

**CHILD SUPPORT ORDINANCE
KLAMATH TRIBAL CODE
Title 4 Chapter 29**

GENERAL PROVISIONS

29.01 Authority.

This Child Support Ordinance is adopted pursuant to the authority vested in the Klamath Tribes General Council by virtue of its inherent sovereignty as an Indian tribal government and Article VI of the Constitution of the Klamath Tribes that provides that the General Council has the power to adopt and enforce ordinances providing for the maintenance of law and order, and to exercise all other reserved powers.

29.02 Purpose.

The purpose of this Child Support Enforcement Ordinance is to establish a fair and equitable process for establishing, modifying and enforcing child support orders and performing related activities including establishment of paternity, and locating noncustodial parents, to help provide for the care of children.

29.03 Policy.

It is the policy of the Klamath Tribes that all parents, both custodial and non-custodial, have an equal obligation to support their children. The Tribes are responsible for establishing governmental laws, procedures and guidelines for the equitable allocation of financial responsibility between parents for children's support where necessary.

29.04 Definitions.

For purposes of this Ordinance, the term

- (a) "Acknowledged father" means a man who has established a father-child relationship under section 29.21 or 29.22.
- (b) "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
- (c) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include a presumed father, or a man whose parental rights have been terminated or declared not to exist.
- (d) "Assignee" means an individual or agency that has been assigned the right to collect child support from the parent obligor.

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- (e) "Child" means any person under the age of eighteen years. In accordance with the terms of this Ordinance, "child" may also include a person over the age of eighteen years who has not yet completed High School, but shall never mean a person over the age of twenty.
- (f) "Child support order" and "child support obligation" mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, tribunal or an administrative agency for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.
- (g) "Certify" means to present to the Tribal Court for determination.
- (h) "Custodial parent" means a parent having the care, physical custody and control of a child or children.
- (i) "Custodian" means any person who is not a parent, having the care, physical custody and control of a child or children.
- (j) "court" means any court having jurisdiction to determine the liability of persons for the support of a child.
- (k) "De novo" means independent review and consideration of all issues.
- (l) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity, adjudication by the court, adoption, or other method for determining parentage set forth at sections 29.20 and 29.21.
- (m) "Disposable income" means that part of the income of an individual remaining after the deduction from the income of any amounts required to be withheld by law except laws enforcing spousal or child support and any amounts withheld to pay medical or dental insurance premiums.
- (n) "Employer" means any entity or individual that engages an individual to perform work or services for which compensation is given.

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- (o) "General Council" means the General Council of the Klamath Tribes with such powers that exist by virtue of the inherent sovereignty of the Klamath Tribes and as specified in the Constitution of the Klamath Tribes.
- (p) "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
 - 1. Deoxyribunucleic acid; and
 - 2. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins or red-cell enzymes.
- (s) "Home Tribe or State" means the Tribal Reservation or Indian country of a Tribe, or territory of a State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading or application for support assistance and, if a child is less than six months old, the Tribal Reservation or Indian country of a Tribe, or territory of a State in which the child lived from birth with a parent or a person acting as a parent. A period of temporary absence is counted as part of the six-month or other period.
- (t) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other third party in possession of a monetary obligation owed to an obligor, as defined by the income-withholding law of the Klamath Tribes, to withhold support from the income of the obligor.
- (u) "Initiating Tribe or State" means a Tribe, Tribal organization, or State from which a proceeding is forwarded or in which a proceeding is filed for forwarding to the Klamath Tribes Child Support Enforcement Office or Tribal Court.
- (v) "Initiating tribunal" means the authorized tribunal in an initiating Tribe, Tribal organization, or State.
- (w) "Issuing Tribe or State" means a Tribe or State from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding Tribe, Tribal organization, or State for purposes of establishment, enforcement, or modification of a child support order.
- (x) "Issuing tribunal" means the authorized tribunal in an initiating Tribe, Tribal organization, or State.

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- (y) "Klamath Indian Reservation" means all lands held in trust by the United States for the benefit of the Klamath Tribes as part of the Klamath Indian Reservation.
- (z) "Klamath tribal member" means an individual duly enrolled with the Klamath Tribes in accordance with the Constitution and laws of the Klamath Tribes.
- (aa) "Klamath Tribes Child Support Enforcement Office" means the Office established pursuant to section 29.06 and that serves as the Tribal IV-D agency pursuant to 45 CFR Part 309.
- (bb) "The Manager" means the Director for the Klamath Tribes Child Support Enforcement Office or any of his/her authorized representatives in child support proceedings.
- (cc) "Non-cash" support means support provided to a family in the nature of goods and/or services, rather than in cash, but which nonetheless, has a certain and specific dollar value.
- (dd) "Obligee" means an individual or agency to which child support is owed on behalf of a child.
- (ee) "Obligor" means a parent who is required to pay child support to a person or agency on behalf of a child.
- (ff) "Office" means the Klamath Tribes Child Support Enforcement Office or its equivalent in any other tribal government or state from which a written request for establishment or enforcement of a support obligation is received.
- (gg) "Order to withhold" means an order or other legal process that requires a withholder to withhold support from the income of an obligor.
- (hh) "Parent" means the natural, biological or adoptive parent of a child.
- (ii) "Paternity index" means the likelihood of paternity calculated by computing the ratio between:
 - 1. The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child; and
 - 2. The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child.

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- (jj) “Past support” means the amount of child support that could have been ordered and accumulated as arrears against a parent, where the child was otherwise not supported by the parent and for which period no valid support order was in effect.
- (kk) “Probability of paternity” means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.
- (ll) “Public assistance” means monetary assistance benefits provided by the Klamath Tribes, any other Indian tribe or state that are paid to or for the benefit of a child. Such payments include cash payments under Title IV-A of the Social Security Act, a tribal or state general assistance program, or the federal Supplemental Security Income program.
- (mm) “Register” means to record or file a child support order or judgment determining parentage in the appropriate location for the recording and filing of such order or judgment.
- (nn) “Registering tribunal” means a tribunal in which a support order is registered.
- (oo) “Responding Tribe or State” means an Indian tribe, Tribal organization or state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating Tribe or State under this Ordinance or a law substantially similar to this Ordinance.
- (pp) “Responding tribunal” means the authorized tribunal in a responding Tribe, Tribal organization or State. The responding tribunal for the Klamath Tribes is the Klamath Tribes Child Support Enforcement Office or the Klamath Tribal Court as set forth in this Ordinance.
- (qq) “Social Services Department” means the Social Services Department of the Klamath Tribes and programs operated thereunder, including, but not limited to the Temporary Assistance to Needy Families program and the General Assistance program.
- (rr) “Tribal Council” means the elected Tribal Council of the Klamath Tribes established under Article VII of the Constitution of the Klamath Tribes;
- (ss) “Tribal Court or Court” means the Tribal Court of the Klamath Tribes Judicial Branch established under Article V of the Constitution of the Klamath Tribes.

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- (tt) "Tribal member" means an individual that is an enrolled Klamath member, or an individual that is enrolled with another federally recognized Indian tribe in accordance with the laws of such tribe.
- (uu) "Tribe or State" means any Tribe, or Tribal organization within the exterior boundaries of the United States, a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the laws of the United States, and any foreign governments, that have enacted a law or established procedures for the issuance and enforcement of child support orders that are substantially similar to Klamath Tribes proceedings for recognition and enforcement of foreign orders.
- (vv) "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
- (ww) "Withholder" means any person who disburses income to the obligor and includes but is not limited to an employer, conservator, trustee or insurer of the obligor.

JURISDICTION

29.05 Jurisdiction.

- (a) The Klamath Tribes Tribal Court and Klamath Tribes Child Support Enforcement Office shall have personal and subject matter jurisdiction over the establishment, modification and enforcement of child support and any associated proceedings, including but not limited to establishment of paternity and location of noncustodial parents, related to the purpose for which this Ordinance is established.
- (b) The Tribal Court and, as applicable the Klamath Tribes Child Support Enforcement Office, has, but is not limited to, personal jurisdiction over the following, for purposes of enforcing the provisions of this Ordinance, and any associated matters:
 - 1. Enrolled members of the Klamath Tribes;
 - 2. Persons who consent to the jurisdiction of the Court by one of the following:
 - (i) Filing an action;
 - (ii) Knowingly and voluntarily giving written consent to jurisdiction of the Court;

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- (iii) Entering a notice of appearance in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction, or filing a motion to dismiss for lack of jurisdiction within 30 days of entering the notice of appearance;
 - (iv) Appearing in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction, or filing, within 30 days of such appearance, a motion to dismiss for lack of jurisdiction;
 - 3. Persons who are the parent or guardian of an enrolled Klamath tribal member or the parent or guardian of a child eligible for enrollment with the Klamath Tribes;
 - 4. Persons who have legally enforceable rights in any jurisdiction to visitation or custody of a child that is in any way a subject of the proceeding and the child is an enrolled member of the Klamath Tribes. eligible for enrollment with the Klamath Tribes;
 - 5. Persons who are alleged to have engaged in an act of sexual intercourse on the Klamath Indian Reservation with respect to which a child that is either an enrolled member of the Klamath Tribes, or eligible for enrollment with the Klamath Tribes, may have been conceived; and/or
 - 6. Applicants for and recipients of Temporary Assistance to Needy Family benefits through the Klamath Tribes, whether the head of household, dependent, or other household member.
- (c) Continuing jurisdiction.
- 1. In every action under this Ordinance where there is jurisdiction, the Tribal Court, and as applicable the Klamath Tribes Child Support Enforcement Office, shall retain continuing jurisdiction over the parties.
 - 2. Consent cannot be withdrawn once given, whether such consent was given expressly or impliedly.
 - 3. Personal jurisdiction cannot be defeated by relocation after jurisdiction is established.
 - 4. Personal jurisdiction cannot be defeated by voluntary relinquishment of enrollment and membership with the Klamath Tribes.
- (d) The Child Support Enforcement Office shall have jurisdiction over persons and entities as provided for in, and as necessary to carry out the provisions of, this Ordinance, for purposes of establishing paternity, establishing, modifying and enforcing child support orders, and performing associated activities. Challenges to the jurisdiction of the Child Support Enforcement Office shall be presented to the Child Support Enforcement Office and certified to the Klamath Tribes Tribal Court for decision. Appeals of Tribal Court determinations of jurisdiction may be

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appealed to the Klamath Tribes Supreme Court in accordance with the laws of the Klamath Tribes.

