

<sup>10</sup> *Merrion*, 455 U.S. at 170.

<sup>11</sup> See *John v. Baker*, 982 P.2d at 751, citing *United States v. Wheeler*, 435 U.S. 313, 322-33 (1978) (discussing inherent powers of sovereignty retained after the coming of the Europeans).

The State does not identify a principled way to find that child support is part of domestic relations in Indian Country but not in Alaska.<sup>12</sup> Why child support would be a family law matter for reservation courts but not off-reservation courts is left unexplained. In the Indian Country cases cited in the opening brief, what is significant is the universal predicate that the tribes in question were properly exercising jurisdiction over child support as part of their inherent sovereignty over domestic relations.<sup>13</sup> The State focuses instead on the portions of the opinions that discuss whether such jurisdiction was *exclusive* because of reservation ties.<sup>14</sup> These parts of the opinions are irrelevant to the main issue of child support qualifying as a domestic relations matter.

Alaska's relative silence on tribal jurisdiction over child support does not make the case for either the Tribe or the State. *John v. Baker III* never "rejected the idea that child support and custody were linked."<sup>15</sup> Rather, the Alaska Supreme Court held that the superior court's referral of the dispute to the Northway tribal court "to conduct further child custody proceedings" meant literally that it referred child custody proceedings, not child support.<sup>16</sup> The Court deferred to the tribal court's own view that it never issued a

<sup>12</sup> Defendant State of Alaska's Memorandum in Support of its Cross-Motion for Summary Judgment and Opposition to CCTHITA's Motion for Summary Judgment ("Opposition") at 38-41, discussing *Iron Heart v. Ellenbecker*, 689 F. Supp. 988, 993 (C.D.S.D. 1988); *Arizona v. Zaman*, 927 P.2d 347 (cited by plaintiff due to an unfortunate Shepardizing error); *Montana v. Three Irons*, 621 P.2d 476, 477 (Mont. 1980); *State ex rel. Flammond v. Flammond*, 621 P.2d 471, 474 (Mont. 1980); *Sanders v. State of Montana Dept. of Public Health and Human Serv., Child Support Enforcement Div.*, 2005 MT 230N (Mt. 2005) (unpublished); and *Jackson County ex rel Smoker v. Smoker*, 459 S.E.2d 789 (N.C. 1995).

<sup>13</sup> Plaintiff's Motion for Summary Judgment at 18-19.

<sup>14</sup> Opposition at 41.

<sup>15</sup> Opposition at 11, citing *John v. Baker III*, 125 P.3d 323, 326 (Alaska 2005).

<sup>16</sup> *John v. Baker III*, 125 P.3d at 327.

child support order to which the state court could give comity recognition.<sup>17</sup> And ultimately, the Court held that its resolution of the case made it “unnecessary to express any opinion” about tribal child support jurisdiction.<sup>18</sup>

In its opposition brief, the State never squarely addresses why child support would not fit within the scope of domestic affairs. Instead, the State engages in a wholly different analysis, beginning with the premise that states enjoy presumptive exclusive jurisdiction absent Congressional authorization off-reservation. For this proposition, the State cites the dissent in *John v. Baker*, which says there is no tribal jurisdiction unless an act of Congress specifically authorizes the exercise of tribal adjudicatory power.<sup>19</sup> The State also cites the same language in *Mescalero Apache Tribe v. Jones* cited by the *John v. Baker* dissent.<sup>20</sup>

The State ignores the fact that the majority opinion in *John v. Baker* spends two entire paragraphs soundly rejecting this premise.<sup>21</sup> In the majority’s words, the court “refuse[d] to accept this invitation to deny the existence of tribal sovereignty and to turn federal law on its head.”<sup>22</sup> The majority points out that *Mescalero* does not stand for a general anti-jurisdiction presumption but rather a limited rule that Congress must authorize tribal authority for matters outside the realm of tribal self-government or

<sup>17</sup> *See id.*

<sup>18</sup> 125 P.3d at 327 n. 15.

<sup>19</sup> Opposition at 22-23, Section III.A (“State law presumptively governs off-reservation”), citing *John v. Baker*, 982 P.2d at 774 (Matthews, J., dissenting).

<sup>20</sup> Opposition at 22, citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973).

<sup>21</sup> *John v. Baker*, 982 P.2d at 751-52.

<sup>22</sup> *Id.* at 752.

internal relations — i.e. matters such as domestic relations.<sup>23</sup> In essence, the State asks this court to misinterpret *Mescalero*, abandon *stare decisis*, and overrule *John v. Baker*.

The State also relies on *Philip Morris United States v. King Mt. Tobacco Co.*, which denied tribal court jurisdiction over Philip Morris in a lawsuit alleging off-reservation federal and state trademark infringement claims.<sup>24</sup> The State challenges all membership-based jurisdiction by quoting out-of-context the Ninth Circuit's statement about land-based jurisdiction being "cabined by geography."<sup>25</sup> This challenge is weak in light of the Ninth Circuit's recent affirmation of membership-based jurisdiction in *Kaltag v. Jackson*<sup>26</sup> and the Alaska Supreme Court's continued reliance on *John v. Baker*.<sup>27</sup>

The point of the subsequent ten pages the State uses to guess at the hypothetical impact of 229 tribal child support programs in Alaska is unclear.<sup>28</sup> Nowhere in the brief or supporting CSSD affidavit does the State cite any negative impact the Tribe's IV-D program has actually had since the TCSU opened in 2007. There is no claim that the Tribe's requests for services are any more severe a strain than requests from other state

<sup>23</sup> See *id.*

<sup>24</sup> 569 F.3d 932, 934 (9th Cir. 2009). The Court did defer to the tribal court to determine whether it has jurisdiction over Phillip Morris for on-reservation conduct. *Id.* at 945 n. 2.

<sup>25</sup> Opposition at 22, n. 75.

<sup>26</sup> 344 Fed. Appx. 324 (9th Cir. 2009) (unpublished), *petition for cert. denied*, 2010 U.S. LEXIS 6530 (Oct. 4, 2010).

<sup>27</sup> See *Starr v. George*, 175 P.3d 50, 50 and 57, (Alaska 2008); *Baker v. John*, 2007 LEXIS 32 (Alaska Mar. 28, 2007); *Dep't of Health & Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388, 398 (Alaska 2006); *In re Adoption of Sara J.*, 123 P.3d 1017, 1022 (Alaska 2005); *Runyon v. Ass'n of Vill. Council Presidents*, 84 P.3d 437, 439 (Alaska 2004) *Evans v. Native Village of Selawik IRA Council*, 65 P.3d 58, 60 (Alaska 2003); *Malabed v. N. Slope Borough*, 70 P.3d 416, 427 (Alaska 2003); *In re C.R.H.*, 29 P.3d 849, 851 and 853 (Alaska 2001); *Sierra v. Goldbelt, Inc.*, 25 P.3d 697, 701 (Alaska 2001); *Sengupta v. Univ. of Alaska*, 21 P.3d 1240 (Alaska 2001).

<sup>28</sup> Opposition at 26-36.

IV-D programs, or really any strain at all. In fact, CSSD's most recent self-audit relays nothing but positive relations with the Tribe.<sup>29</sup>

Some of the hypothetical impacts are also misleading. The State complains about getting lower foster care reimbursement when support is set by the Tribe.<sup>30</sup> However, this may be true whenever the State is the payee for a child support order from another jurisdiction that does not use Civil Rule 90.3, or when an Alaska court or CSSD itself finds good cause to vary from Rule 90.3. The State also complains that it cannot accept "in-kind" services as assigned payments. However, the Tribe's rules provide that "[n]on-cash payments will not be permitted to satisfy assigned support obligations."<sup>31</sup> The State's assertion that it would have to be the primary enforcer of Central Council's child support orders is not factual. The Tribe is the primary enforcer of its own support orders, as well as hundreds of State orders with TANF arrears that CSSD has transferred to the Tribe for enforcement.<sup>32</sup>

Even if cooperating with the Tribe's IV-D program did significantly increase the workload of CSSD, the entire state-impact analysis is simply not part of *John v. Baker*. Nor does anything in *Montana v. United States* suggest that state-impact has any relevance to inherent jurisdiction over domestic relations, since *Montana* was about

<sup>29</sup> See Defendant's Exhibit 38 at 46-47 (describing CSSD's successful outreach to all federally-recognized tribes in Alaska and outreach team work on tribal child support cases).

<sup>30</sup> Opposition at 35.

<sup>31</sup> See Defendant's Exhibit 1 at 104, *CCTHITA Employment & Training Tribal Child Support Unit (TCSU) Standards for Determining Support Obligations*, §1.04(4)(b) in Kind Support.

<sup>32</sup> See Affidavit of Jessie Archibald in Support of Plaintiff's Motion for Summary Judgment, ¶¶ 8, 20-22.

regulating non-Indian hunters and fishermen who had no dealings with the Tribe on land not owned by the Tribe.<sup>33</sup>

The other two cases the State cites to prove that state-impact negates jurisdiction are also inapt. *Wagnon v. Prairie Band Potawatomi Nation* analyzes the boundaries of state authority to impose an off-reservation gas tax with “downstream economic consequences” on a Tribe.<sup>34</sup> *Nevada v. Hicks* actually analyzes tribal court authority, but only with respect to a tribal jurisdiction over state police for allegedly wrongful conduct in executing a state search warrant on a reservation.<sup>35</sup> The Supreme Court held in *Hicks* that the tribal court did not have jurisdiction over a suit against the state officers, partly because tribal court control over the actions of state law enforcement officers investigating a state-law crime was not “connected to that right of the Indians to make their own laws and be governed by them.”<sup>36</sup> The Court specifically distinguished situations where state activities might interfere with tribal “authority ‘[to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members.’”<sup>37</sup> Additionally, *Hicks* states: “Our holding in this case is limited to the question of tribal-court jurisdiction over state officers enforcing state law. We leave open the question of tribal-court jurisdiction over nonmember defendants in general.”<sup>38</sup>

<sup>33</sup> *Montana v. United States*, 450 U.S. 544, 547 (U.S. 1981).

<sup>34</sup> 546 U.S. 95, 114 (2005).

<sup>35</sup> 533 U.S. 353 (2001).

<sup>36</sup> *Hicks*, 533 U.S. at 361.

<sup>37</sup> *Id.* at 360-61, quoting *Strate v. A-1 Contractors*, 520 U.S. 438, 459 (1997), quoting *Montana v. U.S.*, 450 U.S. at 564 (1981).

<sup>38</sup> *Hicks*, 533 U.S. at 358 n. 2.

The Tribe does not seek to control State officials or regulate State activities.<sup>39</sup>

Rather, it seeks to enforce UIFSA and IV-D regulations which require all state and tribal IV-D programs to provide enforcement services to each other. This result is consistent with the legislative intent of UIFSA, the main goals of which are to hold parents accountable for maintaining their children and to limit multiple support orders by different jurisdictions.<sup>40</sup> Administering a child support order from the Tribe should be no more of an interference with CSSD's dignity or authority than administering a support order from another state.

If the State finds it too burdensome to follow federal regulations requiring services to tribal IV-D programs and compliance with UIFSA, the State can stop pursuing IV-D funding and opt out of IV-D program requirements.<sup>41</sup> The State has not yet made this choice.

**B. SUBJECT MATTER JURISDICTION DEPENDS ON THE CHILD**

Even though the Tribe's codes contain broad jurisdictional provisions, the only jurisdiction the Tribe is asking the court to recognize is subject matter jurisdiction in cases where the child is a member or eligible for membership in the Tribe. *John v. Baker*

<sup>39</sup> See *Prairie Band of Potawatomi Indians v. Richards*, 2002 U.S. Dist. LEXIS 2284 (D. Kan. 2002) (lower court enjoined state from ticketing tribally-registered vehicles off-reservation, and appeals court rejected the argument that the injunction ran afoul of *Hicks* because the core issue was tribal control over members as they travel off-reservation, not control over state officials).

<sup>40</sup> See Uniform Law Commissioners, A Few Facts About the Uniform Interstate Family Support Act (2001), [http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-uifsa.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-uifsa.asp) ("UIFSA limits child and family support orders to a single state, eliminating interstate jurisdictional disputes.").

<sup>41</sup> See *Kansas v. United States*, 214 F.3d 1196, 1198 (10th Cir. 2000) (where Kansas sued the U.S. arguing that the amended IV-D program requirements are too onerous and expensive, necessitate too much manpower, and encroach upon its ability to determine its own laws, the Circuit Court upheld dismissal of the suit because a state that elects to receive the federal block

— a non-ICWA tribal custody case involving a consenting non-member father — and the *Venetie* adoption case — an ICWA case involving a consenting non-member adoptive parent — could not be clearer that subject matter jurisdiction in a tribal domestic relations case turns on the membership of the child.<sup>42</sup>

The State has been trying to convince different courts to overturn *John v. Baker* and advance its theory that Alaska tribes' subject matter jurisdiction over domestic relations turns on the membership of all parties, not just the membership of the child.<sup>43</sup> But no court has agreed. Recently, the United States Supreme Court denied the State's petition for *certiorari* in *Kaltag*, where the State tried to convince the Court to adopt this position, contrary to the decisions of the federal district court and the Ninth Circuit.<sup>44</sup> But the Ninth Circuit's decision stands, affirming the district court that "it is the membership of the child that is controlling, not the membership of the individual parents."<sup>45</sup>

The State tries to make much of United States Supreme Court decisions since 1999 limiting off-reservation land-based tribal jurisdiction over gas taxes, hotel taxes, and commercial real estate transactions.<sup>46</sup> The implication is that *John v. Baker* should thus be given less weight. These cases are of limited applicability here, because the

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grant under the TANF program must operate a child support enforcement program that meets IV-D's requirements.)

<sup>42</sup> See *John v. Baker*, 982 P.2d at 759 and *John v. Baker*, 30 P.3d 68, 73 (Alaska 2001) (appeal after remand); *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548 (9th Cir. 1991).

<sup>43</sup> See, e.g. *Native Village of Tanana v. State*, No. 3AN-04-1214 CI, slip op. (Anch. Sup. Ct. May 25, 2007), *appeal argued*, No. S-13332 (Alaska Dec. 10, 2009) and *Kaltag*, *infra*.

<sup>44</sup> 2010 U.S. LEXIS 6530 (Oct. 4, 2010).

<sup>45</sup> See Order, *Kaltag Tribal Council v. Jackson*, Case No. 3:06-cv-211 TMB, at 10 (D. Alaska, February 22, 2008) (Plaintiff's Motion for Summary Judgment, Exhibit 11), *aff'd* 344 Fed. Appx. 324 (9th Cir 2009).

<sup>46</sup> *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001); *Wagnon v. Prairie Bank Potawatomi Nation*, 546 U.S. 95 (2005); *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316 (2008).

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Alaska Supreme Court continues to rely on and follow *John v. Baker* uncritically.<sup>47</sup>

Since denying *certiorari* in *John v. Baker* in 2000,<sup>48</sup> the United States Supreme Court has been silent on tribal jurisdiction in Alaska until denying the State's petition for *certiorari* in *Kaltag*.

### C. PERSONAL JURISDICTION

The court need not make any findings regarding personal jurisdiction over non-members, because the court is not being asked to rule on any particular tribal court child support order in this lawsuit. Should questions arise as to personal jurisdiction in a tribal court order that CSSD is asked to enforce, UIFSA provides a procedure for parties to voice objections to jurisdiction and for those objections to be resolved in a fair forum. Section 507(b) of UIFSA requires registration if an obligor objects to administrative enforcement of a support order, and Section 607 provides that:

A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden on proving one or more of the following defenses: (1) the issuing tribunal lacked personal jurisdiction over the contesting party . . . If a party presents evidence establishing a full or partial defense . . . the tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders.

Suffice it to say that the caselaw uniformly holds that a court can obtain personal jurisdiction over a party through that party's consent.<sup>49</sup> This was how the Northway Tribal Court obtained jurisdiction over the non-member father in *John v. Baker*.

<sup>47</sup> See fn 24, *infra*.

<sup>48</sup> 528 U.S. 1182

<sup>49</sup> See, e.g., *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (personal jurisdiction represents a restriction on judicial power that may be waived by consenting to the court's exercise

Although it is undecided whether *Montana v. United States* applies to membership-based jurisdiction cases, that decision recognizes the power of Tribes to regulate activities of non-members who enter into consensual relationships with Tribes.<sup>50</sup> Non-members who agree to participate in Tribal court proceedings fall into this “consensual relationship” category. In *Plains Commerce Bank*, the U.S. Supreme Court considered the effect of tribal authority on a non-member party, and the key issue was whether the non-member consented to jurisdiction.<sup>51</sup> As long as the non-member has consented to imposition of tribal laws, either expressly or by actions, the Tribe may exercise jurisdiction if the laws stem from the tribe’s inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations.<sup>52</sup>

**II. THE TRIBE CAN VINDICATE THE HARM DONE TO ITS FAMILIES BY THE STATE’S VIOLATION OF TITLE IV-D THROUGH § 1983**

The State’s description of the Tribe’s due process and 1983 claims in Section VII of its brief do not match the actual claims.

First, the State mixes up the distinct due process and 1983 claims by arguing that the due process claim must be premised on a federal statute affording enforceable individual rights.<sup>53</sup> The Tribe’s due process claim asserts that the State’s decision to ignore the Tribe’s requests for interstate services — including one request to garnish

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of adjudicatory authority); *Barlow v. Thompson*, 221 P.3d 998, 1002 (Alaska 2009) (consent of the party is one of the traditional grounds for personal jurisdiction).

<sup>50</sup> 450 U.S. 544, 565 (1981). See also *Smith v. Kootenai College*, 434 F.3d 1127, 1135-36 (9th Cir. 2006), cert. denied, 126 S. Ct. 2893 (2006) (“... as a plaintiff Smith chose to appear in tribal court. We are of the opinion that, even though his claims did not arise from contracts or leases with the Tribes, Smith could and did consent to the civil jurisdiction of the Tribes’ courts”).

<sup>51</sup> *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, \_\_\_, 128 S. Ct. 2709, 2724 (2008).

<sup>52</sup> *Id.*

<sup>53</sup> Opposition at 63 (citing § 1983 cases).

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unemployment benefits that is now over a year old<sup>54</sup> — violates tribal families' basic procedural rights to timely action from a state agency.<sup>55</sup> The Tribe's due process claim about administrative inaction is raised separately from the 1983 claim.

Second, the State argues against the Tribe bringing the 1983 claim on its own behalf.<sup>56</sup> However, the summary judgment motion's 1983 section begins with the unambiguous statement that the Tribe asserts its 1983 claim on behalf of its members — a narrower claim than the Complaint.<sup>57</sup> The State also argues that this case is only about sovereign power and not harm to tribal citizens, and thus does not qualify as a *parens patriae* action. This ignores the central problem in the case, namely that the families and children depending on the Tribe's child support orders cannot get enforcement services from the State because it rejects tribal authority over child support. The State's argument echoes a similar mistake it made in the *Native Village of Curyung* case: "The state has misunderstood the nature of *parens patriae* claims . . . the injury the state seeks to remedy is not to its sovereignty, but rather to its larger population."<sup>58</sup>

The Tribe's child support program exists for the health and welfare of its members, just as the State's program does the same for its citizens.<sup>59</sup> The Tribe has asserted a quasi-sovereign interest in obtaining enforcement services to benefit its

<sup>54</sup> See Complaint ¶ 30 and Answer ¶ 30 (regarding the State's non-response to the Tribe's Nov. 19, 2009, request for services for tribal court case 09-CS-120).

<sup>55</sup> Plaintiff's Motion for Summary Judgment at 35.

<sup>56</sup> See Opposition, Sections VII.B.1 ("CCTHITA may not sue under § 1983 to vindicate CCTHITA's sovereign rights) and VII.B.4 ("CCTHITA has not established that it has been harmed by State action.")

<sup>57</sup> See Plaintiff's Motion for Summary Judgment at 27 ("The Tribe asserts its section 1983 claim on behalf of its members as *parens patriae*.")

<sup>58</sup> *State, Dep't of Health and Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388, 400 (Alaska 2006).

members dependent on tribal child support orders. The Tribe agrees that “enforcement of collection against unwilling obligors is the *sine qua non* of child support programs.”<sup>60</sup> The right to child support enforcement services that the Tribe seeks to enforce as *parens patriae* affects the well-being of member families and children since “parents have a paramount duty to support their children.”<sup>61</sup> As explained in *Curyung’s parens patriae* analysis, the well-being of individual families and children is “inextricably bound up” with the Tribe’s ability to maintain its integrity, which is something that can only occur through the Tribe’s children.<sup>62</sup>

Third, the State mischaracterizes the federal right violated as “generalized grievances about the lack of intergovernmental cooperation.”<sup>63</sup> The problem is more specific, namely the enforcement of rights created by 42 U.S.C. 654(9) and 45 C.F.R. § 302.36(a)(2), which require every state IV-D plan to “extend the full range of services available under its IV-D plan to all tribal IV-D programs.” Alaska’s IV-D plan does not include this provision. Nor does CSSD provide enforcement services available under its IV-D plan to the Tribe’s IV-D program for any requests based on the Tribe’s support orders. The denial of services, with the narrow exception of two negotiated PFD agreements, is an uncontested matter of fact.

As to the enforceability of IV-D rights under 1983, the State incorrectly asserts that Title IV-D does not create enforceable individual rights.<sup>64</sup> *Blessing v. Freestone*

<sup>59</sup> Opposition at 29.

<sup>60</sup> Opposition at 32.

<sup>61</sup> Opposition at 30, quoting *Kestner v. Clark*, 182 P.3 1117, 1122 (Alaska 2008).

<sup>62</sup> *Curyung*, 151 P.3d at 402.

<sup>63</sup> Opposition at 70.

<sup>64</sup> Opposition at 69.

recognizes the possibility of 1983 actions to vindicate certain individual rights under Title IV-D.<sup>65</sup> It resolved a circuit split on the issue by rejecting vague claims for general violations of unspecified rights to substantial compliance with IV-D provisions as a whole, but allowing that Title IV-D may give rise to some individually enforceable rights.<sup>66</sup> Thus, it remanded to the district court to construe the complaint to determine what IV-D violations were at issue and then consider whether those violations infringed individual federal rights.<sup>67</sup> *Howe* therefore still is good authority, as limited by the qualifications set out in *Blessing*.<sup>68</sup>

Whether the right asserted here to enforce the state IV-D plan requirement meets the *Blessing* test is informed by *Curyung*. There, the Court found an individual enforceable right to a section of the Adoption Act that conditions federal funding on state child welfare plans providing for the development of individual case plans.<sup>69</sup> The Court determined that this provision meets the *Blessing/Gonzaga* test because (1) it is clearly designed to benefit individual children in foster care; (2) the plan requirement is black-and white — either a state has a plan or not; and (3) the language saying that states “shall” have the plan means it is mandatory.<sup>70</sup> While the provision does not give every family a guaranteed satisfactory case plan, it does create a “systematic” enforceable right

<sup>65</sup> *Blessing v. Freestone*, 520 U.S. 329, 345 (U.S. 1997).

<sup>66</sup> *Id.* at 339-40.

<sup>67</sup> *Id.* at 346-48.

<sup>68</sup> See, e.g., *Save Our Valley v. Sound Transit*, 335 F.3d 932, 941, n. 6 (9th Cir. Wash. 2003) (citing *Howe* as good authority, eight years after *Blessing*). See also Sasha Samberg-Champion, Note: How to Read *Gonzaga*: Laying the Seeds of a Coherent Section 1983 Jurisprudence, 103 Colum. L. Rev. 1838 (2003) (discussing 1983 suits to enforce spending clause provisions).

<sup>69</sup> 151 P.3d at 406.

<sup>70</sup> *Id.* at 407.

for the state to "develop, adopt and enforce a statewide system designed to provide each family and child with a case plan that meets the statute's specifications."<sup>71</sup>

Likewise here, the modern IV-D program "is no longer primarily a welfare reimbursement, revenue-producing device for the Federal and State governments; it is a family-first program, intended to ensure families' self-sufficiency by making child support a more reliable source of income."<sup>72</sup> Tribal families and children have an enforceable right for the state to develop, adopt and enforce a statewide system designed to provide child support enforcement services to the Tribe's IV-D program, as required by 42 U.S.C. 654(9) (IV-D state plan requirements) and 45 C.F.R. § 302.36(a)(2) (specific IV-D state plan requirement to extend full range of services to *all* tribal IV-D programs). These federal rules are aimed to encompass Alaska Native families.<sup>73</sup>

If CSSD denies these services to the Tribe, CSSD allows and encourages non-custodial parents to evade their child support obligations when there is a Central Council child support order in place. The deliberate withholding of services to a set of Native families also undermines the State's Constitutional mission of providing services to all Alaskan families. Ordering the State to comply with UIFSA and Title IV-D will ensure appropriate services to all Alaskan families.

<sup>71</sup> *Id.*

<sup>72</sup> Child Support Enforcement Program; Intergovernmental Child Support, 73 Fed. Reg. 74,408, 74,408-09 (codified at 45 CFR Parts 301, 302, 303, 305 and 308) (Dec. 8, 2008).

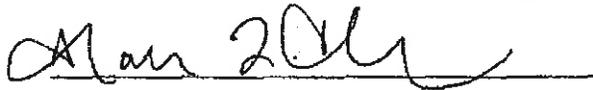
<sup>73</sup> See Tribal Child Support Enforcement Programs, 69 Fed. Reg. 16,638, 16,649 (codified at 45 CFR Parts 286, 302, 309 and 310 (Mar. 30, 2003) ("We are aware of the special circumstances in Alaska related to the term "Indian country" as a consequence of the Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). For clarification, except where specifically noted, throughout the preamble "Indian country" is replaced with the term "Tribal territory" in consideration of the special circumstances in Alaska. The final regulatory definition of "Indian Tribe and Tribe" encompasses all Indian Tribes and Alaska

Central Council therefore respectfully requests that the Court enter an order granting its motion for summary judgment and denying the State's cross-motion for summary judgment.

DATED: November 24, 2010

ALASKA LEGAL SERVICES CORPORATION

Attorneys for Plaintiff



Holly Handler, AK Bar No. 0301006

Certificate of Service

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ALASKA LEGAL SERVICES CORPORATION  
410 SIXTH STREET, SUITE 922  
JUNEAU, ALASKA 99801-1056  
(907) 586-8425  
FAX (907) 586-2449

Native entities enumerated in the Department of the Interior's listing of Federally-recognized entities such that each is eligible to apply for direct IV-D funding.")

REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

*Central Council of Tlingit and Haida Indian Tribes of Alaska v. State of Alaska, et al.*, 1JU-10-376 CI

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

RECEIVED BY MAIL 11:55  
CLERK, TRIAL COURT

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

Plaintiff, )

v. )

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

Defendants. )

Case No. IJU-10-376 CI

REPLY TO OPPOSITION TO STATE'S CROSS-MOTION  
FOR SUMMARY JUDGMENT<sup>1</sup>

R

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

<sup>1</sup> The Central Council of Tlingit and Haida Indian Tribes of Alaska chose to combine its opposition to the State's Cross Motion with its reply brief in support of its own motion for summary judgment. See Reply Brief in Support of Plaintiff's Motion for Summary Judgment at 17 (Nov. 24, 2010). [hereinafter "CCTHITA Reply"] This brief is the State's reply associated with the State's cross-motion for summary judgment.

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DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1001 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 263-5100

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DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 268-5100

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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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 OFFICE OF THE ATTORNEY GENERAL  
 ANCHORAGE BRANCH  
 1031 W. FOURTH AVENUE, SUITE 200  
 ANCHORAGE, ALASKA 99501  
 PHONE: (907) 269-3100

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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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Introduction

The parties present this Court with two different visions of *John v. Baker I*. Either *John v. Baker I* marks a specific exception to the general rule that tribes are without authority to act off-reservation, or the case establishes a presumption of tribal off-reservation jurisdiction based on a child's membership status.

Custody has a long-recognized history of tribal sovereignty. *John v. Baker I* relied on that history, and the explicit Congressional call for action to stem systematic removals of children from Indian families in child custody proceedings.<sup>2</sup> Congress established "concurrent" off-reservation jurisdiction in child custody proceedings, and the Alaska Supreme Court's decision purports to be an expression of that Congressional intent.

By contrast, Congress and federal courts have been absolutely silent about the exercise of off-reservation tribal child support jurisdiction. The regulation of debt relationships between parents is a modern phenomenon unconnected to traditional tribal issues. And since *John v. Baker I* was decided, the United States Supreme Court has repeatedly highlighted two themes: (1) the limited nature of off-reservation tribal jurisdiction; (2) the limited reach of tribal jurisdiction over nonmembers. A presumptive off-reservation child support jurisdiction regime cannot be squared with *John v. Baker I* and recent federal case law.

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<sup>2</sup> See 25 U.S.C. § 1901.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 268-5100

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To reach a principled result in this case, *John v. Baker I* does not need to be reversed. The State of Alaska has never requested reversal of *John v. Baker I* in any state or federal court proceedings, and does not do so here. The State does, however, seek an application of *John v. Baker I*'s membership-based jurisdiction that accords with governing federal Indian law. Governing federal law cannot be reconciled with the sweeping scope of off-reservation tribal jurisdiction proffered by CCTHITA.

**I. Tribal Authority On Reservation and Off Reservation Are Vastly Different, and Are Subject To Different Analyses**

CCTHITA expresses confusion about why a tribe would have child support jurisdiction on a reservation, but not off a reservation.<sup>3</sup> On-reservation and off-reservation jurisdictional rules are entirely different, and these differences explain—at least in part—why the State objects to the kind of unrestrained roving membership-based jurisdiction proposed by CCTHITA. Below is a chart outlining the general tribal jurisdiction rules (limited exceptions exist) on and off reservation<sup>4</sup>:

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

<sup>3</sup> CCTHITA Reply at 4 (“The State does not identify a principled way to find that child support is part of domestic relations in Indian Country but not in Alaska”).

<sup>4</sup> As discussed further below, to the extent *John v. Baker I* recognized membership based jurisdiction, it did so with reference to the closely related Congressional authorization (*i.e.*, ICWA) of concurrent off-reservation custody jurisdiction.

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| Tribal Jurisdiction    |   |
|------------------------|---|
| <b>On Reservation</b>  |   |
| Members                | Yes                                       |
| Nonmembers             | Montana Exception, Treaty, Statute (ICWA) |
| <b>Off Reservation</b> |   |
| Members                | None unless Treaty, Statute (ICWA)        |
| Nonmembers             | None unless Treaty, Statute (ICWA)        |

CCTHITA's analytical disconnect about the jurisdictional issues in this case is highlighted by its allegation that the State is violating the State Constitution by questioning tribal court orders.<sup>5</sup> The State Constitution affirms State sovereignty. It is not a mandate to recognize orders from other sovereigns. To the contrary, the Alaska Constitution demands a "unified judicial system,"<sup>6</sup> the intended scope of which is the entire "Territory of Alaska upon the date of ratification of this constitution by the people of Alaska."<sup>7</sup> And, as applied to child support, the State offers its services to all Alaskans, Native and non-Native alike.<sup>8</sup> The only factor that has changed recently is that a separate

<sup>5</sup> CCTHITA Reply at 1, 17.  
<sup>6</sup> Alaska Const. art. IV, § 1.  
<sup>7</sup> Alaska Const. art. XII, § 1.  
<sup>8</sup> State Exh. 38, Affidavit of J. Mallonee ¶¶ 6, 19 (Oct. 28, 2010); AS 25.27.100.

1  
2 sovereign entity, CCTHITA, has now arrogated to itself the right to issue child support  
3 orders to many of the same Alaska citizens. The fact that a separate sovereign is  
4 interfering with the State Constitutional mandate (and then, in a bit of irony, trying to use  
5 State Constitutional law as an offensive weapon against the State) creates the underlying  
6 tension driving this case and the related federal Indian law analyses.

7  
8 **A. On-Reservation Rules Respect Tribal Sovereignty Over Members and  
9 Nonmembers**

10 On a reservation, tribal sovereignty prevails "unless Congress legislates to  
11 the contrary," and there is "no room for state regulation."<sup>9</sup> Indian conduct on  
12 reservations is "left exclusively to tribal governments."<sup>10</sup> How and in what manner the  
13 tribes operate child support programs on a reservation is left to the tribes.

14 On a reservation, then, tribes have virtually unfettered autonomy over their  
15 own members. "When on-reservation conduct involving only Indians is at issue, state  
16 law is generally inapplicable, for the State's regulatory interest is likely to be minimal  
17 and the federal interest in encouraging tribal self-government is at its strongest."<sup>11</sup> The  
18 United States Supreme Court notes a "tradition of Indian sovereignty over the reservation  
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23 <sup>9</sup> F. Cohen, *Cohen's Handbook of Federal Indian Law* § 6.03[1][a] at 520 (2005  
ed.) (hereinafter "Cohen").

24 <sup>10</sup> *Id.* at 521.

25 <sup>11</sup> *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).  
26

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 268-6100

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and tribal members.”<sup>12</sup> The Court held that tribes should be allowed to resolve disputes “arising on the reservation among reservation Indians.”<sup>13</sup>

Given that well-established on-reservation authority, tribes entering child support orders or running child support programs for tribal members on a reservation is an expected result. On-reservation, tribes have the authority to run their own programs, to enforce their own orders, and to exercise self government as they see appropriate within their land-based boundaries. Federal law encourages the exercise of such jurisdiction, and tightly restricts any potential State interference.

Even when a nonmember is involved, if the nonmember is on a reservation, a State cannot necessarily assert jurisdiction. The United States Supreme Court demands that tribal interests be considered as part of a “particularized inquiry into the nature of the state, federal and tribal interests at stake.”<sup>14</sup> In various contexts, states have been found to be without authority to regulate nonmember conduct on reservations.<sup>15</sup>

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<sup>12</sup> *Id.* at 143.  
<sup>13</sup> *Fisher v. Dist. Court of the Sixteenth Judicial Dist. of Montana*, 424 U.S. 382, 387-88 (1976).  
<sup>14</sup> *Bracker*, 448 U.S. at 145.  
<sup>15</sup> *See, e.g., New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 343 (1983) (State of New Mexico had insufficient interest to impose fish and game laws on nonmembers hunting on reservation); *Bracker*, 448 U.S. at 152-53 (State of Arizona unable to assess motor carrier license and use fuel taxes on nonmember logging contractor for activities on a reservation).

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2           **B. Off-Reservation Jurisdictional Rules Restrict the Exercise of Tribal**  
3           **Jurisdiction**

4           Tribes do not enjoy the same autonomy off-reservation. In fact, *John v.*  
5           *Baker I* marks “the first time in 200 years of American jurisprudence that any court has  
6           upheld tribal jurisdiction based solely on membership.”<sup>16</sup> Because “Alaska Native  
7           villages occupy no reservations and for the most part possess no Indian country,”<sup>17</sup> a tribe  
8           such as CCTHITA is limited solely to its off-reservation membership-based authority.

9           *John v. Baker I* is a carefully crafted first step in recognition of off-  
10          reservation tribal authority, and future interpretations of the scope of membership-based  
11          authority must be placed in the context of applicable federal Indian law.

12          Off-reservation, state law presumptively applies except in limited  
13          circumstances.<sup>18</sup> Tribal commentators interpret *John v. Baker I* as setting forth an  
14          “instance” where tribes could exercise concurrent off-reservation jurisdiction—custody  
15          disputes between unmarried parents.<sup>19</sup> Given the novelty of off-reservation tribal  
16          disputes between unmarried parents.<sup>19</sup> Given the novelty of off-reservation tribal  
17          disputes between unmarried parents.<sup>19</sup> Given the novelty of off-reservation tribal

18          <sup>16</sup> David S. Case, *Commentary on Sovereignty: The Other Alaska Native Claim*, 25  
19          J. Land Res. & Envtl. Law 149, 153 (2005).

20          <sup>17</sup> *John v. Baker I*, 982 P.2d 738, 750 (Alaska 1999).

21          <sup>18</sup> Cohen § 6.01[5], at 513-14 (“In Indian law, the pervasiveness of tribal governing  
22          authority and the preclusion of state jurisdiction are manifested primarily *within* Indian  
23          country. . . . With respect to events occurring *outside* Indian country, however,  
24          *nondiscriminatory state laws have been held to apply unless federal law provides*  
25          *otherwise. . . . In some instances, tribal jurisdiction, particularly over members, may*  
26          *extend beyond Indian country. Courts have upheld jurisdiction with respect to child*  
27          *custody disputes, tribal property, and off-reservation treaty rights.” (Italics added)).*

28          <sup>19</sup> *Id.* at 514 (citing *John v. Baker I*, 982 P.2d 738 (Alaska 1999)).

1  
2 jurisdiction, other examples of off-reservation tribal jurisdiction are difficult to find.  
3 Tribes may have off-reservation rights if native artifacts are involved, or where treaty  
4 rights exist.<sup>20</sup> But, tribal off-reservation authority remains the exception, recognized in  
5 almost no reported case decisions.  
6

7 Pure membership-based, off-reservation jurisdiction is also exceptional in  
8 part because federal courts still think "land matters." Since *John v. Baker I* (1999), the  
9 U.S. Supreme Court has repeatedly emphasized the importance of land status as a part of  
10 the jurisdictional analysis. In 2005 and 2008 the United States Supreme Court noted that  
11 tribal sovereignty "centers on the land"<sup>21</sup> and has a "significant geographical  
12 component."<sup>22</sup> Land status is of "critical importance,"<sup>23</sup> and forms the "backdrop"  
13 against which applicable law is analyzed.<sup>24</sup> In recognition of the importance of land  
14 status, the U.S. Supreme Court will take an "altogether different course" when analyzing  
15 cases on-reservation or off-reservation.<sup>25</sup>  
16

17  
18 <sup>20</sup> *Id.* (citing *Chilkat Indian Village v. Johnson*, 870 F.2d 1469, 1470 (9th Cir. 1989)  
19 (tribal ordinance regulating tribal artifacts); *Settler v. Lameer*, 507 F.2d 231, 239 (9th Cir.  
20 1974) (tribe retained off-reservation regulatory and enforcement powers pursuant to  
21 treaty); *United States v. Sohapp*, 770 F.2d 816, 823 (9th Cir. 1985) (state law could not  
22 qualify Indian treaty rights)).

23 <sup>21</sup> *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 128 S.Ct. 2709, 2718  
24 (2008).

25 <sup>22</sup> *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 112 (2005).

26 <sup>23</sup> *Plains Commerce Bank*, 128 S. Ct. at 2725.

<sup>24</sup> *Wagnon*, 546 U.S. at 112.

<sup>25</sup> *Id.*

1  
2 C. *John v. Baker I* Does Not Change Federal Law Applicable to On-  
3 Reservation and Off-Reservation Exercise of Tribal Jurisdiction

4 CCTHITA incorrectly asserts that *John v. Baker I* rejected arguments  
5 related to land status and presumptive off-reservation state jurisdiction.<sup>26</sup> CCTHITA's  
6 reading of *John v. Baker I* is far too broad. *John v. Baker I* merely rejected the dissent's  
7 categorical view that no off-reservation tribal authority could exist without express  
8 Congressional recognition.<sup>27</sup>

9 According to *John v. Baker I*, a tribe may sometimes exercise a pure  
10 "membership based" jurisdiction.<sup>28</sup> But membership-based jurisdiction as introduced by  
11

12  
13 <sup>26</sup> CCTHITA Reply at 5 ("*John v. Baker* spends two entire paragraphs soundly  
rejecting this premise").

14 <sup>27</sup> *John v. Baker I*, 982 P.2d at 752 (rejecting dissent's refusal to recognize off-  
15 reservation authority "unless an act of Congress specifically authorizes the exercise of  
16 tribal adjudicatory power").

17 <sup>28</sup> CCTHITA is correct in arguing that *John v. Baker I* recognized membership-based  
18 authority, but CCTHITA presents a highly misleading and inaccurate portrayal of  
*Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 173 (1982). See CCTHITA Reply at 3.  
19 *Merrion* did not endorse off-reservation, membership-based jurisdiction. Instead,  
*Merrion* analyzed whether tribes could impose oil and gas severance taxes on  
20 nonmember corporations acting on-reservation. The Court noted that a tribe has "general  
21 authority, as a sovereign, to control economic activity within a reservation." 455 U.S. at  
22 137. The court also noted a "significant geographical component to tribal power." *Id.* at  
23 142. While recognizing tribal authority over members, the Court cautioned that "tribal  
powers over nonmembers have always been narrowly confined." *Id.* at 171. And, as to  
24 tribal members, although the Court recognized great tribal sovereignty, the Court also  
noted that "[t]ribes may enforce discriminatory rules that would be intolerable in a non-  
25 Indian community. The equal protection components of the Fifth and Fourteenth  
26 Amendments, which limit federal or state authority, do not similarly limit tribal power."  
*Id.* at 170. No part of the opinion suggested that tribes have an unlimited extra-territorial  
membership-based jurisdiction. In 2001, the United States Supreme Court specifically  
cautioned against reading *Merrion* too broadly, and said the ruling was restricted to

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2 *John v. Baker I* in 1999 remains largely uncharted territory. While CCTHITA suggests  
3 a broad reading of *John v. Baker I*, CCTHITA's lengthy string cite does not offer a single  
4 case relevant to the scope of membership-based jurisdiction presented in this case.<sup>29</sup> Nor  
5 has the Ninth Circuit expanded membership-based jurisdiction beyond the narrow context  
6 of ICWA and custody proceedings. In *Kaltag v. Jackson*, the Ninth Circuit issued an  
7

8  
9 taxing authority on Indian trust lands. *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 653  
(2001).

10 <sup>29</sup> *Starr v. George* 175 P.3d 50, 55 n.25 & 57 (Alaska 2008) (discussing general  
11 comity principles, and expressly declining to reach issue of whether or not tribes have  
12 "independent jurisdiction over adoption proceedings"); *Baker v. John*, No. S-11546, 2007  
13 WL 949422 (Alaska Mar. 28, 2007) (unpublished, not precedential) (analyzing whether  
14 or not Alaska Civil Rule 90.3 was properly applied—no citation to *John v Baker I*); *In re*  
15 *Adoption of Sara J.*, 123 P.3d 1017, 1022 (Alaska 2005) (citing *John v. Baker I* for  
16 principle that in interpreting ICWA, court may rely on case law and the Bureau of Indian  
17 Affairs interpretations); *State, Dep't of Health & Soc. Servs. v. Curyung*, 151 P.3d 388,  
18 298 (Alaska 2006) (citing *John v. Baker I* for proposition that many Alaska Native  
19 villages have the same status as tribes in the lower 48); *Runyon v. Ass'n of Vill. Council*  
20 *Presidents*, 84 P.3d 437, 439 n.3 (Alaska 2004) (citing *John v. Baker I* for proposition  
21 that Alaska tribes have sovereignty notwithstanding lack of Indian country); *Evans v.*  
22 *Native Vill. of Selawik Council*, 65 P.3d 58, 60 (Alaska 2003) (recognizing state superior  
23 court as appropriate forum, and denying comity recognition to tribal court order because  
24 of due process violations); *Malabed v. N. Slope Borough*, 70 P.3d 416, 427 n.51 (Alaska  
25 2003) (citing *John v. Baker I* for principle that, in the judicial arena, a court may give  
26 comity recognition to certain tribal court orders); *In re C.R.H.*, 29 P.3d 849, 851 n.6  
(tribes retain sovereign powers unless powers withdrawn), 853 n.17 (Indian canon of  
construction demands that ambiguities in statutes be resolved in favor of tribes) (Alaska  
2001); *Sierra v. Goldbelt, Inc.* 25 P.3d 697, 701 (Alaska 2001) (citing *John v. Baker I* for  
proposition that Alaska Supreme Court will apply "independent judgment to questions of  
statutory interpretation"); *Sengupta v. Univ. of Alaska*, 21 P.3d 1240, 1250 (Alaska 2001)  
(citing *John v. Baker I* for principle that Alaska Supreme Court can affirm on different  
basis than relied on by superior court); see CCTHITA Reply at 6 n.27. Note that this  
case does not involve the question of whether or not tribes are sovereign entities. We  
presume that. The question presented is the scope of that sovereignty off-reservation in  
the child support arena.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2 unpublished, non-precedential,<sup>30</sup> three-paragraph opinion affirming a tribe's ICWA  
3 authority to initiate adoption proceedings. For reasons already discussed, ICWA is a  
4 special circumstance where Congress, by statute, already recognized "concurrent"  
5 jurisdiction via 25 U.S.C. § 1911(b).<sup>31</sup>  
6

7 Child support is certainly not an area previously recognized as being at the  
8 "core of sovereignty,"<sup>32</sup> and Alaska tribal assertions of off-reservation jurisdiction over  
9 child support cannot be squared with existing federal Indian law,<sup>33</sup> with general  
10 recognition of off-reservation State's rights,<sup>34</sup> or even with *John v. Baker I.*<sup>35</sup>  
11  
12

13  
14  
15 <sup>30</sup> 344 Fed. Appx. 324, 2009 WL 2736172 (9<sup>th</sup> Cir. Aug. 28, 2009); Ninth Circuit  
16 Rule 36-3 (unpublished dispositions and orders of this Court are not precedent).

17 <sup>31</sup> *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989)  
18 (characterizing 25 U.S.C. § 1911(b) as establishing "concurrent jurisdiction" off-  
19 reservation).

20 <sup>32</sup> *John v. Baker I*, 982 P.2d at 758 (recognizing custody as being "at the core of  
21 sovereignty—a tribe's 'inherent power to determine tribal membership, to regulate  
22 domestic relations among members, and to prescribe rules of inheritance for members").

23 <sup>33</sup> Existing federal law sets clear jurisdictional rules depending on on-reservation or  
24 off-reservation status.

25 <sup>34</sup> As will be explained below, the U.S. Supreme Court can and does closely examine  
26 State rights in determining the scope of off-reservation tribal jurisdiction, if any.

<sup>35</sup> *John v. Baker I* involved a custody dispute between private parties, and is quite  
unlike the situation here, where a serious and substantial State programmatic interest is  
impacted.

1  
2 **II. Child Support Has Not Been Accorded the Congressional Jurisdictional**  
3 **Imprimatur Enjoyed by ICWA**

4 Neither Congress nor the courts have endorsed off-reservation tribal child  
5 support jurisdiction the way they have endorsed tribal authority over Indian child custody  
6 or ICWA proceedings. Yet, Congressional intent is key to understanding the scope of  
7 tribal court jurisdiction. *John v. Baker I* purported to apply Congressional intent<sup>36</sup> as  
8 expressed in the Indian Child Welfare Act.<sup>37</sup> According to *John v. Baker I*,  
9 Congressional intent with respect to custody decisions in general can be gleaned from  
10 ICWA: "ICWA's goal was to increase tribal control over custody decisions involving  
11 tribal children,"<sup>38</sup> and, by enacting ICWA, Congress "revealed its intent that Alaska  
12 Native Villages retain their power to adjudicate child custody disputes."<sup>39</sup> That basic  
13 expression of Congressional intent was the very cornerstone of the Alaska Supreme  
14 Court's holding that tribes could exert membership-based jurisdiction off-reservation in  
15 custody cases.  
16

17 Tribal jurisdiction over custody cases was not a "novelty of the ICWA" but  
18 has been broadly recognized for some time.<sup>40</sup> The United States Supreme Court, in  
19

20  
21 <sup>36</sup> *John v. Baker I*, 982 P.2d at 751 ("tribal self-government depends on the intent of  
Congress").

22 <sup>37</sup> *Id.* at 753-54.

23 <sup>38</sup> *Id.* at 753.

24 <sup>39</sup> *Id.* at 754.

25 <sup>40</sup> *Holyfield*, 490 U.S. at 42.  
26

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 268-5100

1  
2 interpreting ICWA, acknowledged that Congress intended to allow off-reservation  
3 "concurrent" jurisdiction in child custody proceedings.<sup>41</sup> CCTHITA is therefore wrong  
4 when it makes the surprising argument that custody is "not a *per se* tribal issue."<sup>42</sup>

5 Child support does not share a similar history to Indian child welfare as  
6 embodied in ICWA. Congress has never found that States are systematically depriving  
7 tribal parents of their right to child support; or that there is any broader problem in the  
8 delivery of child support which might demand some form of concurrent off-reservation  
9 jurisdiction. Congress never linked ICWA with child support. Nor has Congress  
10 otherwise categorized child support as a "tribal" issue in some other way. The serious  
11 and well-documented problems<sup>43</sup> which led to passage of ICWA in 1978 simply do not  
12 exist with respect to child support.  
13

14 CCTHITA is absolutely correct when it concedes that child support is not  
15 "a *per se* tribal issue."<sup>44</sup> While custody may be a part of a tribe's tradition and custom,  
16 child support is not:  
17

18 Additionally, although this income withholding proceeding is for the  
19 purpose of enforcing a child support obligation, it is not a domestic  
20 affair, dominated by tribal tradition and custom; it is a collection

21  
22 <sup>41</sup> *Id.* at 36 (interpreting 25 U.S.C. § 1911(b) as recognizing "concurrent but  
preemptively tribal jurisdiction" in "Indian child custody proceedings").

23 <sup>42</sup> CCTHITA Reply at 2.

24 <sup>43</sup> *See, e.g.*, 25 U.S.C. § 1901.

25 <sup>44</sup> CCTHITA Reply at 2.  
26

1  
2 action, and accordingly, not an area dominated by tribal tradition and  
3 custom.<sup>45</sup>

4 As noted in the State's cross-motion, the federal government got involved in enforcing  
5 child support obligations because non-paying parents (mostly non-paying fathers) were  
6 creating enormous welfare costs for the nation. The goal of child support enforcement  
7 programs was to reduce those welfare payments and encourage states to go after  
8 delinquent fathers.<sup>46</sup> When tribes were allowed to become IV-D eligible,<sup>47</sup> it was to close  
9 an *on-reservation loophole*, where a deadbeat parent could flee to a reservation to avoid  
10 prosecution for not paying the child support ordered by another jurisdiction.<sup>48</sup> There is  
11 no legislative history of Title IV-D to suggest that Congress, the federal Office of Child  
12 Support Enforcement, or any other entity intended that funding tribal IV-D programs  
13 would expand tribal jurisdiction off-reservation.<sup>49</sup>  
14  
15  
16

17 <sup>45</sup> *First v. State, Dep't of Soc. and Rehab. Servs.*, 808 P.2d 467, 473 (Mont. 1991).

18 <sup>46</sup> See discussion at pages 6-10 of State's cross-motion.

19 <sup>47</sup> 42 USC § 655(f) (a subsection of Title IV-D, Social Security Act) authorizes child  
20 support collection programs specific to tribes, including the authority of the Secretary of  
21 the Department of Health and Human Services to issue implementing regulations.

22 <sup>48</sup> 69 Fed. Reg. 16638 (2004) (State Ex. 37 at 2) ("within much of Tribal territory,  
23 the authority of State and local governments is limited or non-existent," and "States have  
24 been limited in their ability to provide IV-D services on Tribal lands").

25 <sup>49</sup> Certainly the final rule and regulations implementing the tribal IV-D program  
26 contemplated the precise opposite. See, e.g., 69 Fed. Reg. 16655 (State Ex. 37 at 19)  
(cmt. 1 on § 309.75) (where a tribe does not have jurisdiction, "the proper action" is "to  
refer the case to a State or another Tribe" that does).

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-6700

1  
2 ICWA enjoys a well-developed legislative history in the Congressional  
3 record, strong "Congressional findings" and associated "Congressional declaration of  
4 policy,"<sup>50</sup> and U.S. Supreme Court recognition of tribal custody decisions and the  
5 Congressionally mandated ICWA jurisdictional scheme.<sup>51</sup> But the picture for child  
6 support is entirely different. Even though child support is a decades-old program,  
7 CCTHITA has cited to no Congressional statements or Supreme Court cases which  
8 discuss, even obliquely, the need for tribes to run off-reservation child support programs.  
9 None exist. The resounding legislative and judicial silence suggests off-reservation tribal  
10 child support jurisdiction was never an intended result.<sup>52</sup>

11  
12 **III. Nonmember Jurisdiction Is a Matter of Subject Matter Jurisdiction, Not**  
13 **Merely Personal Jurisdiction**

14 CCTHITA argues that it has jurisdiction any time a child is involved who is  
15 either a member of the Tribe, or eligible for membership. While it does not say so  
16 directly, it appears to be taking the position that the child's status is the sole relevant  
17 jurisdictional consideration. Even assuming such a broad-sweeping jurisdictional  
18

19  
20 <sup>50</sup> 25 U.S.C. §§ 1901-02.

