

# SAINT REGIS MOHAWK TRIBE

## FAMILY SUPPORT ACT

### SECTION I: GENERAL

#### 1. Purpose and Scope

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

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

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

The Saint Regis Mohawk Tribe's Child Support Enforcement Unit ("SRMT-CSEU") is hereby established. The SRMT-CSEU is the designated Tribal agency identified in the approved Tribal Plan under Title IV-D of the Social Security Act, and is responsible for the administration and operation of the Tribal IV-D plan.

The SRMT-CSEU is authorized to develop policies and procedures, to be approved and adopted by the Saint Regis Mohawk Tribal Council, as well as take any other action necessary to implement the approved Tribal Plan IV-D Plan, consistent with this Act and any other applicable law.

The SRMT-CSEU staff will report to the Saint Regis Mohawk Tribe's Executive Director or his designee, and are subject to the Saint Regis Mohawk Tribe's personnel and other administrative policies.

To the extent that the duties and responsibilities outlined by this Act, other applicable laws, and by their internal policies and procedures, as approved by the Saint Regis Mohawk Tribal Council, the SRMT-CSEU are in conflict with existing personnel or administrative policies, the SRMT-CSEU policies and procedures will take precedent.

#### 2. Jurisdiction

The Saint Regis Mohawk Tribal Court shall have jurisdiction in paternity and child support matters when one or more of the following applies:

- (i) When one of the parties or the child is an enrolled member or eligible to become a member of the Saint Regis Mohawk Tribe; or
- (ii) When one or more of the parties or the child resides or is domiciled within the territory of the Saint Regis Mohawk Tribe.

- (iii) When a party, whether Indian or non-Indian, and whether natural or created by law, who is found within the territorial jurisdiction of the SRMT Court shall be subject to the jurisdiction of the SRMT Court. Non-Indian persons, by their residence, employment, or by their participation in any other activity within the territorial jurisdiction of the SRMT Court impliedly consent and submit to the provisions of this Act and the jurisdiction of the SRMT Court.
- (iv) In the case of enforcement of a foreign child support order issued pursuant to the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. §1738B), when one of the parties is a contract, temporary, or regular employee of the Saint Regis Mohawk Tribe; or employed within the territory of the Saint Regis Mohawk Tribe.
- (v) When a party voluntarily subjects themselves to the jurisdiction by accepting service of a Summons, Petition or Motion or other court mandate to appear in the Saint Regis Mohawk Tribal Court

### **3. Definitions**

“Acknowledgment of Paternity” means the putative father of a child born out of wedlock and the biological mother of the child may formally acknowledge paternity by executing an Acknowledgment of Paternity, or by signing a birth certificate, or other similar document completed soon after the birth of a child.

“Arrears” means the amount of money the payor has not paid pursuant to the most recent child support court order. Arrears shall not include birthing expenses imposed by a state or other Tribe.

“Child” means the natural or adopted child under the age of twenty one (21) years old.

“Child Support Order” means a Saint Regis Mohawk Tribal Court order, or other court order from a court of competent jurisdiction relating to the payment of child support.

“Court” means the Saint Regis Mohawk Tribal Court as established by referendum vote of the Saint Regis Mohawk Tribe.

“Court Order” means a Saint Regis Mohawk Tribal Court order or a valid child support court order issued by a court of competent jurisdiction.

“Custodial Parent” (CP) means the person who has primary physical placement of the child, whether by voluntary agreement or by Court Order. This is based on the presumption that the Noncustodial Parent (NCP) has the child 73-80 days per year (every other weekend, alternating holidays, and two weeks in the summer).

“Disposable Income”, for the purpose of calculating the amount of income subject to garnishments, is defined as an individual's compensation (including salary, overtime, bonuses, commission, and paid leave) after the deduction of health insurance premiums and any amounts required to be deducted by law. Amounts required to be deducted by law include federal, state,

and local taxes, state unemployment and disability taxes, social security taxes, and other garnishments or levies, but does not include such deductions as voluntary retirement contributions and transportation deductions.

“Gross Income” means the income of a parent before any permitted deductions are made.

Gross income shall include the following:

- Salaries and wages, including bonuses;
- Interest and investment income;
- Social Security disability and or social security retirement benefits;
- Net proceeds from worker’s compensation or other personal injury awards;
- Unemployment benefits;
- Voluntary deferred compensation, including pension and profit-sharing plans;
- Military and veteran benefits;
- Undistributed income of a business, partnership or corporation;
- All other sources of income.

Gross income shall not include:

- Supplemental Security Income (SSI);
- Temporary Assistance for Needy Families (TANF) or IV-D benefits or other child support received.

“Judge” means the Saint Regis Mohawk Tribal Chief Judge or Associate Judge of the SRMT Court.

“Non-Cash Support” means non-cash child support provided to a family in the nature of goods and/or services rather than in cash. Non-cash support directly contributes to the needs of a child. Non-cash support may include services such as making repairs to automobiles or a home, the clearing or upkeep of property, providing a means for travel, providing needed resources for a child’s participation in Tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value.

“NCP” means Non- Custodial Parent. The non-custodial parent is the parent with whom the child(ren) do not live with a majority of the time.

“Imputed Income” means the amount of income that shall be assigned to a party when calculating child support should the party’s income be unknown, if the party is unemployed, or if the party refuses to provide sufficient information to determine income.

“Parent” means the biological or adoptive person of a minor child.

“Payee” means the parent, legal guardian or agency which is receiving the child support payment.

“Payor” means the party who is responsible to pay child support. Stepparents, although they may have a moral and cultural duty to contribute, may not be a payor.

“Putative Father” shall mean the alleged father of a minor child.

“Social Security Disability” (SSD) means disability benefits paid to adults, and certain members of their family, provided they have worked long enough and have a medical condition that has prevented them from working or is expected to prevent them from working for at least 12 months or end in death.

“Supplemental Security Income” (SSI) means benefits paid to disabled adults and children with limited income and resources and are exempt from child support garnishment.