KLAMATH TRIBES CHILD SUPPORT ENFORCEMENT OFFICE

29.06 Establishment of Child Support Enforcement Office.

- (a) There is established a Child Support Enforcement Office to be operated under the Klamath Tribes Judicial Branch. This Office is the Klamath Tribes Tribal IV-D agency pursuant to 45 CFR Part 309 and is the entity primarily responsible for providing support enforcement services described in this Ordinance. The Child Support Enforcement Office shall provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, and location of noncustodial parents, as appropriate, with respect to any child, obligee or obligor determined to be within the jurisdiction of the Klamath Tribes.
- (b) When responsible for providing support enforcement services, and there is sufficient evidence available to support the action to be taken, the Child Support Enforcement Office shall perform, but not be limited, to the following:
 - 1. Carrying out the policy and traditions of the Klamath Tribes regarding child support obligations;
 - 2. Operating the Klamath Tribes Tribal IV-D Program;
 - 3. Accepting all applications for IV-D services and promptly providing IV-D services;
 - 4. Establishing child support orders in compliance with Klamath Tribes child support guidelines and formulas;
 - 5. Establishing paternity for child support purposes;
 - 6. Initiating and responding to child support modification proceedings and proceedings to terminate support orders;
 - 7. Enforcing established child support orders and obligations;
 - 8. Establishing and enforcing obligations to provide medical insurance coverage for children;
 - 9. Establishing and enforcing obligations to provide child care expenses for children;
 - 10. Collecting child support;
 - 11. Accepting offers of compromise or partial or total charge-off of child support arrearages;
 - 12. Distributing child support payments;
 - 13. Maintaining a full record of collection and disbursements made;

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14. Establish or participate in a service to locate parents utilizing all sources of available information and records, and to the extent available, the Federal Parent Locator Service;
 15. Maintaining program records in accordance with section 29.07 (a).
 16. Establishing procedures for safeguards applicable to all confidential information handled by the Child Support Enforcement Office, that are designed to protect the privacy rights of the parties, including:
 - i. Safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, to locate a noncustodial parent, or to establish, modify, or enforce support, or to make or enforce a child custody determination;
 - ii. Prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;
 - iii. Prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the Office has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child.
 - iv. Any mandatory notification to the Secretary that the Office has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child.
 - v. Procedures in accordance with any specific safeguarding regulations applicable to Tribal IV-D programs.
 - vi. Procedures under which sanctions must be imposed for the unauthorized use or disclosure of information.
 17. Publicizing the availability of child support enforcement services available, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained, and publicizing the availability of and encouraging the use of procedures for voluntary establishment of paternity and child support;
 18. Ensuring compliance with the provisions of applicable federal laws, including, but not limited to 42 U.S.C. 651 to 669 and 45 C.F.R. Chapter III.
- (c) The Child Support Enforcement Office shall establish rules, procedures and forms for carrying out its responsibilities and authority under this ordinance. All parties to child support proceedings shall comply with the rules and procedures adopted by the Office, and shall utilize the proper forms prepared by the Office.

29.07 Record Maintenance.

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- (a) The Child Support Enforcement Office shall maintain all records necessary for the proper and efficient operation of the program, including records regarding:
1. Applications for child support services;
 2. Efforts to locate noncustodial parents;
 3. Actions taken to establish paternity and obtain and enforce support;
 4. Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;
 5. Office IV-D program expenditures;
 6. Any fees charged and collected, if applicable; and
 7. Statistical, fiscal, and other records necessary for reporting and accountability required by federal law.
- (b) The Office shall comply with the retention and access requirements at 45 CFR 74.53, including the requirement that records be retained for at least seven years.

COOPERATIVE ARRANGEMENTS AND AGREEMENTS

29.08 Cooperation With Other IV-D Tribal and State agencies.

The Klamath Tribes Child Support Enforcement Office shall extend the full range of services available under the Klamath Tribes approved IV-D plan to respond to all requests from, and cooperate with, other Tribal and State IV-D agencies.

29.09 Cooperative Agreements.

The Child Support Enforcement Office may enter into cooperative agreements and/or arrangements with other Tribal and State jurisdictions and agencies to provide for cooperative and efficient child support enforcement services. The Klamath Tribes Tribal Council must approve government-to-government cooperative agreements.

NOTICES AND FINDINGS OF FINANCIAL RESPONSIBILITY

29.10 Parties.

The following are parties to child support proceedings in the Klamath Tribal Court or within the Child Support Enforcement Office:

- (a) The Klamath Tribes, acting by and through the Child Support Enforcement Office;

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- (b) Custodial and noncustodial parents, whether natural or adoptive, whose parental rights have not been legally terminated;
- (c) Persons with physical custody of a child for whose benefit a support order or an order establishing paternity is sought, is being modified or is being enforced;
- (d) A male who is alleged to be the father of a child when an action is initiated to establish, modify or enforce a support or paternity order;
- (e) Tribal or state agencies that have a vested interest in the outcome of the proceeding in accordance with Child Support Enforcement Office rules and procedures, and or by approval of the Klamath Tribal Court;
- (f) Any other person the Klamath Tribal Court has joined as a party pursuant to Court order.

29.11 Proceeding By Minor Parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

29.12 Administrative Notice and Finding of Financial Responsibility.

- (a) At any time after the Klamath Tribes is assigned support rights, a public assistance payment is made, or a request for child support enforcement services is made by an individual or another Tribe or State child support enforcement agency, the Manager may, if there is no existing child support order, issue a notice and finding of financial responsibility. The notice shall include the following:
 - 1. Name and date of birth for the child for whom support is to be paid;
 - 2. Notice that the addressee is presumed to be the parent of the child. Where paternity has not already been legally established, the notice shall include the statements set forth at subsection (b).
 - 3. Name of the person or agency having physical custody of the child for whom support is to be paid;
 - 4. Itemization of assumed income and assets held by the parent to whom the notice is directed;
 - 5. Anticipated amount of monthly support for which the parent will be responsible;
 - 6. Anticipated past amount of support for which the parent will be responsible;

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7. Whether the parent will be responsible for obtaining health care coverage for the child where it is available to the parent at a reasonable cost;
 8. Notice that failure to respond to the Notice may lead to a finding of legal paternity for purposes of child support, where paternity has not already been established;
 9. Notice that failure to respond to the Notice may lead to an award of child support and health care coverage being issued against the parent for the amount stated in the notice.
 10. Notice that if the parent or other party objects to all or any part of the notice and finding of financial responsibility, the party must submit to the Child Support Enforcement Office, within 30 days of the date of service, a written response setting forth his or her objections.
 11. Notice that if the person does not submit a written objection to any part of the notice, the Manager may enter an order in accordance with the notice and finding of financial responsibility.
- (b) Where paternity has not already been legally established, the notice shall also include the following:
1. The name of the child's other parent;
 2. An allegation that the person is the parent of the child for whom support is owed;
 3. The probable time or period of time during which conception took place; and
 4. A statement that if the alleged parent or the obligee does not timely send to the Office issuing the notice a written response that denies paternity and requests a hearing, then the Manager, without further notice to the alleged parent, or to the obligee, may enter an order that declares and establishes the alleged parent as the legal parent of the child for child support purposes.

29.13 No Objection to Administrative Notice and Finding of Financial Responsibility; Issuance of Administrative Order.

Where no timely written response setting forth objections to the notice and finding of financial responsibility, or timely appeal of the second notice and finding of financial responsibility, is received by the Office, the Manager may enter an order in accordance with the notice, and shall include in that order:

- (a) Name and birth date of the child for whom support is to be paid;
- (b) Finding of legal paternity for purposes of child support;

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- (c) The amount of monthly support to be paid, with directions on the manner of payment;
- (d) The amount of past support to be ordered against the parent;
- (e) Whether health care coverage is to be provided for the child;
- (f) Name of the person or agency/entity to whom support is to be paid; and
- (g) A statement that the property of the parent is subject to collection action, including but not limited to wage withholding, garnishment and liens and execution thereon.

29.14 Timely Objection to Administrative Notice and Finding of Financial Responsibility; Negotiation Conference.

Where the Office receives a timely written response setting forth objections, the Office shall schedule a negotiation conference with the alleged obligor to occur within 15 days from the date that the written objections were received. If the Office and the obligor reach full agreement to the terms of a support award, such agreement shall be entered into the terms of a stipulated order for support. If the Office and obligor do not reach a full agreement as to the amount of child support and other provisions of the notice and finding of financial responsibility (excepting paternity), the Office shall issue a second notice and finding of financial responsibility within 15 days from the date of the negotiation conference. If the Office and the obligor do not reach agreement as to paternity, the Office shall certify the matter to the Tribal Court for hearing on the issues in dispute.