21 <sup>51</sup> *Holyfield*, 490 U.S. at 36 (describing tribal jurisdiction under 25 U.S.C. § 1911(a)  
22 and § 1911(b)).

23 <sup>52</sup> CCTHITA refers to "Alaska's relative silence" on child support. CCTHITA  
24 Reply at 4. Indian law is a federal question, and the "relative silence" stems from the  
25 crucial lack of federal recognition for any off-reservation tribal child support programs.  
26 Far from supporting CCTHITA's claim, the silence CCTHITA identifies undermines  
CCTHITA's claim to off-reservation child support jurisdiction.

1  
2 presumption applied to tribal members, applying a presumption of tribal jurisdiction to  
3 nonmembers would violate federal law.

4 **A. As a General Matter, Nonmember Jurisdiction Implicates Subject**  
5 **Matter Jurisdiction**

6 Nonmember jurisdiction is a matter of subject matter jurisdiction, not  
7 merely personal jurisdiction.<sup>53</sup> The right of CCTHITA to bind individuals who are not  
8 members of the Tribe by its orders is clearly something more than "personal jurisdiction."  
9 The Tribe cites no legal authority which holds that tribal adjudicatory authority over  
10 nonmembers is merely a matter of "personal jurisdiction."<sup>54</sup>

11  
12 **B. Jurisdiction Off-Reservation Over Nonmembers Has Almost Never**  
13 **Been Recognized**

14 "*Montana's* general rule is that the inherent sovereign powers of an Indian  
15 tribe do not extend to the activities of non-Indians who come within its borders."<sup>55</sup> This  
16 rule has been cast as a presumption that tribes lack jurisdiction over nonmembers.<sup>56</sup> With  
17 only one "minor exception," the United States Supreme Court has "never upheld under  
18

19 <sup>53</sup> *Nevada v. Hicks*, 533 U.S. 353, 368 n.8 (2001).

20 <sup>54</sup> See CCTHITA Reply at 11-12.

21 <sup>55</sup> *Red Mesa Unified Sch. Dist. v. Yellowhair*, No. CV-09-8071-PCT-PGR, 2010 WL  
22 3855183, at \*2 (D. Ariz. Sept. 28, 2010). Note that the reference to "*Montana's* general  
23 rule" is specific to nonmembers on a reservation. There has never been a suggestion that  
24 tribes, under any circumstance, may exercise jurisdiction over nonmembers off-  
25 reservation.

26 <sup>56</sup> *Hicks*, 533 U.S. at 376-77 (Souter, J., concurring); see *Plains Commerce Bank*,  
128 S. Ct. at 2720 (tribal efforts to regulate nonmembers presumptively invalid).

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1081 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2 *Montana* the extension of tribal civil authority over nonmembers on non-Indian land.<sup>57</sup>

3 The seminal case of *Montana v. United States* and subsequent cases of tribal jurisdiction  
4 over nonmembers involve on-reservation conduct. The one "exception" identified in  
5 *Plains Commerce* involved non-Indian land located in the "heart" of a closed portion of  
6 a reservation.<sup>58</sup> A jurisdictional rule premised solely on a child's status cannot be  
7 squared with the U.S. Supreme Court's *Montana* jurisprudence.

8  
9 CCTHITA suggests that if the Tribe has inherent jurisdiction to adjudicate  
10 child support disputes (the State disputes any such inherent authority), all that remains is  
11 a question of personal jurisdiction over nonmembers which can be easily resolved by  
12 consent.<sup>59</sup> A federal district court recently rejected a similar argument.<sup>60</sup> In that case,  
13 the tribe argued that it had inherent powers of self-government (retained on-reservation  
14 powers) which operated independently of the *Montana* framework over nonmembers.<sup>61</sup>  
15 The federal district court disagreed, noting that the tribal powers of self-government are  
16

17  
18  
19  
20 <sup>57</sup> *Plains Commerce Bank*, 128 S. Ct. at 2722.

21 <sup>58</sup> *Id.* (citing *Brendale v. Confederated Tribes and Bands of Yakima Nation*,  
22 492 U.S. 408 (1989)).

23 <sup>59</sup> CCTHITA Reply at 11-12.

24 <sup>60</sup> *Yellowhair*, No. CV-09-8071-PCT-PGR, 2010 WL 3855183, at \*2 n.9.

25 <sup>61</sup> *Id.*

1  
2 not independent of *Montana*.<sup>62</sup> And, as noted above, the question of nonmember  
3 jurisdiction under *Montana* is clearly a question of subject matter jurisdiction.

4 CCTHITA suggests that “no court has agreed” with the State’s nonmember  
5 arguments.<sup>63</sup> CCTHITA exaggerates. In the State *Tanana* case, the superior court  
6 clarified that its decision reached only tribal members, not nonmembers.<sup>64</sup> *Kaltag*,  
7 meanwhile, was an ICWA proceeding involving tribal members from different tribes, as  
8 in *John v. Baker I*. The Ninth Circuit’s decision, that adoption jurisdiction of an Indian  
9 child was based on the status of the child, was unpublished, and therefore was not  
10 precedential.<sup>65</sup> Notwithstanding that the case came before the Supreme Court via an  
11 unpublished, non-precedential opinion, the United States Supreme Court took the unusual  
12 step of asking for Solicitor General review of nonmember jurisdiction in ICWA cases.<sup>66</sup>  
13 Clearly, the U.S. Supreme Court was interested in the question of nonmember  
14 jurisdiction—in the ICWA context—and is likely to address the matter when a case  
15 presenting the right factual and procedural history is presented. And because *Kaltag* was  
16  
17

18  
19 <sup>62</sup> *Id.* (noting, in part, that the “Supreme Court has made clear that the *Montana*  
20 framework governs a tribe’s exercise of its inherent sovereign powers.”) (citation  
21 omitted).

22 <sup>63</sup> CCTHITA Reply at 10.

23 <sup>64</sup> *Native Village of Tanana v. State of Alaska*, No. 3AN-04-12194 CI (Alaska  
24 Super., Dec. 8, 2008) (“this court’s decision addresses issues related to tribal members  
25 and not nonmembers”).

26 <sup>65</sup> Ninth Circuit Rule 36-3.

<sup>66</sup> Order List, Case No. 09-960, 559 U.S. \_\_\_\_ (April 26, 2010) (“The Solicitor  
General is invited to file a brief in this case expressing the view of the United States”).

1  
2 an ICWA case, it says little or nothing about the law of child support. The nonmember  
3 jurisdiction issue in Alaska continues to present serious unanswered questions.

4 C. CCTHITA Fails to Prove An Exception to The General Rule  
5 Prohibiting Tribal Jurisdiction Over Nonmembers

6 If tribes can assume jurisdiction over nonmembers off-reservation (an  
7 unlikely scenario),<sup>67</sup> then the *Montana* framework applies. CCTHITA bears the burden  
8 of proving a legitimate basis for nonmember jurisdiction.<sup>68</sup> CCTHITA appears confused  
9 about the legal standard since it suggests the State must provide evidence of "negative  
10 impact"<sup>69</sup> to the State CSSD program. CCTHITA has it exactly backwards: it is the Tribe  
11 which must prove the exception to the general rule which disallows or limits tribal  
12 jurisdiction over nonmembers. In its opening brief, CCTHITA mentioned only the  
13 second *Montana* exception (threat to health and welfare). Perhaps realizing the weakness  
14 in its "health and welfare" argument, CCTHITA changed tack in its reply and relied  
15 exclusively on the first *Montana* exception (consensual relationship). But in both its  
16 opening brief and reply brief, CCTHITA simply offered conclusory arguments: (1) a  
17 parent's failure to provide adequate financial support has a "direct effect on the political  
18  
19  
20  
21

22 <sup>67</sup> See, e.g., *Smith v. Salish Kootenai College*, 434 F.3d 1127, 1139 (9<sup>th</sup> Cir. 2006)  
23 (Tribes have no jurisdiction over nonmembers unless a nonmember enters tribal lands or  
24 conducts business with the tribe).

25 <sup>68</sup> See, e.g., *Plains Commerce Bank*, 128 S. Ct. at 2720.

26 <sup>69</sup> CCTHITA Reply at 6.

1  
2 integrity, the economic security, and the health and welfare of the Tribe;<sup>70</sup> (2)  
3 nonmembers who participate in tribal court proceedings have entered a consensual  
4 relationship with the tribe.<sup>71</sup> Offering those conclusions as fact fails to meet the  
5 evidentiary burdens imposed on the Tribe.

6  
7 (1) The Health and Welfare Exception Does Not Apply Here

8 As to health and welfare, CCTHITA suggests that the failure of Tribal  
9 parents to pay child support necessarily has a negative impact on CCTHITA. But  
10 CCTHITA does not articulate a harm specific to the Tribe that is any different than harm  
11 to the State or anyone located in the State. The second *Montana* exception is not  
12 triggered unless the Tribe must act to "avert catastrophic consequences."<sup>72</sup> CSSD  
13 successfully ran a statewide child support program long before CCTHITA obtained IV-D  
14 status. Even with absolutely no Tribal action, Tribal children may continue getting child  
15 support through State CSSD as this service is available to all Alaskans. CSSD's  
16 competence and ability to deliver child support has not been questioned by CCTHITA.  
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23 <sup>70</sup> CCTHITA Motion for Summary Judgment and Memorandum in Support at 16  
(July 16, 2010).

24 <sup>71</sup> CCTHITA Reply at 12.

25 <sup>72</sup> *Plains Commerce Bank*, 128 S. Ct. at 2726.  
26

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1081 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2 The Tribe's argument also presents a classic situation where the exception  
3 would swallow the general rule prohibiting jurisdiction over off-reservation nonmembers.  
4 *Plains Commerce Bank* does not allow that result.<sup>73</sup>

5 (2) Participation In Tribal Court Proceedings Is Not Consent As  
6 Envisioned by *Montana*

7 CCTHITA suggests that, per *John v. Baker I*, mere participation in Tribal  
8 court proceedings by a nonmember obligor is "consent" to Tribal jurisdiction and consent  
9 resolves questions of personal jurisdiction.<sup>74</sup> This argument fails for several reasons.  
10

11 First, as we have already detailed above, CCTHITA is plainly mistaken  
12 when it says *Montana* relates to personal jurisdiction only. *Montana* establishes rules for  
13 assertion of subject matter jurisdiction, and subject matter jurisdiction cannot be created  
14 by consent.<sup>75</sup>  
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17  
18

19 <sup>73</sup> *Id.* at 2720.

20 <sup>74</sup> "Non-members who agree to participate in Tribal court proceedings fall into this  
21 'consensual relationship' category." CCTHITA Reply at 12.

22 <sup>75</sup> See, e.g., *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456  
23 U.S. 694, 702 (1982) (consent of the parties irrelevant to the question of subject matter  
24 jurisdiction); 2 James Wm. Moore, *Moore's Federal Practice* § 12.30[1] (3d ed. 2009)  
25 ("Lack of subject matter jurisdiction . . . may not be waived"); Conference of Western  
26 Attorneys General, *American Indian Law Deskbook* 209 (4<sup>th</sup> ed. 2009) (nonmember  
cannot create residual tribal authority, but "can merely consent to the application of such  
authority when it otherwise exists").

1  
2 Second, the only nonmember jurisdiction analysis recognized by the United  
3 States Supreme Court is the one specified in *Montana*.<sup>76</sup> The first *Montana* exception  
4 does not support the idea that personal, non-business relations create consent, or that  
5 mere participation in a Tribal court proceeding creates consent. *Montana's* first  
6 exception has thus far been limited to private commercial transactions.<sup>77</sup>  
7

8 CCTHITA correctly points to one case where the Ninth Circuit recognized  
9 a nonmember's ability to initiate a case in tribal court on a reservation. Key to that  
10 decision was that the plaintiff was on a reservation asserting a suit as a "plaintiff, in full  
11 control of the forum."<sup>78</sup> The obligors participating in CCTHITA child support  
12 proceedings bear no resemblance to a plaintiff "in full control" of his forum. They are  
13

14  
15 <sup>76</sup> *Yellowhair*, No. CV-09-8071-PCT-PGR, 2010 WL 3855183 at \*2 (tribe's  
16 sovereign powers over nonmember governed by the principles set forth in *Montana v.*  
17 *United States*); William C. Canby, *American Indian Law in a Nutshell* 91 (5<sup>th</sup> ed. 2009)  
18 ("the Supreme Court appears to have cemented firmly its view that tribes, as domestic  
dependent nations, have no authority over nonmembers unless one of the two *Montana*  
exceptions (narrowly construed) applies").

19 <sup>77</sup> See, e.g., *Hicks*, 533 U.S. at 372 (noting first *Montana* exception as applying to  
20 "private commercial actors"); *Philip Morris USA, Inc. v. King Mtn. Tobacco Co.*, 569  
21 F.3d 932, 941 (9th Cir. 2009) (framing question as whether Philip Morris had consensual  
22 relationship *through* business dealings); *Salish Kootenai College*, 434 F.3d at 1138  
23 (citing with approval *Boxx v. Long Warrior*, 265 F.3d 771, 776 (9th Cir. 2001) for  
24 proposition that "socially consensual" relationship with an Indian cannot serve as the  
basis for tribal civil jurisdiction); *In re. J.D.M.C.*, 739 N.W.2d 796, 810 n. 21 (S.D. 2007)  
("Marrying a tribal member and allowing your children to receive tribal services does not  
constitute the consensual relationship envisioned by the *Montana* jurisdictional  
analysis").

25 <sup>78</sup> *Salish Kootenai College*, 434 F.3d at 1138.  
26

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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nonmember defendants.<sup>79</sup> They are nonmember defendants who CCTHITA has threatened via a summons with arrest and/or a variety of financial sanctions if they do not participate in tribal court proceedings:

**If you do not provide a proper answer within twenty (20) days, or fail to appear for any scheduled action, including a scheduled genetic test, the Court may issue for your arrest or enter a default judgment against you. A default judgment against you may find you to be the father, and may order you to contribute to the minor child's support. A judgment for money may become a lien against any real property you own now or in the future, and may be enforced by garnishment or seizure of real property, and interception of your tax refunds or other income.<sup>80</sup>**

Not all notices are the same. The following is representative of other threats made in the summons to nonmember obligor parents:

**YOU ARE HEREBY NOTIFIED that if you do not provide an answer within twenty (20) days, or fail to appear for the scheduled hearing, the Tribal Court may hold you in contempt of court and/or enter a default judgment against you. A default judgment may order you to pay child support. A judgment for money may become a lien against any real property you own now or in the future, and may also be enforced by garnishment or seizure of property, and interception of your tax refunds or other income.<sup>81</sup>**

<sup>79</sup> See, e.g., State Exh. 2 at 120-21 (obligor respondent not a tribal member); State Exh. 4 at 12-13 (obligor respondent not a Tribal member); State Exh. 8 at 10 (obligor respondent not a Tribal member); State Exh. 10 at 1-2 (obligor respondent not a Tribal member).

<sup>80</sup> State Exh. 4 at 91 (bold in original); State Exh. 8 at 74 (bold in original).

<sup>81</sup> State Exh. 10 at 73 (bold in original).

1  
2 A nonmember who appears and participates in the tribal court proceeding under threat of  
3 arrest has hardly "consented" to tribal court jurisdiction.<sup>82</sup> Adversarial child support  
4 proceedings where the defendant is faced with a default judgment or a contempt citation  
5 likewise are simply not "consensual" as that term is normally understood or as it has been  
6 construed by the United States Supreme Court to date.

7  
8 Finally, CCTHITA suggests that Northway Tribal Court "obtained  
9 jurisdiction" over one of the parties by consent under *John v. Baker I*. CCTHITA  
10 misreads the case. The Alaska Supreme Court did not find jurisdiction based on consent,  
11 although it recognized the potential relevance of consent in future cases.<sup>83</sup> Indeed, the  
12 Court implied that if it had been presented with a nonmember jurisdiction question, it  
13 would have performed a different analysis. For example, the court recognized a "crucial  
14 distinction between members and nonmembers of the tribe."<sup>84</sup> But because Mr. Baker  
15 never raised a nonmember objection,<sup>85</sup> the sole issue before the court was whether the  
16 children were members of Northway Village. Under well-settled *custody* rules, a court  
17 may obtain adjudicatory jurisdiction based only on the presence (membership) of the  
18

19 <sup>82</sup> CCTHITA Reply at 12 ("Non-members who agree to participate in Tribal court  
20 proceedings fall in this 'consensual relationship' category").

21 <sup>83</sup> *John v. Baker I*, 982 P.2d at 759 n.141.

22 <sup>84</sup> *Id.* at 755.

23 <sup>85</sup> *Id.* at 744 (identifying two issues raised by Mr. John on appeal: (1) due process  
24 violations; (2) children allegedly not members of Northway Village); *see also*  
25 *Supplemental Brief of Appellee*, 1998 WL 35172673, at \*\*31-32 (May 4, 1998);  
26 *Supplemental Reply Brief of Appellee*, 1998 WL 35241864, at \*\*8-13 (May 24, 1998)  
(John Baker's briefing does not raise a nonmember argument).

1  
2 *child.*<sup>86</sup> By contrast, child support proceedings focus on the *parent's status*, and therefore  
3 non-membership should be addressed under the *Montana* rules.<sup>87</sup> The Alaska Supreme  
4 Court was not faced with a child support question in *John v. Baker I*. It did not resolve  
5 the case based on consent, and the objecting party—Mr. John Baker—never raised his  
6 wife's nonmember status as an objection to the jurisdiction of Northway Tribal Court,  
7 and did not brief the issue at all. It is incorrect to suggest that *John v. Baker I* finds  
8 nonmember status irrelevant, especially since subject matter jurisdiction is governed by  
9 federal law.<sup>88</sup>

11 **IV. Impact to State Interests is a Recognized Part of the Jurisdictional Analysis**

12 Before the Court decides whether ~~off-reservation tribal jurisdiction may be~~  
13 exercised, it must balance the impact of such a ruling on the State of Alaska. That impact  
14 undercuts claims of tribal child support jurisdiction in two ways: (1) the necessary State  
15 involvement takes this case outside the scope of *Montana's* "domestic relations among  
16 members," and (2) the disruption to the existing State system of child support  
17 jurisdiction, *off-reservation*, weighs heavily against recognition of such tribal jurisdiction.  
18

19  
20 <sup>86</sup> See, e.g., AS 25.30.300 (allowing State to assume jurisdiction if it is the "home  
21 state of the child"); see also Rhonda Wasserman, *Parents, Partners, and Personal*  
22 *Jurisdiction*, 1995 U. Ill. L. Rev. 813, 817 (1995) (child custody cases invoke a "status  
23 exception" to justify custody proceedings in a state otherwise lacking jurisdiction).

24 <sup>87</sup> See, e.g., AS 25.25.201 (jurisdiction determined by parental status); Rhonda  
25 Wasserman, *Parents, Partners, and Personal Jurisdiction*, 1995 U. Ill. L. Rev. 813, 815  
26 (1995) (child support a "financial matter" governed by "standard jurisdictional rules").

<sup>88</sup> See, e.g., *Plains Commerce Bank*, 128 S. Ct. at 2716 ("We begin by noting that  
whether a tribal court has adjudicative authority over nonmembers is a federal question").

1  
2 If 229 different tribes can set, enforce, and modify child support orders, the  
3 potential for uncertainty or conflict among tribes (intra-tribal conflicts could occur), and  
4 between tribes and the State, is very real. The State child support program will be  
5 adversely impacted—the only question being the degree of impact.  
6

7 **A. “Domestic Relations Among Members” Does Not Exist Because The**  
8 **State Is A Necessary Part of the Tribal Operations and the State’s**  
9 **Financial Interests Are Impacted**

10 The United States Supreme Court ruled that tribes have inherent power to  
11 “regulate domestic relations among members.”<sup>89</sup> CCTHITA fails to address the  
12 fundamental disconnect between limited tribal sovereignty (“domestic relations among  
13 members”) and the fact that in Alaska CSSD would be asked to fulfill a key role in all  
14 tribal child support orders or programs. While CCTHITA couches its argument in terms  
15 of demanding State compliance with UIFSA, or IV-D regulations, Alaska presents a  
16 unique situation for at least two reasons: (1) both parties claim concurrent jurisdiction  
17 over the same people (according to the Tribe, it has jurisdiction over either members or  
18 nonmembers depending only on the child’s status), and in exactly the same geographical  
19 area<sup>90</sup>; (2) federally recognized tribes in Alaska have extremely limited enforcement  
20 authority (all are operating off-reservation), and the State CSSD will therefore undergird  
21 any tribal child support efforts in Alaska (whether for CCTHITA or any other federally  
22

23 <sup>89</sup> *Montana v. United States*, 450 U.S. 544, 564 (1981).

24 <sup>90</sup> Note that UIFSA, for example, clearly presumes different operating areas, and  
25 many of the rules cannot be applied the way the statute reads currently. See AS  
26 25.25.201; State Exh. 39, Affidavit of J. Mallonee ¶ 10 (Dec. 20, 2010).

1  
2 recognized tribe in Alaska<sup>91</sup>). Alaska's unique situation demands grappling with some of  
3 the direct consequences of opening up child support jurisdiction to potentially over 200  
4 separate sovereigns.<sup>92</sup> Neither UIFSA's procedural rules nor Title IV-D eligibility and  
5 funding (only one tribe in Alaska is IV-D eligible) alter the underlying jurisdictional  
6 problems, or address Alaska's jurisdictional landscape in the aftermath of the Alaska  
7 Native Claims Settlement Act.<sup>93</sup>  
8

9 Alaska CSSD would act as a crucial, virtual arm for any tribe in Alaska  
10 who seeks either to enter child support orders or to run a child support program. CSSD's  
11 virtual arm status does not remotely resemble an "internal" matter where a tribe controls  
12

13  
14 <sup>91</sup> State Exh. 38, Affidavit of J. Mallonee ¶ 18 (Oct. 28, 2010) ("It is highly likely  
15 that CSSD would become involved in enforcement of a large majority of tribal child  
16 support orders because oftentimes a parent does not pay child support"); ¶18 ("processing  
17 orders involving up to 229 separate sovereigns within Alaska with different procedures  
18 on establishing child support orders and some with no procedures or form child support  
orders at all will necessarily be more complicated than centralizing operations within  
CSSD"); ¶ 19 ("any parent can request CSSD's assistance, regardless of who issued the  
order").

19 <sup>92</sup> See State Exh. 39, Affidavit of John Mallonee ¶¶ 2-10 (Dec. 20, 2010) (explaining  
20 distinct problems associated with problems of jurisdictional overlap unlike for other  
states, or tribes located outside Alaska).

21 <sup>93</sup> Neither UIFSA or Title IV-D have anything to do with a party's underlying  
22 jurisdiction. These issues were thoroughly briefed in the State's Cross-Motion.  
23 Defendant State of Alaska's Memorandum in Support of its Cross-Motion for Summary  
24 Judgment and Opposition to CCTHITA's Motion for Summary Judgment at pages 13-21  
(Nov. 3, 2010) (hereinafter "State's Cross-Motion"); see also *Alaska v. Native Village of*  
25 *Venetie Tribal Gov't*, 522 U.S. 520, 533 (1998) (ANCSA ended federal superintendence  
26 over tribes' lands in Alaska, and revoked existing reservations); Pub. L. 92-203, 85 Stat.  
688 (1971), codified as amended at 43 U.S.C.A. §§ 1601-1629h (ANCSA).

1  
2 "only the relations among members."<sup>94</sup> The United States Supreme Court has noted that  
3 the dependent status of tribes is "necessarily inconsistent with their freedom  
4 independently to determine their external relations."<sup>95</sup> Yet, if CCTHITA—or any other  
5 federally recognized tribe in Alaska—begins issuing child support orders, it will  
6 necessarily involve CSSD and therefore unavoidably affects "external relations." This is  
7 so regardless of UIFSA, and regardless of Title IV-D, which simply do not speak to  
8 underlying questions of federal Indian law. When other sovereign entities begin *intra-*  
9 *state* Alaska child support operations involving the same land and the same people, a  
10 necessary consequence is impacting state sovereignty, state child support law, and the  
11 state child support program, i.e., affecting "external relations." *Montana's* "domestic  
12 relations among members" standard has not been met.<sup>96</sup>

13  
14  
15 Situations involving children in state custody, or where the state pays  
16 public assistance, highlight the implausibility of treating tribal child support in Alaska as  
17 being "domestic relations among members." In either scenario, the State has a direct  
18 interest, yet a tribe would claim authority premised only on the child's status. For  
19 example, under CCTHITA's legal theory, it may disregard the State's custody of the  
20

21 <sup>94</sup> *United States v. Wheeler*, 435 U.S. 313, 326 (1978).

22 <sup>95</sup> *Id.*

23 <sup>96</sup> The State will be necessarily involved if tribes begin issuing child support orders,  
24 and will also be negatively impacted in numerous ways, as outlined by CSSD Director  
25 John Mallonee. (State Exhs. 38, 39.) At least the State involvement component is not  
26 denied by CCTHITA. To the contrary, CCTHITA correctly views CSSD as a necessary  
adjunct to its own program.

1  
2 child and set its own child support order if the child involved is a member of CCTHITA.  
3 This scenario has already occurred. In a case involving the minor child N.D., CCTHITA  
4 issued a child support order even though the child was in state custody and all child  
5 support would be owed to the State.<sup>97</sup> At the time CCTHITA entered its child support  
6 order, the State of Alaska was the child's legal and physical custodian pursuant to a court  
7 order.<sup>98</sup>  
8

9 Similarly, State interests are impacted when the State pays public assistance  
10 for the child. Where the State pays public assistance, child support is owed to the State  
11 of Alaska, not the child's custodian.<sup>99</sup> When a tribe issues a child support order and the  
12 State is paying public assistance for the child, the tribal child support order will  
13 determine the State's reimbursement rights because the obligor owes child support to the  
14 State, not the custodial parent.<sup>100</sup> CCTHITA's actions directly and immediately affect the  
15 State of Alaska, and therefore cannot be said to be "domestic relations among members."  
16  
17  
18

19 <sup>97</sup> See State Exh. 38, Affidavit of J. Mallonee ¶ 14 (Oct. 28, 2010).

