Saint Regis Mohawk Tribe

Chief Michael Conners
Chief Eric Thompson
Chief Beverly Cook
Sub-Chief Agnes Jacobs
Sub-Chief Benjamin Herne
Sub-Chief Kenneth Jock

TRIBAL COUNCIL RESOLUTION
2019 - 49

APPROVE AMENDMENT TO THE SAINT REGIS MOHAWK TRIBE FAMILY SUPPORT ACT

WHEREAS, the Saint Regis Mohawk Tribal Council (the "Tribal Council") is the duly recognized governing body of the Saint Regis Mohawk Tribe (the "Tribe") and is responsible for the health, safety, education and welfare of all community members; and

WHEREAS, in TCR 2013-57 the Tribal Council adopted the Family Support Act (the "Act"), as amended in TCR 2014-05 and TCR 2016-92; and

WHEREAS, the Saint Regis Mohawk Tribe Child Support Enforcement Unit ("SRMT CSEU") working in conjunction Tribal Council recommends an amendment to the Family Support Act to ensure the basic health and financial needs of Mohawk children are met in a timely and efficient manner when parents no longer live together; and

WHEREAS, the SRMT CSEU has summarized the proposed changes to the Act below:

- Section I. B. 3. Added who may attend Child Support Court Proceedings;
- Section II. C. 2. and 3. clarified process for service of child support documentation;
- Section V. D. 1. Established upper limit to combined parental income for Child Support Guidelines;
- Section V. F. allows CSEU to provide updated Child Support Worksheet to Tribal Court in the event that new information is received after the initial CS Worksheet has been filed;
- Section V. I. (D), Foreign Orders, added Motion to Transfer; and

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WHEREAS, the Tribal Council has determined that these amendments are necessary and are in the best interests of Tribal members.

NOW, THEREFORE, BE IT RESOLVED:

1. The Saint Regis Mohawk Tribal Council hereby approves the amended Family Support Act, as annexed hereto, effective upon the date of this Resolution; and

2. This Resolution hereby supersedes TCR 2016-92.

SAINT REGIS MOHAWK TRIBAL COUNCIL

Michael Conners Tribal Chief	Eric Thompson Tribal Chief	Beverly Cook Tribal Chief

CERTIFICATION: This is to certify that the Saint Regis Mohawk Tribal Council pursuant to the authority vested therein duly passed the above resolution.

Summer Bero — Kentenha / October 9, 2019

Summer Bero, Tribal Clerk — Date

SAINT REGIS MOHAWK TRIBE
FAMILY SUPPORT ACT

SECTION I: GENERAL

A. Purpose and Authority

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

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

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

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

B. Procedure

1. Where the method of procedure in any proceeding in which the Saint Regis Mohawk Tribal Court has jurisdiction under this Act is not prescribed, the procedure shall be in accord with the Tribe's Rules of Civil Procedure to the extent they are suitable to the proceeding involved.

2. If there is any conflict between the application of any provision under this Act or any other provision of tribal law, this act governing the proceeding shall control.

3. Any child support court proceeding shall be limited to the parties, legal counsel, court staff, CSEU staff, any witness for testimony, and SRMT Tribal Police. At the Judge's discretion, he/she may allow other people to attend.

C. Definitions

1. "Acknowledgment of Paternity" means the putative father of a child born out of wedlock and the biological mother of the child may formally acknowledge paternity by executing an Acknowledgment of Paternity or by signing a birth certificate.

2. "Arrears" means the amount of money the payor has not paid pursuant to the most recent

child support court order. Arrears shall not include birthing expenses imposed by a state or another Tribe.

3. "Child" or "Minor Child" means the natural or adopted child under the age of twenty-one (21) years old.

4. "Clerk" means the Clerk of the Saint Regis Mohawk Tribal Court.

5. "Custodial Parent" (CP) means the person who has primary physical placement of the child(ren), whether by voluntary agreement or by Court Order. When a child(ren)'s placement is split evenly between parties meaning 50/50 then the parent who earns less income is deemed the custodial parent for child support purposes.

6. "Financial Disclosure Form" means a form that each party to a child support request must fill out to determine his/her child support obligation. The form shall be promulgated by the SRMT-CSEU and disseminated to each party with any child support petition or paternity petition that requests child support.