“Social Security Retirement” (SSR) means retirement benefits paid to adults, and certain members of their family, if they are covered under Social Security.

“SRMT-CSEU” means the Saint Regis Mohawk Tribal Child Support Enforcement Unit. The unit is responsible for receiving, processing, and disbursing payments, and for maintaining a record of payments, in all cases in which the Court orders that payments for child support be made. The SRMT-CSEU also provides child support enforcement services to children and families and is authorized to seek:

- (i) Location of obligors or their assets and obliges;
- (ii) Determination of parentage;
- (iii) Establishment or modification of child support; or
- (iv) Enforcement of support orders or laws relating to the duty of support.

## **SECTION II: PATERNITY ESTABLISHMENT**

### **1. Actions for Establishment of Paternity**

Any interested party, including the biological mother, the putative father, the child’s legal guardian, the child, or the SRMT-CSEU may petition the court for the determination of the paternity of a child. No child support can be ordered unless paternity has been established.

SRMT-CSEU shall utilize an accredited laboratory for the purposes of processing and analyzing all genetic testing samples.

### **2. Petition for Paternity Establishment**

A petition for the establishment of paternity shall contain the following information:

- (i) The name, date of birth and tribal affiliation (if known) of the child or children and the date ranges of conception;

- (ii) The names, dates of birth, tribal affiliation (if known) and addresses of the biological mother and the putative father(s) in the action.
- (iii) If there is a protective order in place, the addresses of the parties shall be redacted from all court documents;
- (iv) If there is reason to believe that emotional or physical harm may be inflicted should the whereabouts of a party or a child is disclosed, the whereabouts of those individuals shall be redacted from all court documents.
- (v) A statement from the moving party setting forth the reasonable possibility of the requisite sexual contact between the parties, meaning the biological mother and father, during the conceptive period.
- (vi) A statement indicating if there has ever been a proceeding involving the child or children in the action for paternity, custody, placement or child support.
- (vii) A statement indicating that if paternity is established, whether the custodial party will be seeking a child support order.

### **3. Summons for Paternity Establishment**

- A. The complainant filing a paternity petition pursuant to the terms in this Act shall be required to file the original Petition with the SRMT-CSEU as well as the SRMT Court Clerk. A Summons shall also be completed by the complainant on a form approved by the Court and filed with the Petition.
- B. The date and time of the hearing shall be left blank for the Clerk of the SRMT Court to complete. In all cases, the date for the Mandatory Meeting with SRMT-CSEU will be within 30 days of the filing of the Summons and Petition.
- C. The date for the Initial court appearance, should an agreement not be reached at the Mandatory Meeting, shall be no more than 60 days from the date of the filing of the Summons and Petition. The Summons shall contain the following information:
  - (i) Notification that if the respondent does not appear at the date, time and location on the Summons a Default Judgment may be entered;
  - (ii) Notification that the parties may retain legal representation at his or her own expense;
  - (iii) Notification that the Respondent may file an answer to the claims in the Petition by filing a written answer with the Tribal Court and SRMT-CSEU within twenty (20) days of the service of the Summons and Petition.

Defenses that may be claimed are as follows:

- (i) The putative father was sterile or impotent at the time of conception; and/or

- (ii) The putative father and the biological mother did not have sexual intercourse at the time of completion; or
  - (iii) That the putative father is not the biological father of the child.
- D. That there is the right to voluntarily acknowledge paternity by executing an Acknowledgment of Paternity, and the right to voluntarily acknowledge paternity at the initial hearing.
- E. The right to have genetic testing if paternity is contested by either party.
- F. The requirement for both parties to meet with SRMT-CSEU prior to the initial hearing. The date, time and location of the Mandatory Meeting will be included in the Summons along with the child support guideline calculation, if child support was requested by the complainant.
- G. A notice stating that if paternity is established that support will commence from the date that the Judgment of Paternity is signed.
- H. If the SRMT-CSEU was not the party filing the Summons and Petition, the SRMT Tribal Court Clerk shall provide a copy of the filed documents to the SRMT-CSEU.

#### **4. Service**

- A. SRMT-CSEU or the complainant is responsible for service of the Petition and Summons and may effectuate such service by the use of a process server, or any person, not a party to the action, who is over the age of eighteen (18) years.
- B. Both the Petition and Summons shall, whenever possible, be served on the respondent by personal service.
- C. The person serving shall file with the SRMT Court a certification of proof of service, prepared on a form approved by the SRMT Court, indicating that he or she has served the respondent, including the date and place of service.
- D. When the Summons and Petition cannot by reasonable diligence be personally served on the respondent, service may be made by registered mail. If received, a return receipt shall be proper proof of service and shall be filed with the Clerk of the SRMT Court.
- E. In the event that the respondent cannot be served personally, SRMT-CSEU or the complainant may petition the court for an order allowing service to be affected by publishing the Summons in a newspaper nearest to the last known location of the respondent for two consecutive publication dates.
- F.
  - (i) Such order shall be granted only upon a showing that complainant has diligently pursued all other methods of service, and is unable to serve respondent in any other way.

- (ii) A copy of the published notice shall be filed with the Clerk of the SRMT Court as proof of service.

**5. Mandatory Meeting with SRMT-CSEU**

A. Both parties are required to participate in a meeting with SRMT-CSEU prior to the initial hearing and attempt to reach an agreement as to the paternity and child support for the child. The date and location of the meeting is provided in the Summons. SRMT-CSEU shall discuss with both parties:

- (i) The right to sign a Voluntary Acknowledgment of Paternity Form without genetic testing:
  - 1. SRMT-CSEU shall provide the parties with the acknowledgment form for execution and shall file said acknowledgment with the proper state agency managing the vital records in the state in which the child was born. If the acknowledgment form is not readily available, SRMT-CSEU shall schedule a date and time for the parties to return to execute the acknowledgement. If one or both parties fail to appear, the party failing to appear may be found in contempt.
- (ii) The right to admit paternity pending genetic testing:
  - 1. If an agreement is reached, SRMT-CSEU will draft an Agreement and have both parties' sign said Agreement. Genetic test samples will be obtained at the date of the meeting if all parties and the child are present. If the parties and child cannot participate in genetic testing on the day of the Meeting, the Agreement shall state the date and time for the mother, child and alleged father to return for genetic testing. Failure to appear at any scheduled genetic testing appointments may result in a finding of contempt.
- (iii) The right to acknowledge paternity by signing an Agreement;
  - 1. If an agreement is reached SRMT-CSEU will draft an Agreement incorporating the agreement that the alleged father is the biological father based on his statements, and incorporating terms of child support, medical support and fees (if any). Both parties shall sign the Agreement and the Agreement shall have the full force and effect of a court order.
- (iv) The right to deny paternity and request a tribal court hearing. Should a hearing be requested, the hearing will be held on the date and time indicated on the initial Summons served on the party.