29.15 Second Administrative Notice and Finding of Financial Responsibility.

The second notice and finding of financial responsibility shall include the following:

- (a) The information set forth at Section 29.12, subsections (a)(1-7);
- (b) Notice that if the parent or other party objects to all or any part of the second notice and finding of financial responsibility, the party must file an appeal with the Tribal Court, copied to the Klamath Tribes Child Support Enforcement Office, within 30 days of the date of service;
- (c) Notice that if the parent does not file an appeal within 30 days of the date of service, the Manager may enter an order in accordance with the second notice and

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finding of financial responsibility consistent with the requirements of section 29.13.

29.16 Manner of Service.

- (a) The following notices and documents must be served by personal service, or by certified mail, return receipt requested, with delivery restricted to the addressee:
 - 1. Notices and findings of financial responsibility served to the obligor;
 - 2. Requests to modify of a child support order;
 - 3. Orders to show cause alleging failure to comply with support order, unless other manner of service is expressly authorized by the Court;
- (b) The following notices and documents may be served by regular mail:
 - 1. Notices and findings of financial responsibility served to the obligee.
 - 2. Responses denying paternity and requesting a hearing sent by the Office to the obligee.
- (c) When service is authorized by regular mail, proof of service may be by notation upon the computerized case record by the person who made the service and shall include the address to which the documents were mailed, a description of the documents and the date that they were mailed. If the documents are returned as undeliverable, that fact shall also be noted on the computerized case record. If no new address for service by regular mail can be obtained, service shall be by certified mail, return receipt requested or by personal service upon the obligee.
- (d) When a case is referred for action to the Klamath Tribes Child Support Enforcement Office from another state or tribe, the Office shall accomplish service on the obligee by sending the documents to the initiating agency, by regular mail. The initiating agency shall then make appropriate service upon the obligee.

29.17 Filing Order With Court. Effective as Tribal Court Judgment.

Upon issuing a child support order, or modified child support order, the Manager shall cause a true copy of the order to be filed in the office of the Clerk for the Tribal Court, along with a certificate of service of the order upon the parties to the proceeding. Such filing shall render the order effective as a Tribal Court order and judgment.

29.18 Administrative Child Support Orders Final.

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Administrative child support orders and findings of paternity issued in accordance with this Ordinance are final and action by the Office to enforce and collect upon the orders, including arrearages, may be taken from the date of issuance of the orders.

29.19 Appeals of Child Support Enforcement Office Action.

- (a) Appeals of orders issued by the Office based upon a notice and finding of financial responsibility shall be presented to the Tribal Court within 30 days of the date of service of the notice. All issues presented for appeal to the Court shall be reviewed de novo.
- (b) Challenges to the jurisdiction of the Child Support Enforcement Office to take action for or against a person shall be brought before the Klamath Tribes Tribal Court. The issues of jurisdiction shall be reviewed by the Court de novo.
- (c) In any hearing, the Klamath Tribes Rules of Civil Procedure and Rules of Evidence shall apply, to the extent that they are not inconsistent with the provisions of this Ordinance.

PARENTAGE

29.20 Mother-Child Relationship.

A woman is considered the mother of a child for child support purposes where:

- (a) The woman gave birth to the child;
- (b) The woman legally adopted the child; or
- (c) The woman has been adjudicated to be the mother of the child by a court of competent jurisdiction.

29.21 Father-Child Relationship.

A man is considered the father of a child for child support purposes where:

- (a) There is an un rebutted presumption of paternity;
- (b) The man and the child's mother have executed an acknowledgment of paternity;
- (c) The man legally adopted the child; or

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- (d) The man has been adjudicated to be the father of the child by a court of competent jurisdiction.

29.22 Establishing Paternity.

- (a) An action to establish paternity for child support purposes may be initiated for any child up to and including 18 years of age.
- (b) In an action to establish child support for a minor child, the Manager may enter an order of paternity where there is:
1. Presumption of Paternity. A man is presumed to be the natural father of a child for purposes of child support if:
 - (i) He and the child's natural mother are or have been married to each other and the child is born during the marriage;
 - (ii) He and the mother of the child are or were married to each other and the child is born within 300 days after the marriage is interrupted or terminated by death, annulment, declaration of invalidity, divorce, or decree of separation;
 - (iii) He and the mother of the child married each other in apparent compliance with the law before the birth of the child, notwithstanding later determination of possible invalidity of the marriage, and the child was born during the purported marriage, or within 300 days after it was interrupted or terminated by death, annulment, declaration of invalidity, divorce, or decree of separation; or
 - (iv) He and the mother married each other in apparent compliance with the law after the birth of the child, and he voluntarily asserted his paternity of the child, where such assertion is noted in a record filed with a tribal or state agency charged with maintaining birth records.
 2. Voluntary acknowledgment of paternity in accordance with section 29.23.
 3. Failure to file an objection to allegation of paternity in a Notice and Finding of Financial Responsibility.

29.23 Execution of Acknowledgment of Paternity.

- (a) An acknowledgment of paternity must:
1. Be signed under penalty of perjury by the mother and the father by a man seeking to establish his paternity.
 2. State that the child whose paternity is being acknowledged does not have a presumed father and does not have another acknowledged or adjudicated father.

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3. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing.
4. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only in accordance with the provisions set forth in section 29.29.

29.24 Denial of Paternity.

A presumed father may sign a denial of his paternity. The denial is valid only if:

- (a) An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to section 29.23; or,
- (b) The denial is signed, or otherwise authenticated, under penalty of perjury; and
- (c) The presumed father has not previously:
 1. Acknowledged his paternity, unless the previous acknowledgment has been lawfully rescinded or successfully challenged; or
 2. Been adjudicated to be the father of the child, unless the previous adjudication has been lawfully vacated, reversed, or successfully challenged.

29.25 Objection to Allegation of Paternity.

- (a) Where a man has filed a timely written denial or objection to an Office allegation of paternity, or if the Manager determines that there is a valid issue with respect to paternity of the child, the Manager shall certify the matter to the Tribal Court for a determination based upon the contents of the file and any evidence which may be produced at trial.
- (b) The certification shall include true copies of the notice and finding of financial responsibility, the return of service, the denial of paternity and request for hearing or appeal, and any other relevant papers.
- (c) When a party objects to the entry of an order of paternity and blood tests result in a cumulative paternity index of 99 or greater, notwithstanding the party's objection, evidence of the tests, together with testimony of a parent, is a sufficient basis upon which to presume paternity for purposes of establishing temporary child support pending final determination of paternity by the Court.

29.26 Order for Testing.

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- (a) The Office may order genetic testing only if there is an allegation of paternity stating facts establishing a reasonable probability of the requisite sexual contact and there is no acknowledged or adjudicated father, or such acknowledgement or adjudication has been lawfully reopened or challenged.
- (b) Genetic testing of a child shall not be performed prior to birth without the consent of the mother and the alleged father.

29.27 Requirements for Genetic Testing.

- (a) Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
 - 1. The American Association of Blood Banks, or a successor;
 - 2. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
 - 3. An accrediting body designated by the Federal Secretary of Health and Human Services.
- (b) A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be the same kind for each individual undergoing genetic testing.
- (c) Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the individual objecting may require the testing laboratory to recalculate the probability of paternity using a different ethnic or racial group, or may engage another testing laboratory to perform the calculations.

29.28 Genetic Testing Results.

- (a) A man is rebuttably identified as the father of a child if the genetic testing results disclose that:
 - 1. The man has at least a 99 percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
 - 2. A combined paternity index of at least 100 to 1.
- (b) A man who is rebuttably identified as the father pursuant to subsection (a) may rebut the genetic testing results only by other genetic testing in accordance with

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section 29.27 that excludes the man as the genetic father of the child, or identifies another man as the possible father of the child.

- (c) If more than one man is identified by genetic testing as the possible father of the child, the men may be ordered to submit to further genetic testing to identify the genetic father.

29.29 Reopening Issue of Paternity.

- (a) No later than one year after an order establishing paternity is entered by the Office, and if no genetic parentage test or challenge by court adjudication has been completed, a party may apply to the Manager to have the issue of paternity reopened. Upon receipt of a timely application, the Manager shall order the mother and the male party to submit to parentage tests. The person having physical custody of the child shall submit the child to a parentage test.
- (b) Where no genetic parentage test has been completed, a person determined to be the father may apply to the Manager to have the issue reopened for challenging determination of paternity after the expiration of one year upon clear evidence of fraud, duress, or material mistake of fact.
- (c) If a party refuses to submit to the genetic parentage test, the issue of paternity shall be resolved against that party by an appropriate order of the Court upon the motion of the Manager.
- (d) Child support paid before an order is vacated under this section shall not be returned to the payer.

29.30 Genetic Testing When Specimens Not Available.

- (a) Subject to 29.30(b), if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances considered by the Office or the Court to be just, the following individuals may be ordered to submit specimens for genetic testing:
 - 1. The parents of the man;
 - 2. Brothers and sisters of the man;
 - 3. Other children of the man and their mothers; and
 - 4. Other relatives of the man necessary to complete genetic testing.
- (b) Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

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29.31 Proceeding Before Birth.

A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. Genetic testing specimens shall not be collected until after the birth of the child, except under extraordinary circumstances and upon the consent of both the mother and the alleged father.

29.32 Full Faith and Credit.

Full faith and credit shall be given to an acknowledgement of paternity or denial of paternity effective in another tribe or state if the acknowledgment or denial has been signed and is in compliance with the law of the other jurisdiction.