20 <sup>98</sup> *Id.*

21 <sup>99</sup> See AS 25.27.120. The State also has a right of subrogation to recover public  
22 assistance benefits paid up to the amount of the child support order. See AS 25.27.130.  
23 Also, the obligee assigns his or her rights to child support to the State as a condition of  
receiving public assistance benefits. See AS 47.27.040.

24 <sup>100</sup> Even if no public assistance is currently being paid, the child may be eligible for  
25 state public assistance benefits in the future. In reality, therefore, the State is an  
unacknowledged third party to every child support action.

1  
2 **B. The Negative Impact of Off-Reservation Tribal Child Support**  
3 **Operations in Alaska Presents a Serious and Important Jurisdictional**  
4 **Consideration**

5 CCTHITA errs when it denies that an impact in fact exists and denies that  
6 impact is legally relevant.

7 **(1) Allowing the Operation of Multiple Child Support Authorities in**  
8 **the State of Alaska Will Have an Inevitable Negative Impact on**  
9 **CSSD Operations and On the State's Overall Child Support**  
10 **Scheme**

11 The State has a longstanding interest in simple, uniform, predictable child  
12 support rules.<sup>101</sup> The Alaska Supreme Court has demanded strict adherence to Civil Rule  
13 90.3 precisely to affirm these goals.<sup>102</sup> In practical effect, the State's goals would be  
14 upended were the State forced to contend with 229 separate sovereign entities setting  
15 child support orders based on 229 individual tribal standards—or on an ad hoc basis.  
16 Parents, too, would be flatly denied a “simple, uniform, predictable” set of child support  
17 rules, and could face up to three different potential child support awards depending which  
18 sovereign entity (Tribe 1 (*e.g.*, Northway Village), Tribe 2 (*e.g.*, Mentasta Village), or the  
19 State of Alaska) exercised jurisdiction first.

20 CCTHITA tries to finesse the ramifications by pointing to its status as a  
21 federally-approved IV-D program with federally approved IV-D policies and procedures.

22 <sup>101</sup> Alaska R. Civ. P. 90.3 commentary I(B); State Exh. 38, Affidavit of J. Mallonee ¶  
23 21 (Oct. 28, 2010) (“Tribal child support orders can affect the State's interest in uniform  
24 child support awards and enforcement for all of Alaska's children and parents”).

25 <sup>102</sup> *See, e.g., State, Dep't of Revenue v. Schofield*, 993 P.3d 405, 408 (Alaska 1999)  
26 (actions which undermine Rule 90.3's goal of “predictability” not allowed).

1  
2 CCTHITA's response fails for three reasons. First, as noted in section IV(A) above, the  
3 impacts to the State of Alaska occur regardless of Title IV-D funding (or UIFSA) and  
4 arise instead from the potential operations of multiple intra-state child support rules as  
5 governed by separate sovereign entities. Second, CCTHITA's IV-D program has a  
6 greater impact on State child support operations than IV-D programs from other states.  
7  
8 Third, CCTHITA's Complaint is not limited to recognition of the authority of tribal IV-D  
9 programs, but encompasses all tribes with or without a IV-D program.

10 CCTHITA's IV-D program has negatively impacted CSSD resources. The  
11 heart of the problem is the dual jurisdictional scheme envisioned by CCTHITA.<sup>103</sup>  
12 CCTHITA's child support cases are for the same children and obligors otherwise subject  
13 to State CSSD child support jurisdiction, and for precisely the same geographic area.  
14 Requests from other state IV-D programs do not involve potentially competing child  
15 support orders involving up to three different sovereigns. To deal with the jurisdictional  
16 overlap, significant additional monitoring and coordination are required.<sup>104</sup>  
17

18 The unfortunate fact is that CCTHITA's IV-D program has already  
19 affected, and will continue to affect CSSD resources. CSSD has had to redirect two staff  
20 positions to address multiple CCTHITA requests and referrals at an estimated cost of  
21 \$109,000 per year.<sup>105</sup> CCTHITA is similar to other Alaskan tribes in that it has virtually  
22

23 <sup>103</sup> State Exh. 39, J. Mallonee Affidavit ¶¶ 2, 10 (Dec. 20, 2010).

24 <sup>104</sup> *Id.* at ¶¶ 2-10.

25 <sup>105</sup> *Id.* at ¶ 3.  
26

1  
2 no independent enforcement capability. For example, it cannot garnish unemployment  
3 benefits, or workers' compensation benefits, or PFD dividend payments, or IRS tax  
4 refunds.<sup>106</sup> It cannot suspend occupational or drivers licenses.<sup>107</sup> It must ask the State to  
5 perform all of these services for it (i.e., the State as a virtual arm of the Tribe's program).  
6 As explained by the CSSD Director, the nature and extent of CCTHITA's requests  
7 burden the state CSSD system.<sup>108</sup>

8  
9 Of course, this case is not strictly about tribal IV-D programs in Alaska. To  
10 the contrary, tribes in Alaska are overwhelmingly non-IV-D, and CCTHITA's IV-D  
11 program is a stark exception. CCTHITA has nevertheless asked this Court to broadly  
12 affirm tribal child support jurisdiction as an exercise of tribal "self-governance."<sup>109</sup>  
13 Therefore, CCTHITA is championing inherent jurisdiction for all Alaska tribes. Thus,  
14 the parties here must grapple with the potential impact on the State of all federally  
15 recognized tribes in Alaska having the authority to issue, modify and enforce child  
16 support orders premised on tribal "self-governance" and inherent authority.<sup>110</sup>

17  
18  
19 <sup>106</sup> State Exh. 38, Affidavit of J. Mallonee ¶ 18 (Oct. 28, 2010); see also CCTHITA  
20 Motion for Summary Judgment and Memorandum in Support 5 (July 16, 2010) ("certain  
21 support services . . . can only be obtained with CSSD cooperation").

22 <sup>107</sup> State Exh. 38, Affidavit of J. Mallonee ¶ 18 (Oct. 28, 2010).

23 <sup>108</sup> *Id.* at ¶¶ 14, 18-22; State Exh. 39, J. Mallonee Affidavit ¶¶ 2-10 (Dec. 20, 2010).

24 <sup>109</sup> CCTHITA Complaint for Injunctive and Declaratory Relief at 9 (Jan. 19, 2010).

25 <sup>110</sup> As admitted by CCTHITA, inherent authority is not the same as IV-D status, and  
26 IV-D status is irrelevant to the jurisdictional question. See CCTHITA Reply at 2-9 (Nov.  
24, 2010).

1  
2 Because the result of the Tribe's requested relief is that non-IV-D tribes  
3 could also issue child support orders, the State interest in uniformity is undermined. The  
4 State is genuinely at risk if non-IV-D tribes set orders on an ad-hoc basis;<sup>111</sup> or the tribes  
5 set orders with lower minimum payments than imposed by Civil Rule 90.3 (thus reducing  
6 Alaska's rate of state TANF/welfare reimbursement); or if the tribes set orders for in-kind  
7 support (orders for services instead of money). Because any parent could request  
8 services from CSSD (even if the original order were issued by a tribe), the concern is  
9 only magnified.<sup>112</sup>

11 The overwhelming non-IV-D status of most Alaska tribes sets the backdrop  
12 for an extraordinarily complex *intra*-state situation (quite unlike the normal *inter*-state  
13 applications of child support rules and regulations). Because all 50 states operate IV-D  
14 programs,<sup>113</sup> some degree of uniformity is ensured because of underlying federal  
15 minimum requirements.<sup>114</sup> Specific guidelines are required of each State.<sup>115</sup>  
16 Administrative review processes must be in place for review and modification of  
17 orders.<sup>116</sup> All States must cooperate in establishing and enforcing support orders.<sup>117</sup> The

20 <sup>111</sup> State Exh. 38, Affidavit of J. Mallonee ¶ 21 (Oct. 28, 2010).

21 <sup>112</sup> *Id.* ¶¶ 6, 19.

22 <sup>113</sup> *Id.* at ¶ 13; 42 U.S.C. §§ 651-669b.

23 <sup>114</sup> *See, e.g.*, 45 C.F.R. Part 302 (State Plan Requirements).

24 <sup>115</sup> 42 U.S.C. § 667.

25 <sup>116</sup> 42 U.S.C. § 666.

1  
2 system operates more or less seamlessly, with the opportunity to mutually address cross-  
3 jurisdictional problems in accordance with IV-D regulations. No such certainty exists  
4 outside the sphere of the IV-D programs. And in the event of problems with a tribally-  
5 issued child support order, "CSSD has no authority to file motions in tribal court, a  
6 completely separate and distinct sovereign."<sup>118</sup>  
7

8 The State's interest in simple, uniform and predictable child support rules  
9 simply cannot be accomplished in the jurisdictional world envisioned by CCTHITA. The  
10 State has no ability to control the activities of separate sovereign entities,<sup>119</sup> and will have  
11 in a very real sense lost control over both policy and procedure applicable to child  
12 support goals in general, and State CSSD operations in specific.

13 **(2) The United States Supreme Court Considers State Impact To Be**  
14 **an Important Part of the Overall Jurisdictional Analysis**

15 CCTHITA suggests that whether its child support program impacts the  
16 State is legally irrelevant because *John v. Baker I* did not analyze state impact.<sup>120</sup> *John v.*  
17 *Baker I* (as repeatedly emphasized) was a private custody dispute between unmarried  
18 parents. Unlike child support, no larger state programmatic interests were directly at  
19

20 <sup>117</sup> 45 C.F.R. §§ 302.36, 303.7

21 <sup>118</sup> State Exh. 38, Affidavit of John Mallonee ¶ 16 (Oct. 28, 2010).

22 <sup>119</sup> See generally *Plains Commerce Bank*, 128 S. Ct. at 2724 (tribal sovereignty is  
23 outside the basic structure of the Constitution, the Bill of Rights do not apply, and tribal  
24 courts "differ from traditional American courts in a number of significant respects")  
(citations omitted).

25 <sup>120</sup> CCTHITA Reply at 7 ("state-impact analysis is simply not part of *John v. Baker*").  
26

1  
2 play. The State had no overarching interest in the regulation of Mr. Baker and  
3 Ms. John's relationship status (unmarried adults), or in the resolution of their private  
4 custody dispute.

5 State impact has not been discussed extensively in federal case law for the  
6 simple reason that tribal off-reservation jurisdiction is not generally recognized except in  
7 a few discrete circumstances.<sup>121</sup> Where tribes do operate off-reservation, state impact is a  
8 necessary component of the inquiry.<sup>122</sup>

9  
10 Three recent United States Supreme Court decisions (*Sherrill, Wagnon,*  
11 *Hicks*) illuminate our highest Court's concern with preserving state rights when tribes  
12 operate off-reservation.<sup>123</sup> In *City of Sherrill v. Oneida Indian Nation of New York*, a  
13 tribe refused to pay property taxes. Although the property was located on historic  
14 reservation lands, it had been "continuously governed" for two centuries by the State of  
15

16  
17 <sup>121</sup> As noted above, those situations include custody disputes between unmarried  
18 parents, exercise of off-reservation treaty rights, and certain authority over Native  
19 artifacts. *See, supra*, at Section I(B).

20 <sup>122</sup> To put this in some perspective, on-reservation activities require a careful  
21 balancing of interests. States cannot exert jurisdiction over nonmembers on a reservation  
22 without balancing state, federal, and tribal interests. *See, e.g., Barona Band of Mission*  
23 *Indians v. Yee*, 528 F.3d 1184, 1190 (9th Cir. 2008) (upholding State tax applicable to  
24 nonmembers where purchases were made on-reservation in order to avoid tax, and after  
25 "careful attention to the factual setting" and balancing state, tribal and federal interests).  
26 Yet CCTHITA seems to imply that it can operate off-reservation with no consideration of  
State interests (completely unrestrained, in fact) so long as a child is involved who may  
be a member of the Tribe (or eligible for membership).

<sup>123</sup> Keeping in mind, too, that this is little more than the corollary to restrictions  
placed on states when they try to exert jurisdiction on a reservation.

1  
2 New York and its county and municipal units.<sup>124</sup> The Court's decision opened by noting  
3 that if New York could not tax the properties, it would have the effect of "disrupting the  
4 governance of central New York's counties and towns."<sup>125</sup> The Court repeatedly  
5 expressed its concern for the potential disruptions of New York State sovereignty.<sup>126</sup>  
6

7 One *Sherrill* concern has particular resonance in Alaska. The Court said  
8 that a tribally-created "checkerboard of alternating state and tribal jurisdiction in New  
9 York State" would "seriously burde[n] the administration of state and local  
10 governments."<sup>127</sup> The "checkerboarding" would be acute in Alaska, because of the  
11 multiplicity of federally recognized tribes. Up to 229 tribes entering, modifying and  
12 enforcing child support orders based on non-uniform standards or procedures (or no  
13 articulated standards or procedures at all) was a concern specifically articulated by John  
14 Mallonee, the State Director for CSSD.<sup>128</sup>  
15  
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17 <sup>124</sup> *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197, 216 (2005).

18 <sup>125</sup> *Id.* at 202.

19 <sup>126</sup> *Id.* at 217 n.11, 219-20.

20 <sup>127</sup> *Id.* at 219-20 (citations omitted).

21 <sup>128</sup> State Exh. 38, Affidavit of John Mallonee ¶ 21 (Oct. 28, 2010) ("if the 229 tribes  
22 in Alaska each begin issuing child support orders, the State would be left with a  
23 patchwork of 229 different child support guidelines . . . or child support set on an ad hoc  
24 basis"); see also *State, Dep't of Human Services v. Jojola*, 660 P.2d 590, 593 (N.M.  
25 1983) (requiring New Mexico to proceed to up to 23 separate tribal courts for paternity  
26 determinations would "defeat and be a burden on the aims of the public assistance  
program," and New Mexico's assertion of jurisdiction over tribal members did not  
interfere with tribal self-governance).

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2                   *Wagnon v. Prairie Band Potawatomi Nation* (dismissed as irrelevant by  
3 CCTHITA) also explicitly considered State off-reservation jurisdiction. The tribe in  
4 *Wagnon* claimed that State *off-reservation actions* were an “impermissible affront to its  
5 sovereignty.”<sup>129</sup> The United States Supreme Court rejected the argument outright and  
6 affirmed many central tenets of State off-reservation jurisdiction. First, the Court  
7 recognized the “significant geographic component” to tribal sovereignty.<sup>130</sup> Second, the  
8 Court reaffirmed the presumptive application of nondiscriminatory state law off-  
9 reservation.<sup>131</sup> But, third, the majority resoundingly (a 7-2 decision) rejected a vigorous  
10 dissent calling for a balancing test to apply any time a state action would impact tribal  
11 interests.<sup>132</sup> The *Wagnon* dissent argued for tribal jurisdiction because a state tax would  
12 “nullify” a tribe’s power to impose a similar tax, and that the tribe’s interest coincided  
13 with federal interests in promotion of “tribal economic development, tribal self-  
14 sufficiency, and strong tribal governments.”<sup>133</sup> CCTHITA similarly argues that federal  
15 interests in enforcement of an “inter-governmental child support scheme” and tribal  
16 interests in general are undermined unless tribal adjudicatory authority and programmatic  
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20 <sup>129</sup> *Wagnon*, 546 U.S. at 99.

21 <sup>130</sup> *Id.* at 112.

22 <sup>131</sup> *Id.* at 114 (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973)).

23 <sup>132</sup> *Id.* at 124 and 124 n. 9, 125, 128 (Ginsburg, J., Kennedy, J., dissenting).

24 <sup>133</sup> *Id.* at 128 (Ginsburg, J., Kennedy, J., dissenting); *but see id.* at 113, 114 (majority’s  
25 rejection of *Bracker* balancing, and rejection of claims that interference with tribal  
26 government needed to be considered).

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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2 authority are recognized. CCTHITA's argument has only superficial relevance when  
3 applied off-reservation, and the 2005 *Sherill* and *Wagnon* decisions leave little room for  
4 doubt that State law applies in all off-reservation contexts (with only limited exceptions  
5 that do not include child support). If the Tribe were to prevail in this action, State law  
6 would in a very real sense be fundamentally undermined by the prospect of up to 229  
7 additional adjudicatory bodies entering orders affecting tribal members and nonmembers  
8 alike.  
9

10 The Tribe seeks to distinguish *Nevada v. Hicks* and to downplay the impact  
11 on the State of Alaska of an additional 229 jurisdictions entering orders and asking for  
12 state assistance in tribal order enforcement. It says that it "does not seek to control State  
13 officials or regulate State activities."<sup>134</sup> The off-reservation establishment of tribal child  
14 support programs could actually have a much greater overall practical impact on State  
15 policies and procedures than the limited governmental intrusion by fish and game officers  
16 executing a search warrant on-reservation in *Nevada v. Hicks*. Alternatively stated, if a  
17 tribe is unable to regulate the *on-reservation* conduct of State fish and game officials  
18 issuing a search warrant in a specific case (the holding in *Nevada v. Hicks*), how can  
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24 <sup>134</sup> CCTHITA Reply at 9 (citing *Prairie Band of Potawatomi Indians v. Richards*, No.  
25 99-4136-DES, 2002 WL 215996 (D. Kan. Feb. 8, 2002)). The State notes that  
26 *Potawatomi* is a federal preemption case, not a case about tribal jurisdiction, and  
therefore is inapposite.

1  
2 tribes engage in *off-reservation* activities substantially affecting the State's broad,  
3 programmatic, child support processes and laws?<sup>135</sup>

4 State interests are an obvious, important consideration, particularly so off-  
5 reservation. The United States Supreme Court has acknowledged the importance of those  
6 interests in a variety of contexts where questions of state-tribal relations exist. State  
7 interests must be considered here. Because of the negative impacts on overall child  
8 support goals, as well as operational impacts on CSSD identified by CSSD Director John  
9 Mallonee, this Court should decline to find tribal jurisdiction in the area of child support.  
10

11 **V. CCTHITA Has Failed to Articulate Either a Due Process Claim or Section**  
12 **1983 Claim**

13 If CCTHITA has no child support jurisdiction, some or all of the due  
14 process and section 1983 claims in the complaint are moot. A section 1983 case cannot  
15 be prosecuted merely to vindicate tribal sovereignty interests, and no separate due  
16 process argument is advanced.

17 **A. CCTHITA Brought This Case Primarily to Vindicate Tribal Rights**

18 The caption of the Complaint shows that the Tribe brought this action "on  
19 its own behalf" to vindicate its sovereign rights, not the individual rights of specific tribal  
20 members.<sup>136</sup> Its prayer for relief asks for declaratory and injunctive relief to declare the  
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22  
23 <sup>135</sup> See generally AS 25.25 (Uniform Interstate Family Support Act); AS 25.27 (Child  
24 Support Services Agency); Alaska R. Civ. P. 90.3.

25 <sup>136</sup> See *Native Village of Curyung*, 151 P.3d at 399 & 402 (tribes cannot use section  
26 1983 to vindicate their own sovereign rights).

1  
2 Tribe's sovereign rights, and to require the State to respond to Tribal requests for  
3 services.<sup>137</sup> To the extent "members" are even mentioned, members are an afterthought  
4 in a case almost entirely devoted to the question of tribal off-reservation authority.  
5 CCTHITA alleges the State of Alaska does not recognize its tribal sovereignty; only  
6 derivatively does it allege that tribal members "suffer."  
7

8 **B. The Tribe Has Not Articulated Any Due Process Violation Apart From**  
9 **the State's Alleged Failures to Provide Inter-Governmental Child**  
10 **Support Cooperation to CCTHITA**

11 CCTHITA articulates no due process claim separate from the State's  
12 alleged failure to provide Title IV-D services.<sup>138</sup> The due process claim is inseparable  
13 from the State's alleged breach of its underlying Title IV-D support obligations, and  
14 courts have simply not recognized any individual rights giving rise to due process claims  
15 under Title IV-D, a program funded under the Social Security Act. CCTHITA basically  
16 concedes that it has no independent due process claim, as it gave only a parenthetical,  
17 three sentence treatment to its due process argument.<sup>139</sup>  
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23 <sup>137</sup> CCTHITA Complaint for Injunctive and Declaratory Relief 9 (Jan. 19, 2010).

24 <sup>138</sup> *Id.* at 8, 9.

25 <sup>139</sup> CCTHITA Reply at 12-13.  
26

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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2 **C. CETHITA Fails To Specify Any Statutes Or Regulations Giving Rise**  
3 **to Individual Rights**

4 CETHITA concedes that *Blessing v. Freestone* governs the conditions  
5 under which a section 1983 claim may be maintained.<sup>140</sup> Among other things, *Blessing*  
6 required that Congress must have intended that a statutory provision giving rise to a  
7 section 1983 claim must "benefit the plaintiff," i.e., a party must establish that "Title IV-  
8 D gives them federal rights."<sup>141</sup>

9 CETHITA offers 42 U.S.C. § 654(9) and 45 C.F.R. § 302.36(a)(2)" as  
10 evidence of specific provisions creating individual rights.<sup>142</sup> Neither section creates  
11 individual rights. 42 U.S.C. § 654(9) references coordination with other *states*, but does  
12 not specifically require any action with respect to individuals. Similarly,  
13 45 C.F.R. § 302.36(a)(2) merely requires that services be provided to Tribal IV-D  
14 programs (programs run by states and tribes). The regulations do not confer individual  
15 rights. 42 U.S.C. § 654(9) and 45 C.F.R. § 302.36(a)(2) are exactly the kind of  
16 provisions which "may ultimately benefit individuals who are eligible for Title IV-D  
17 services, but only indirectly,"<sup>143</sup> and therefore "do not give rise to individualized  
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22 <sup>140</sup> CETHITA Reply at 15.

23 <sup>141</sup> *Blessing v. Freestone*, 520 U.S. 329, 340, 341 (1997).

24 <sup>142</sup> CETHITA Reply at 14, 16.

25 <sup>143</sup> *Blessing*, 520 U.S. at 344.

1  
2 rights,<sup>144</sup> and therefore cannot serve as the basis for a section 1983 claim consistent with  
3 *Blessing*.

4 CCTHITA says that *Curyung* "informs" the *Blessing* analysis.<sup>145</sup> *Curyung*  
5 involved statutory provisions which required creation of case plans for "each child."  
6 Where individualized case plans are involved, the Alaska Supreme Court suggests that  
7 *Blessing*'s requirements may have been met.<sup>146</sup> The provisions relied on by CCTHITA  
8 do not resemble the provisions in *Curyung*, and *Curyung* actually undercuts CCTHITA's  
9 arguments.  
10

11 **VI. CCTHITA Provides No Response to the State's Argument that Tribal**  
12 **Jurisdiction May Deny Some Alaskan Citizens Access to State Courts**

13 The State pointed out in its cross-motion that initiating Tribal jurisdiction  
14 could result in some Alaska citizens being denied access to state court.<sup>147</sup> The problem is  
15 of constitutional dimension implicating both due process and equal protection concerns,  
16 and invites consideration of whether the Constitutional mandate to have a "unified  
17 judicial system" can be met.<sup>148</sup> Certainly, Alaska citizens would be subject to multiple  
18 jurisdictional regimes if CCTHITA is correct.  
19

20  
21 <sup>144</sup> *Id.*

22 <sup>145</sup> CCTHITA Reply at 15.

23 <sup>146</sup> *Native Village of Curyung*, 151 P.3d at 407.

24 <sup>147</sup> State's Cross Motion 56-62.

25 <sup>148</sup> Alaska Const. art. IV, § 1.  
26

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 260  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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2 CCTHITA has chosen to ignore this argument entirely in its reply brief.  
3 The decision not to respond is certainly reflective of CCTHITA's extraordinarily dim  
4 view of State child support concerns, of State court access concerns, and even concerns  
5 about the rights of individual parents. CCTHITA seeks first and foremost to vindicate its  
6 own rights, but in choosing not to respond to State arguments, the Tribe apparently  
7 concedes that its jurisdictional architecture allows some Alaska citizens the unrestricted  
8 right of access to State courts, and others not.  
9

10 Two distinct categories of citizens would be created, each with different  
11 rights and responsibilities: (1) category one includes those Alaska citizens who have no  
12 child who is a member or eligible for membership in CCTHITA, and that category of  
13 Alaska citizens would have the full and unfettered right to have child support cases heard  
14 in State court; and (2) category two includes Alaska citizens (member and nonmembers)  
15 who have a child who is a member or eligible for membership in CCTHITA, and these  
16 Alaska citizens would be entirely denied access to State court if the Tribe elects to take  
17 jurisdiction. Tribal jurisdiction could then extend to nonmembers who have no right or  
18 ability to influence Tribal law, or to participate in Tribal governance or elections.<sup>149</sup> The  
19 due process and equal protection concerns are both obvious, and serious, and demand a  
20 response from CCTHITA as to how their vision of jurisdiction squares with State  
21 Constitutional concerns.  
22  
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25 <sup>149</sup> See, e.g., *Plains Commerce Bank*, 128 S. Ct. at 2724.  
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DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-6100

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2 As CCTHITA's summons forms demonstrate, members and nonmembers  
3 are threatened with arrest, contempt, default judgment, garnishment and other penalties if  
4 they do not participate in tribal child support proceedings. Mandatory tribal jurisdiction  
5 of this nature falls far short of the "complete and total access to the state judicial system"  
6 envisioned by *John v. Baker I.*<sup>150</sup>

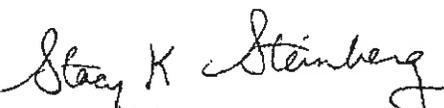
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8 Conclusion

9 For the reasons stated above, CCTIHTA's motion for summary judgment  
10 should be denied, and the State's cross-motion granted.

11 Dated December 21<sup>st</sup>, 2010.

12 JOHN J. BURNS  
13 ATTORNEY GENERAL

14 By:   
15 Mary Ann Lundquist  
16 Senior Assistant Attorney General  
17 ABA No. 9012132

18 By:   
19 Stacy K. Steinberg  
20 Chief Assistant Attorney General  
21 ABA No. 9211101

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25 <sup>150</sup> *John v. Baker I*, 982 P.2d at 761.