- B. If an agreement was reached by the parties resolving the paternity and/or child support, the Agreement shall be filed in the Tribal Court and the Clerk shall be notified to take the matter off the docket.
- C. If the parties are unable to reach an agreement, or if one party refuses to participate in the Mandatory Meeting, the Initial Hearing for paternity as set forth in the Summons shall take place. If one or both parties fail to appear at the Initial Hearing, a Default Order may be entered.

## **6. Initial Appearance**

- A. At the initial appearance the SRMT Tribal Court shall determine if the putative father and the biological mother are willing to voluntarily acknowledge paternity. If both parties affirm that they wish to establish paternity without the use of genetic tests, the Tribal Court shall issue an order establishing the putative father as the legal father of the minor child.
- B. If paternity is contested the SRMT Tribal Court shall order that genetic testing be performed within ten (10) days of the hearing. The Order shall contain the date, time and location of the genetic testing.

## **7. Circumstances Under Which Paternity May Not Be Established**

- A. If the child subject to the action was conceived as a result of forcible rape or incest, and the mother or guardian has requested that paternity establishment not proceed, SRMT-CSEU will not file an action in Tribal Court for paternity establishment. If this information is received following the filing of the Summons and Petition, the Tribal Court may dismiss the action. If SRMT-CSEU filed the action, they may request the dismissal of the action by filing an Order to Dismiss with the Tribal Court.
- B. In any case in which legal proceedings for adoption is pending, if, in the opinion of the SRMT-CSEU, it would not be in the best interests of the child to establish paternity, an action for paternity establishment will not be filed. If this information is received following the filing of the Summons and Petition, the Tribal Court may dismiss the action. If SRMT-CSEU filed the action, they may request the dismissal of the action by filing an Order to Dismiss with the Tribal Court.

## **8. Genetic Testing**

In ordering genetic testing, the SRMT Tribal Court will ensure that:

- (i) Genetic test samples shall be collected by certified buccal swab collectors at the SRMT-CSEU or at a location approved by the SRMT Court;

- (ii) Genetic testing samples shall be provided to an accredited genetic testing laboratory, and the results shall be forwarded to SRMT-CSEU, the SRMT Tribal Court, and the parties along with a Notice of a Final Paternity Hearing;
- (iii) If genetic tests show that the putative father is the biological father by a percentage of 99.0% or higher, paternity is presumed and the putative father shall be adjudicated the legal father;
- (iv) Whenever the results of the genetic tests exclude the putative father as the biological father of the child, this evidence shall be conclusive evidence of non-paternity and the Tribal Court shall dismiss the action;
- (v) If the action was brought by the child's biological mother but she refuses to submit herself or the child to the genetic tests, the action shall be dismissed;
- (vi) Establishment of paternity under this section has no effect on Tribal enrollment or membership.

## **9. Final Paternity Hearing**

Following the receipt of the genetic testing results, SRMT-CSEU shall file a Notice of Final Paternity Hearing. SRMT-CSEU shall obtain a date and time of the final paternity hearing from the SRMT Clerk of Court which shall be held no less than ten (10) days after the filing of the genetic testing results. Following the hearing SRMT-CSEU or the complainant shall prepare an Order with the following conditions:

### **A. Paternity Order**

- (i) Following an initial appearance and determination of paternity by voluntary acknowledgement or by genetic testing, the SRMT-CSEU shall prepare an Order containing the following information:
  - (a) A statement that SRMT has jurisdiction over the case;
- (ii) If the paternity of the child is established at the hearing by the voluntary acknowledgment of the parties, and by a preponderance of evidence, an Order establishing paternity and declaring the putative father to be the legal father shall be entered;
- (iii) If genetic tests were administered and the results indicate a probability of 99.0% or higher, a judgment of paternity declaring the putative father to be the biological father shall be entered;
- (iv) If genetic tests were administered and there is a probability of 98.9% or lower and there has been no showing by the preponderance of the evidence that the putative father named in the Petition is not the biological father, the case shall be dismissed;

- (v) Conditions for the repayment of any fees or costs associated with the paternity action including, but not limited to, genetic testing, service of process and modification of the official birth record;
- (vi) A finding of custody, visitation and placement of the child;
- (vii) A determination of which party can claim the child for state and federal tax purposes;
- (viii) A determination of which parent shall apply and obtain health insurance for the child, if available at a reasonable cost, which shall be no more than 5% of the parent's gross income;
- (ix) If child support is requested by either party, a determination of child support under the guidelines as stated in this Act.

## **10. Default Order**

- A. When the respondent fails to appear or answer a Petition filed herein, the complainant or SRMT-CSEU may file a motion, supported by an affidavit of paternity signed by the complainant, for a Default Paternity Order. The complainant or SRMT-CSEU will also file an Default Order for the Tribal Court to enter into the record. The Tribal Court may enter a Default Paternity Order upon finding of the following:
  - (i) The Tribal Court has jurisdiction over the subject matter of the case and over the respondent;
  - (ii) That the respondent was given proper service of the Petition and Summons and proper notice of any hearings as provided for in this Act;
  - (iii) That the Petition and/or the child support recommendation of SRMT-CSEU is based on available, relevant and material information,
- B. Notice of the Default Order shall be served on the respondent via certified and regular mail by the SRMT Clerk of Court.
- C. A Default Paternity Judgment may be appealed and may only be overturned upon a showing of good cause. The respondent must show by the preponderance of the evidence that the respondent did not have proper notice, or that the SRMT lacked jurisdiction, or that it is subsequently shown that a party is not the biological parent of the child.