29.33 Establishment of Mother-Child Relationship and Paternity For Child Support Purposes Only.

- (a) The establishment of a mother-child relationship, or of paternity made pursuant to this Ordinance shall be for purposes of child support only. The determination of parental relationships made pursuant to this Ordinance shall not be considered conclusive for purposes of enrollment, the eligibility for which is governed by the Constitution of the Klamath Tribes and the Klamath Tribes Enrollment Ordinance.
- (b) This section does not prohibit a party to a parentage proceeding being adjudicated by the Tribal Court from joining the issue of paternity for purposes of determining possible eligibility for enrollment in accordance with Klamath Tribal law and procedures.

RULES OF PROCEDURE AND EVIDENCE

29.34 Rules of Civil Procedure and Evidence.

To the extent not in conflict with the procedures of this Ordinance, the Klamath Tribes Rules of Civil Procedure and Evidence shall apply to all proceedings herein.

29.35 Special Rules of Evidence and Procedure.

- (a) In any proceeding to establish, enforce, or modify a support obligation, extrinsic evidence of authenticity is not required for the admission of a computer printout of the Manager that may reflect the employment records of a parent, the support payment record of an obligor, the payment of public assistance, the amounts paid,

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the period during which public assistance was paid, the persons receiving or having received assistance and any other pertinent information, if the printout bears a seal purporting to be that of the Manager and is certified as a true copy by original, facsimile, or scanned signature of a person purporting to be an employee of the Manager. Printouts certified in accordance with this section constitute prima facie evidence of the existence of the facts stated therein.

- (b) The Child Support Enforcement Office may subpoena financial records and other information needed to establish paternity or to establish, modify or enforce a support order. Service of the subpoena may be by certified mail.
- (c) Persons or entities that fail to comply with a subpoena issued under this section without good cause are subject to a civil penalty.
- (d) The physical presence of the parties may not be required for the establishment, enforcement, or modification of a support order or order determining parentage.
- (e) A verified petition, affidavit, or document substantially complying with federally mandated forms and documents incorporated by reference in any of them, not excluded under the hearsay rule if given in person, are admissible in evidence if given under oath by a party or witness residing in the territory of another Tribe or State.
- (f) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record is evidence of the facts asserted in it, and is admissible to show whether payments were made.
- (g) Copies of bills for testing parentage and for prenatal and postnatal health care of the mother and child furnished to the adverse party at least 20 days before trial are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.
- (h) Documentary evidence transmitted from another Tribe or State to the Klamath Tribes by facsimile, or other means that does not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.
- (i) In a proceeding under this Ordinance, the Court may permit a party or witness residing in the territory of another Tribe or State to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that Tribe or State. The Court shall cooperate with tribunals of

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other Tribes or States in designating an appropriate location for the deposition or testimony.

- (j) A privilege against disclosure of communications between spouses does not apply in a proceeding under this Ordinance.
- (k) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this Ordinance.

CHILD SUPPORT GUIDELINES

29.36 Establishing Child Support Guidelines.

Klamath Tribes Child Support Guidelines shall be prepared by the Klamath Tribes Child Support Enforcement Office and presented for review and approval by the Klamath Tribes Tribal Council. The guidelines shall be reviewed and considered for updating at least once every three years to ensure that their application results in the determination of appropriate child support amounts. The guidelines shall make provision for imputed income and establish any specific bases for deviation from the guidelines.

- (a) In establishing the guidelines, the Office shall take into consideration the following:
 - 1. All earnings, income and resources of each parent, including real and personal property;
 - 2. The earnings history and potential of each parent;
 - 3. The reasonable necessities of each parent;
 - 4. The educational, physical and emotional needs of the child for whom the support is sought;
 - 5. Preexisting support orders and current dependents;
 - 6. Non-cash contributions including fuel, clothing and child-care;
 - 7. Other criteria that the Office determines to be appropriate.
- (b) All child support shall be computed as a percentage of the combined Gross Income of both parents.
- (c) The guidelines may anticipate certain circumstances of deviation from the standard formula upon consideration of, but not limited to the following:
 - 1. Costs of a health benefit plan incurred by the obligor or the obligee;
 - 2. Social security or apportioned Veteran's benefits paid to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement;

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3. Survivors' and Dependents' Education Assistance under 38 U.S.C. Chapter 35 paid to the child, or to a representative payee for the benefit of the child as a result of the obligor's disability or retirement.

29.37 Guidelines Presumed Correct.

- (a) There is a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines is the correct amount of the child support obligation in any proceeding for the establishment or modification of a child support obligation.
- (b) Rebutting the presumption requires a written finding on the record that the application of the guidelines would be unjust, inequitable, unreasonable, inappropriate under the circumstances in a particular case, or not in the best interest of the child. The following factors shall be considered in a challenge to strict adherence to the guidelines:
 1. Evidence of other available resources of a parent;
 2. Number and needs of other dependents of a parent;
 3. Net income of a parent remaining after withholdings required by law or as a condition of employment.
 4. Special hardships of a parent, including but not limited to, medical circumstances of a parent and extraordinary visitation transportation costs affecting his or her ability to pay child support;
 5. The needs of the child, including extraordinary child care costs due to special needs;
 6. Evidence that a child who is subject to the support order is not living with either parent or is a "child attending school."

29.38 Income.

- (a) Standard for determination of income. All income and resources of each parent's household shall be disclosed and considered when determining the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.
- (b) Verification of income. Tax returns for the proceeding two years and current pay stubs shall be provided to verify income and deductions. Other sufficient information shall be required for income and deductions that do not appear on tax returns or paystubs. The Office shall have authority to conduct lawful discovery

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in accordance with the methods set forth in this Ordinance, the Klamath Tribes Child Support Enforcement Rules and Procedures, and the Klamath Tribes Rules of Civil Procedure, to verify income of the parents.

- (c) Income includes the following:
1. Salaries;
 2. Wages;
 3. Commissions;
 4. Deferred compensation;
 5. Contract-related benefits;
 6. Dividends;
 7. Gifts;
 8. Prizes
 9. Royalties;
 10. Per capita payments, including payments received as a share of profits due to membership in an Indian tribe, including, but not limited to gaming revenue distributions;
 11. Gambling winnings;
 12. Interest;
 13. Trust income;
 14. Severance pay
 15. Annuities;
 16. Capital gains;
 17. Pension or retirement program benefits;
 18. Workers' compensation;
 19. Unemployment benefits;
 20. Spousal maintenance actually received;
 21. Bonuses;
 22. Social security benefits; and
 23. Disability insurance benefits.
- (d) The following are excluded as sources of income that shall be disclosed, but shall not be included in gross income:
1. Income from a spouse or significant other who is not the parent of the child;
 2. Income from other adults in the household;
 3. Public assistance payments, including Temporary Assistance for Needy Families, Supplemental Security Income, General Assistance, and food stamps;
 4. Foster care payments;
 5. Child care assistance benefits.

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29.39 Income Deductions.

Deductions will be made from the obligor's total income to assess monthly income from which the child support obligation will be based:

- (a) Mandatory union or professional dues;
- (b) Court-ordered spousal maintenance payments to the extent actually paid;
- (c) Court ordered child support.

29.40 Imputed Income.

Income will be imputed to an obligor parent when the parent is voluntarily unemployed or voluntarily and unreasonably underemployed. The Child Support Guidelines shall set forth the standards for determining and applying imputed income.

29.41 Rebuttable Presumption of Inability to Pay Child Support When Receiving Certain Assistance Payments.

- (a) A parent who is eligible for and is receiving cash payments under Title IV-A of the Social Security Act, a tribal or state general assistance program, or the federal Supplemental Security Income program shall be rebuttably presumed unable to pay child support and a child support obligation does not accrue unless the presumption is rebutted.
- (b) Each month, the Social Services Department shall identify those persons receiving cash payments under the programs listed in subsection (a) that are administered by the Social Services Department and provide that information to the Manager. If benefits are received from programs listed in subsection (a) of this section that are administered by another tribe, state, or federal agency, the obligor shall provide the Manager with written documentation of the benefits.
- (c) Within 30 days following identification of persons under subsection (b) of this section, the Office shall provide notice of the presumption to the obligee and obligor and shall inform all parties to the support order that, unless a party objects as provided in subsection (d) of this section, child support shall cease accruing beginning with the support payment due on or after the date the obligor first begins receiving the cash payments and continuing through the last month in which the obligor received the cash payments. The Office shall serve the notice on the obligee by certified mail, return receipt requested, and shall serve the notice on the obligor by first class mail to the obligor.

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- (d) A party may object to the presumption by sending an objection to the Office within 30 days after the date of service of the notice. The objection must describe the resources of the obligor or other evidence that might rebut the presumption of inability to pay child support. Upon receiving an objection, the Office shall present the case to the Tribal Court for determination as to whether the presumption has been rebutted.
- (e) If no objection is made, or if the Tribal Court finds that the presumption has not been rebutted, the Office shall discontinue billing the obligor for the period of time described in subsection (c) of this section and no arrearage shall accrue for the period during which the obligor is not billed.
- (f) Within 30 days after the date the obligor ceases receiving cash payments under a program described in subsection (a) of this section, the Office shall provide notice to all parties to the support order:
 - 1. Specifying the last month in which a cash payment was made;
 - 2. Stating that the payment of those benefits has terminated and that by operation of law billing and accrual of support resumes.
- (g) Receipt by a child support obligor of cash payments under any of the programs listed in subsection (a) of this section shall be sufficient cause to allow the Office or the Tribal Court to issue a credit and satisfaction against child support arrearage for months that the obligor received the cash payments, absent good cause to the contrary.