7. "Guardian" means anyone who has (a) child(ren) living with him/her for which he/she is providing financial support. The term can include any relative of the subject child(ren) even if there is no Court order establishing a guardianship.

8. "Gross Income" means the income of a parent before any permitted deductions are made.

   (a) Gross income shall include the following:

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

   (b) Gross income shall not include:

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

9. "Imputed Income" means the amount of income that shall be assigned to a party when calculating child support. This calculation shall be used when a party's income be unknown, if a party is unemployed or under-employed, or if a party refuses to provide

sufficient information to determine his/her income.

10. "Judge" means a Saint Regis Mohawk Tribal Court Judge.

11. "Non-Cash Support" means non-cash child support provided to a family in the nature of goods and/or services rather than in cash. Non-cash support directly contributes to the needs of a child. Non-cash support may include services such as making repairs to automobiles or a home, the clearing or upkeep of property, providing a means for travel, providing needed resources for a child's participation in Tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value. Non-Cash support is only allowable when it is mutually agreed upon by both the non-custodial parent and the custodial parent.

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

13. "Parent" means the biological or adoptive person of a minor child.

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

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

16. "Putative Father" means the alleged father of a minor child.

17. "Process Server" means a person who in the regular course of his/her business serves the following, including but not limited to, writs, warrants, subpoenas or petitions. When service is effectuated outside the United States of America, the SRMT-CSEU shall utilize a Process Server who meets all of the requirements of a process server within his/her jurisdiction and any such service shall be deemed proper service under tribal law.

18. "Release of Information Authorization" is required for each party when child support is requested.

19. "Social Security Disability" (SSD) means disability benefits paid to an adult, and certain members of his/her family, provided he/she has worked long enough and has a medical condition that has prevented him/her from working or is expected to prevent him/her from working for at least twelve (12) months or end in death.

20. "Supplemental Security Income" (SSI) means benefits paid to a disabled adult and his/her children with limited income and resources and exempt from child support garnishment.

21. "Social Security Retirement" (SSR) means retirement benefits paid to an adult, and certain members of his/her family, if he/she is covered under Social Security.

D. Establishment of Child Support Enforcement Unit

1. The Saint Regis Mohawk Tribe's Child Support Enforcement Unit ("SRMT-CSEU") is hereby established. The SRMT-CSEU is the designated Tribal agency identified in the approved Tribal Plan under Title IV-D of the Social Security Act, and is responsible for the administration and operation of the Tribal IV-D plan. Pursuant to its Tribal IV-D plan, the SRMT-CSEU does not represent either party in actions arising under this Act. The SRMT-CSEU is deemed to represent the best interests of the children and the Tribe.

2. The SRMT-CSEU is responsible for receiving, processing, and disbursing payments, and for maintaining a record of payments, in all cases in which the Court orders or parties agree that payments for child support be made through a child support enforcement unit.

3. The SRMT-CSEU shall also provide child support enforcement services to children and families and is authorized to seek:

   (a) Location of obligors or their assets and obliges;
   (b) Determination of parentage;
   (c) Establishment or modification of child support; or
   (d) Enforcement of support orders or laws relating to the duty of support.

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

5. The SRMT-CSEU staff will report to the Saint Regis Mohawk Tribe's Community Family Services Director or his/her designee, and is subject to the Saint Regis Mohawk Tribe's personnel and other administrative policies.

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

SECTION II. TRIBAL COURT

A. Jurisdiction

1. The Saint Regis Mohawk Tribal Court shall have subject matter jurisdiction over the proceedings and law set forth in this Act.

2. The Saint Regis Mohawk Tribal Court shall have personal jurisdiction over a party in paternity and child support matters when:

a. a party or the child is an enrolled member or eligible to become a member of the Saint Regis Mohawk Tribe;
b. a party or the child resides or is domiciled within the territory of the Saint Regis Mohawk Tribe;
c. the non-Indian or non-member party has consented to the jurisdiction of the Tribe by:
    i. express contractual consent;
    ii. residing or domiciling within the Tribe's reservation;
    iii. being employed as a contract, temporary, or regular employee of the Tribe or a tribal business located on the reservation;
    iv. engaging in consensual relations or a domestic relationship with a tribal member on the reservation;
    v. or participating in any other substantial activity within the territorial jurisdiction of the SRMT that impacts the political integrity, the economic security, or the health and welfare of the Tribe and its members.