## **SECTION III: CHILD SUPPORT ESTABLISHMENT**

### **1. Actions for Establishment and Modification of Child Support**

- A. In a proceeding establishing or modifying child support pursuant to this Act, the SRMT Court may order one or both parents of the minor child or children to pay an amount of child support pursuant to the guidelines provided for in this Act. New child support actions are addressed in §3.1-3.5 of this Act. Modifications of existing child support orders can be modified pursuant to §3.11 of this Act.
- B. The SRMT Court shall consider the following relevant factors when determining child support:
  - (i) The financial, emotional, educational and medical needs of the child(ren);
  - (ii) The financial resources of both parents;
  - (iii) The standard of living of the child(ren) and the parents.

## **2. Petition for Child Support Establishment**

- A. A parent, child, custodial parent, guardian or SRMT-CSEU may file a petition for establishment of a child support order under this Act
- B. The petition for establishment or modification of child support shall contain the following information:
  - (i) The name, date of birth and tribal affiliation (if known) of the child;
  - (ii) The names, dates of birth, tribal affiliation (if known) and addresses of the parties in the action.
    - If there is a protective order in place, the addresses of the parties shall be redacted from all court documents;
    - If there is reason to believe that emotional or physical harm may be inflicted should the whereabouts of a party or a child is disclosed, the whereabouts of those individuals shall be redacted from all court documents.
  - (iii) The amount of the proposed child support pursuant to the guidelines provided for in this Act;
  - (iv) A statement indicating how health insurance and/or medical support is to be provided, or if there is any outstanding medical bills;
  - (v) A statement if there are any work-related child care expenses or extraordinary medical expenses of the child;
  - (vi) A statement indicating if there has ever been a proceeding involving the child(ren) in the action for paternity, custody, placement, or child support;
  - (vii) A request and/or statements as to the current custody, placement and visitation schedule of the child or children.

- (viii) A statement indicating that the father is named as the legal father of the child or children. In lieu of said statement a party may attach copies of the official birth certificate of the child or children to the petition.
- C. Each party to the action will be required to complete a Financial Disclosure Form and to provide SRMT-CSEU with the disclosure no less than ten (10) days prior to the Mandatory Meeting. As part of the Financial Disclosure, each party will be requested to provide the last two years of income tax returns, if available.
  - (i) Failure to provide the required Financial Disclosure may be grounds for a contempt of Court finding, or any other penalty the Court deems necessary to compel compliance. In the absence of the information requested, the Court and SRMT-CSEU will utilize imputed income to determine the child support
  - (ii) Financial information filed with the Court or to SRMT-CSEU shall be confidential and available only to the parties, Court and SRMT-CSEU. Any information provided shall be used for the sole purpose of establishing, modifying, or enforcing child support.
- D. Each party to the action will be required to complete a Release of Information Authorization which shall allow SRMT-CSEU to obtain additional financial records and to confirm any information provided by a party. .
- E. The following SRMT entities are required to release information to SRMT-CSEU for the purpose of establishing, modifying or enforcing a child support order:
  - (i) All departments of SRMT;
  - (ii) Akwesasne Housing Authority and Community Development;
  - (iii) SRMT Tribal enterprises; and
  - (iv) Any person or entity doing business on the lands of the Saint Regis Mohawk Tribe.

### **3. Summons for Child Support Establishment**

- A. The complainant filing a Child Support Petition pursuant to the terms in this Act shall be required to file the original Petition with the SRMT-CSEU as well as the SRMT Court Clerk. A Summons shall be completed by the complainant on a form approved by the Court and filed with the Petition.

The date and time of the hearing shall be left blank for the Clerk of the SRMT Court to complete. In all cases, the date for the Mandatory Meeting with SRMT-CSEU will be within 30 days of the filing of the Summons and Petition.

The date for the Initial court appearance, should an agreement not be reached at the Mandatory Meeting, shall be no more than 60 days from the date of the filing of the Summons and Petition. The Summons shall contain the following information:

- (i) Notification that if the respondent does not appear at the date, time and location on the Summons, a Default Judgment may be entered;
- (ii) Notification that the parties may retain legal representation at his or her own expense;
- (iii) Notification that the respondent may file an Answer to the claims in the Petition by filing the same with the Tribal Court within twenty (20) days of the service of the Summons and Petition.
- (iv) The requirement for both parties to attend the Mandatory Meeting with SRMT-CSEU prior to the initial hearing. The date, time and location of the mandatory meeting will be included in the Summons along with the child support guideline calculation.

- B. In addition to the Petition and Summons, a Financial Disclosure form shall also be filed and served on the Respondent.
- C. If SRMT-CSEU was not the party filing the Summons, Petition, and Financial Disclosure, the Tribal Court Clerk shall provide a copy of the documents to the SRMT-CSEU.

#### **4. Service**

- A. SRMT-CSEU or the complainant is responsible for the service of the Petition and Summons and may effectuate such service by the use of a process server, or any person, not a party to the action, who is over the age of eighteen (18) years.
- B. Both the Petition and Summons shall, whenever possible, be served on the respondent by personal service.
- C. The person serving shall file with the SRMT Court certification of proof of service, prepared on a form approved by the SRMT Court indicating that he or she has served the respondent, including the date and place of service.
- D. When the Summons, Petition and Financial Disclosure cannot, by reasonable diligence, be personally served on the respondent, service may be made by registered mail. The return receipt shall be proper proof of service and shall be filed with the Clerk of SRMT Court.

- E. In the event that the respondent cannot be served personally, the complainant may petition the Court for an order allowing service to be effected by publishing the Summons in a newspaper nearest to the last known location of the respondent for two consecutive publication dates.
- F.
  - (i) Such order shall be granted only upon a showing that complainant has diligently pursued all other methods of service, and is unable to serve respondent in any other way.
  - (ii) A copy of the published notice shall be filed with the Clerk of the SRMT Court as proof of service.