29.42 Child Support Payments.

- (a) Each child support order shall specify that the support payments be made either to the Child Support Enforcement Office, or to the person or agency to whom is receiving the payments for the child.
- (b) In any case where the obligee receives public assistance from the Klamath Tribes or other tribal or state agency, or has previously received public assistance for which assignment has been made and has not been completely satisfied, payments shall be made to the Child Support Enforcement Office.
- (c) The parties affected by the child support order shall immediately inform the Child Support Enforcement Office of any change of address, employment, or of other conditions that may affect the administration of the order.

29.43 Health Insurance.

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- (a) In any order for child support, either the custodial or non-custodial parent, or both, shall be required to maintain or provide health insurance coverage, including medical and dental, for the child that is available at a reasonable cost.
 - 1. Insurance premiums for the child shall be added to the base child support obligation. If the insurance policy covers a person other than the child, only that portion of the premium attributed to the child shall be allocated and added to the base child support obligation.
 - 2. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation.
- (b) Health insurance coverage required under this section shall remain in effect until the child support order is modified to remove the coverage requirement, the coverage expires under the terms of the order, or the child reaches the age of majority or is emancipated, unless there is express language to the contrary in the order.
- (c) A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.
- (d) This section shall not be construed to limit the authority of the Child Support Enforcement Office, or the Court, to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.
- (e) A parent ordered to provide health insurance coverage shall provide to the other parent or the Child Support Enforcement Office proof of such coverage, or proof that such coverage is not available at a reasonable cost within twenty days of the entry of the order or immediately upon notice of unavailability.
- (f) Every order requiring a parent to provide health care or insurance coverage is subject to direct enforcement as provided under this Ordinance.

29.44 Medical Expenses.

Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' Adjusted Gross Income as separate items that are not added to the base child support

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obligation. If reimbursement is required, the other parent shall reimburse the parent who incurs the expense within thirty (30) days of receipt of documentation of the expense.

29.45 Child-Care Expenses.

The Office or the Court may include in a child support order payment of child care expenses. Such payment shall be allocated and paid monthly in the same proportion as base child support where such expenses are necessary for either or both parents to be employed, seek employment, or attend school or training to enhance employment income.

INCOME WITHHOLDING AND GARNISHMENT

29.46 Payment of Support by Income Withholding.

- (a) Except as provided in section 29.47, all child support orders established by the Klamath Tribes Child Support Enforcement Office and the Klamath Tribes Tribal Court shall include a provision requiring the obligor to pay support by income withholding regardless of whether support enforcement services are being provided through the Klamath Tribes Child Support Enforcement Office.
- (b) The Child Support Enforcement Office shall initiate income withholding by sending the noncustodial parent's employer a notice using the standard Federal income withholding form.
- (c) When an arrearage exists and notice of the delinquent amount has been given to the obligor, the Tribal Court, upon application, shall issue a withholding order upon the ex parte request of a person holding support rights or the Child Support Enforcement Office Manager.
- (d) In the case of each noncustodial parent against whom a support order is or has been issued or modified, or is being enforced, so much of his or her income must be withheld as is necessary to comply with the order.
- (e) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.
- (f) The total amount to be withheld for current month's obligations and overdue support shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

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- (g) The only basis for contesting a withholding is an error in the amount of current or overdue support, or in the identity of the alleged noncustodial parent.
- (h) Improperly withheld amounts shall promptly be refunded.
- (i) Income withholding shall be promptly terminated in cases where there is no longer a current order for support and all arrearages have been satisfied.

29.47 Exceptions To Income Withholding Requirement.

- (a) The Manager or the Court shall grant an exception to income withholding required under section 29.46 where:
 - 1. Either the custodial or noncustodial parent demonstrates, and the tribunal enters a written finding, that there is good cause not to require income withholding (Good cause shall include, but not be limited to, consideration of whether the obligor has paid in full any arrears owed, and has complied with the terms of previous withholding exceptions); or,
 - 2. A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the tribunal
- (b) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a child support order are at least equal to the support payable for one month.

29.48 Employer Notification Requirement.

Employers must notify the Klamath Tribes Child Support Enforcement Office promptly when the noncustodial parent's employment is terminated with the employer. Notification shall include the noncustodial parent's last day of employment, last known address, and the name and address of the noncustodial parent's new employer if known. Such notification shall occur regardless of whether termination of employment was voluntary or involuntary.

29.49 Employer Penalties.

- (a) Any employer who discharges a noncustodial parent from employment, refuses to employ, or takes disciplinary action against any noncustodial parent because of withholding pursuant to a child support order shall be fined in the amount of one-thousand dollars (\$1,000.00).

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- (b) An employer that fails to withhold income in accordance with the provisions of the income withholding order shall be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

29.50 Processing Withholding Orders.

The Child Support Enforcement Office is responsible for receiving and processing income withholding orders from states, tribes, and other entities, and ensuring that orders are properly and promptly served on employers within the Klamath Tribe's jurisdiction.

29.51 Allocation of Withheld Amounts.

The Child Support Enforcement Office shall allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

29.52 Garnishment of Per Capita Payments.

- (a) Per capita payments may be garnished and applied to child support arrearages unless a child support order has specified the amount of arrearages owed and the obligor is current with an arrearage payment schedule approved by the Office or the Court. Action for garnishment of per capita payments may be brought by any party to the proceeding and shall be done in accordance with this section, Klamath tribal law, or the law of any other applicable jurisdiction.
- (b) Requests for garnishment of Klamath Tribes per capita payments shall be presented to the Tribal Court and shall include the following:
1. A sworn statement by the party, stating the facts authorizing issuance of the garnishment order;
 2. A description of the terms of the order requiring payment of support and/or arrearages, and the amount past due, if any; and,
 3. A sworn statement that written notice has been provided to the obligor and the Office at least fifteen days prior to the party filing the request for garnishment.
- (c) If an obligor is subject to two or more attachments for child support on account of different obligees, and the amount of the per capita payment to be garnished is not sufficient to respond fully to all of the attachments, the obligor's per capita payment available for garnishment shall be apportioned among the various obligees equally.

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- (d) Upon receipt of a request for garnishment of a Tribal Member's per capita payment that complies with this section, the Court shall issue a garnishment order indicating the amount to be garnished. The Clerk of the Court shall forward a copy of the order to all parties to the proceeding within five days of the entry of the order.
- (e) Garnishment of Klamath Tribal member per capita payments is limited to 50% of the per capita payment pursuant to the Klamath Tribes Revenue Allocation Plan. This limit shall remain in effect unless and until the Revenue Allocation Plan is amended to provide for a different amount, which revised amount shall be complied with.

MODIFICATION AND TERMINATION

29.53 Grounds for Modification and Termination.

A child support order may be modified or terminated in accordance with the following:

- (a) Substantial change of circumstances. Any party to the proceedings may initiate a request with the Manager for modification or termination of a child support order based upon a substantial change of circumstances. Such proceeding shall be in accordance with the procedures established by the Manager.
 - 1. Except as provided for in subparagraph (2) of this section, if a child support award, or modification of award, is granted based upon substantial change in circumstances, twenty-four months must pass before another request for modification is initiated by the same party based upon a substantial change of circumstances.
 - 2. The Child Support Enforcement Office may initiate proceedings at any time to modify an order of child support in cases of substantially changed circumstances if public assistance money is being paid to or for the benefit of the child.
 - 3. Voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.
- (b) Emancipation and death. Unless otherwise agreed in writing or expressly provided in the order, provisions for the support of a child are terminated by emancipation of the child, by the death of the parent obligated to support the child, or by the death of the child.
- (c) Marriage and re-marriage to each other. Unless expressly provided by an order of the Child Support Enforcement Office, or the Court, the support provisions of the order are terminated upon the marriage to each other of parties to a paternity

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order, or upon remarriage to each other of the parties to the child support proceeding. Any remaining provisions of the order, including provisions establishing paternity, remain in effect unless otherwise expressly provided in the order.

- (d) Compliance with support guidelines. A support order may be modified one year or more after it has been entered without showing a substantial change of circumstances in order to add an adjustment in the order of support consistent with updated Klamath Tribes child support guidelines.
- (e) Child is eighteen. A child support order automatically terminates when a child reaches eighteen years of age unless the order provides that continued support is necessary to assist the child through completion of High School.
- (f) Child support orders may only be modified as to installments accruing subsequent to the request for modification unless the request for modification is based upon an automatic termination provision.

29.54 Request to Modify Child Support Order.

Any time the Support Enforcement Office is providing support enforcement services in accordance with this Ordinance, the obligor, the obligee, the party holding the support rights or the Manager may submit a request to modify the existing order pursuant to this section.

- (a) The request shall be in writing in a form prescribed by the Manager, and shall:
 - 1. set out the reasons for modification;
 - 2. state whether there exists a support order, in any tribal or state jurisdiction, involving the child, other than the order the party is moving to modify;
 - 3. state, to the extent known, whether there is pending in this state or any other jurisdiction any type of support proceeding involving the child;
 - 4. state whether there exists a support order, in any tribal or state jurisdiction, involving the child, other than the order the party is moving to modify;
 - 5. provide any other information requested by the Manager;
 - 6. provide a certification as to the truth of the information provided in the request under penalty of perjury.
- (b) The requesting party shall serve the request upon all parties to the proceeding, including the obligor, the obligee, the party holding the support rights and the Manager.