B. Summons

1. If a complainant does not utilize the services of the SRMT-CSEU, then the complainant must file the original petition along with a Summons with the SRMT Court Clerk and a copy of the petition with the SRMT-CSEU. If SRMT-CSEU files the complaint on behalf of a party, then the agency shall file the original petition along with a Summons with the SRMT Court Clerk. The Summons shall be on a form approved by the Court.

2. The Summons shall include a time and date for Mediation. Mediation shall take place within thirty (30) days of the filing of the Summons and Petition.

3. The date and time of the initial court appearance shall be left blank for the Clerk of the SRMT Court to complete. The date for the initial court appearance, should an agreement not be reached at Mediation, shall be no more than 60 days from the date of the filing of the Summons and Petition.

4. The Summons shall also contain the following information:

    a. Notification of the requirement that both parties will attend Mediation with SRMT-CSEU prior to the initial court appearance.

    b. Notification that, if the respondent does not appear on the date, time and location of the initial court appearance as stated on the Summons, a Default Judgment may be entered.

    c. Notification that each party may retain legal representation at his or her own expense;

    d. Notification that the respondent may file an answer to the claims in the Petition by

filing a written answer with the Tribal Court and SRMT-CSEU within twenty (20) days of the service of the Summons and Petition.

e. If it is a SRMT-CSEU case, notification that each party must keep SRMT-CSEU advised of his/her current address and employer. Each party must advise the SRMT-CSEU within ten (10) days of changing his/her physical address or employment.

C. Service

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

2. Both the Petition and Summons shall be served on the respondent as outlined in the Tribe's Rules of Civil Procedure as amended or by United States Postal Service certified mail, return receipt requested. If neither method of service is possible then publication may be used as an alternative method.

3. Upon effectuating personal service, the person serving the pleadings shall file an Affidavit of Service, indicating that he or she has served the respondent or a person of suitable age and discretion at respondent's last known residence or place of employment followed by a mailing at respondent's last known residence or place of employment, the date and place of service. Any affidavit of service shall comply with the requirements of the SRMT's Rules of Civil Procedure TCR 2008-20 or as amended. . When utilizing certified mail return receipt requested for service, the return receipt shall be proof of service once it is filed with the Clerk of the SRMT Court without the need for an affidavit of service.

4. In the event that the respondent cannot be served personally or by certified mail, SRMT-CSEU may apply to the Court to effectuate service by publishing the Summons in a newspaper nearest to the last known location of the respondent for two consecutive publication dates at least 30 days before the initial court appearance or any other court appearance. A copy of the published notice shall be filed with the Clerk of the SRMT Court as proof of service.

5. If the SRMT-CSEU was not the party filing the Summons and Petition, the Clerk of the SRMT Court shall provide a copy of the filed documents to the SRMT-CSEU.

D. Default Judgments

1. At an initial court appearance or for any other scheduled court appearance where the respondent fails to appear, the SRMT Tribal Court may issue a Default Judgment upon finding the following:

    a. That the Tribal Court has jurisdiction over the subject matter of the case and over the respondent;

b. That the respondent was given proper service of the Petition and Summons as provided for in this Act;

c. That the petition before the court is based on credible evidence; and

d. That the respondent has failed to appear or to answer the petition.

2. The Default Judgment shall be served on the respondent as provided by the Court or as directed by the Court.

3. A Default Judgment may be reopened upon a showing for good cause which can include, but is not limited to, the respondent not having proper notice, or that the SRMT Tribal Court lacks jurisdiction, or that it is subsequently shown that a party is not the biological parent of the child.

SECTION III – MEDIATION

A. Mediation with the SRMT-CSEU

1. Both parties will participate in mediation with SRMT-CSEU prior to the initial court appearance as provided for in the Act, in an attempt to reach an agreement on the underlying petition without court involvement. The date and location of Mediation shall be provided in the Summons.