## **5. Mandatory Meeting with SRMT-CSEU**

- A. Both parties are required to participate in a meeting with SRMT-CSEU prior to the initial hearing and attempt to reach an agreement as to the child support for the child or children. The date and location of the meeting is provided in the Summons. Both parties will be required to present the Financial Disclosure Form at the time of the meeting.
- B. SRMT-CSEU shall prepare a Child Support Worksheet for the parties using the guidelines in this Act and the information provided to them by the parties. Should both parties agree to the child support terms and other conditions, SRMT-CSEU shall prepare an Agreement for both parties to sign. Both parties shall sign the Agreement and the Agreement shall have the same force and effect as a Court order.
- C. If an agreement was reached by the parties, the Agreement shall be filed in the Tribal Court and the Clerk shall be notified to take the matter off the docket.
- D. If the parties are unable to reach an agreement, or if one party refuses to participate, the initial hearing for child support as set forth in the Summons shall take place. If one or both parties fail to appear at the Initial Hearing, a Default Order will be drafted by the complainant or SRMT-CSEU for the Tribal Court to enter into the record

## **6. Initial Hearing**

- A. If the parties were unable to reach an agreement with respect to the child support and other conditions in the Mandatory Meeting, the initial hearing will be held on the date and time shown in the Summons and Petition.
- B. SRMT-CSEU or the complainant shall file an amended Child Support Worksheet with the SRMT Clerk of Court prior to the initial hearing if the amount of child support requested has changed based on information obtained after the filing of

the Summons and Petition. SRMT-CSEU shall also provide a copy of the Child Support Worksheet to both parties at least five (5) days prior to the hearing via regular mail.

C. Child support shall be based on the guidelines in §3.7-3.10 of this Act.

## **7. Orders**

A. Following a child support hearing, the Court Order for Child Support shall contain the following information:

- (i) A statement that SRMT has jurisdiction over the child support case;
- (ii) The amount of child support and any amount to be paid towards arrears if any exist;
- (iii) The amount of work-related non-subsidized daycare or health insurance cost to be paid by the non-custodial party;
- (iv) A statement regarding the circumstances under which the child support obligation will terminate;
- (v) A statement that each parent shall notify SRMT-CSEU of any change of employer or address within ten (10) days of said occurrence.
- (vi) A statement that any and all enforcement remedies available to SRMT-CSEU under this Act, will be taken should a payor become delinquent equal to one month's of child support or fail to follow the terms of the Court Order.
- (vii) An order to seek work if the non-custodial parent is unemployed or underemployed.
- (viii) That each party may request a review of the support order if there is a change in circumstances warranting a modification or once every twenty-four (24) months.

## **8. Default Orders**

A. When the respondent fails to appear or fails to answer a Petition filed herein, the complainant or SRMT-CSEU may file a Motion, supported by an Affidavit, for a Default Child Support Order. The Tribal Court may enter a Default Child Support Order upon finding of the following:

- (i) The Tribal Court has jurisdiction over the subject matter of the case and over the respondent;

- (ii) That the respondent was given proper service of the Petition and Summons and proper notice of any hearings as provided for in this Act;
  - (iii) That the Petition or the recommendation of SRMT-CSEU is based on available, relevant and material financial information;
  - (iv) Establishment of the respondent's obligation, at the amount provide for in the Default Order has been determined under the guidelines and schedule based on calculation of the income provided;
  - (v) Notice of the Default Order shall be served on the respondent by the SRMT Clerk of Court via certified and regular mail.
- B. A Default Child Support order may be appealed and may only be overturned upon a showing of good cause. The respondent must show by the preponderance of the evidence that the respondent did not have proper notice, or that the SRMT lacked jurisdiction, or that it is subsequently shown that a party is not the biological parent of the child.

## **9. Child Support Guidelines**

- A. Child support shall be established utilizing the annual gross income of the custodial and non-custodial parent. If a parent's income is unknown or if the parent is unemployed, imputed income may be used when calculating the child support.
- B. SRMT-CSEU shall prepare every four (4) years a Child Support Standards Chart (CSSC) guideline which shall serve as a guide to parties and the SRMT Court in determining the basic child support obligation. The chart shall be broken down by annual income ranges and by the number of children in a case. The CSSC shall be approved by the SRMT Council every four (4) or whenever it is amended by the SRMT-CSEU.
- C. Child support is based on a percentage of income determined by the number of children as follows:
- (i) 17% for one child
  - (ii) 25% for two children
  - (iii) 29% for three children
  - (iv) 31% for four children
  - (v) No less than 35% for five or more children
- D. Child support obligations may be impacted by a "Self Support Reserve" (SSR) which shall be one hundred thirty-five percent (135%) of the poverty income guidelines amount for a single person as reported by the Federal Department of Health and Human Services. SRMT-CSEU is responsible to update the SSR

amount based on the federal poverty guidelines released annually by The Federal Department of Health and Human Services. The Self Support Reserve shall be updated in the child support worksheet, wherein, each parent shall be entitled to this Self Support Reserve. To insure that the parent does not fall below this SSR, the calculated child support obligation shall be subtracted from the parent's income. If the remaining amount falls below the SSR, the SRMT Court shall set the CS obligation at a minimum of \$25.00 per month.