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

CENTRAL COUNCIL OF TLINGIT )  
AND HAIDA INDIAN TRIBES OF )  
ALASKA, on its own behalf and as )  
*parens patriae* on behalf of its members )  
Plaintiff, )  
v. )  
STATE OF ALASKA, PATRICK S. )  
GALVIN, in his official capacity of )  
Commissioner of the Alaska Department )  
of Revenue and JOHN MALLONEE, )  
in his official capacity of Director of the )  
Alaska Child Support Services Division )  
Defendants. )

Case No. 1JU-10-376 CI

AFFIDAVIT (SECOND) OF JOHN MALLONEE

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, John Mallonee, being first duly sworn, do depose and state:

- 1. I am the Director of the Child Support Service Division (CSSD), Department of Revenue, State of Alaska.
- 2. CCTHITA states in its Reply that "There is no claim that the Tribe's requests for services are any more severe a strain then requests from other state IV-D programs, or really any strain at all." I respectfully disagree, and therefore supplement my prior affidavit of October 28, 2010 on that particular point. My prior affidavit already addressed general and possible future issues with federally recognized tribes in Alaska issuing child support orders. Many of those issues apply to the IV-D tribal program in Alaska, as well as to any other Alaska tribes without a child support program. Because of the jurisdictional overlap involved—both agencies asserting jurisdiction over many of the same people—and because of CCTHITA's limited enforcement authority,

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Affidavit (Second) of John Mallonee  
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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2 CCTHITA's IV-D program poses operational and financial impacts unlike those  
3 from other IV-D agencies from other states.

- 4 3. Due to the high number of special requests for assistance or information by  
5 CCTHITA, and the need for special handling of CCTHITA requests, CSSD has  
6 redirected the work of two staff members to respond to CCTHITA requests and  
7 cases. A rough dollar estimate of these two employees' time is \$109,000 per  
8 year.
- 9 4. As mentioned in my previous affidavit, CSSD enters all of CCTHITA child  
10 support orders in the Alaska State Case Registry, a registry that CSSD must  
11 maintain according to federal regulations. CSSD does not enter other state's  
12 orders into the Alaska State Case Registry. Entry in the registry requires  
13 additional CSSD staff time and attention.
- 14 5. At the request of CCTHITA, CSSD has referred over 300 cases to CCTHITA.  
15 Many of these cases involve recoupment of tribal TANF (Temporary Assistance  
16 for Needy Families) administered by CCTHITA under a State grant agreement  
17 and AS 47.27.200. At CCTHITA's request, CSSD agreed to keep these cases  
18 open until the Tribe could put its withholding order in place. This is not the  
19 normal procedure with other IV-D child support agencies and results in a  
20 significant increase in staff-supported case work at CSSD. It also results in  
21 possible dual enforcement of the same support obligation and arrears.  
22 CCTHITA has failed in many cases to ever notify CSSD to close its case. When  
23 CSSD is not notified to close a case, CSSD staff time is involved in duplicative  
24 monitoring and administration.
- 25 6. For the CCTHITA tribal TANF cases CSSD is still enforcing, it appears  
26 CCTHITA is failing to notify CSSD when a parent stops receiving tribal TANF  
administered by CCTHITA. This could result in CSSD distributing child  
support to the wrong obligee—CSSD would distribute the money to CCTHITA  
(treated as the obligee during the time frames that tribal TANF is being paid)  
when the money was actually owed to the custodial parent. This would cause  
additional administrative, accounting and enforcement work for CSSD staff.  
CSSD staff would have to adjust the case and accounting for the proper obligee,  
ask CCTHITA to return the funds, and then send the money to the custodian. It  
would also result in a delay of payment to the custodian.
7. CSSD has provided information to CCTHITA in over 718 cases. This  
information includes copies of state-issued orders, financial and payment  
information, employer information, and locate information. This is highly  
unusual amount of information for CSSD staff to provide to another IV-D  
agency when the other IV-D agency opens its case. These requests have caused  
significant administrative work for CSSD.
8. CSSD staff also respond to CCTHITA weekly inquiries and research CSSD's  
database to provide relevant information to CCTHITA on case parties. The  
inquiries vary. For example, CCTHITA may inquire if CSSD has a case

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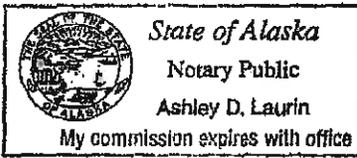
involving the parties, why CSSD closed its case, why a parent's paternity was disestablished, or how a parent became listed on the child's birth certificate. CSSD does not receive these types of inquiries from other states on a routine basis, and it requires substantial administrative effort to respond.

- 9. CSSD staff must also answer general questions for CCTHITA and explain CSSD procedures such as CSSD license suspension processes, collection and accounting on foster care cares, and paternity establishment procedures. Other IV-D agencies do not require this kind of extensive administrative support.
- 10. Many of the problems with CCTHITA's IV-D agency and tribal court are caused by CCTHITA's assertion of jurisdiction over the same people that CSSD and the State court assert jurisdiction over, i.e. Native and non-Native Alaska residents. This problem does not occur with other states and tribes with reservations because jurisdiction is based on geographical boundaries as outlined in the Uniform Interstate Family Support Act (UIFSA) (AS 25.25.101-903) and Full Faith and Credit for Child Support Orders Act (FFACCSOA) (25 U.S.C. § 1738(B)). Child support jurisdiction is often directly governed by geographic boundaries, such as in AS 25.25.201 (bases for jurisdiction over nonresident). These jurisdictional rules are difficult or impossible to apply to Alaska, and are not geared to the situation where CSSD otherwise has jurisdiction over the parties. Other sovereigns entering child support orders in the State creates immediate jurisdictional uncertainty.
- 11. Other current and likely future impacts on CSSD of federally recognized Tribes in Alaska issuing child support orders are addressed in my previous affidavit dated October 28, 2010.

*John Mallonee*  
John Mallonee

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of December 2010

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100



*Ashley D. Laurin*  
Notary Public, State of Alaska  
My Commission Expires w/office

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Affidavit (Second) of John Mallonee  
CCTHITA v. State of Alaska, et al, 1JU-10-376CI

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

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

Plaintiffs,

v.

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

Defendants.

FILED IN CHAMBERS  
STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU  
BY: KJK ON: Oct 25, 2011

Case No. 1JU-10-376 CI

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

Plaintiff, the Central Council of Tlingit and Haida Indian Tribes of Alaska ("Tribe") is a federally recognized Indian Tribe. This case presents important questions concerning the Tribe's jurisdiction to adjudicate child support in its tribal court. The Tribe seeks injunctive and declaratory relief finding that its tribal court has subject matter jurisdiction over child support cases concerning tribal member children, and requiring the State of Alaska to give recognition to tribal child support orders in such cases.

Both parties move for summary judgment. The facts are generally not in dispute; the motions present questions of law. Having considered the parties' memoranda and exhibits, and the arguments of counsel presented at oral argument, the Tribe's motion for summary

judgment is granted, and the State's motion for summary judgment is denied, for the reasons set forth below.<sup>1</sup>

## II. DISCUSSION

### A. Standard for Summary Judgment

Summary judgment is appropriate where there are no genuine issues of material fact and a party is entitled to a judgment as a matter of law.<sup>2</sup> The party moving for summary judgment "has the initial burden of offering admissible evidence showing both the absence of any genuine dispute of fact and the legal right to a judgment."<sup>3</sup> Once that burden is satisfied, the non-moving party, in order to prevent the entry of summary judgment, must produce admissible evidence reasonably tending to dispute or contradict the moving party's evidence.<sup>4</sup>

### B. Child Support

As society changed during the nineteenth and early twentieth century, American courts created, for the first time in Anglo-American common law, a legally enforceable duty on the part of parents to financially support their children.<sup>5</sup> This development stemmed from a

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<sup>1</sup> Plaintiff's request for the court to take judicial notice of the briefing in *State v. Native Village of Tanana*, 249 P.3d 734 (Alaska 2011) is denied. The briefing in *Tanana* does not establish any fact which would bring it within Evidence Rule 201, nor is it legal authority within the scope of Rule 202. Judicial notice is, therefore, inappropriate. However, these materials are the sort of persuasive matter which parties routinely – and quite appropriately – submit in support of legal arguments. These materials are entirely appropriate to submit for the court's consideration, and they will be made a part of the record without any need to resort to judicial notice. Defendant's motion to strike is denied for the same reasons.

<sup>2</sup> Alaska Rule of Civil Procedure 56.

<sup>3</sup> *Cikan v. ARCO Alaska, Inc.*, 125 P.3d 335, 339 (Alaska 2005).

<sup>4</sup> *Id.*

<sup>5</sup> See generally, 108 Yale L.J. 1123, *The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law* (1999).

recognition of the correlation between divorce, poverty, and dependency on the part of children of divorcing families (or, more generally, families involving a parent absent from the home).<sup>6</sup>

With the advent of modern welfare programs later in the twentieth century came a realization that the failure of noncustodial parents (often fathers) to provide financial support to their children drove those children into poverty and inflated the welfare rolls. By 1974 it could be said that:

The problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by their absent parents. Of the 11 million recipients who are now receiving [Aid to Families with Dependent Children], 4 out of every 5 are on the rolls because they have been deprived of the support of a parent who has absented himself from the home.<sup>7</sup>

Until then, child support establishment, collection, and enforcement had largely been left to the States.<sup>8</sup>

In 1974, Congress adopted Title IV-D of the Social Security Act, which required each state, as a condition of receiving federal funds for its welfare program, to create a child support enforcement system available both to welfare recipients and non-recipients.<sup>9</sup> The federal government, through its IV-D reimbursement plan, pays most of the cost of this system.

As part of this federal program, participating child support enforcement agencies are overseen by the federal Office of Child Support Enforcement ("OSCE"). Federal law establishes a variety of requirements that states are required to comply with in order to receive federal IV-D funding.

<sup>6</sup> *Id.*

<sup>7</sup> *Wehunt v. Ledbetter*, 875 F.2d 1558, 1565 (11th Cir. 1989), quoting Social Services Amendments of 1974, S. Rep. 93-1356, 93<sup>rd</sup> Congress, 2d Session 42 (1974).

<sup>8</sup> See, e.g., 73 Mich. Bar Journal 660, *Federalization of Child Support: Twenty Years and Counting* (July 1994).

<sup>9</sup> P.L. 93-647; 42 USC §§661-665.

In 1996, as part of the federal welfare reform legislation known as the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), states were required to adopt the Uniform Interstate Family Support Act ("UIFSA"), which sets out procedures for recognition of child support orders from other states.

UIFSA was initially promulgated by the National Conference of Commissioners on Uniform State Laws in 1992, and was adopted in Alaska in 1995.<sup>10</sup> The purpose of UIFSA is to unify state laws relating to the establishment, enforcement, and modification of child support orders, and to eliminate the problem of multiple child support orders from different jurisdictions.<sup>11</sup>

The UIFSA requires states to recognize child support orders from other "states." Although the uniform act included Indian tribes within the definition of "states," the language including Indian tribes was omitted by the Alaska legislature when it adopted UIFSA in 1997.<sup>12</sup>

When Congress enacted PRWORA in 1996, it required states to enact the official version of UIFSA, which includes Indian tribes within the definition of "states."<sup>13</sup> The State of Alaska twice requested an exemption from this requirement in 2008, but each request was rejected by the federal Department of Health & Human Services.<sup>14</sup> After the second denial, the State was warned that continued failure to enact a conforming statute risked loss of over \$60

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<sup>10</sup> AS 25.25.101 *et seq.*; SLA 1995, ch. 57.

<sup>11</sup> Am Jur 2d *Desertion*, §73 (2011); *Hamilton v. Foster*, 620 N.W.2d 103 (Neb. 2000); *Linn v. Delaware Child Support Enforcement*, 736 A.2d 954 (Del. 1999). *See also, Barlett v. State, Dept. of Revenue*, 125 P.3d 328, 331 (Alaska 2005) (UIFSA requires states to enforce other state's judgments "in order to create uniformity in interstate judgments.").

<sup>12</sup> SLA 1995, ch. 57 §4.

<sup>13</sup> 42 USC §666(f).

<sup>14</sup> Exhibit 4 to Plaintiff's Motion for Summary Judgment.

million in federal funds for IV-D and Temporary Assistance to Needy Families ("TANF") programs (the successor program to Aid to Families with Dependent Children).<sup>15</sup>

Faced with this threat, the Alaska Legislature amended UIFSA in 2009 to conform to the definition of "states" in the official text.<sup>16</sup> In doing so, the Legislature adopted intent language clarifying that it was not the Legislature's intention to confer additional jurisdiction on tribal courts:

(a) It is the intent of the legislature that, in order to bring Alaska into conformity with the nationwide Uniform Interstate Family Support Act (UIFSA), as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of that date by the National Conference of Commissioners on Uniform State Laws, it is necessary to amend AS 25.25.101 to include "an Indian tribe" and "the United States Virgin Islands" in the definition of "state."

(b) The proposed changes made in AS 25.25.101(19) under sec. 3 of this Act are conforming amendments that will result in procedural changes in Alaska for enforcement and modification of child support orders from other jurisdictions. UIFSA does not determine the authority of an Indian tribe to enter, modify, or enforce a child support order. In adopting UIFSA conforming amendments, the legislative intent is

(1) to remain neutral on the issue of the underlying child support jurisdiction, if any, for the entities listed in the amended definition of "state";

(2) not to expand or restrict the child support jurisdiction, if any, of the listed "state" entities in the amended definition; and

(3) not to assume or express any opinion about whether those entities have child support jurisdiction in fact or in law.<sup>17</sup>

UIFSA requires a tribunal of this state to recognize the "continuing, exclusive jurisdiction" of a tribunal of another state that has issued a child support order under a law

<sup>15</sup> *Id.*

<sup>16</sup> AS 25.25.101(19), amended by SLA 2009, ch. 45 §3.

<sup>17</sup> 2009 SLA ch. 45 §1.

substantially similar to UIFSA.<sup>18</sup> Article 5 of UIFSA requires Alaska's Child Support Services Division ("CSSD") to take steps to administratively enforce child support orders from other states without the need to file an independent court action in an Alaska court.<sup>19</sup> If an order from another state is contested in Alaska, UIFSA provides that CSSD "shall" register the order in an Alaska court under the procedures set forth in article 6 of UIFSA.<sup>20</sup> Resort to the registration procedure avoids the need to file an independent court action in Alaska to seek recognition of a foreign judgment as a matter of comity.<sup>21</sup>

The State correctly points out that the ability to use these UIFSA procedures for a tribal court support order depends upon whether the tribal court has jurisdiction to issue child support orders. UIFSA does not confer jurisdiction on tribal courts; it merely requires recognition of tribal court support orders if the tribal court has jurisdiction.

Thus the outcome of this case hinges on the basic question of jurisdiction: does the Tlingit Haida tribal court have jurisdiction to enter child support orders concerning children who are tribal members?

C. Tribal Court Jurisdiction – *John v. Baker*

Indian tribes possess inherent powers of self-government which predate the arrival of European settlers and the founding of the United States.<sup>22</sup> Tribes "retain those fundamental

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<sup>18</sup> AS 25.25.205(d).

<sup>19</sup> AS 25.25.501-507.

<sup>20</sup> AS 25.25.507(b); AS 25.25.601-614.

<sup>21</sup> See generally, Exhibit 3 to Plaintiff's Motion for Summary Judgment, SOA pp. 0115-0116 (Steinberg letter).

<sup>22</sup> *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978).

attributes of sovereignty . . . which have not been divested by Congress or by necessary implication of the tribe's dependent status."<sup>23</sup>

While tribal sovereignty is not absolute, "until Congress acts, . . . Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status."<sup>24</sup> The United States Supreme Court has articulated a "core set of sovereign powers that remain intact even though Indian nations are dependent under federal law; in particular, internal functions involving tribal membership and domestic affairs lie within a tribe's retained inherent sovereign powers."<sup>25</sup>

These principles are well established in the context of an Indian tribe occupying a reservation in the lower 48 states. Indian tribes possess broad sovereignty in Indian country. In Alaska, however, the Alaska Native Claims Settlement Act ("ANCSA") largely extinguished Indian country.<sup>26</sup>

In *John v. Baker*, the Alaska Supreme Court held that Alaska tribes retain the power to adjudicate custody disputes concerning tribal member children "by virtue of their inherent powers as sovereign nations."<sup>27</sup> The court in *John v. Baker* found that this power does not depend upon the existence of Indian country, but rather stems from the tribe's interest in "preserving and protecting the Indian family as the wellspring of its own future."<sup>28</sup> As such,

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<sup>23</sup> *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 146 (1982).

<sup>24</sup> *Merrion*, 435 U.S. at 323.

<sup>25</sup> *John v. Baker*, 982 P.2d 738, 751 (Alaska 1999), cert. denied, 528 U.S. 1182 (2000).

<sup>26</sup> *Alaska v. Native Village of Venetie Tribal Government (Venetie II)*, 522 U.S. 520 (1998).

<sup>27</sup> 982 P.2d at 748-49.

<sup>28</sup> *Id.* at 752.

the power to adjudicate custody disputes over Alaska Native children is necessary "to protect tribal self-government or to control internal relations."<sup>29</sup>

It was unclear from the Supreme Court's first *John v. Baker* opinion (*John v. Baker I*) whether the holding extended to the question of whether Alaska Native tribes have authority to decide child support as well as child custody. In its third opinion in *John v. Baker* (*John III*), the Supreme Court clarified that it did not intend to decide this question in *John v. Baker I*. The court in *John III* declined, for procedural reasons, to reach the question presented in this case -- whether tribal courts have jurisdiction over child support issues.<sup>30</sup> This is, therefore, a question of first impression.

#### D. Child Custody and Child Support

It is clear under Alaska law and procedure that the issues of child custody and child support are closely intertwined. The Supreme Court emphasized this point in *McCaffery v. Green*,<sup>31</sup> a case dealing with interstate child support jurisdiction.

Ms. McCaffery and Mr. Green were divorced in Texas. The Texas court awarded McCaffery custody of the children and ordered Green to pay child support. Four years later, McCaffery moved to Alaska with the children. Green moved to Oregon. Neither parent retained connections to Texas.

Three years after moving to Alaska, McCaffery moved in an Alaska court to modify the visitation and child support provisions of the Texas decree. Green objected on the basis of jurisdiction.

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<sup>29</sup> *Id.*

<sup>30</sup> *John v. Baker*, 125 P.3d 323 (Alaska 2005).

<sup>31</sup> 931 P.2d 407 (Alaska 1997).

The trial court found that it had jurisdiction to modify the Texas decree as to custody and visitation under the statute then in effect, the Uniform Child Custody Jurisdiction Act ("UCCJA"), but found that the court was without jurisdiction as to child support.

The Supreme Court reversed, holding that the court had jurisdiction to consider both custody or visitation, and child support. In doing so, the court noted that it "simply makes sense" for a court that has jurisdiction to consider custody and visitation to also have jurisdiction to consider child support:

An Alaska court is already deciding issues of custody and visitation. A visitation determination inherently affects the amount of child support owed by the obligor parent. Alaska Civil Rule 90.3(a)(3) specifically links the two issues: a court may allow an obligor parent to reduce child support payments up to fifty percent for any period in which that parent has extended visitation of over twenty-seven consecutive days. This rule recognizes that a parent's own expenses are greater (and the other parent's expenses less) when that parent exercises visitation rights. To decide custody and visitation issues without being able to make the logically concomitant support modification could result in an imbalance between visitation allowed and support owed.<sup>32</sup>

The court went on to note that issues of support and custody are intertwined, quoting the view of one commentator on this point:

Dissolution of marriage determines status and does not carry with it any inevitable consequences. The parties are not presumed to have any ongoing obligation to one another. Therefore, in a divorce action it is conceptually justifiable to sever the economic issues from the status issues and require personal jurisdiction to resolve the former. In contrast, divorce does not extinguish a parent's obligation to his or her children. While the amount of monthly payments is certainly a subject of frequent dispute, the fact remains that the noncustodial parent can reasonably anticipate being liable for some amount of child support. The parent's obligation to support the child is not merely related to the status determination; it is an inevitable concomitant of custody decisions.<sup>33</sup>

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<sup>32</sup> 931 P.2d at 413-14 (emphasis added).

<sup>33</sup> *Id.* at 414, quoting Monica J. Allen, Child-State Jurisdiction: A Due Process Invitation to Reconsider Some Basic Family Law Assumptions, 26 Fam. L. Q. 293, 307 (1992).

Additionally, Alaska's court rules require the court to consider child support any time it makes a custody decision. Civil Rule 90.3(e) requires all parents seeking to litigate custody issues to file information regarding their income for child support purposes. Child support depends not upon the amount of time the child actually spends with each parent, but rather upon what is in the custody order.<sup>34</sup>

The court in *John v. Baker* clearly established that the tribal court has jurisdiction to decide issues of custody and visitation as to children who are members of the tribe. It would be an odd result if a state court which was called upon to decide custody were required to decide child support, but a tribal court deciding custody were barred from deciding support for lack of jurisdiction. But that would be the result of the State's position. This result would provide a substantial deterrent for parents to bring custody disputes to tribal courts, since tribal courts could not decide all of the issues in the case. It would also open the door to procedural manipulation, since a parent wanting to adjudicate custody without risking an adverse child support order could file in tribal court.

Parents have a broad range of rights and responsibilities with respect to their children. The duty to provide financial support for one's children is just one of a parent's responsibilities. Parents have a duty to keep their children safe, to provide them with food, clothing, shelter, and medical care, and to ensure that they go to school.

A court deciding child custody may make decisions that affect the full range of each parent's rights and duties. A court may enter orders in a custody case having to do with all of the parents' duties, including but not limited to child support. A court may order a parent to

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<sup>34</sup> *Turinsky v. Long*, 910 P.2d 590, 595 (Alaska 1996).

take the child to school, or to the doctor, or to see a counselor, or to church. A parent may be prohibited from exercising some of the duties of a parent, or may be required in a custody order to exercise those duties.

According to the State's position, a tribal court has the jurisdiction to adjudicate each and every one of the rights and responsibilities of the parents of a tribal member child, except for the parents' duty to provide monetary support for the child. Under this argument, child support is merely a debt between the parents, which has no relation to any tribal interest. This position fails to recognize the "paramount duty" of parents to support their children.<sup>35</sup> This duty is not simply a debt to the other parent, but is integral to the statutory and common-law duty parents have to their children.<sup>36</sup>

In arguing that child support is merely a social welfare program, the State views this question only through the lens of administrative child support enforcement. This argument views child support as only a way for governments to recoup welfare payments from noncustodial parents.<sup>37</sup> But the duty to pay child support long predates enactment of social welfare legislation. This duty is integral to the parent child relationship. The ability to ensure that noncustodial parents support their children may be the only thing keeping those children out of grinding poverty. This duty cannot be characterized as merely a debt between parents. Nor can it be characterized only as an after-effect of the enactment of social welfare legislation in the twentieth century.

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<sup>35</sup> See, e.g., *Kestner v. Clark*, 182 P.3d 1117, 1122-23 (Alaska 2008).

<sup>36</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987).

<sup>37</sup> State's memorandum in opposition to summary judgment and in support of cross-motion for summary judgment at 6-8, 12 ("... child support developed as a broad, national social welfare program.").

The determination and enforcement of the duty of parents to support a child who happens to be a tribal member is no less a part of the tribe's internal domestic relations than the decision as to which parent the child will live with, which school the child will attend, or any of the other important decisions that custody courts make every day. Ensuring that tribal children are supported by their noncustodial parents may be the same thing as ensuring that those children are fed, clothed, and sheltered. The future of a tribe – like that of any society – requires no less.

In my view, the determination of child support is an integral part of a custody determination. To the extent that the Supreme Court found in *John v. Baker* that tribes have jurisdiction over custody determinations, I conclude that this jurisdiction, to be meaningful, must extend to adjudication of child support.

To the extent that the State argues that the holding of *John v. Baker* is in question as a result of subsequent federal decisions, that argument was undercut by the Alaska Supreme Court's decision in *State v. Native Village of Tanana*,<sup>38</sup> in which the court reaffirmed *John v. Baker*'s "foundational holding" that a sovereign tribe's inherent powers of self-government include "inherent authority to regulate internal domestic relations among its members," and that this authority was not divested by ANCSA's elimination of Indian country in Alaska.<sup>39</sup> It is not for this court to reject the Supreme Court's holding in *John v. Baker*.<sup>40</sup>

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<sup>38</sup> 249 P.3d 734 (Alaska 2011).

<sup>39</sup> *Id.* at 750.

<sup>40</sup> I am not persuaded that *Montana v. United States*, 450 U.S. 544 (1981), a case having to do with a tribe's authority to regulate the activities of non-members on private land, calls the Alaska Supreme Court's later holding in *John v. Baker* into question. *Montana* has to do with a tribe's authority to regulate the conduct of non-members, and does not delineate a tribe's authority to adjudicate domestic relations cases involving children who are members of the tribe. I find *Montana* to be distinguishable.

Here, of course, the tribal court seeks to decide only child support and not custody. The fact that a court has chosen not to exercise the full extent of its jurisdiction, however, does not divest the court of jurisdiction. In my view, *John v. Baker* confers jurisdiction on the tribal court to decide both custody and support. The tribal court does not forfeit its jurisdiction merely because it chooses not to decide issues of custody.

E. Personal Jurisdiction

I have concluded that the tribal court has subject matter jurisdiction over issues of child support as to children who are members of the tribe (or eligible for membership). This case does not require the court to decide the issue of personal jurisdiction, which must be decided on a case by case basis.

The United States Supreme Court held in *Kulko v. Superior Court*<sup>41</sup> that the Due Process clause of the Fourteenth Amendment was violated when a California court heard a custody modification and child support claim against a father who lived in New York, when that father did not have the "minimum contacts" with the State of California which are required under *International Shoe Co. v. Washington*.<sup>42</sup>

Statutes such as the UCCJEA or UIFSA impose geographical limitations on the jurisdiction of state courts. Reservation boundaries impose geographical limitations on the jurisdiction of tribal courts in the lower 48 states. Because of the extinguishment of Indian country in Alaska, the Tlingit Haida Tribal court has no such geographical limitation on its jurisdiction. The tribe claims jurisdiction based solely on the child's membership. Under this framework, the tribal court could claim jurisdiction to enter a support order for a tribal member

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<sup>41</sup> 436 U.S. 84 (1978).