2. During mediation, the SRMT-CSEU shall discuss with both parties the options for settling the matter without litigation. The options for settlement are as follows:

   a. For a paternity petition:

      i. The right to voluntarily acknowledge paternity without genetic testing and without resolving the issue of child support. The SRMT-CSEU shall provide the parties with the acknowledgment form for execution and shall file said acknowledgment with the proper state agency managing the vital records in the state in which the child was born. If the acknowledgment form is not readily available, SRMT-CSEU shall schedule a date and time for the parties to return to execute the acknowledgment. For a child born outside of the United States, the SRMT-CSEU shall provide the parties with the appropriate forms necessary to acknowledge paternity. Such forms shall then be filed with the appropriate agency where the child was born.

      ii. The right to request genetic testing. If testing is requested, then the SRMT-CSEU shall obtain genetic test samples, if possible, on that day. If the parties and child cannot participate in genetic testing that day, then a date and time for the parties to be tested shall be agreed upon.

iii. The right to acknowledge paternity and settle the child support issue by signing an Agreement that sets forth the terms of the settlement which includes an acknowledgment that the putative father is the biological father based on his statements, and incorporating terms of child support, medical support and fees (if any). Both parties shall sign the Agreement and the Agreement shall be submitted to the Tribal Court with a request that the Agreement be incorporated into a Court order. The parties' signed agreement shall take effect upon signing; or

iv. The right to deny paternity and request a tribal court hearing. If a hearing is requested, the hearing shall be held on the date and time indicated on the initial Summons served on the party.

b. For child support:

i. The parties can sign an Agreement setting forth the amount of basic child support, child support add-ons like medical expenses and child care expenses, if appropriate, arrears and any other matter related to child support. The SRMT-CSEU shall submit the signed Agreement to Tribal Court to be incorporated into a Court order. The parties' signed agreement shall take effect upon signing.

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

B. Lack of Agreement

1. While attendance at mediation is desired and encouraged no party may be penalized for failing to participate. If one party refuses to participate in Meditation, the initial court appearance as set forth in the Summons shall take place.

2. If the parties are unable to reach an agreement after mediation, the initial court appearance as set forth in the Summons shall take place.

SECTION IV: PATERNITY

A. Children Born During a Marriage

1. A child born during a marriage is presumed to be the child of the husband.

2. A putative father who is not the mother's husband may challenge the presumption of the husband's paternity and file a paternity petition on the basis of the child's best interest or on the basis of the husband's lack of access.

3. The SRMT-CSEU may challenge the presumption of paternity due to the husband's lack of access and may file a paternity petition.

B. Children Born Outside of a Marriage

1. The paternity of a child born outside of a marriage may be established through: (1) genetic testing, (2) as agreed between the parties, (3) as ordered by SRMT Tribal Court; (4) through an acknowledgment of paternity or (5) a birth certificate if the jurisdiction in which the child is born establishes paternity through a birth certificate.

2. A parent can revoke an acknowledgment of paternity within sixty (60) days of signing. A parent can petition the SRMT Court to revoke an acknowledgment of paternity if more than sixty (60) days has passed since signing it, but only on the grounds of fraud, duress or material mistake of fact.

C. Actions for Establishment of Paternity

1. Any interested party, including the biological mother, the putative father, the child's legal guardian, the child, or the SRMT-CSEU on behalf of the Tribe by assignment of interest from the custodial parent, may petition the court for the determination of the paternity of a child. No child support can be ordered unless paternity has been established.

2. Establishment of paternity under this Act has no effect on Tribal enrollment, membership or eligibility for membership. Membership determinations are separate and distinct from the establishment of paternity. Any person wishing to file a membership application may do so with the Tribal Clerk of the SRMT.

D. Establishment of Paternity

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

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

    b. The names, dates of birth, tribal affiliation (if known) and addresses of the biological mother and the putative father(s) in the action;

    c. If there is a protective order in place, the address of the affected party and of any children shall be redacted from all court documents;

    d. If there is reason to believe that emotional or physical harm may be inflicted should the whereabouts of a party or a child be disclosed, the petitioner shall state the reason and request the Court to issue an Order redacting the personal information from all court documents that respondent can access;

    e. A statement regarding the father's access to the mother prior to the child's conception or birth;

f. A statement indicating if there has ever been any other proceeding including any state court or other tribal court, involving the child or children in the action for paternity, custody, placement or child support; and

g. A statement indicating whether the custodial party will be seeking a child support order if paternity is established; and

h. A copy of any order entered by a state court or other tribal court.