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- (c) The nonrequesting parties have 30 days to resolve the matter by stipulated agreement or to serve the requesting party and all other parties by regular mail with a written response setting forth objections to the request, and a request for hearing.
- (d) Upon receipt of a written response submitted by a nonrequesting party setting forth objections to the request for modification and requesting a hearing, the Manager shall forward the request for modification to the Tribal Court for determination.
- (e) When the moving party is the Manager and no objections and request for hearing have been served upon the Manager within 30 days of perfecting service of the request on all parties, the Manager may enter an order granting the modification request.
- (f) When the requesting party is other than the Manager, and no objections and request for hearing have been served upon the moving party or the Manager within 30 days of perfecting service, the requesting party may submit to the Manager a true copy of the request, certificates of service for each party served, along with a certification that no objections or request for hearing have been served on the requesting party. Upon receipt of the copy of the request, certificates of service and certification from the requesting party, the Manager shall issue an order granting the modification request.
- (g) A request for modification made under this section does not stay the Manager from enforcing and collecting upon the existing order unless so ordered by the Court.

29.55 Incremental Adjustment.

If an adjustment to a child support order is modified to increase the award by more than thirty percent and the change would cause a significant hardship, the adjustment maybe implemented in two stages, the first at the time of the entry of the order and the second six months from the entry of the order.

COMPLIANCE AND ENFORCEMENT

29.56 Failure to Comply With Support Order.

- (a) If an obligor fails to comply with a support order, a petition or motion may be filed by a party to the proceeding to initiate a contempt action in the Court. If the Court finds there is reasonable cause to believe the obligor has failed to comply

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with a support order, the Court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.

- (b) If the obligor contends at the hearing that he or she lacked the means to comply with the support order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the order.
- (c) The Court retains continuing jurisdiction and may use a contempt action to enforce a support order until the obligor satisfies all duties of support, including arrearages that accrued pursuant to the support order.

ARREARAGES

29.57 Arrearages.

Arrearages shall include any monies, in-kind or traditional support recognized by the Child Support Enforcement Office to be owed to or on behalf of a child to satisfy a child support obligation or to satisfy in whole or in part arrears or delinquency of such obligation, whether denominated as child support, spousal support, or maintenance. Arrearages also include medical and child-care support obligations.

29.58 Compromise and Charge-off.

- (a) The Child Support Enforcement Office may execute offers of compromise of disputed claims or may grant partial or total charge-off of child support arrears owed to the Klamath Tribes up to the total amount of public assistance paid to or for the benefit of the persons to whom the support was incurred.
- (b) The Child Support Enforcement Office may execute offers of compromise of disputed claims or may grant partial or total charge-off of child support arrears owed to any other tribe or state up to the total amount of public assistance paid to or for the benefit of the persons to whom the support was incurred in accordance with agreements entered into between the Klamath Tribes and the tribe or state to which the child support arrearage collection rights have been assigned.
- (c) Upon concurrence of the Child Support Enforcement Office, the Office may execute offers of compromise of disputed claims or may grant partial or total

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charge-off of child support arrears owed to a parent obligee agreeing to compromise or partial or total charge-off.

- (d) The obligor may execute a written extension or waiver of any statute that may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms.

29.59 Charge-Off Requests

Charge-off requests shall be in writing and in accordance with the rules and procedures established by the Office.

29.60 Factors.

In considering an offer of compromise, or request for partial or total charge-off, the Child Support Enforcement Office shall consider the following factors:

- (a) Error in law or bona fide legal defects that materially diminish chances of collection;
- (b) Collection of improperly calculated arrears;
- (c) Substantial hardship;
- (d) Costs of collection action in the future that are greater than the amount to be charged off;
- (e) Settlement from lump sum cash payment that is beneficial to the tribe or state considering future costs of collection and likelihood of collection;
- (f) Tribal custom or tradition.

29.61 Substantial Hardship.

When considering a claim of substantial hardship, the Office should consider, but not be limited to the following factors:

- (a) The child on whose behalf support is owed is reunited with the obligor parent because the formerly separated parents have reconciled or because the child has been returned to the parent from foster care or care of another.

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- (b) The obligor parent is aged, blind or disabled and receiving Supplemental Security income, Social Security, or similar benefits.
- (c) The mother of the child is seeking charge-off of debt accrued on behalf of a child who was conceived as a result of incest or rape and presents evidence of rape or incest acceptable to KTCSE.
- (d) Payment of the arrears interferes with the obligor's payment of current support to a child living outside the home.
- (e) The obligor has limited earning potential due to dependence on seasonal employment that is not considered in the child support order, illiteracy or limited English speaking proficiency, or other factors limiting employability or earning capacity.
- (f) The obligor's past efforts to pay child support and the extent of the obligor's participation in the child's parenting.
- (g) The size of the obligor's debt.
- (h) The obligor's prospects for increased income and resources.

29.62 Violation of Charge-Off Agreement.

When the obligor violates the terms of a conditional charge-off agreement, the Office, after notice and opportunity for a hearing, may enter an order providing:

- (a) Any amount charged off prior to the violation shall remain uncollectible;
- (b) Re-establishment of collection for further amounts that would have been charged off if not for the violation;
- (c) That the obligor may not reinstate the terms of the charge-off agreement by renewed compliance with its terms, unless the Office agrees to reinstate the conditional charge-off upon a finding of good cause for the violation.

**RECOGNITION, ENFORCEMENT AND MODIFICATION OF FOREIGN CHILD
SUPPORT ORDERS; EXERCISE OF JURISDICTION IN SIMULTANEOUS
PROCEEDINGS**

29.63 Full Faith and Credit.

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The Klamath Tribes recognize and shall enforce child support orders issued by other Tribes, Tribal organizations, States and foreign governmental entities in accordance with the requirements of the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B, whether such orders are administrative or judicial in nature.

29.64 Requests for Establishment, Recognition and Enforcement.

All requests for establishment, recognition and enforcement of child support orders and associated proceedings shall be presented by a party to the case, or a Tribe or State tribunal, to the Klamath Tribes Child Support Enforcement Office for processing.

29.65 Simultaneous Proceedings.

- (a) The Child Support Enforcement Office and Klamath Tribal Court may exercise jurisdiction to establish a support order if the application for assistance is filed with the Child Support Enforcement Office after a petition or comparable pleading is filed in another Tribe or State tribunal only if:
 - 1. The application for assistance is filed with the Child Support Enforcement Office before the expiration of the time allowed in the other Tribe or State tribunal for filing a responsive pleading challenging the exercise of jurisdiction by the other Tribe or State;
 - 2. The contesting party timely challenges the exercise of jurisdiction in the other Tribe or State; and
 - 3. If relevant, the Klamath Tribes is the home Tribe of the child.
- (b) The Klamath Tribes Child Support Enforcement Office and Tribal Court may not exercise jurisdiction to establish a support order if the application for assistance is filed before a petition or comparable pleading is filed in another Tribe or State if:
 - 1. The application, petition or comparable pleading in the other Tribe or State is filed before the expiration of the time allowed for filing a responsive pleading challenging the exercise of jurisdiction by the Klamath Tribes;
 - 2. The contesting party timely challenges the exercise of jurisdiction in the Klamath Tribes; and,
 - 3. If relevant, the other Tribe or State is the home tribe or state of the child.

29.66 Continuing, Exclusive Jurisdiction to Modify Child Support Order.

- (a) The Klamath Tribes shall have continuing, exclusive jurisdiction over a child support order entered by the Klamath Tribes for the benefit of a child who is an enrolled member of the Klamath Tribes, or eligible for enrollment with the Klamath Tribes, until all of the parties who are individuals have filed written

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consents with the tribunal of another Tribe or State to modify the order and transfer continuing, exclusive jurisdiction.

- (b) The Court may not exercise its continuing, exclusive jurisdiction to modify the order if the order has been lawfully modified by a tribunal of another Tribe or State. The Klamath Tribes shall recognize the continuing, exclusive jurisdiction of a tribunal of another Tribe or State that has lawfully issued a child support order.
- (c) If a Klamath Tribes child support order is lawfully modified by a tribunal of another Tribe or State, the Klamath Tribes loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued and may only:
 - 1. Enforce the order that was modified as to amounts accruing before the modification;
 - 2. Enforce nonmodifiable aspects of that order;
 - 3. Provide other appropriate relief for violations of that order that occurred before the effective date of the modification.
- (d) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

29.67 Initiating and Responding Tribunal of the Klamath Tribes.

- (a) The Klamath Tribes Child Support Enforcement Office shall serve as the initiating tribunal to forward proceedings to another Tribe or State and as a responding tribunal for proceedings initiated in another Tribe or State.
- (b) The Child Support Enforcement Office may serve as an initiating tribunal to request a tribunal of another Tribe or State to enforce or modify a support order issued by the Klamath Tribes.
- (c) The Klamath Tribes Child Support Enforcement Office, provided it has continuing, exclusive jurisdiction over a support order, shall act as the responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the Klamath Tribes does not reside in the issuing Tribe or State jurisdiction, in subsequent proceedings, the Klamath Tribes tribunal may seek assistance to obtain discovery and receive evidence from a tribunal of another Tribe or State.
- (d) If the Klamath Tribes lacks continuing, exclusive jurisdiction over a child support order, or a spousal support order, it may not serve as a responding tribunal to modify a child support or spousal support order of another Tribe or State.

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29.68 Determination of Controlling Order.