- E. If a child is receiving Social Security cash benefits as a result of the natural parent's disability, the amount owed for current support shall be reduced by the amount of the child's monthly cash benefit. Should the child's monthly cash benefit exceed the amount of the monthly child support obligation there shall be no credit against any child support arrears.
- F. Child support obligations will be based on the percentages contained in this Section and shall be represented as a whole dollar amount in the Court Order.
- G. Child support arrears may be ordered by the Tribal Court dating back to the date of acknowledgment of paternity, or the date from which the paternity judgment was issued.
- H. If a parent has more than one child support case, any prior child support obligation shall be deducted from his or her gross income.
- I. The Tribal Court may require parents to share in the child care expenses and/or extraordinary medical expenses not covered under any policy, plan, or Indian Health Services (IHS).
- J. Medical support may be considered if one or both parents have accessible and affordable health coverage available for the child at a reasonable cost. Reasonable cost is defined as being no more than 5% of a parent's gross income.
  - (i) If a child is eligible for Indian Health Services the Tribal Court has the discretion to not establish a medical support order.
- K. Non-cash support, only when agreed upon by both parties, may be considered by the Tribal Court in lieu of cash child support. In determining whether to permit non-cash support, the Tribal Court may consider the current circumstances of the parties including whether a non-custodial parent is able to obtain employment, and the availability of other financial resources to meet the current cash child support obligation.
  - (i) Non-cash support may not be ordered to repay assigned debts owed to a state or tribal jurisdiction. All non-cash support orders must describe the type of non-cash support contribution and the SRMT Court must assign a dollar value to the contribution.

- (ii) Should a non-cash support contribution not be met, the recipient of the non-cash support is responsible to notify SRMT-CSEU by the end of each month of the non-compliance in writing. If a notice of non-compliance is not received by the last day of the month, it shall be presumed the non-cash support contribution was met and the payor shall receive a credit based on the Tribal Court Order.

## 10. Child Support Calculations

The Child Support Calculation Worksheet provided for in this Act will determine the proposed amount of child support parents will be responsible for. Said worksheet will be completed utilizing the following steps:

- A. ***Determine Total Gross Annual Income.*** This is the amount of money that is received from any source before taxes or other expenses of any kind are taken out. This does not include public assistance payments or child support received or paid on behalf of children of other relationships. If the payer is a serial payer, the total gross income available for child support calculation purposes, shall be reduced by the amount of the prior child support order.
- B. ***Determine Total Annual Deductions.*** These are items allowed to be deducted in order to arrive at net income. Deductions shall include federal, state, and local taxes, state unemployment and disability taxes, and social security taxes, but do not include such deductions as voluntary retirement contributions and transportation deductions.
- C. ***Calculate Annual Net Income.*** Annual net income is calculated by subtracting the total annual deductions from the total gross annual income.
- D. ***Calculate Combined Annual Net Income.*** This is calculated by adding the Custodial Parent's (CP) and Non-Custodial Parent's (NCP) annual net incomes.
- E. ***Determine the Basic Child Support Obligation.*** This is calculated by multiplying the Combined Annual Net Income by the appropriate child support percentage listed in the Child Support Standards chart.
- F. ***Determine Proportional Share of Income.*** Each parent's proportional share of income is determined in order to calculate their proportional share of the basic child support obligation. This is determined by dividing each parent's annual net income by the total combined annual net income.
- G. ***Calculate Basic Child Support Obligation without consideration of low income limitations.*** This is calculated by multiplying the basic child support obligation by each parent's proportional share.
- H. ***Consider Low Income Limitations.*** Low income limitations are determined by utilizing the current Federal Poverty Level (FPL) and the Self-Support Reserve (SSR) as reported by the United States Department of Health and Human

Services. These limitations are calculated by subtracting each parent's basic child support obligation from their annual net income and then comparing the result with the current FPL and SSR.

I. ***Determine Child Support Obligation with consideration of low income limitations.***

- (i) If the amount determined above falls between the FPL and the SSR, then the presumptive amount will be \$25.00 per month (\$300.00 annually).
- (ii) If the amount falls below the FPL, then the presumptive amount will be \$0.00 and Non-Cash Support may be considered per the SRMT Child Support Guidelines.
- (ii) If the amount is greater than the SSR, then the low income limitations do not affect the obligation and the presumptive amount will be the Child Support Obligation as determined in (G) above.

**11. Deviation**

- A. There is a rebuttable presumption that the award of child support pursuant to the calculations listed above is appropriate. However, the Tribal Court may consider a deviation from the child support guidelines. When deviating from the guidelines the Court must find and provide in a written order the following reason(s) for deviating from the guidelines:
- (i) The financial resources of the child(ren) and or parent(s);
  - (ii) If one of the parents is a seasonal employee of a trade or profession;
  - (iii) Maintenance received by either parent;
  - (iv) The needs of any person other than the child, whom either party is legally obligated to pay support;
  - (v) Extraordinary travel expenses incurred in exercising the right to periods of physical placement or visitation;
  - (vi) Extraordinary travel expenses incurred to secure employment;
  - (vii) The physical, mental and emotional needs of the child;
  - (viii) The child's educational needs;
  - (ix) If it is determined that the non-custodial parent provides residence to the child in excess of the presumptions made by the guidelines;
  - (x) The best interests of the child;
  - (xi) An agreement by the parties for a deviation.

- B. Should the Tribal Court deviate from the guidelines the order will state the amount that would have been ordered had the guidelines been followed.

## **12. Modifications of Child Support**

- A. Any party to an action may request a child support review from SRMT-CSEU to determine if there has been a substantial change in circumstances since the last order for child support or if the child support order has not been reviewed for twenty-four (24) months or more. A substantial change in circumstances includes, but is not limited to, a change in annual income of 15% or the actual residence of a child(ren) has changed.
- B. A Motion for Modification of child support may be filed by SRMT-CSEU or complainant. The Motion shall be accompanied by an Affidavit setting forth the factual basis for the Motion and the Modification requested.
- C. The Notice and Motion shall indicate that each party has the right to be present and that each may retain legal counsel at their own expense.
- D. Each Motion shall require that the parties attend a Mandatory Meeting with SRMT-CSEU at a date, time and location set forth in the Motion prior to the hearing to determine if an Agreement can be reached without a court hearing. In all cases the Mandatory Meeting shall be scheduled at a date no more than ten (10) days from the date of filing of the Motion.
- E. Each party will be required to complete a Financial Disclosure Form and file the forms with SRMT-CSEU no less than ten (10) days prior to the review hearing.
- F. The Motion shall indicate the date, time and location of the review hearing which shall be no more than twenty (20) days from the date of filing. A copy of the Motion, Affidavit and Financial Disclosure Form shall be sent by regular and certified mail to the respondent by SRMT-CSEU or the complainant.
  - (i) A return receipt for registered mail delivery signed by the respondent shall be returned to the Tribal Court Clerk who shall file.
  - (ii) If the mail delivery is not returned as signed, but the regular mail was not returned as undeliverable, SRMT-CSEU or the complainant shall file an Affidavit of Mailing which shall be filed in the docket with the Tribal Court Clerk and shall constitute proof of service by mail.
  - (iii) If the regular mail is returned as undeliverable, the complainant shall attempt personal service pursuant to §2.3 and §3.3 this Act.
- G. Child support orders may be modifiable for future support only.