2. A paternity petition shall contain the following notices:

   a. that if the parties agree, they have the right to voluntarily acknowledge paternity by executing an Acknowledgment of Paternity at Mediation or at the initial court appearance;

   b. that either party can request genetic testing if paternity is contested by either party. The party requesting genetic testing, however, shall bear the burden of paying for it unless he/she can demonstrate why he/she should not pay for it;

   c. that if child support is requested, it shall be determined using the child support guideline calculation;

   d. that if paternity is established and child support is requested, that support shall commence from the date that paternity is established.

3. An Answer which denies paternity may rely on the following

   a. The putative father was sterile or impotent at the time of conception; and/or

   b. The putative father and the biological mother did not have sexual intercourse at the time of conception; or

   c. That the mother was married to someone else at the time of the child's birth; or

   d. The putative father is not the biological father of the child.

E. Initial Appearance for Paternity

1. If the putative father and the biological mother are willing to voluntarily acknowledge paternity without the use of genetic tests, the Tribal Court shall issue a final order establishing the putative father as the legal father of the minor child.

2. If paternity is contested, the SRMT Tribal Court shall order that genetic testing be performed within ten (10) days of the hearing. The Order shall contain the date, time and location of the genetic testing and shall comply with the requirements of this Act.

3. Upon proper notice in the Summons, if one or both parties fail to appear at the initial court appearance, a Default Order of paternity shall be entered unless the party who failed to appear requested that the appearance date be changed or notified the Court that he/she was unable to attend the hearing for good cause. A party may only request one change to the court date or be excused once for good cause. Thereafter, failure to appear at a rescheduled court date shall result in an automatic default judgment.

F. Circumstances Where Paternity May Not Be Established

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

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

G. Genetic Testing

1. In ordering genetic testing, the SRMT-CSEU or the SRMT Tribal Court shall ensure that:

    a. Genetic test samples are collected by certified buccal swab collectors at the SRMT-CSEU;

    b. Genetic testing samples are provided to an accredited genetic testing laboratory with a notice to where to send the results;

    c. Results should be sent to the SRMT-CSEU if the parties attended Mediation and wish to resolve the matter without further litigation. If the matter is pending in Tribal Court the results shall be sent to it;

    d. Once Tribal Court has received genetic testing samples it shall notify the parties and notify the parties of the next court date. Once SRMT-CSEU has received the results, it shall notify the parties and notify them of a new Mediation date;

    e. If genetic tests show that the putative father is the biological father by a percentage of 99.0% or higher, paternity is presumed and the putative father shall be adjudicated the legal father;

f. Whenever the results of the genetic tests exclude the putative father as the biological father of the child, this evidence shall be conclusive evidence of non-paternity and the Tribal Court shall dismiss the action unless it finds good cause in the child's best interest to allow the matter to go forward;

g. If the paternity action was brought by the child's biological mother but she refuses to submit herself or the child to the genetic tests, the action shall be dismissed; and

h. Establishment of paternity under this section has no effect on Tribal enrollment or membership.

H. Final Paternity Hearing

1. If paternity was not established by voluntary acknowledgment at the initial court appearance, and a genetic test was ordered, a final paternity hearing shall be held where the results of the genetic testing shall be presented unless the parties agree to the establishment of paternity. The hearing shall be held no later than ten (10) days after the receipt of the genetic testing results.

2. Upon the Tribal Court's receipt of the genetic test results, it shall advise the parties of its receipt of the results. The SRMT Court Clerk shall then schedule the matter for a hearing.

3. If the genetic tests results indicate a probability of 99.0% or higher, the SRMT-CSEU shall file a Proposed Order, that:

   a. Finds the putative father is the biological father based on genetic testing

   b. Sets conditions for the repayment of any fees or costs associated with the paternity action including, but not limited to, genetic testing, service of process and modification of the official birth record.