<sup>42</sup> 326 U.S. 310, 316 (1945).

child, against a nonmember parent, even in a case in which neither the parents nor the child have ever been to Alaska or set foot on the Tribe's traditional lands.

One could imagine a hypothetical case in which both parents live in a far away state, and all the necessary witnesses as to the issue of child support would be located in the parents' state of residence. The obligor parent would have to defend himself or herself in a far away court with which he or she has no connections. In such a hypothetical case, the exercise of jurisdiction by the tribal court may well violate due process, based on the holding in *Kulko*.

It is not necessary to decide the precise outer limits of the court's jurisdiction to decide this case. There is no suggestion that any of the particular cases at issue here involve a claim of jurisdiction that would run afoul of *Kulko*.

F. Other Practical Difficulties

The State has identified a number of practical problems with concurrent state and tribal jurisdiction. I recognize the validity of many of these concerns. These practical complications are inevitable with a system of dual sovereignty. I further recognize that many of these problems will be difficult to solve. Because I believe the conclusions reached in this decision are a necessary consequence of the Supreme Court's holding in *John v. Baker*, however, I believe the solution to these problems lies somewhere other than in this court.

G. Remedies

Based on the foregoing conclusions, I find that the Tribe is entitled to summary judgment on its first, second, and third causes of action, and I will enter a declaratory judgment declaring that the Tribe possesses inherent rights of self-governance that include subject matter jurisdiction to adjudicate child support for children who are members of the Tribe or eligible

for membership in the Tribe, and an injunction requiring the State of Alaska, Child Support Services Department to comply with UIFSA and applicable federal and state regulations.

There are several issues that require additional briefing. The first is whether these conclusions require summary judgment on the constitutional and §1983 claims set out in plaintiff's fourth and fifth causes of action. And the second is the precise language of the injunctive relief that should be granted. In particular, how broadly should the injunction be phrased as to future cases.

In addressing this second question, I would ask the parties to specifically address the question of how (or whether) to address possible questions about personal jurisdiction, under *Kulko* or other authority, in crafting an injunction.

Finally, the parties should address the question of whether, based on the conclusions set out in this order, the court should enter final judgment in this case. If so, the parties should state their positions on what that judgment should be (consistent with the conclusions reached in this order).

The plaintiff should submit a memorandum on these points, along with a proposed form of order, in thirty (30) days. The defendant should submit its memorandum thirty (30) days from the date of service of the plaintiff's memorandum. The plaintiff may submit a reply memorandum fifteen (15) days from the date of service of the defendant's memorandum.

### III. CONCLUSION

As discussed above, I find that the Tlingit Haida Tribal court has subject matter jurisdiction to enter child support orders concerning tribal member children. The plaintiff's

motion for summary judgment is, therefore, GRANTED. The State's cross motion for summary judgment is DENIED.

Entered at Juneau, Alaska this 25 day of October, 2011.

  
Philip M. Pallenberg  
Superior Court Judge



**CERTIFICATION OF SERVICE**

I certify that I served the following parties on the 25th day of October, 2011.

|   |   |
|---|---|
| Holly Handler                                 | Mary Ann Lundquist                            |
| <input checked="" type="checkbox"/> Court box | <input checked="" type="checkbox"/> Court box |

  
Keitha J. Kolvig  
Judicial Assistant to Judge Pallenberg

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

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

Plaintiffs,

v.

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

Defendants.

FILED IN CHAMBERS  
STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU  
BY: KJK ON: Aug 23, 2003

Case No. 1JU-10-376 CI

**ORDER ON POST-SUMMARY JUDGMENT ISSUES**

At the court's request, both parties filed briefs on the remaining issues in dispute in this case. The court has reviewed the briefs and issues the following order.

The parties are in agreement that the court need not enter any decision on the plaintiff's fourth and fifth causes of action (constitutional and §1983 claims). The parties are further in agreement that the court should leave questions of personal jurisdiction for decision in future cases. Where the parties differ is on the scope of injunctive relief to be granted now.

The court's decision on summary judgment stated that the court would enter "an injunction requiring the State of Alaska; Child Support Services Department [sic] to comply with UIFSA and applicable federal and state regulations."<sup>1</sup>

<sup>1</sup> Order on Summary Judgment at 15.

The Tribe argues for a relatively broad injunction requiring the State to comply with specific provisions of federal law and regulations, and referring to specific aspects of UIFSA and its IV-D plan. The State, on the other hand, argues that no injunctive relief is necessary, and in the alternative that any injunctive relief should be narrowly tailored.

In its reply memorandum, the Tribe argues that the court has already determined that an injunction should be entered, and therefore the court should reject the State's arguments for no injunction. I agree with this position. An injunction is appropriate.

However, I am not persuaded that the relatively broad injunction sought by the Tribe is called for. As the State points out, the scope of an injunction should be dictated by the extent of the violation established.<sup>2</sup> The core issue in this case is whether Alaska tribes have subject matter jurisdiction to decide child support. I have decided that question in the affirmative. The State takes the position that its dispute with the Tribe was over the question of whether the Tribe had subject matter jurisdiction. According to the State, now that this question is resolved the State is ready to move forward on working with the Tribe. The State represents that it will now process tribal child support orders just as it will orders from other jurisdictions.

Crafting specific language for an injunction poses significant challenges. Absent some evidence that the State's profession of good faith willingness to cooperate is inaccurate, I believe it is appropriate to take a "wait and see" approach as to the more specific language proposed by the Tribe. I will issue a somewhat more limited injunction at this point than what the Tribe proposes. If the State does not proceed in good faith to work with the Tribe to implement procedures for sharing of information, does not appropriately respect Tribal orders, denies appropriate IV-D services to the Tribe, does not appropriately provide interstate enforcement services to the Tribe under UIFSA, or does not timely respond to requests for

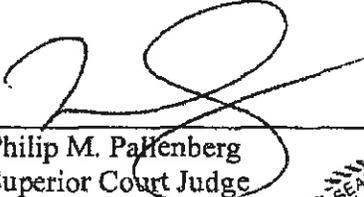
services from the Tribe, the Tribe may file a motion in this case to modify or broaden this injunction, or may bring contempt or other enforcement proceedings within this case.

I will therefore enter an order as follows:

1. Declaratory judgment will be granted declaring that the Tribe's inherent rights of self-governance include subject matter jurisdiction to adjudicate child support for children who are members of the Tribe or eligible for Tribal membership.
2. A permanent injunction will be entered requiring the State of Alaska to recognize the Tribe as a "State" under UIFSA and for the purpose of its State IV-D program, requiring the State of Alaska to recognize and enforce valid child support orders of the Tlingit Haida Tribal court just as it would valid orders of any other State, and requiring the State to provide IV-D services to the Tribe's IV-D program on the same level that it does to IV-D programs of other equivalent jurisdictions.

The plaintiff should prepare an appropriate form of order for a permanent injunction and proposed final judgment.

Entered at Juneau, Alaska this 23 day of August, 2012.

  
Philip M. Paffenberg  
Superior Court Judge



<sup>2</sup> *Lewis v. Casey*, 518 U.S. 343, 359 (1996).

**CERTIFICATION OF SERVICE**

I certify that I served the following parties on the 28<sup>th</sup> day of August, 2012.

|   |   |
|---|---|
| Holly Handler                                     | Mary Ann Lundquist                                |
| <input checked="" type="checkbox"/> Via Court box | <input checked="" type="checkbox"/> Via U.S. Mail |

Keitha J. Kolvig  
Keitha J. Kolvig  
Judicial Assistant to Judge Pallenberg

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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

Plaintiff,

v.

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

Defendants.

FILED IN CHAMBERS State of Alaska First Judicial District at Juneau By: KJK on: Sept 24, 2012

Case no. 1JU-10-376 CI

ORDER

For good cause shown, Plaintiff's Non-Opposed Motion for Entry of Final Judgment and Injunction is hereby granted.

DATED: 9/24/12

*[Signature]*  
The Hon. Philip M. Pallenberg  
Juneau Superior Court Judge



CERTIFICATION

Copies Distributed  
Date Sept. 25, 2012  
To Handler  
Steinberg  
Lundquist  
By K. Holmgren

CCTHITA v. State Order

1 of 1 Case No. 1JU-10-376 CI

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LAW OFFICES OF ALASKA LEGAL SERVICES CORPORATION 419 6th St. Suite 322 Juneau, AK 99801-1996 (907) 586-6925 Fax: (907) 586-2449

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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

Plaintiff, )

v. )

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

Defendants. )

FILED IN CHAMBERS  
State of Alaska  
First Judicial District at Juneau  
By: KJK on: Sept. 24, 2012

COPY

Case no. 1JU-10-376 CI

PERMANENT INJUNCTION

For the reasons set forth in its Order dated October 25, 2011, granting plaintiff (hereinafter "the Tribe") summary judgment, and in its August 23, 2012 "Order on Post-Summary Judgment Issues," this Court hereby enters a Permanent Injunction against the defendants (hereinafter, "the State of Alaska"):

1. The State of Alaska is hereby ordered to recognize the Tribe as a "State" under Alaska's Uniform Interstate Family Support Act (UIFSA), AS 25.25, Alaska's administrative code implementing UIFSA, 15 AAC 125.700-800, and for purposes of the State's IV-D program
2. The State of Alaska is hereby ordered to recognize and enforce valid child support orders of the Tribe's Tribal Court just as it would valid child support orders of any other State; and

CCTHITA v. State  
Permanent Injunction

1 of 2  
Case No. 1JU-10-376 CI

LAW OFFICES OF  
ALASKA LEGAL SERVICES CORPORATION  
419 6th St. Suite 322  
Juneau, AK 99801-1096  
(907) 586-6425  
Fax: (907) 586-2445

LODGED 9/24/12 BY K INITIALS  
DATE

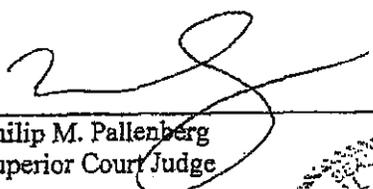
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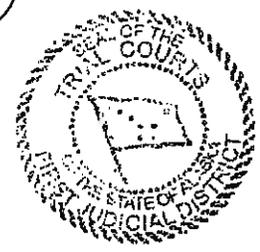
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3. The State of Alaska is hereby ordered to provide IV-D services to the Tribe's IV-D program on the same level that it does to IV-D programs of other States or other equivalent jurisdictions.

This Permanent Injunction will remain in place against the State of Alaska indefinitely.

Entered at Juneau, Alaska this 24 day of September, 2012.

  
Philip M. Pallenberg  
Superior Court Judge



CERTIFICATION  
Copies Distributed  
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Steinberg  
Lundquist  
By B. Volberg

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

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

Plaintiff,

v.

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

Defendants.

FILED IN CHAMBERS  
 State of Alaska  
 First Judicial District at Juneau  
 By: KJK on: Sept 24, 2012

COPY

Case no. 1JU-10-376 CI

FINAL JUDGMENT

In accord with its Order dated October 25, 2011, granting plaintiff summary judgment, and its August 23, 2012 "Order on Post-Summary Judgment Issues," this Court hereby enters Final Judgment in plaintiff's favor.

This order includes a declaratory judgment that the Central Council of Tlingit and Haida Indian Tribes of Alaska possesses inherent rights of self-governance that include subject matter jurisdiction to adjudicate child support for children who are members of the Tribe or eligible for membership in the Tribe.

Plaintiff may file a motion for its fees and costs within 10 days of the signing of this Final Judgment.

Entered at Juneau, Alaska this 24 day of September, 2012.

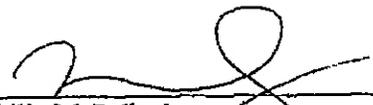
CCTHITA v. State  
 Final Judgment

1 of 2  
 Case No. 1JU-10-376 CI

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LODGED 9-27-12 BY: [Signature] INITIALS DATE  
 LAW OFFICES OF ALASKA LEGAL SERVICES CORPORATION  
 419 6th St. Suite 322  
 Juneau, AK 99801-1086  
 (907)586-6425  
 Fax: (907) 586-2449

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Philip M. Pallenberg  
Superior Court Judge



**CERTIFICATION**  
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CCTHITA v. State  
Final Judgment

2 of 2  
Case No. 1JU-10-376 CI

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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

Plaintiff, )

v. )

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

Defendants. )

Case no. 1JU-10-376 CI

STATE OF ALASKA  
FIRST JUDICIAL DISTRICT  
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PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

Plaintiff submits this memorandum of points and authorities in support of its motion for attorney's fees.

I. STANDARD FOR CALCULATING ATTORNEY'S FEES

As prevailing party in this case, plaintiff seeks enhanced fees under Alaska Civil Rule 82. The Alaska Supreme Court has "consistently held that clients receiving free legal services may recover attorney's fees" under Rule 82.<sup>1</sup> Thus, the Court has approved attorney's fees to Alaska Legal Services Corporation, as well as other non-profits such as the Alaska Network on Domestic Violence and Sexual Assault.<sup>2</sup>

<sup>1</sup> *Vasquez v. Campbell*, 146 P.3d 1, 3 (Alaska 2006).

<sup>2</sup> *See, e.g., Vasquez*, 146 P.3d at 3; *NCO Fin. Sys. v. Ross*, 2012 Alas. LEXIS 56, 7-8 (Alaska 2012)

LAW OFFICES OF  
ALASKA LEGAL SERVICES CORPORATION  
419 6th St. Suite 333  
Juneau, AK 99801-1095  
(907) 586-6425  
Fax: (907) 586-2449

6

1 When attorneys do not charge an hourly rate to their clients, Rule 82 fees are  
2 calculated by objectively valuing the attorney's services.<sup>3</sup> This can be done by  
3 multiplying reasonable hourly rates by the actual reasonable hours worked, or — when  
4 appropriate — considering value-enhancing factors such as risk premiums and  
5 encouraging representation in similar cases.<sup>4</sup>

6 The trial court has broad discretion to enhance Rule 82 fees, though it must  
7 explain its reasons for doing so.<sup>5</sup> Through this motion, Plaintiff requests an enhanced  
8 Rule 82 award of 80% of reasonable hours expended multiplied by a reasonable hourly  
9 rate.

10  
11 II. CONSIDERATION OF RULE 82 ENHANCEMENT FACTORS

12 Under subsection (b)(2) of Rule 82: "In cases in which the prevailing party  
13 recovers no money judgment, the court . . . shall award the prevailing party in a case  
14 resolved without trial 20 percent of its actual attorney's fees which were necessarily  
15 incurred." The court may enhance the award, depending on the following factors in  
16 subsection (b)(3):

- 17 (A) the complexity of the litigation;  
18 (B) the length of trial;  
19 (C) the reasonableness of the attorneys' hourly rates and the number of  
20 hours expended;  
21 (D) the reasonableness of the number of attorneys used;  
22 (E) the attorneys' efforts to minimize fees;  
23 (F) the reasonableness of the claims and defenses pursued by each side;  
24 (G) vexatious or bad faith conduct;

25 <sup>3</sup> See *Krone v. State*, 222 P.3d 250, 257 (Alaska 2009).

26 <sup>4</sup> See *id.*

<sup>5</sup> *Id.* at 255, citing *Municipality of Anchorage v. Gentile*, 922 P.2d 248, 264-65 (Alaska 1996).

1 (H) the relationship between the amount of work performed and the  
significance of the matters at stake;

2 (I) the extent to which a given fee award may be so onerous to the non-  
3 prevailing party that it would deter similarly situated litigants from the  
voluntary use of the courts;

4 (J) the extent to which the fees incurred by the prevailing party suggest  
5 that they had been influenced by considerations apart from the case at bar,  
such as a desire to discourage claims by others against the prevailing party  
6 or its insurer; and

7 (K) other equitable factors deemed relevant. If the court varies an award,  
the court shall explain the reasons for the variation.

8 Several of those factors apply to this case.

9 1. Complexity of the litigation

10 The extent of tribal jurisdiction in Alaska is a highly specialized area of law. In  
11 light of ANCSA's silence regarding tribal governance, "Alaska Natives have frequently  
12 resorted to Congress and the courts for clarification of tribal rights to self-government,  
13 hunting and fishing rights, and for further refinements to ANCSA."<sup>6</sup> The view of the  
14 State of Alaska, expressed in the Cross-Motion for Summary Judgment, is that "[t]ribal  
15 jurisdiction questions are seldom easy or self-evident."<sup>7</sup> Indeed, the State's (extensive)  
16 briefing invited this court to conduct a thorough examination of United States Supreme  
17 Court cases on tribal jurisdiction decided since 1999, and to scale back the decision in  
18 *John v. Baker* accordingly.<sup>8</sup> Consequently, the summary judgment practice in this case  
19 included a survey of tribal jurisdiction cases in the Alaska courts, the United States  
20 Supreme Court, and other courts across the country addressing both exclusive and  
21 concurrent tribal jurisdiction over domestic relations. Although resolved without a trial,  
22 the summary judgment briefing in this matter was more extensive than the average case.  
23

24  
25 <sup>6</sup> Cohen's Handbook of Federal Indian Law, 327 (2012).

26 <sup>7</sup> Defendants' Cross-Motion for Summary Judgment at 1.

<sup>8</sup> See *id.* at 2, 21-26, 37-38.

1  
2                   **2.       The Reasonableness of the Claims and Defenses Pursued**

3           Reliance on this factor is appropriate where the non-prevailing party has made  
4 unreasonable arguments.<sup>9</sup> The Alaska Supreme Court has approved an enhanced award  
5 of 75% of actual fees based on this factor alone, even in the absence of bad faith.<sup>10</sup>  
6 Because no court in Alaska since 1999 has taken any action to scale back *John v Baker*, it  
7 was not reasonable for the State to ask the trial court to do so in this proceeding. Nor was  
8 it reasonable for the State to argue against tribal jurisdiction in this case on the grounds  
9 that child support is not part of domestic relations. The unreasonableness of these  
10 arguments is described in the decision on summary judgment. This court's decision is  
11 consistent with the view of the federal government, which rejected the State's same  
12 jurisdictional arguments on multiple occasions during the fight to conform Alaska's  
13 version of the Uniform Interstate Family Support Act to include Indian Tribes.<sup>11</sup>

14  
15                   **3.       Reasonability of Rates and Hours Expended**

16           The attached affidavits support the reasonableness of the attorneys' hourly rates  
17 and the number of hours expended. The rate sought by counsel is in the middle of the  
18 fair market range identified in one affidavit, and less than the fair market rate identified in  
19 the other. The rate of \$300/hour was also noted as the fair market rate of non-profit  
20 attorneys at the Northern Justice Project in the 2009 *Heitz v. State* case.<sup>12</sup>

21  
22           The number of hours expended over the two-and-a-half years of litigation is  
23 reasonable, considering the time required to research and formulate the complaint.  
24

25 <sup>9</sup> *State v. Jacob*, 214 P.3d 353, 362 (Alaska 2009).

<sup>10</sup> *See Cole v. Bartels*, 4 P.3d 956, 961 (Alaska 2000)

26 <sup>11</sup> *See Order on Summary Judgment*, 4-5 (Oct. 25, 2011).

<sup>12</sup> 2009 Alas. LEXIS 120 (Alaska 2009).

1 complete the briefing for summary judgment, submit discovery requests to the State and  
2 review the responses, respond to discovery requests from the State, engage in ongoing  
3 negotiations, work on day-to-day inter-governmental case management issues affected by  
4 the pending litigation, prepare for and participate in oral argument, and negotiate multiple  
5 stipulations for PFD garnishments. Additionally, the client in this case was not a single  
6 individual or family, but rather an entire government. Thus, multiple client meetings  
7 were with governmental committees as well as individual tribal representatives.

8  
9 **4. Reasonableness of the Number of Attorneys Used and Efforts  
to Minimize Fees**

10 This case was a significant undertaking. However, plaintiff was represented by a  
11 single attorney at ALSC. Undersigned counsel was responsible for all the drafting and  
12 research. There is no paralegal in the Juneau office of ALSC to assist with this work.  
13 James Davis acted in a support role for questions relating to litigation issues. Counsel  
14 litigated against formidable adversaries: both a senior Assistant Attorney General and the  
15 Chief Assistant Attorney General for Collections and Support, who were in turn  
16 supported by the Attorney General's Indian Law specialists. Given the press of business  
17 at ALSC, no more time than absolutely necessary was spent litigating this case  
18

19 **5. The Importance of the Issues and Equitable Factors Supporting  
20 Enhancement**

21 This case addressed an issue of first impression in the state. Resolution of the  
22 questions raised in the brief affect the enforceability of orders issued by a federally-  
23 funded tribal IV-D child support agency. The Tribe is a large one, with 28,000 citizens  
24 worldwide. It would be hard to dispute that enforcing support orders for children is a  
25

1 matter of utmost importance. It is also important that a federally-funded agency be  
2 afforded inter-governmental services in order to fully serve its client families.

3 Moreover, while these issues are extremely important, there is a lack of attorneys  
4 both capable of taking on a case of this type and willing to do so on a *pro bono*  
5 basis. These "value-enhancing factors," are factors the court should consider to resolve a  
6 fee enhancement request.<sup>13</sup> It is therefore appropriate for the trial court to enhance fees  
7 to encourage attorneys to resolve matters of public importance on behalf of tribal  
8 governments and other non-profit entities serving primarily low-income families.

9  
10 III. CONCLUSION

11 For the foregoing reasons, plaintiff requests that this court, in its discretion, grant  
12 it enhanced fees upon consideration of the factors enunciated under subsection (b)(3) of  
13 Alaska Civil Rule 82.

14 DATED: October 15, 2012

ALASKA LEGAL SERVICES CORPORATION

Attorneys for Plaintiff

16  
17 

18 Holly Handler, AK Bar No. 0301006

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26 <sup>13</sup> See *Krone* at 350.

1  
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
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8 Plaintiff, )

9 vs. )

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13 of Revenue and JOHN MALLONEE, in )  
14 his official capacity of Directory of the )  
15 Alaska Child Support Services Division )

16 Defendants. )

Case No. 1JU-10-00376 CI

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**OPPOSITION TO PLAINTIFF'S  
MOTION FOR ATTORNEY'S FEES**

The parties dispute the amount of attorney's fee the court should award. The Central Council argues for enhanced fees of 80%, \$106,952. The State disagrees. Enhanced fees are not warranted in this case and the Court should award the standard 20% prevailing party fee rate, \$26,738. This amount amply compensates Central Council.

**Introduction**

As the prevailing party, the Central Council is entitled to an award of attorney's fees under Rule 82. But, because the Central Council did not recover a money judgment and the matter did not go to trial, the Central Council is entitled to "20 percent of its

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

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2 actual attorney's fees which were necessarily incurred."<sup>1</sup> The purpose of this  
3 presumptive compensation at 20 percent "is to *partially compensate* a prevailing party for  
4 the expenses incurred in winning his case."<sup>2</sup>

5 At a rate of \$300 and \$400 per hour, the 20 percent not only partially, but  
6 generously compensates Central Council. The Central Council owes no attorney's fees to  
7 its attorney. Alaska Legal Services is a public interest law firm that does not bill its  
8 clients.<sup>3</sup> The requested \$300 rate is not based on actual ALSC rates or the cost of doing  
9 business, but rather is based on the going rate for attorneys of similar experience.<sup>4</sup> The  
10 State fully recognizes that, in cases where an attorney does not charge a fee, the  
11 reasonable actual attorney's fee is determined by the value of the attorney's service.<sup>5</sup> In  
12 fact, the State of Alaska is generally in the same position with respect to calculating  
13 attorney's fees based on the going rate of attorney's fees. However, the State's  
14 reimbursement rate for someone of Ms. Handler's experience would probably be \$200  
15 per hour, and possibly \$225 per hour. In effect, compensation at the rate of \$300 per hour  
16 is already an enhanced attorney fee under the circumstances of this case and therefore  
17 does not need to be further enhanced.  
18  
19

20  
21 <sup>1</sup> Alaska R. Civil P. 82(b)(2) (emphasis added).

22 <sup>2</sup> *Krone v. State, Dep't of Health and Soc. Servs.*, 222 P.3d 250, 256 (Alaska 2009)  
(emphasis added).

23 <sup>3</sup> Certificate of Holly Handler in Support of Plaintiff's Motion for Attorney's Fees  
at 5 ¶ 6; Affidavit of James J. Davis, Jr. in Support of Plaintiff's Motion for Attorney's  
Fees at 5 ¶ 6.

24 <sup>4</sup> Davis Affidavit at 5 ¶ 6; Affidavit of Thomas M. Daniel at 2 ¶ 2; Handler  
Certificate at 5 ¶ 6.

25 <sup>5</sup> *United Services Automobile Ass'n v. Pruitt*, 38 P. 3d 528, 534 n.14 (Alaska 2001).

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

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2 Despite the requested generous compensation rate, the Central Council claims that  
3 its attorney's fees should be further enhanced. At the Rule 82 presumptive rate the  
4 Central Council is entitled to \$26,738. But the Central Council requests 400% of that  
5 amount (i.e., \$106,952). Such enhancement is not warranted by the facts or the Rule.

6  
7 **I. The complexity of the litigation is not grounds to enhance the fees when  
compensation is calculated at an hourly rate.**

8 Central Council argues for this enhanced fees because "[t]he extent of tribal  
9 jurisdiction in Alaska is a highly specialized area of the law" and that accordingly the  
10 summary judgment practice was more complex than the average case.<sup>6</sup> This case was not  
11 complex. The Central Council's motion and reply amounted to 55 pages and largely  
12 relied on just one case, *John v. Baker*,<sup>7</sup> to support its jurisdictional argument. To be sure,  
13 the legal briefing required detailed legal research. But the fact that the parties had to  
14 research and write motions for summary judgment (analyzing *John v. Baker*) is no basis  
15 for deviating from the Rule 82 presumptive fees. Analyzing court decisions is the very  
16 stuff of day-to-day life as an attorney. It does not indicate a need for enhanced fees.  
17

18 Further, this litigation was not drawn out. This case presented straightforward  
19 summary judgment legal briefing that was completed less than a year after the case was  
20 filed.<sup>8</sup> There was only limited written discovery. The parties did not take depositions,  
21 retain experts, prepare complex jury instructions, or perform the other time consuming  
22

23  
24 <sup>6</sup> Plaintiff's Memorandum in Support of Motion for Attorney's Fees at 3.