## **13. Mandatory Meeting with SRMT-CSEU**

- A. Both parties are required to participate in a meeting with SRMT-CSEU prior to the initial hearing and attempt to reach an agreement as to the child support for the child. Both parties will be required to present the Financial Disclosure Form at the time of the meeting.
- B. SRMT-CSEU shall prepare a child support worksheet for the parties using the guidelines in this Act. Should both parties agree to the child support, the SRMT-CSEU shall prepare an Agreement for both parties to sign. The Agreement shall have the same force and effect as a Court order.
- C. If an agreement was reached by the parties resolving the modification of child support, the Agreement shall be filed in the Tribal Court and the Clerk shall be notified to take the matter off the docket.
- D. If the parties are unable to reach an agreement, or if one party refuses to participate, the review hearing shall take place. If one or both parties fail to appear at the review hearing, a Default Order may be entered.

#### **14. Initial Hearing**

- A. If the parties were unable to reach an agreement with respect to the child support and other conditions in the Mandatory Meeting, the initial hearing will be held on the date and time shown in the Notice of Motion.
- B. SRMT-CSEU or the complainant shall file an amended Child Support Worksheet with the SRMT Clerk of Court prior to the initial hearing if the amount requested has changed based on information obtained after the filing of the Motion. SRMT-CSEU shall also provide a copy of the Child Support Worksheet to both parties at least five (5) days prior to the hearing.
- C. Child support shall be based on the guidelines in §3.8-3.9 of this Act, unless a deviation in child support is found pursuant to §3.10 of this Act.

#### **15. Orders**

- A. Following a child support hearing, any Court order of support shall contain the following information:
  - (i) A statement that SRMT has jurisdiction over the child support case;
  - (ii) The amount of child support and any amount to be paid towards arrears if any exist;
  - (iii) The amount of work-related non-subsidized daycare or health insurance cost to be paid by the non-custodial party;
  - (iv) A statement regarding the circumstances under which the child support obligation will terminate;

- (v) A statement that each parent shall notify SRMT-CSEU of any change of employer or address within ten (10) days of said occurrence.
- (vi) A statement that any and all enforcement remedies available to SRMT-CSEU under this Act, will be taken should a payor become delinquent equal to one month's of child support or fail to follow the terms of the Court Order.
- (vii) An order to seek work if the non-custodial parent is unemployed or underemployed.
- (viii) That each party may request a review of the support order if there is a change in circumstances warranting a modification or once every twenty-four (24) months.

## **16. Default Orders**

- A. When the respondent fails to appear or fails to answer a Motion filed herein, the complainant or SRMT-CSEU may file a Motion, supported by an Affidavit, for a Default Child Support Order. The Tribal Court may enter a Default Child Support Order upon finding of the following:
  - (i) The Tribal Court has jurisdiction over the subject matter of the case and over the respondent;
  - (ii) That the respondent was given proper service of the Motion and proper notice of any hearings as provided for in this Act;
  - (iii) That the Motion or the recommendation of SRMT-CSEU is based on available, relevant and material financial information;
  - (iv) Establishment of the respondent's obligation, at the amount provide for in the Default Order has been determined under the guidelines and schedule based on calculation of the income provided;
  - (v) Notice of the Default Order shall be served on the respondent by the SRMT Clerk of Court via regular and certified mail.
- B. A Default Child Support order may be appealed and may only be overturned upon a showing of good cause. The respondent must show by the preponderance of the evidence that the respondent did not have proper notice, or that the SRMT lacked jurisdiction, or that it is subsequently shown that a party is not the biological parent of the child.

## **17. Payment of Child Support**

- A. Following the issuance of an order for child support or an agreement between the parties has been reached; SRMT-CSEU will file a Federal Notice of Income

Withholding and submit the Notice to the employer or other source of income of the payor.

- (i) SRMT-CSEU will be responsible for the receipting, distribution and disbursement of all child support payments pursuant to their IV-D Plan.
  - (ii) Parties will be provided with a detailed account statement, broken down by month, annually and upon request.
- B. Income Withholding Orders shall indicate the amounts to withhold and any additional amounts to repay any arrearages pursuant to the terms of the Order. The employer must submit all amounts withheld to SRMT-CSEU no later than five (5) days following the date of withholding from the income.
  - (i) The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor's disposable income available for child support. This requirement shall be so stated in the court order and any SRMT-CSEU correspondence.
- C. If the employer fails to withhold income in accordance with the terms contained in the Notice of Income Withholding, the employer may be held liable for all amounts that should have been withheld from the payor. The SRMT-CSEU has the authority and standing to initiate an action to recoup such amounts. The SRMT-CSEU Standard Operating Procedures will provide detail on when and how this will occur. No employer shall refuse to honor a Notice of Income Withholding or a party's wage withholding request issued under this Act.
- D. An employer may not discharge, refuse to employ or take disciplinary action against an employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section may subject an employer to appropriate penalties as to be determined under SRMT law or custom.
- E. SRMT-CSEU shall promptly terminate an income withholding order and provide the employer or other source of income a termination notice when there is no current child support order and all arrearages have been satisfied.
- F. Child support shall continue until the child reaches the age of twenty one (21) years, unless emancipated pursuant to a valid court order.
- G. When the child reaches the age of twenty one (21), SRMT-CSEU will file a motion of child support with the Tribal Court. A hearing will be scheduled at a date not to exceed the child's twenty-first (21) birthday.
- H. If the parties request that child support payments are not made pursuant to a Federal Notice of Income Withholding to SRMT-CSEU, the Tribal Court will take testimony on how the parties intend to keep records of the direct payments so that the paying parent is credited with making each payment. However, if the payor becomes delinquent in an amount equal to one month's child support,

SRMT-CSEU must issue a Notice of Income Withholding and submit to the employer or other source of income of the payor.