- (a) If a proceeding is brought under this Ordinance, and one tribunal has already issued a child support order, the order of that tribunal controls and must be so recognized.
- (b) If a proceeding is brought under this Ordinance, and two or more child support orders have been issued by tribunals of this Tribe or another Tribe or State with regard to the same obligor and child, the following rules shall be used to determine which order to recognize for purposes of continuing, exclusive jurisdiction:
 - 1. If only one of the tribunals would have continuing, exclusive jurisdiction under this Ordinance, the order of that tribunal controls and must be recognized.
 - 2. If more than one of the tribunals would have continuing, exclusive jurisdiction under this Ordinance, an order issued by a tribunal in the current home tribe or State of the child controls, and must be recognized, but if an order has not been issued in the current home Tribe or State of the child, the order most recently issued controls and must be recognized.
 - 3. If none of the tribunals, except the Klamath Tribes, would have continuing, exclusive jurisdiction under this Ordinance, the Klamath Tribes shall issue a child support order, which controls and must be recognized.

29.69 Child Support Orders For Two or More Obligees.

In responding to multiple registrations or requests for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another Tribe or State, such orders shall be enforced in the same manner as if multiple orders had been issued.

29.70 Application of Law of the Klamath Tribes.

Except as otherwise provided in this Ordinance, a responding tribunal of the Klamath Tribes:

- (a) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in the Klamath Tribes and may exercise all powers and provide remedies available in those proceedings; and

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- (b) Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of the Klamath Tribes.

29.71 Duties as Initiating Tribunal.

- (a) Upon the receipt of an application or petition authorized by this Ordinance, the Child Support Enforcement Office shall forward three copies of the application or petition and its accompanying documents:
1. To the responding tribunal in the responding Tribe or State; or
 2. If the identity of the responding tribunal is unknown, to the information agency of the responding Tribe or State with a request that the application or petition and documents be forwarded to the appropriate tribunal and that receipt be acknowledged.
- (b) As the Initiating tribunal, the Child Support Enforcement Office and/or Klamath Tribal Court shall issue any certificates or other documents, make findings, specify the amount of support sought, and provide any other documents necessary to satisfy the requirements of the responding Tribe or State.

29.72 Duties and Powers as Responding Tribunal.

- (a) When the Klamath Tribes Child Support Enforcement Office receives an application, petition or comparable pleading from an initiating tribunal, the Child Support Enforcement Office shall take appropriate action, in accordance with the provisions of this Ordinance, to assist the initiating tribunal, which may include initiation of proceedings to accomplish one or more of the following:
1. Issue or enforce a support order, modify a child support order or take action to establish parentage;
 2. Registration of initiating tribunal's order with the Klamath Tribes Tribal Court for recognition and enforcement;
 3. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
 4. Order income withholding;
 5. Enforce orders by civil contempt;
 6. Set aside property for satisfaction of the support order;
 7. Place liens and order execution;
 8. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment;
 9. Order the obligor to seek appropriate employment by specified methods;
 10. Award reasonable attorney's fees and other fees and costs;

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11. Garnish per capita payments; and
 12. Grant any other available remedy.
- (b) The Klamath Tribes responding tribunal shall include in a support order issued pursuant to this section, or in the documents accompanying the order, the calculations on which the support order is based.
- (c) If the Klamath Tribes tribunal issues an order pursuant to this section, it shall send a copy of the order by first-class mail to the applicant/petitioner and the respondent, any other party, and to the initiating tribunal, if any.

29.73 Inappropriate Tribunal.

If an application, petition, or comparable pleading is received by the Klamath Tribes Child Support Enforcement Office and the Office deems it is an inappropriate tribunal, it shall forward the pleading and accompanying documents to an appropriate tribunal in another Tribe or State and notify the applicant/petitioner by first-class mail where and when the application or pleading was sent.

29.74 Credit for Payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another Tribe or State must be credited against the amounts accruing or accrued for the same period under a support order issued by the Klamath Tribes.

29.75 Employer's Receipt of Income-Withholding Order of Another Tribe or State.

An income-withholding order issued in another tribe or jurisdiction may be sent by first-class mail to the obligor's employer without first filing a request for assistance with the Klamath Tribes Child Support Enforcement Office.

29.76 Employer's Compliance With Income-Withholding Order of Another Tribe or State.

- (a) Upon receipt of the income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.
- (b) The employer shall treat an income-withholding order issued by another jurisdiction that appears regular on its face as if it had been issued the Klamath Tribes.

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- (c) Except as otherwise inconsistent with section 29.46(f), the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order that specify:
1. The duration and the amount of periodic payments of current child support, stated as a sum certain;
 2. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
 3. The person or agency designated to receive payments and the address to which the payments are to be forwarded;
 4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as sums certain;
 5. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

29.77 Administrative Enforcement of Order.

- (a) A party seeking assistance to enforce a support order or an income-withholding order, or both, issued by a tribunal of another tribe or jurisdiction shall send the documents required for registering the order set forth at section 29.79 to the Klamath Tribes Child Support Enforcement Office.
- (b) Upon receipt of the documents, the support enforcement agency shall register the order with the Court, and consider, if appropriate, use of any administrative procedure authorized by the laws of the Klamath Tribes to enforce a support order or an income-withholding order, or both.

29.78 Contest by Obligor.

- (a) An obligor may contest the validity or enforcement of an income-withholding order issued by another Tribe or State and received directly by a Tribal employer in the same manner as if a tribunal of the Klamath Tribes had issued the order.
- (b) The obligor shall give notice of any contest to:
1. The support enforcement agency providing services to the obligee.
 2. Each employer that has directly received an income-withholding order; and
 3. The person or agency designated to receive payments in the income-withholding order, or if no person or agency is designated, to the obligee.

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REGISTRATION FOR ENFORCEMENT AND MODIFICATION

29.79 Registration of order for enforcement; procedure.

- (a) A support order or income-withholding order of another Tribe or State may be registered in the Klamath Tribes by sending the following documents and information to the Klamath Tribes Child Support Enforcement Office for registering;
1. A letter of transmittal to the Child Support Enforcement Office requesting registration and enforcement;
 2. Two copies of all orders to be registered, including any modification of an order;
 3. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
 4. The name of the obligor and, if known:
 - i. The obligor's address and social security number;
 - ii. The name and address of the obligor's employer and any other source of income of the obligor;
 - iii. A description and the location of property of the obligor in this state not exempt from execution; and
 - iv. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
 5. Any other information requested by the Child Support Enforcement Office.
- (b) Upon receipt of a request for registration and necessary supporting documentation, the Child Support Enforcement Office shall cause the order to be registered, together with one copy of the supporting documents and information, regardless of their form.

29.80 Effect of registration for enforcement.

- (a) A support order or income-withholding order issued by another tribe or state is registered when the order is filed in the Tribal Court.
- (b) A registered order issued in another tribe or jurisdiction is enforceable in the same manner and is subject to the same procedures as an order issued by the Court.
- (c) Except as otherwise provided for in this Ordinance, a tribunal of the Klamath Tribes shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

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29.81 Choice of Law.

The law of the issuing Tribe or State governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearages under the order.

29.82 Notice of Registration of Order.

- (a) When a support order or income-withholding order issued in another Tribe or State is registered, the Child Support Enforcement Office shall notify the nonregistering party. Notice must be given by first-class, certified or registered mail or by any means of personal service authorized by the law of the Klamath Tribes. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
- (b) The notice must inform the nonregistering party:
 - 1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of the Klamath tribes;
 - 2. That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;
 - 3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
 - 4. Of the amount of any alleged arrearages.
- (c) Upon registration of an income-withholding order for enforcement, the Child Support Enforcement Office shall notify the obligor's employer pursuant to the income-withholding laws of the Klamath Tribes.

29.83 Procedure to Contest Validity or Enforcement of Registered Order.

- (a) A nonregistering party seeking to contest the validity or enforcement of a registered order in the Klamath Tribes shall request a hearing before the Tribal Court within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, to contest the remedies being sought or the amount of any alleged arrearages.

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- (b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
- (c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the Court shall schedule the matter for hearing and give notice to the parties, including the Child Support Enforcement Office, by first-class or electronic mail of the date, time and place of the hearing.
- (d) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
 - 1. The issuing tribunal lacked personal jurisdiction over the contesting party;
 - 2. The order was obtained by fraud;
 - 3. The order has been vacated, suspended, or modified by a later order;
 - 4. The issuing tribunal has stayed the order pending appeal;
 - 5. There is a defense under the law of the Klamath Tribes to the remedy sought;
 - 6. Full or partial payment has been made;
 - 7. The statute of limitation precludes enforcement of some or all of the arrearages;
- (e) If a party presents evidence establishing a full or partial defense to the validity or enforcement of the order, the Court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. All remedies available may be used to enforce an uncontested portion of the registered order under the laws of the Klamath Tribes.
- (f) If the contesting party does not establish a defense to the validity or enforcement of the order, the Court shall issue an order confirming the order.

29.84 Confirmed Order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

29.85 Registration For Modification

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another Tribe or State shall register that order with the Klamath Tribes in accordance with the procedures of this Ordinance if the order has not

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been registered. A request for modification in accordance with the terms of this Ordinance may be submitted at the same time as the request for registration, or later. The request for modification must specify the grounds.