<sup>7</sup> *John v. Baker I*, 982 P.2d 738 (Alaska 1999).

<sup>8</sup> The complaint was filed on January 19, 2010. The summary judgment briefing  
25 took place from July 16, 2010 to December 21, 2010.

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
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2 and expensive litigation tasks which normally attend civil litigation of even moderate  
3 complexity. There was no trial. This case was simply not procedurally complex compared  
4 to most other civil proceedings. That the issues were vigorously litigated or that the case  
5 took some time to complete, are not reasons to deviate from presumptive fees.<sup>9</sup>

6 To the extent the summary judgment briefing was "extensive," the Central Council  
7 is more than fully compensated because its attorney's fees are calculated at an hourly  
8 rate. More hours worked simply translates to the Central Council being paid for more  
9 hours at \$300 or \$400 per hour. Thus, Central Council is already being compensated for  
10 the complexity.

11  
12 Rule 82's complexity factor is designed to ensure adequate compensation where  
13 "an award of attorney's fees is based upon a percentage of the amount of a final money  
14 judgment."<sup>10</sup> In those cases "the prevailing party may be substantially under or  
15 overcompensated" because "the amount of a final money judgment is not necessarily  
16 related to the amount of hours worked by the prevailing party's attorney."<sup>11</sup> "There is,  
17 however, no comparable risk of under or overcompensation when an award of attorney  
18 fees is based upon a percentage of the total actual hourly fees paid by the prevailing party  
19

20  
21  
22 <sup>9</sup> See *Kowalski v. Kowalski*, 806 P.2d 1368, 1373 (Alaska 1991) ("contentiousness  
23 over difficult issues" is a "by-product[] of the adversarial system" and does not, standing  
24 alone, justify an increase in fees; case regarding statutory fees in child support context).

25 <sup>10</sup> *Ware v. Ware*, 161 P.3d 1188, 1201 (Alaska 2007) (Fabe, J, and Bryner C.J.,  
dissenting).

26 <sup>11</sup> *Id.*

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

1  
2 to his or her attorney.”<sup>12</sup> A calculation based on hourly fees “will already reflect the  
3 complexity of a case.”<sup>13</sup> Thus, this factor is best reserved for calculation of attorney’s  
4 fees based on a percentage of a final judgment. It should not be used here.

5 Accordingly, even assuming that this case was “complex,” the “complexity” has  
6 already been captured in the Central Council’s hourly fees. While the Alaska Supreme  
7 Court has approved the use of “complexity” to enhance fees,<sup>14</sup> “[u]sing complexity as an  
8 independent enhancing factor in th[is] case[] ‘double-counts the effect of complexity on  
9 fees’” and will “ultimately overcompensate[]” the Central Council.<sup>15</sup>

11 The Central Council’s request to enhance its attorney’s fees on the basis of  
12 complexity is not warranted under the facts or under the case law, and should be denied.

13 **II. The State’s arguments were reasonable and do not support**  
14 **enhancement of the presumptive 20% fee award.**

15 The Central Council suggests that tribal jurisdictional issues in Alaska are so clear  
16 that the State’s legal arguments were unreasonable and that therefore its attorney’s fees  
17 should be enhanced. No one else seems to share this view.

18  
19  
20  
21 <sup>12</sup> *Id.* at 1202; *Cole v. Bartels*, 4 P.3d 956, 960 n.20 (Alaska 2000) (“[C]omplexity serves  
22 poorly as an independent enhancing factor where hourly fees, rather than a portion of a  
23 money judgment serve as the subject of the award.”).

24 <sup>13</sup> *Cole*, 4 P.3d at 960 n.20.

25 <sup>14</sup> *Ware*, 161 P.3d at 1199 (expressing concern about the use of the complexity  
26 factor); *see also id.* at 1201-02 (Fabe, J., & Bryner, J., dissenting).

<sup>15</sup> *Id.* at 1202 (Fabe, J. & Bryner, J., dissenting) (quoting *Cole*, 4 P.3d at 960 n.20);  
*see also id.* at 1199 n.51 (citing cases noting that using complexity as an enhancing factor  
over-counts the effect that complexity has on fees).

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
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1  
2 It is broadly acknowledged that as a general matter tribal jurisdictional  
3 “ambiguities still remain in abundance.”<sup>16</sup> And few would argue that Alaska presents a  
4 unique jurisdictional environment with many unsettled questions. In 1999, the Alaska  
5 Supreme Court in *John v. Baker I* distinguished Alaska from the rest of the nation and  
6 announced “membership based” jurisdiction by “teas[ing] apart the ideas of land-based  
7 sovereignty and membership sovereignty.”<sup>17</sup>  
8

9 The *John v. Baker I* opinion marked a watershed moment. It was the “first time in  
10 200 years of American jurisprudence that any court . . . upheld tribal jurisdiction based  
11 solely on membership.”<sup>18</sup> This new concept of a “sovereign entity without territorial  
12 reach is perplexing and introduces a new element of uncertainty into the already complex  
13 area of Indian law jurisdictional issues.”<sup>19</sup> Tribal advocates frankly acknowledge that  
14 Alaska’s “peculiar situation” will be the testing ground for the scope of tribal off-  
15 reservation jurisdiction elsewhere.<sup>20</sup>  
16

17  
18 <sup>16</sup> William C. Canby, Jr., *American Indian Law in a Nutshell* 138 (5th ed. 2009).

19 <sup>17</sup> 982 P.2d 738, 754 (Alaska 1999). As of 1992, the Alaska Supreme Court had still  
20 did not even recognized tribes as sovereign entities. *In re F.P.*, 843 P.2d 1214, 1215  
(Alaska 1992). Only in 1998 did the U.S. Supreme Court settle the question of whether  
21 Alaskan tribes inhabited Indian country. *Alaska v. Native Village of Venetie Tribal Gov't*,  
22 522 U.S. 520, 532 (1998) (ANCSA lands do not satisfy Indian country requirement).

23 <sup>18</sup> David S. Case, *Commentary on Sovereignty: The Other Alaska Native Claim*, 25  
24 J. Land Res. & Envtl. Law 149, 153 (2005).

25 <sup>19</sup> David M. Blurton, *John v. Baker and the Jurisdiction of Tribal Sovereigns without  
26 Territorial Reach*, 20 Alaska L. Rev. 1, 6 (2003).

<sup>20</sup> Alex Tallchief Skibine, *Tribal Sovereign Interests Beyond the Reservation  
Borders*, 12 Lewis & Clark Law Review 1003, 1028, 1030-31 (2008) (“The peculiar  
situation of Alaskan tribes provides a fertile ground to debate the extent of tribal  
sovereignty beyond the reservation borders . . . . The Alaskan example is important

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
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1  
2 The State of Alaska is thirteen years beyond *John v. Baker I*. At the national level,  
3 the United States Supreme Court and federal decisions<sup>21</sup> offer little to suggest that a  
4 broad membership-based jurisdiction will be applied. Post *John v. Baker I*, the United  
5 States Supreme Court has reaffirmed the importance of land status, and has placed firm  
6 limits on tribal jurisdiction, especially over nonmembers.<sup>22</sup> The suggestion that the  
7 parameters of tribal off-reservation jurisdiction have already been finally settled, and that  
8 raising tribal jurisdictional arguments is “unreasonable” is not well taken.  
9

10 And, even the Alaska Supreme Court, in the recent *Tanana* decision, highlighted  
11 the still unsettled nature of the law in Alaska.<sup>23</sup> Rather than holding that *John v. Baker*  
12 decided everything, the Court recognized its limited holdings, including that tribes have  
13 the “inherent authority to regulate *internal* domestic relations *among its members*.”<sup>24</sup>  
14 Thus, the Alaska Supreme Court’s most recent pronouncement is that *John v. Baker* is  
15 not the be all and end all of tribal jurisdictional questions in Alaska. It answered a very  
16  
17

18 beyond Alaska, as any extra-territorial tribal power recognized in Alaska should also be  
19 recognized in the lower 48 states.”).

20 <sup>21</sup> See Cohen’s Handbook of Federal Indian Law § 2.01[2] at 111 (Nell Jessup  
21 Newton ed., 2012) (“Federal supremacy is a bedrock principle of Indian law.”).

22 <sup>22</sup> See, e.g., *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 128 S. Ct.  
23 2709, 2718, 2720 (2008) (tribal jurisdiction centers on tribal land and tribal members  
24 within the reservation; regulation of nonmembers is presumptively invalid); *Nevada v.*  
25 *Hicks*, 533 U.S. 353 (2001) (no tribal court jurisdiction over state officers executing  
26 search warrants on tribal lands); *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001)  
(tribe without authority to tax nonmembers on non-Indian land within reservation).

<sup>23</sup> See *State of Alaska v. Native Village of Tanana*, 249 P.3d 734, 751 n.129, 752  
(Alaska 2011) (setting out unanswered questions including the extent of tribal jurisdiction  
over nonmembers and over members who have limited or no contact with the tribe).

<sup>24</sup> *Tanana*, 249 P.3d at 750 (emphasis added).

*Central Council of Tlingit and Haida Indian Tribes of Alaska v. State*  
Case No. 1JU-10-00376 CI

OPPOSITION TO PLAINTIFF’S  
MOTION FOR ATTORNEY’S FEES

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

1  
2 narrow question regarding tribal jurisdiction in the private custody matter context—  
3 nothing more. Given the federal cases governing tribal jurisdiction and the scope of *John*  
4 *v. Baker*, it was not unreasonable for the State to argue that the Central Council did not  
5 have jurisdiction over child support because it was not a matter of *internal* domestic  
6 relations *among members*.

7  
8 Further, the Central Council's claims that the State should not have made  
9 arguments to "scale back *John v. Baker*" (by arguing that the Tribe did not have  
10 jurisdiction over child support) are disingenuous.<sup>25</sup> The State's argument was not to  
11 "scale back *John v. Baker*." *John v. Baker* did not even deal with tribal jurisdiction over  
12 child support.<sup>26</sup> The Alaska Supreme Court made this clear in *John v. Baker III*:

13  
14 [I]t is clear that we believed [in *John v. Baker I*] that the custody and  
15 support matters were separate and that the transfer of the former to  
16 the tribal court did not entail the transfer of the latter.<sup>27</sup>

17 The State's argument in this case was that *John v. Baker I* should not be *expanded* from  
18 the private child custody context to the child support context.<sup>28</sup> This question has not  
19 been decided by the Alaska Supreme Court. It was certainly not unreasonable for the  
20 State to take this position.

21 <sup>25</sup> Plaintiff's Memorandum in Support of Motion for Attorney's Fees at 4.

22 <sup>26</sup> *John v. Baker*, 982 P.2d at 743 ("we conclude that Native tribes do possess the  
23 inherent sovereign power to adjudicate *child custody* disputes between tribal members")  
(emphasis added).

24 <sup>27</sup> *John v. Baker III*, 125 P.3d 323, 326-27 (Alaska 2005).

25 <sup>28</sup> State's Motion for Summary Judgment at 2-3 (arguing that court should not  
26 "expand *John v. Baker I*"); *id.* at 21-38 (arguing why *John v. Baker* reasoning should not  
be expanded into child support context).

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

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2 Similarly, the Central Council's argument that the State unreasonably argued "that  
3 child support is not part of domestic relations"<sup>29</sup> is wrong. The State's argument was not  
4 "that child support is not part of domestic relations," but rather that it is not a matter of  
5 the *internal* domestic relations *among members*.<sup>30</sup> For the State to make these subject  
6 matter jurisdiction arguments based on federal case law (which controls tribal  
7 jurisdictional issues and limits tribal inherent jurisdiction to the *internal* domestic  
8 relations *among members*)<sup>31</sup> was not unreasonable.

9  
10 Further, the efforts of the federal Department of Health and Human Services to get  
11 the State to adopt the full uniform version of UIFSA, does not make the State's  
12 jurisdictional arguments unreasonable. What language is included in the State's UIFSA  
13 regarding tribes is irrelevant to the jurisdictional issue (and this attorney fee issue).  
14 During the dispute over what the State's version of UIFSA should include, the federal  
15 government did not (as the Central Council suggests) reject the State's jurisdictional  
16 arguments. Rather, the federal government required the State to conform its UIFSA to  
17

18  
19 <sup>29</sup> Plaintiff's Memorandum in Support of Motion for Attorney's Fees at 4.

20 <sup>30</sup> State's Cross Motion at 38-41 (distinguishing cases cited by Central Council as  
21 authority for proposition that child support is a domestic matter; focusing on whether it is  
22 a matter of "internal domestic relations"); *id.* at 42-56 (state arguments regarding no  
23 jurisdiction over nonmembers, i.e. it is not an *internal* domestic relations matter); State's  
24 Reply at 18-38.

25 <sup>31</sup> *See Montana v. United States*, 450 U.S. 544, 564 (1981) (tribes have "inherent  
26 power to determine tribal membership, to regulate domestic relations among members,  
and to prescribe rules of inheritance for members"); *Plains Commerce Bank*, 128 S. Ct. at  
2718 (stating that tribal sovereignty "centers on the land held by the tribe and on tribal  
members on the reservation"); *id.* at 2720 (finding that "efforts by a tribe to regulate  
nonmembers, especially on non-Indian fee land, are 'presumptively invalid'").

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

1  
2 the Uniform Interstate Family Support Act (by including tribes in the definition of  
3 "state") as a condition of receiving continued federal IV-D funding. Whether a tribe can  
4 use these UIFSA procedures depends not on whether "tribe" is included in the definition  
5 of "state," but on whether the tribe has subject matter jurisdiction over child support in  
6 the first instance. As this Court stated, "UIFSA does not confer jurisdiction on tribal  
7 courts; it merely requires recognition of tribal court support orders if the tribal court has  
8 jurisdiction."<sup>32</sup>

9  
10 And, contrary to the Central Council's assertion that this Court "described [the  
11 unreasonableness of the State's jurisdictional arguments] in the decision on summary  
12 judgment,"<sup>33</sup> the Court makes no such statement. This Court's order only indicates that  
13 the Court agreed with the Tribe's jurisdictional arguments and rejected the State's. The  
14 rejection of one party's arguments and the sharp disagreement between the parties is not  
15 an indicator of reasonableness. It is a reflection of Alaska's uniqueness and the difficulty  
16 of applying federal Indian case law to Alaska. It indicates only that this is litigation.  
17  
18 Nothing more.

19 While in one breath claiming that the State's position was unreasonable because it  
20 is governed by the decision in *John v. Baker*, in the next breath the Central Council  
21 recognized that "[t]his case addressed an issue of first impression in the state."<sup>34</sup> Because  
22

23  
24 <sup>32</sup> Order Granting Plaintiff's Motion for Summary Judgment and Denying  
Defendant's Motion for Summary Judgment at 6.

25 <sup>33</sup> Plaintiff's Memorandum in Support of Motion for Attorney's Fees at 4.

26 <sup>34</sup> Plaintiff's Memorandum in Support of Motion for Attorney's Fees at 5.

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

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2 this case is a matter of first impression and therefore “without the benefit of an  
3 authoritative body of law to guide and shape them,” it would simply be “unjust to  
4 characterize claims as unreasonable.”<sup>35</sup> As such the Central Council is not entitled to an  
5 enhancement of fees based on the reasonableness of the State’s arguments.

6  
7 In sum, the Central Council’s assertions regarding the reasonableness of the  
8 State’s jurisdictional arguments are not supported by the facts. This is a novel and  
9 developing area of the law without an authoritative binding body of law that would have  
10 prohibited the State’s arguments. The Central Council’s motion for enhanced fees should  
11 be denied.

12 **III. The reasonableness of the number of hours expended is not grounds**  
13 **for increasing Central Council’s rate of payment.**

14 The Central Council argues that an enhanced fee award is justified because of “the  
15 reasonableness of . . . the number of hours expended.”<sup>36</sup> While “Rule 82 (B)(3)(C) and  
16 (D) do permit a superior court to vary an award of attorney’s fees based upon the  
17 reasonableness of the prevailing party’s litigation expenses, these factors are best suited  
18 as a basis for *decreasing* an award where a prevailing party has expended an  
19 *unreasonable* amount of resources on his or her case.”<sup>37</sup> Central Council cannot use this  
20 factor as grounds to increase its fee award.  
21  
22  
23

24 <sup>35</sup> *Ware*, 161 P.3d at 1204 (Fabe, J. & Bryner, J., dissenting).

25 <sup>36</sup> Plaintiff’s Memorandum in Support of Motion for Attorney’s Fees at 4.

26 <sup>37</sup> *Ware*, 161 P.3d at 1203.

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

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2 In addition, under Civil Rule 82, the Central Council is already expected to keep  
3 litigation expenses reasonable. That is, an attorney's fee award is limited to "a portion of  
4 'reasonable actual attorney's fees.'"<sup>38</sup> Central Council's efforts to meet this expectation  
5 do not warrant an enhanced award.<sup>39</sup> Any enhancement based on the reasonableness of  
6 the number of hours expended must be denied.

7  
8 **IV. The attorney's fee may not be enhanced based on the importance of the  
9 issues.**

10 The attorney's fees in this case cannot be enhanced (as the Central Council  
11 suggests be done) on the basis that this case is "of utmost importance" and it could  
12 potentially affect the Tribe's "28,000 citizens worldwide."<sup>40</sup> To enhance the fees based  
13 on the "nature of the policy or interest advocated" violates state statute.

14 Under AS 09.60.010, "a court in this state may not discriminate in the award of  
15 attorney fees . . . based on the nature of the policy or interest advocated by the party" or  
16 on "the number of persons affected by the outcome of the case."<sup>41</sup> Thus, the Central  
17

18  
19  
20 <sup>38</sup> *Ware*, 161 P.3d at 1203 (quoting Civil Rule 82(b)(2)).

21 <sup>39</sup> *Id.* On the flip side, if the Central Council failed to meet that requirement, its  
22 attorney's fees would be subject to a downward adjustment under these paragraphs.

23 <sup>40</sup> Plaintiff's Memorandum in Support of Motion for Attorney's Fees at 5-6.  
24 Importantly, it is not the case that the Tribe must have jurisdiction or the Tribe's member  
25 children will not receive child support. The State has statewide jurisdiction and has run a  
26 very successful child support program for decades, including issuance of and  
enforcement of orders involving tribal children. Mallonee Affidavit (first) at 1-4 ¶1-12.  
While tribal jurisdiction over child support is no doubt an important matter to the Central  
Council, this case is not a matter of support or no support for tribal children.

<sup>41</sup> AS 09.60.010(b).

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

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Council is not entitled to enhanced fees based on its arguments about the importance of the issues or how many tribal members might be affected.

While Civil Rule 82 does refer to “the relationship between the amount of work performed and the significance of the matters at stake” as an adjustment factor,<sup>42</sup> this factor is not the same as argued by the Central Council. While an upward adjustment might be appropriate where significant amounts are at stake and the attorney’s fees are minimal in comparison,<sup>43</sup> that is not the case here. The expenditure of 437.5 hours in relationship to the significance of the matter to the Tribe is appropriate. Even compensated at the Rule’s presumptive 20% rate of actual attorney’s fees (calculated at the \$300 per hour and the \$400 per hour rates) for a case resolved without trial, the Central Council is entitled to \$26,738. That amount is not so out of proportion to the matters at stake as to warrant an upward adjustment under Civil Rule 82(b)(3)(H). In any case, “[e]ven assuming that the matters in this case were significant in their own right, it is doubtful that this fact alone justify[s] such a substantially enhanced [80%] award.”<sup>44</sup>

Here, the Tribe ignores entirely any analysis of “relationship between the amount of work performed and the significance of the matters at stake.” They simply raise the issue of “importance” and the tribe’s (28,000 strong) interests. As discussed above, this

<sup>42</sup> Alaska R. Civil P. 82(b)(3).

<sup>43</sup> See, e.g., *Ware*, 161 P.3d at 1200 (discussing relationship between property values and fees generated); see also *id.* at 1204 (Fabe, J., dissenting) (discussing relationship between work performed and potential fees generated; questioning whether importance of issues, alone, would justify an enhanced award).

<sup>44</sup> *Ware*, 161 P.3d at 1200 (Fabe, J. & Bryner, C.J., dissenting) (stating that factor 82(b)(3)(H) should not be used in isolation to upwardly adjust the attorney fees to 80%).

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2848

1  
2 runs afoul of AS 09.60.010's prohibition on setting fee awards based on the "policy or  
3 interest advocated" and "the number of persons affected by the outcome of the case."<sup>45</sup>

4 In effect, by arguing for a further enhancement of its attorney's fees, the Central  
5 Council is making an end run around the statutory prohibition against enhanced fees for  
6 public interest litigants. "The purpose of Rule 82 is to partially compensate a prevailing  
7 party for the expenses incurred in winning his case. It is not intended as a vehicle for  
8 accomplishing anything other than providing compensation where it is justified."<sup>46</sup>

9  
10 The Alaska Supreme Court has bluntly concluded that a court should not apply  
11 Rule 82 "equitable factors" in a way that deliberately encourages public interest  
12 litigation.<sup>47</sup> Yet, the entire concluding section of the Tribe's motion is a demand to  
13 enhance fees because of the importance of the issue to tribes. While Rule 82 factors can  
14 be used to enhance fees in appropriate cases, enhancement stemming directly or  
15 indirectly from public interest considerations is clearly not allowed.

16  
17 The Central Council's motion for enhanced fees should be denied.

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22 <sup>45</sup> AS 09.60.010(b).

23 <sup>46</sup> *Krone*, 222 P.3d at 256 n.60 (quoting *Ferdinand v. City of Fairbanks*, 599 P.2d  
122, 125 (Alaska 1979)).

24 <sup>47</sup> *State v. Native Village of Nunapitchuk*, 156 P.3d 389, 395 (Alaska 2007) ("We  
25 conclude that HB 145 does not change Rule 82, but that courts when considering the  
'other equitable factors' ground for varying awards should be cognizant of the need to  
avoid using this ground as a means to encourage public interest litigation.").

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

1  
2 **V. The Tribe is not entitled to an enhancement of fees based on the asserted**  
3 **lack of Indian law attorneys.**

4 In attempt to mask the disregard of the relationship requirement embedded in Civil  
5 Rule 82(b)(3)(H), the Tribe rolls its argument about the asserted lack of capable attorneys  
6 to handle these Indian law issues into its paragraph H argument. Relying on *Krone*, the  
7 Central Council argues that this is a “value enhancing factor[.]” In this case, no  
8 enhancement is appropriate for the asserted lack of tribal attorneys.

9 First, Civil Rule 82(b)(3) does not list the availability of attorneys as a  
10 consideration in enhancing attorney’s fees, and one should not be created under  
11 paragraph (K) of the Rule.

12  
13 Second, the Central Council’s reliance on *Krone* to use availability of attorneys as  
14 a factor to enhance fees under Rule 82 is unfounded. *Krone* does state that “encouraging  
15 representation in similar cases” is a “value-enhancing factor[.]”<sup>48</sup> But, *Krone* does *not* do  
16 so in the context of applying the Civil Rule 82(b)(3) upward adjustments (as Central  
17 Council suggests be done here). Rather, *Krone* states that the “value-enhancing factors  
18 such as . . . encouraging representation in similar cases” is a consideration in determining  
19 a reasonable attorney fee in the first instance. That is *Krone* (a AS 09.60.010 case, not a  
20 Rule 82 case) used “encouraging representation” as a factor to determine whether the fee  
21 should be calculated by “multiplying reasonable hourly rates by actual reasonable hours  
22

23  
24 <sup>48</sup> *Krone*, 222 P.3d at 257 (allowing full reasonable fees under AS 09.60.010 to be  
25 calculated at enhanced value-of-attorney-services rates rather than just multiplying hours  
26 by a given rate; public interest, class action, constitutional challenge to state changes in  
eligibility for long-term, in-home health care services).

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

1  
2 worked" or "objectively valu[ing] the attorney services."<sup>49</sup> It does not use the scarcity of  
3 attorneys as a further enhancement of reasonable fees that have already been calculated.

4 Third, the Central Council has already taken into account the asserted lack of tribal  
5 attorneys by calculating its attorney's fees at the enhanced rate of \$300 per hour for Ms.  
6 Handler and \$400 per hour for Mr. Davis<sup>50</sup> (rather than the rates at which they were  
7 actually compensated). The high rates already reflect the scarcity of available attorneys  
8 and is grounded in the inability of non-profit entities to hire Indian law attorneys, and the  
9 fact that few attorney specialize in this area of the law.<sup>51</sup> Having used this consideration  
10 in the first instance to value the attorney services, this same factor should not be used a  
11 second time to further enhance attorney's fees beyond the presumptive 20%. The Central  
12 Council's attempt to double dip with respect to this factor should not be condoned.  
13

14 **VI. An attorney fee award of 80% is manifestly unreasonable.**

15 The Central Council requests enhanced attorney's fees of 80% of its actual  
16 reasonable fees.<sup>52</sup> In denying an award of 80% fees, the Alaska Supreme Court found  
17 that this "award of substantially 'full attorney's fees is manifestly unreasonable in the  
18

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22 <sup>49</sup> *Krone*, 222 P.3d at 257.

23 <sup>50</sup> Handler Certificate at 4 ¶11. Handler Certificate at 3 ¶ 8 ("Tribal jurisdiction in  
24 Alaska is a highly specialized legal topic. To the best of my knowledge, few  
25 practitioners in the state specialize in this area of law.").

26 <sup>51</sup> Affidavit of Richard Monkman at 2, ¶4; Daniel Affidavit at 2, ¶3.

<sup>52</sup> Plaintiff's Memorandum in Support of Motion for Attorney's Fees at 2.

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

1  
2 absence of bad faith or vexatious conduct by the non-prevailing party."<sup>53</sup> The Central  
3 Council has not argued (let alone shown) that the State engaged in bad faith or vexatious  
4 conduct. Accordingly, it would be an abuse of discretion for this Court to award the  
5 Central Council its requested 80% of attorney's fees.<sup>54</sup> The Central Council's motion for  
6 enhanced fees should be denied.