I. The SRMT CSEU will promptly refund amounts which have been improperly withheld.

J. Income shall not be subject to withholding in any case where:

(1) Either the custodial or noncustodial parent demonstrates, and the SRMT Court enters a finding, that there is good cause not to require income withholding; 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 SRMT Court.

K. 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 the SRMT CSEU Support order are at least equal to the support payable for one month

L. The SRMT CSEU will 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.

## **18. Enforcement of Child Support Orders**

A. In addition to the issuance of a Notice of Income Withholding, should a payor fail to pay his or her support pursuant to the Tribal Court Order, SRMT-CSEU may take the following enforcement actions included but not limited to:

- (i) To request the suspension or revocation any tribally issued licenses or permits, or other forms of “permission needed” licenses or permits issued by the Saint Regis Mohawk Tribe from the Tribal Council;
- (ii) To intercept gaming winnings of the payor;
- (iii) A requirement for the payor to seek work if unemployed or under-employed;
- (iv) A requirement to attend classes to achieve a high school diploma or equivalent;
- (v) An order for the payor to cooperate with SRMT-CSEU and follow any referrals made for services;
- (vi) Request the seizure and sale of any non-essential personal property from the Tribal Council;

- (vii) To report the delinquency to credit bureaus.
- B. In the event that any of the foregoing does not result in the payor making their child support obligations, the SRMT-CSEU may request assistance from other State and Tribal IV-D agencies to take any actions necessary to collect such support. Such actions may include but are not limited to:
- (i) Interception of state and federal tax returns;
  - (ii) Placement of liens on personal property (located off reservation or licensed outside of the reservation);
  - (iii) Passport denial;
  - (iv) Driver's license and professional license suspension;
  - (v) Seizures of bank and other financial accounts;
  - (vi) A finding contempt and possible incarceration.
- C. The SRMT-CSEU can seek any enforcement action available under applicable law. In the enforcement of any child support order, the following shall be exempt from execution as follows:
- (i) Supplemental Security Income (SSI); Temporary Assistance for Needy Families (TAN-F)
  - (ii) All wearing apparel of every person in the family except that only \$500 in value in furs, jewelry, beadwork and personal ornaments for the person owing the child support obligation;
  - (iii) Items of bona fide religious or cultural significance;
  - (iv) Equipment, vehicles, tools, instruments and/or other materials determined by the Court to be necessary to enable the Payor to obtain income;
  - (v) Any lands within the SRMT that are used by the Payor as their primary residence.

**SECTION IV: FOREIGN ORDERS**

**1. Petition-Registration for Enforcement of Foreign Order**

- A. The SRMT Court will recognize any valid child support order that is properly registered with the Tribal Court pursuant to the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. §1738B). All requests from foreign jurisdictions shall be referred to SRMT-CSEU for processing under this section.
- B. SRMT-CSEU shall prepare a petition and proposed order with the Tribal Court requesting registration of the foreign child support order. The Petition shall include:

- (i) The name of the petitioner;
  - (ii) The name of the payor;
  - (iii) Statement that upon information and belief the payor is an enrolled member or employee of the Saint Regis Mohawk Tribe;
  - (iv) The name of the child and other children that the payor may have child support obligations to;
  - (v) The amount of arrears;
  - (vi) A copy of the most recent court order that the foreign jurisdiction is seeking to enforce;
  - (vii) The record of payment over the past twelve months;
  - (viii) The person or entity that should be paid if the petition is granted;
  - (ix) Any other relevant information that will aid the court.
  - (x) Identification of what child support enforcement services are being requested.
- C. Service shall be made by SRMT-CSEU of the registration action by sending a copy of the petition to the payor. Included in the notice shall be the right of the payor to object in writing to the registration within twenty (20) days of the notice. The only allowable objection to the recognition and enforcement of a judgment is a mistake of fact.

## **2. Enforcement of Foreign Judgment**

- A. A judgment shall be considered enforceable after it is signed by the Judge as a Tribal Court Order and twenty (20) days have lapsed and no objection by the payor has been received.
- B. The Tribal Court Order shall not allow any modification of the underlying child support order or otherwise change the payment percentage, or other payment amount in the underlying child support order.
- C. If applicable, the SRMT-CSEU shall issue a Federal Notice of Income Withholding and submit the Notice to the employer or other source of income of the payor.
- (i) Income withholding orders shall indicate the amounts requested to be withheld and any additional amounts to repay any arrearages pursuant to the terms of the order. The employer must submit all amounts withheld to the SRMT-CSEU no later than five (5) days following the date of withholding from the payer's income.

- (ii) The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor's gross income.
- (iii) An employer may not discharge, refuse to employ or take disciplinary action against an employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section may subject an employer to appropriate penalties as to be determined under SRMT law or custom.
- (iv) All other provisions of this Act shall be followed with respect to enforcement of the order.

**SECTION V: LOCATION OF PARENTS AND ASSETS**

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

**SECTION VI: APPEALS**

Any party to a child support action may file an appeal of a Tribal Court Order under the Rules of Civil Appellate Procedure, Tribal Council Resolution 16-2008.

**SECTION VII: ACT REVIEWS**

This Act shall be reviewed no less than once every four years.

**SECTION VIII: SEVERABILITY**

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

**SECTION IX: SOVEREIGN IMMUNITY NOT WAIVED**

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

**SECTION X: AMENDMENT**

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

**SECTION XI: REPEALER**

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

**SECTION XII: AUTHORITY**

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

**SECTION XIII: EFFECT**

This Act shall take full effect upon Notice of Receipt of Comprehensive Tribal IV-D status.