29.86 Effect of Registration for Modification

- (a) The Klamath Tribes may enforce a child support order of another Tribe or State registered for purposes of modification, in the same manner as if the order had been issued by the Klamath Tribes, but the registered order may be modified only if after notice and hearing, the Klamath Tribes Child Support Enforcement Department or Tribal Court finds, in accordance with the provisions of this Ordinance, that:
 - 1. The following requirements are met:
 - i. The child, the individual obligee and the obligor do not reside in the issuing tribe or state;
 - ii. The requesting party who is a nonresident of the Tribe seeks modification; and
 - iii. The respondent is subject to the personal jurisdiction of the Klamath Tribes; or
 - 2. The child or a party who is an individual is subject to the personal jurisdiction of the Court and all of the parties who are individuals have filed a written consent in the issuing tribunal for the Klamath Tribes to modify the support order and assume continuing, exclusive jurisdiction over the order.
- (b) Modification of a registered child support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of the Klamath Tribes and the order may be enforced and satisfied in the same manner.
- (c) The Klamath Tribes may not modify any aspect of a child support order that may not be modified under the law of the issuing Tribe or State. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under the provisions of this Ordinance, establishes aspects of the order that are nonmodifiable.
- (d) On issuance of the order modifying a child support order issued in another Tribe or State, a tribunal of the Klamath Tribes becomes the tribunal having continuing, exclusive jurisdiction.

DISTRIBUTION OF CHILD SUPPORT COLLECTIONS

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29.87 Prompt disbursement of collections.

The Klamath Tribes Child Support Enforcement Office shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The Office shall furnish to a requesting party or tribunal of another jurisdiction a certified statement by the custodian of the record of the amounts and dates of all payments received.

29.88 Distribution of child support collections.

- (a) The Child Support Enforcement Office shall, in a timely manner:
 - 1. Apply collections first to satisfy current support obligations, except that any collections received based on Federal income tax refund offset under section 464 of the Act and distributed by the Child Support Enforcement Office must be applied to satisfy child support arrearages.
 - 2. Pay all support obligations to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe's TANF agency, or the Child Support Enforcement Office has received a request for assistance in collecting support on behalf of the family from another state or tribal IV-D agency.
- (b) Current recipient of Klamath Tribal TANF. If the family is currently receiving assistance from the Tribal TANF program and has assigned support rights to the Tribe and:
 - 1. There is no request for assistance in collecting support on behalf of the family from a State or other Tribal IV-D agency, the Child Support Enforcement Office may retain collections on behalf of the family, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections shall be paid to the family.
 - 2. There is a request for assistance in collecting support on behalf of the family from a State or other Tribal IV-D agency, the Child Support Enforcement Office may retain collections, not to exceed the total amount of Tribal TANF paid to the family. Any collections exceeding the total amount of Klamath Tribal TANF paid to the family shall be distributed in one of the following manners:
 - (i) The Child Support Enforcement Office may send any remaining collections, as appropriate, to the requesting State IV-D agency for lawful distribution, or to the requesting Tribal IV-D agency for lawful distribution; or
 - (ii) The Child Support Enforcement Office may contact the requesting State IV-D agency to determine appropriate distribution under section 457 of the Act or the other Tribal IV-D agency to

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determine appropriate distribution under 45 CFR 309.115, and
distribute collections as directed by the other agency.

- (c) Former recipient of Klamath Tribal TANF. If the family formerly received assistance from the Klamath Tribal TANF program and there is an assignment of support rights to the Tribe, and:
1. There is no request for assistance in collecting support from a State or other Tribal IV-D agency under 45 CFR 309.120, the Child Support Enforcement Office must pay current support and any arrearages owed to the family to the family and may then retain any excess collections, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.
 2. There is a request for assistance in collecting support from a State or other Tribal IV-D agency under 45 CFR 309.120, the Child Support Enforcement Office must:
 - i. Send all support collected, as appropriate, to the requesting State or other Tribal IV-D agency for lawful distribution; or,
 - ii. Contact the requesting State IV-D agency to determine appropriate distribution under section 457 of the Act or the other Tribal IV-D agency to determine appropriate distribution under 45 CFR 309.115, and distribute collections as directed by the other agency.
- (d) Requests for assistance from State or other Tribal IV-D agency. If there is no assignment of support rights to the Klamath Tribes as a condition of receipt of Klamath Tribal TANF and the Child Support Enforcement Office has received a request for assistance in collecting support on behalf of the family from a state or another Tribal IV-D agency under 45 CFR 309.120, the Child Support Enforcement Office must:
1. Send all support collected, as appropriate, to the requesting State or other Tribal IV-D agency for lawful distribution; or,
 2. Contact the requesting State IV-D agency to determine appropriate distribution under section 457 of the Act or the other Tribal IV-D agency to determine appropriate distribution under 45 CFR 309.115, and distribute collections as directed by the other agency.

29.89 Federal income tax refund offset collections.

Any collections received based on Federal income tax refund offset under section 464 of the Act and distributed by the Child Support Enforcement Office must be applied to satisfy child support arrearages.

MISCELLANEOUS

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29.90 Stays.

Child support orders issued by the Child Support Enforcement Office and/or the Tribal Court may not be stayed pending appeal unless there is substantial evidence showing that the obligor would be irreparably harmed and the obligee would not.

29.91 Mistake of fact.

Except as otherwise expressly provided in this Ordinance, a parent may be prospectively relieved from application of the terms of an administrative order issued by the Child Support Enforcement Office; or an order of the Tribal Court, upon proof of a mistake of fact, the truth of which would render the order void or otherwise invalid, when such mistake is brought forward within one year of its discovery and could not have been discovered before such time with reasonable diligence.

29.92 Cessation of Collection Efforts.

An obligee may request the Child Support Enforcement Office to cease child support collection efforts if it is anticipated that physical or emotional harm will be caused to the parent or caretaker of the child, or to the child for whom support was to have been paid.

29.93 Confidentiality of Records.

Child support records, including paper and electronic records, are confidential and may be disclosed or used only as necessary for the administration of the program. Office employees who disclose or use the contents of any records in violation of this section are subject to discipline, up to and including dismissal from employment and civil penalty. Program administration includes, but is not limited to:

- (a) Extracting and receiving information from other databases as necessary to perform the Office's responsibilities;
- (b) Comparing and sharing information with public and private entities as necessary to perform the Office's responsibilities, to the extent not otherwise prohibited by applicable Federal law or Klamath Tribes Child Support Enforcement Program Rules and Procedures;
- (c) Exchanging information with tribal or state agencies administering programs under Title XIX and Part A of Title IV of the Social Security Act as necessary for the Office and the tribal and state agencies to perform their responsibilities under state and federal law.

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29.94 No Waiver of Sovereign Immunity.

No provision in this Ordinance expressly or impliedly waives the sovereign immunity of the Klamath Tribes, the Klamath Tribes Judiciary, or its officials, agents or employees, nor is intended to operate as consent to suit.

29.95 Effective Date.

This Ordinance shall be effective upon adoption and approval of the General Council in accordance with General Council Resolution.

29.96 Amendment or Repeal.

This Ordinance, and any section, part and word hereof, may be amended or repealed by a Resolution adopted by majority vote of the Klamath Tribes Tribal Council in accordance with the Constitution of the Klamath Tribes.

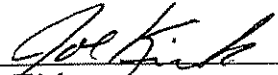
29.97 Severability.

Should any provision set forth in this Plan, or the application thereof to any person or circumstance, be held invalid for any reason whatsoever by a court of competent jurisdiction, the full remainder of such provision or the application of the provision to another person or circumstance shall not be effected thereby.

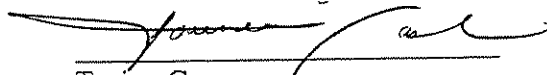
**CHILD SUPPORT ORDINANCE
KLAMATH TRIBAL CODE
Title 4 Chapter 29**

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a General Council meeting held on the 23rd day of February, 2008 with a quorum present, the General Council took action and duly adopted this Plan by a vote of 55 for, 4 opposed, and 4 abstentions by General Council Resolution 2008-001



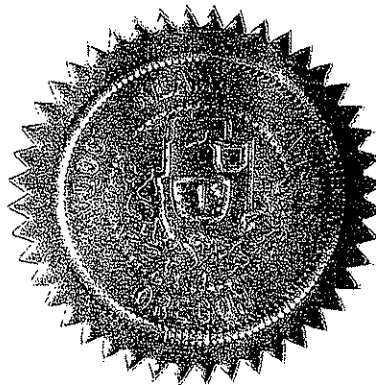
Joe Kirk
Chairman
The Klamath Tribes



Torina Case
Secretary
The Klamath Tribes

LEGISLATIVE HISTORY

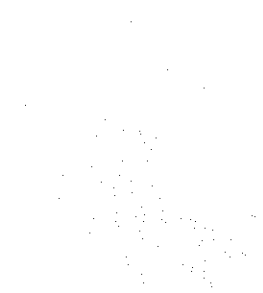
1. Title 4, Chapter 29 originally adopted and approved by General Council on February 23rd, 2008 pursuant to General Council Resolution No. 2008-001.



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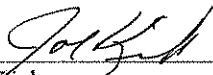
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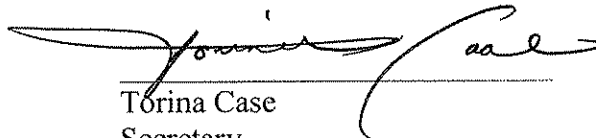
**CHILD SUPPORT ORDINANCE
KLAMATH TRIBAL CODE
Title 4 Chapter 29**

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Tribal Council meeting held on the 24th day of April, 2008 with a quorum present, the Tribal Council took action and duly amended this Plan by a vote of 7 for, 0 opposed, and 2 abstentions by ~~General~~ ^{Tribal} Council Resolution 2008 - 20.



Joe Kirk
Chairman
The Klamath Tribes



Torina Case
Secretary
The Klamath Tribes

LEGISLATIVE HISTORY

1. Title 4, Chapter 29 originally adopted and approved by General Council on February 23rd, 2008 pursuant to General Council Resolution No. 2008-001 _____.

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