### 7 Conclusion

8  
9 The Central Council, and its attorney, Alaska Legal Services, are more than justly  
10 compensated at Rule 82's presumptive 20% of their actual attorney's fees (especially  
11 when those fees are calculated at prevailing \$300 and \$400 per hour rates). There is no  
12 reason for them to reap a windfall or to penalize the State for litigating in good faith. The  
13 list of Rule 82(b)(3) factors should not be applied in a way to accomplish indirectly what  
14 AS 09.60.010 prohibits: discrimination in fee awards based on the alleged public nature  
15 of the litigation.<sup>55</sup> The Central Council has not established any of the factors under Civil  
16 Rule 82(b) that might warrant an enhancement of its attorney's fees and in any case an  
17 enhancement at the rate of 80% would be manifestly unreasonable and an abuse of  
18 discretion. The Central Council's motion for enhanced attorney's fees should be denied.  
19

20  
21  
22 <sup>53</sup> *Marathon Oil Co. v. ARCO Alaska, Inc.*, 972 P.2d 595, 605 (Alaska 1999)  
23 (holding that award of 80% of fees under Rule 82 was an abuse of discretion where there  
24 was no showing of bad faith or vexatious conduct); *see* Alaska R. Civil P. 82(b)(3)(G)).

25 <sup>54</sup> *Marathon Oil Co.*, 972 P.2d at 605.

26 <sup>55</sup> *See Krone*, 222 P.3d at 258 (recognizing that AS 09.60.010 abrogated the public  
interest litigation doctrine).

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The Court should award the Central Council attorney's fees in accordance with Rule 82's presumptive rate for a case resolved without trial. The Central Council should be awarded 20% of its actual attorney's fees (\$26,738) and no more.

Dated this 9th day of November, 2012

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By:  <sup>For</sup> AS No. 0606036  
Mary Ann Lundquist  
Senior Attorney General  
Alaska Bar No. 9012132

By:  <sup>For</sup> AS No. 0606036  
Stacy K. Steinberg  
Chief Assistant Attorney General  
Alaska Bar No 9211101

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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

Plaintiff, )

v. )

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

Defendants. )

Case no. 1JU-10-376 CI

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PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

"The superior court has broad discretion to enhance attorney's fees above the amount prescribed by the Civil Rule 82(b)(2) schedule."<sup>1</sup> The agreed-upon baseline award in this case is not "pre-enhanced" because of counsels' rates, because the evidence in the record shows these are reasonable fair market rates. Governing case law supports enhancement of this award for the complexity of the issues, the reasonableness of fees, and the significance of the matters at stake in relation to the work performed. It would not be appropriate to disregard these factors because of a dissenting opinion in the Alaska Supreme Court, as the State urges.

<sup>1</sup> *Ware v. Ware*, 161 P.3d 1188, 1199 (Alaska 2007).

LAW OFFICES OF  
ALASKA LEGAL SERVICES CORPORATION  
419 6th St, Suite 322  
Juneau, AK 99801-3096  
(907)256-6415  
Fax: (907) 262-7449

D L

1           1.     **PLAINTIFF'S COUNSELS' FAIR MARKET RATES ARE NOT "ENHANCED**  
2                           **RATES."**

3           The State asks the Court to deny plaintiff enhanced Rule 82 fees because, in its  
4 view, the hourly rates for plaintiff's counsel are too high and are already "an enhanced  
5 attorney fee."<sup>2</sup> This argument is at odds with the uncontradicted evidence before the  
6 Court.

7           As to undersigned counsel's time, the Affidavits from Mr. Daniels and Mr.  
8 Monkman attest that the rate of \$300 per hour is a fair market rate, not an "enhanced"  
9 rate. As to Mr. Davis's rate, he has recently been awarded \$400.00 per hour in three  
10 other superior court cases.<sup>3</sup>

11           The State asserts that its own reimbursement rate for an attorney with thirteen  
12 year's experience is \$200-225 per hour. However, the State offers no supporting  
13 evidence for the assertion.<sup>4</sup> Even if the State had offered an affidavit in support, the  
14 Alaska Supreme Court has held that an opposing party's smaller fee does not necessarily  
15

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19           <sup>2</sup> Opposition to Plaintiff's Motion for Attorney's Fees ("Opposition"), at 2.

20           <sup>3</sup> As supplemental support for Mr. Davis's fee rate, plaintiff submits a recent decision of  
21 the Anchorage Superior Court finding his \$400 per hour rate reasonable. See attached  
22 Exhibit 1, ORDER RE: PLAINTIFF'S MOTION FOR ATTORNEY'S FEES, *Ambridge v. Alaska*  
23 *Trustee LLC*, 3AN-10-6356 CI (Oct. 23, 2012). The same order determined that \$200 per  
24 hour was a reasonable rate for an attorney with five years legal experience. Mr. Davis  
25 was also awarded a \$400/hour rate in *Allard v. OCS*, 3AN-04-12757 CI (July 27, 2012)  
26 and *Robison v. Beattie et al.*, Case No. 3AN-12-5482 CI (2012).

<sup>4</sup> See, e.g., *Peter v. Progressive Corp.*, 986 P.2d 865, 877 (Alaska 1999) (Carpeneti, J.  
dissenting) ("This court has consistently found unsupported assertions of counsel to be  
insufficient to raise factual issues."); see also *French v. Jadon, Inc.*, 911 P.2d 20, 26  
(Alaska 1996) ("Mere assertions of fact in pleadings and memoranda are insufficient for  
denial of a motion for summary judgment.") (quoting *State, Dep't of Highways v. Green*,  
586 P.2d 595, 606 n.32 (Alaska 1978)).

1 mean that the prevailing party's fees are too high.<sup>5</sup> The State offers no explanation at all  
2 of why \$400 would not be a reasonable rate for Mr. Davis.

3 The State *could* have submitted evidence to this Court as to what it pays private  
4 law firms when it needs to retain outside counsel in complex tribal sovereignty litigation.  
5 In one such case, the State paid \$295 per hour for a summer law clerk.<sup>6</sup> In comparison,  
6 plaintiff's counsels' rates are certainly reasonable.

7 The Alaska Supreme Court has given clear directions to trial courts for handling  
8 fee requests such as the one at issue: a trial court should base its decision on fair market  
9 rates on the evidence presented to it; an opposing party's unsupported claim that the  
10 proposed rates are too high does not suffice.<sup>7</sup> Considering the evidence in the record,  
11 counsels' respective rates of \$300 per hour and \$400 per hour are reasonable market  
12 rates, not enhanced rates.  
13

14 **2. COURTS OFTEN, AND APPROPRIATELY, ENHANCE RULE 82 FEES BASED**  
15 **ON THE COMPLEXITY OF LITIGATION.**

16 The State cites the dissenting opinion in *Ware v. Ware* for the proposition that  
17 Rule 82's enhancement factor for complexity of litigation does not apply when fees are  
18 calculated at an hourly rate.<sup>8</sup> However, the majority opinion held that "[w]hile we have  
19 occasionally expressed concern about the use of factor (A) - complexity of the litigation -  
20

21 <sup>5</sup> See *Gamble v. Northshore P'ship*, 28 P.3d 286, 289-290 (Alaska 2001) (the prevailing  
22 party's fees were not unreasonable just because they were twice the amount of the non-  
23 prevailing party's fees).

24 <sup>6</sup> See attached Exhibit 2, billing records from litigation in *State of Alaska v. Kaltag*.

25 <sup>7</sup> See *NCO Fin. Sys. v. Ross*, 2012 Alas. LEXIS 56, 15-18 (Alaska Apr. 11, 2012)  
(memorandum opinion) (court acted reasonably in setting rate in accordance with  
26 affidavits and cases submitted by prevailing non-profit party, despite appellant's  
unsupported assertion that rates were too high).

<sup>8</sup> Opposition at 3.

1 to enhance fees where the fees are calculated on an hourly basis, we have repeatedly  
2 upheld its use.<sup>9</sup> In another case, the Alaska Supreme Court rejected the argument that  
3 the length and complexity of the case would be reflected in the fees themselves and  
4 therefore should not be used to increase the percentage of fees awarded.<sup>10</sup> The Court held  
5 that because those factors are explicitly listed as permissible considerations under Civil  
6 Rule 82(b)(3), they are appropriate bases for the trial court to enhance Rule 82 fees.<sup>11</sup>

7 As far as the complexity of this case, the record shows that the summary  
8 judgment briefing did much more than analyze *John v. Baker*<sup>12</sup> and that the litigation also  
9 involved work beyond summary judgment motions,<sup>13</sup> including securing interim relief  
10 (through the PFD stipulations and other individual case-processing issues) and post-  
11 summary judgment briefing on issues outside the scope of the summary judgment order  
12 as well as injunctive relief. Litigating this case encompassed not only fundamental  
13 principles of tribal jurisdiction, but also the interplay of federal, state, and tribal child  
14 support agencies, as well as CSSD's obligations to provide intergovernmental services  
15 under its Title IV-D plan.<sup>14</sup>

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19 <sup>9</sup> *Ware v. Ware*, 161 P.3d 1188, 1199 (Alaska 2007).  
20 <sup>10</sup> *See Cizek v. Concerned Citizens of Eagle River Valley, Inc.* 71 P.3d 845, 851 (Alaska  
21 2003).  
22 <sup>11</sup> *Id.*  
23 <sup>12</sup> *See* Opposition at 3.  
24 <sup>13</sup> *Id.*; *see also Collins v. Blair*, 68 P.3d 1222, 1226 (Alaska 2002) (affirming  
25 enhancement of hourly fee award, based in part on the complexity of the case).  
26 <sup>14</sup> *Compare* ORDER RE: MOTION FOR FEE AWARD, *Allard v. Kennai, et al*, 3AN-04-12757  
CI (July 27, 2012), attached as Exhibit 3 (in action against OCS to enforce a settlement  
agreement, the complexity of getting a State agency to meet statutory standards for  
placement notices factored into the award of 70% of actual fees to ALSC).





1 taken lightly. Neither is a state agency's failure to comply with a legislative mandate."<sup>23</sup>  
2 Likewise in *Ware v. Ware*, an inter-family elder abuse case, the Alaska Supreme Court  
3 found it appropriate for the trial court to enhance the fee award in part because of the  
4 significance of the issues at stake in economic and personal terms.<sup>24</sup>

5 Here, plaintiff is not asking the court to consider its public interest status but  
6 rather the significance of the legal issues. This is akin to the *Allard* court considering the  
7 significance of that case to grandparents in CINA cases who are greatly impacted by the  
8 State's compliance with CINA notice requirements.<sup>25</sup>

9  
10 **5. THE STATE'S RE-LITIGATION IN THIS CASE OF JURISDICTIONAL**  
11 **THEORIES THAT HAVE BEEN CONSISTENTLY REJECTED ELSEWHERE**  
12 **WAS NOT REASONABLE.**

13 The State argues that its briefing suggested merely a narrow interpretation of *John*  
14 *v. Baker*, not a scaling back of the decision nor the thirteen years of supporting precedent  
15 since the 1999 ruling.<sup>26</sup> In actuality, the State's briefing asked the superior court to  
16 overturn two major principles of *John v. Baker* that have guided Alaska courts to date.

17 First, the State asked this court to find that Central Council can never have subject  
18 matter jurisdiction over child support absent proof that all parties are tribal members.<sup>27</sup>  
19 This would have undone a fundamental principle of tribal jurisdiction that subject matter  
20 jurisdiction turns on the membership of the child, and that subject matter jurisdiction can

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23 <sup>23</sup> 214 P.3d 353 (Alaska 2009).

24 <sup>24</sup> 161 P.3d at 1199.

25 <sup>25</sup> See Exhibit 3, at 4.

26 <sup>26</sup> See Opposition at 8.

<sup>27</sup> See State's Cross Motion for Summary Judgment, at 42-56.

1 exist when cases involve non-member parents.<sup>28</sup> Second, the State asked this court to  
2 consider several non-Alaska-based U.S. Supreme Court cases decided since 1999 and  
3 hold that Indian Country is at least partially determinative of tribal jurisdiction in Alaska,  
4 even when jurisdiction is being exercised on the basis of tribal membership.<sup>29</sup> To side  
5 with either of these arguments would fundamentally redefine tribal jurisdiction in Alaska.

6 If this were the first instance of the State making these arguments post-*John v.*  
7 *Baker*, they could be considered reasonable. The problem in this litigation is that the  
8 State has raised the same exact arguments without success to the federal government in  
9 the UIFSA controversy,<sup>30</sup> to the federal district court, the Ninth Circuit and the United  
10 States Supreme court in the *Kaltag* litigation,<sup>31</sup> and to the Anchorage Superior Court and  
11 the Alaska Supreme Court in the *Tanana* litigation.<sup>32</sup> Not one federal or state agency or  
12

13  
14 <sup>28</sup> See, e.g. *John v. Baker*, 982 P.2d 738, 764 (Alaska 1999) (recognizing Tribe's subject  
15 matter jurisdiction over custody case when one parent was tribal member and one parent  
16 was not); *Kaltag Tribal Council v. Jackson*, Case No. 3:06-cv-211 TMB, at 10 (D.  
17 Alaska, February 22, 2008), *aff'd* 344 Fed. Appx. 324 (9th Cir. 2009) (unpublished),  
18 *petition for cert. denied*, 2010 U.S. LEXIS 6530 (Oct. 4, 2010) (recognizing Tribe's  
19 subject matter jurisdiction in adoption case where one biological parent was not a tribal  
20 member).

21 <sup>29</sup> See State's Cross Motion for Summary Judgment, at 23-26, 36-38, 44-45.

22 <sup>30</sup> Plaintiff agrees with the State that UIFSA does not confer jurisdiction. Despite this  
23 fact, defendant CSSD twice petitioned the federal Office of Child Support Enforcement  
24 to allow Alaska to *not* include Tribes within UIFSA's definition of "state" using the same  
25 arguments as those proffered in this case: most Tribes lack Indian Country in Alaska  
26 and "domestic relations among members" encompasses child custody but not child  
support. The OCSE rejected both of these exemption requests. See Exhibit 4 to  
Plaintiff's Motion for Summary Judgment.

<sup>31</sup> See *Kaltag Tribal Council v. Jackson*, *infra*. (rejecting State's theory that presence of  
non-member parent deprived tribal court of subject matter jurisdiction)

<sup>32</sup> See *State v. Tanana*, 249 P.3d 734, 751-52 (Alaska 2011) (rejecting State's theory that  
presence of non-member parents deprive tribal courts of subject matter jurisdiction and  
rejecting State's argument that elimination of Indian Country in Alaska reduced inherent  
jurisdiction over domestic relations).

1 court since 1999 has agreed with these arguments. Despite this fact, the State continually  
2 raises the same arguments. Here, this meant forcing Central Council to defend against  
3 jurisdictional arguments that have been consistently rejected.

4 The State cites *Kowalski v. Kowalski* to argue that "contentiousness over difficult  
5 issues" does not justify an enhancement of fees.<sup>33</sup> The actual holding was that "...  
6 contentiousness over difficult issues, or delay in completing testimony do not, in  
7 themselves, constitute bad faith or vexatious conduct."<sup>34</sup> Plaintiff does not allege that the  
8 State engaged in bad faith or vexatious conduct, or that fees should be enhanced for that  
9 reason. What this court should consider instead is the reasonableness of the State  
10 resuscitating outmoded arguments about Indian Country and subject matter jurisdiction to  
11 resist tribal jurisdiction in this matter. As the Alaska Supreme Court has determined,  
12 when a party's "conduct of litigation add[s] additional and unnecessary levels of  
13 complexity to the action," Rule 82 enhancement is warranted.<sup>35</sup>

#### 15 CONCLUSION

16 The Alaska Supreme Court has held that a significantly enhanced award, even up  
17 to 75%, does not require an explicit finding of bad faith.<sup>36</sup> An award in that range is  
18 justified by the record in this matter.  
19

20 <sup>33</sup> Opposition at 4.

21 <sup>34</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1373 (Alaska 1991).

22 <sup>35</sup> *Ware v. Ware*, 161 P.3d at 1199.

23 <sup>36</sup> See *Cole v. Bartels*, 4 P.3d 956, 961 (Alaska 2000) (awards up to 75% not manifestly  
24 unjust in the absence of bad faith); *Stevens v. Richardson*, 755 P.2d 389, 396 (Alaska  
25 1988) (affirming enhancement to 60% of actual fees in case with no bad faith or  
26 vexatious conduct); *Brunet v. Dresser Olympic Div. of Dresser Indus.*, 660 P.2d 846, 848  
(Alaska 1983) (fee award of 75% of actual fees not abuse of discretion nor "substantially  
full" compensation). See also *Holmes v. Wolf*, 2011 Alas. LEXIS 124 (Alaska Nov. 30,  
2011) (noting affirmation of enhanced awards up to 75% even without bad faith).

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DATED: November 21, 2012

ALASKA LEGAL SERVICES CORPORATION

Attorneys for Plaintiff



Holly Handler, AK Bar No. 0301006

Certificate of Service

The undersigned certifies that on the 21st day of November, 2012, a true copy of this document and attachments was served on Stacy Steinberg and Mary Lundquist via US Mail, by: *HLH*

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

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

Plaintiffs,

v.

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

Defendants.

FILED IN CHAMBERS  
STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU  
BY: KJK ON: Dec 19, 2012

Case No. 1JU-10-376 CI

**ORDER GRANTING IN PART MOTION FOR ENHANCED ATTORNEY'S FEES**

**I. INTRODUCTION**

Plaintiffs move for attorney's fees under Civil Rule 82. More specifically, plaintiffs seek an enhanced fee award under Rule 82(b)(3) of \$106,952. Defendants do not oppose an award of fees, but do oppose an enhanced award. Defendants argue that the court should award fees of \$26,738.

**II. DISCUSSION**

**A. Applicable Law**

Civil Rule 82 provides for an award of attorney's fees to the prevailing party. Defendants agree that plaintiffs are the prevailing party. Rule 82(b)(2) provides for an award of 20% of the prevailing party's actual attorney's fees. Plaintiffs' counsel, Alaska Legal Services, however, did not charge plaintiffs for their representation. When the prevailing party's attorney

does not charge a fee, the reasonable actual attorney's fee is determined by the value of the attorney's service.<sup>1</sup>

Rule 82(b)(3) provides that the fee calculated under Rule 82(b)(2) may be varied if the court determines that it is warranted upon consideration of the following factors:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys' efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;
- (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;
- (J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and
- (K) other equitable factors deemed relevant.

B. The Value of Counsel's Representation

Plaintiffs argue that the value of counsel's representation, based on the hours spent and a reasonable hourly rate, is \$133,690. Plaintiffs request an award of fees in the amount of 80% of this amount, or \$106,952.

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<sup>1</sup> *United Service Automobile Ass'n. v. Pruitt*, 38 P.3d 528, 534 n.14 (Alaska 2001).  
Alaska Court System  
Order

Defendants do not dispute the hours spent, but argue that the hourly rates sought by plaintiffs are too high. Defendants represent that the State's reimbursement rate for someone of Ms. Handler's experience would be \$200-\$225 rather than the \$300 claimed. However, while the defendants question the hourly rates proposed by plaintiffs, they offer no evidence that these rates are not the "going rate" in the marketplace. The rates proposed by plaintiffs' counsel are consistent with the court's experience in other cases.

I find that both the number of hours and the hourly rates put forward by plaintiffs reasonably represent the market value of the services performed by plaintiffs' counsel. Accordingly, I determine that the value of plaintiffs' counsel's services is \$133,690.

C. Enhancement

Civil Rule 82(b)(3) allows the court to vary from the basic 20% award based on consideration of the factors set forth in that rule and quoted above.

1. *The Complexity of the Litigation*

Plaintiffs argue that this case was highly complex. Defendants disagree, pointing out that the plaintiffs' briefing on summary judgment amount to 55 pages and focused largely on the applicability of one case, *John v. Baker*.<sup>2</sup> Furthermore, the State notes that this litigation was not unduly drawn out, being resolved by summary judgment briefing which was completed less than a year after the filing of the complaint. Little discovery was done, and there was no trial or other substantial motion practice.

It is clear that this case involves an important issue of first impression: whether tribal jurisdiction over child custody, as recognized in *John v. Baker*, includes child support. I would

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<sup>2</sup> 982 P.2d 738 (Alaska 1999) (*John v. Baker I*).

not, however, characterize this as a highly complex case. It presents a single, straightforward issue of law. While that issue is both important and difficult, it is not a complex issue.

Given the importance and the difficulty of the issue involved in this case, careful and thorough briefing was warranted. I believe the inclusion of 437.5 hours of attorney time in the calculation of reasonable, actual attorney's fees adequately reflects the scope of the briefing, and no further enhancement of that fee is warranted by the factor of complexity.

2. *Length of Trial*

Because there was no trial, this factor is not at issue.

3. *Reasonableness of the Attorney's Hourly Rates and the Number of Hours Expended, and the Attorneys' Efforts to Minimize Fees*

A client who was billed \$133,690 for a case resolved at summary judgment might not feel that counsel had undertaken any special efforts to minimize fees. While neither the time spent nor the hourly rate claimed is unreasonable, I also cannot conclude that either reflects any unusual effort to minimize fees. This factor does not support an enhancement.

4. *The Reasonableness of the Claims and Defenses Pursued by Each Side, or Vexatious or Bad Faith Conduct*

Plaintiffs argue that the State's arguments against tribal jurisdiction over child support were unreasonable. I do not agree. This case presents an important issue of first impression. While *John v. Baker I* represented, as the State terms it, a watershed moment in the definition of tribal jurisdiction, that case (along with its progeny in the Alaska Supreme Court) leaves a number of unsettled issues. The Supreme Court in *John v. Baker III* made it clear that *John v. Baker I* did not decide the question presented here.<sup>3</sup> While I ultimately did not find the State's

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<sup>3</sup> 125 P.3d 323, 326-27 (Alaska 2005).

arguments persuasive, I do not find it to have been unreasonable, vexatious, or in bad faith for the State to make them.

5. *The Relationship between the Amount of Work Performed and the Significance of the Matters at Stake, and Other Equitable Factors*

Plaintiff argues that the significance of the matters at stake in this case, the large number of people impacted by it, and the lack of attorneys who are both capable of and willing to take on a case of this type, warrant an enhancement of fees. The State, on the other hand, argues that consideration of these factors is prohibited by AS 09.60.010(b), which provides as follows:

Except as otherwise provided by statute, a court in this state may not discriminate in the award of attorney fees and costs to or against a party in a civil action or appeal based on the nature of the policy or interest advocated by the party, the number of persons affected by the outcome of the case, whether a governmental entity could be expected to bring or participate in the case, the extent of the party's economic incentive to bring the case, or any combination of these factors.

In *State v. Village of Nunapitchuk*, however, the Alaska Supreme Court found – based on a “binding concession” by the State – that AS 09.60.010(b) does not modify the factors set out in Rule 82.<sup>4</sup> Inasmuch as AS 09.60.010(b) was not enacted with the two-thirds majority required to modify a court rule of procedure, it could not have done so.<sup>5</sup> Because AS 09.60.010(b) modified the “public interest litigant exception” but it did not – and could not – amend Rule 82, it has no bearing on the question now before the court.<sup>6</sup>

It is clear that this case presents an issue of great significance not only to the members of the Central Council of Tlingit and Haida Indian Tribes of Alaska but also to other Native peoples in Alaska, to American Indians throughout the United States, and to others with an

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<sup>4</sup> 156 P.3d 389, 405-6 (Alaska 2007).

<sup>5</sup> *Id.* at 392.

interest in the parameters of tribal jurisdiction. The briefing and argument by plaintiffs' counsel was of consistently high quality, and helpful to the court.

Considering the great significance of the issue presented in this case, and comparing the significance of the issue to the fees sought, I find that these factors support an enhancement of the fees to be awarded.

6. *Other Factors*

I do not find the factors set out in Rule 82(b)(3)(I)<sup>7</sup> and (J)<sup>8</sup> to be relevant to this case.

III. CONCLUSION

The only factor that is significant to the analysis is the one set out in Rule 82(b)(3)(H): the relationship between the amount of work performed and the significance of the work performed. As noted above, given the significance of the issues in this case, I find that this factor supports an enhanced award. Because I did not find many of the plaintiff's other reasons for enhancement to be persuasive, and because of Rule 82's "primary purpose" to "partially compensate" a prevailing party,<sup>9</sup> however, I do not find that an enhancement to 80% is warranted.<sup>10</sup> I will award fees of 50% of the reasonable, actual fee.<sup>11</sup>

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<sup>6</sup> See also, *Krone v. State, Dept. of Health and Social Services*, 222 P.3d 254, (Alaska 2009).

<sup>7</sup> "[T]he extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts."

<sup>8</sup> "[T]he extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer."

<sup>9</sup> *Nunapitchuk*, 156 P.3d at 398.

<sup>10</sup> An award of 80% begins to approach an award of full actual fees, which is only permitted under Rule 82(b)(3) if there has been vexatious or bad faith conduct. *Johnson v. Johnson*, 239 P.3d 393, 400 (Alaska 2010). While the Supreme Court upheld an 80% award in *Ware v. Ware*, 161 P.3d 1188 (Alaska 2007), in that case there were multiple factors supporting enhancement, including unreasonable litigation conduct by defendant that bordered on bad faith. *Id.* at 1199.

For all of these reasons, plaintiffs are awarded attorney's fees in the amount of \$66,845.

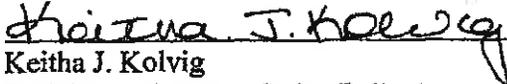
Entered at Juneau, Alaska this 19 day of December, 2012.

  
Philip M. Pallenberg  
Superior Court Judge

**CERTIFICATION OF SERVICE**

I certify that I served the following parties on the 19<sup>th</sup> day of December, 2012.

|   |   |
|---|---|
| Holly Handler                                     | Mary Ann Lundquist                                |
| <input checked="" type="checkbox"/> Via Court box | <input checked="" type="checkbox"/> Via U.S. Mail |

  
Keitha J. Kolvig  
Judicial Assistant to Judge Pallenberg

<sup>11</sup> See, *State v. Jacob*, 214 P.3d 353, 362 (Alaska 2009), affirming award of 50% of actual fees based on significance of the case and unreasonableness of defendant's arguments.

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