4. If genetic tests establish that there is a probability of 98.9% or lower and there has been no showing by the preponderance of the evidence that the putative father named in the Petition is not the biological father, the SRMT-CSEU shall file a Proposed Order that the case be dismissed unless the Court determines there is good cause in the child's best interest to move forward with the hearing.

SECTION V: ESTABLISHMENT OF CHILD SUPPORT

A. Establishment or Modification of Child Support

1. A parent, child, custodial parent, the child's legal guardian, or the SRMT-CSEU on behalf of the Tribe, may petition the court for the establishment of a child support order.

No child support can be ordered unless paternity has been established.

B. Petition for the Establishment of Child Support

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

2. The petition for establishment of child support shall contain the following information:

    a. The name, date of birth and tribal affiliation (if known) of the child;

    b. The names, dates of birth, tribal affiliation (if known) and addresses of the parents in the action.

    c. If there is a protective order in place, the address of the affected party and of any children shall be redacted from all court documents; or if there is reason to believe that emotional or physical harm may be inflicted should the whereabouts of a party or a child be disclosed, the petitioner shall state the reason and request the Court to issue an Order redacting the personal information from all court documents that respondent can access;

    d. The amount of the proposed child support requested pursuant to the guidelines provided for in this Act.

    e. A statement indicating how health insurance and/or medical support is to be provided, whether there are any outstanding medical bills, and whether there are any extraordinary medical expenses for the child(ren);

    f. A statement indicating whether there are any work-related child care expenses;

    g. A statement indicating if there has ever been a separate proceeding in another jurisdiction for paternity, custody, placement, or child support involving the subject child(ren);

    h. A copy of any order entered by another jurisdiction for paternity, custody, placement, or child support;

    i. A statement as to the current custody, placement and parenting time of the child(ren);

    j. An official birth certificate, acknowledgment of paternity or court order indicating that the father is named as the legal father of the child or children. A copy of either the official birth certificate, court order or acknowledgment of paternity shall be attached to the petition. If the parties were married at the time of the child(ren)'s

birth, then such a statement shall be included in the petition.

C. Financial Disclosure

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

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

3. Each party to the action shall complete a Release of Information Authorization which shall allow SRMT-CSEU to obtain additional financial records and to confirm any information provided by a party.

4. The following SRMT entities are required to release information to SRMT-CSEU for the purpose of establishing, modifying or enforcing a child support order:

    a. All departments of SRMT;

    b. Akwesasne Housing Authority and Community Development;

    c. SRMT Tribal enterprises; and

    d. Any person or entity doing business within the territory of the Saint Regis Mohawk Tribe.

5. If a party declines to participate in Mediation, or otherwise fails to provide the required financial disclosure as outlined above, the Court and SRMT-CSEU will utilize imputed income to determine his/her child support obligation.

6. Financial information shall be kept confidential and full disclosure of information shall be available only to the Court and the SRMT-CSEU. When any financial documents are filed with the Court to be placed in the public docket, the Court shall redact all personal and confidential information such as social security numbers, employee identification numbers, tax identification numbers and all other identifying data. The Court shall order the parties to keep confidential any financial information obtained during the hearing.

7. Any financial information provided to SRMT-CSEU or the Court shall be used for the sole purpose of establishing, modifying, or enforcing child support.

D. Child Support Guidelines

1. Every four (4) years, SRMT-CSEU shall prepare a Child Support Standards Chart (CSSC) guideline which shall serve as a guide to parties and the SRMT Court in determining the basic child support obligation. The chart shall be broken down by annual income ranges and by the number of children in a case. It shall establish the upper limit of the combined parental income. To receive an amount of child support above that upper limit the parents can mediate such an amount or the Court can deviate based on the child's needs.

2. A parent's child support obligation shall be established utilizing the annual gross income of the CP and NCP. If a parent's income is unknown or if the parent is unemployed, imputed income may be used when calculating the child support.

3. Child support is based on a percentage of income determined by the number of children as follows:

    a. 17% for one child;
    b. 25% for two children;
    c. 29% for three children;
    d. 31% for four children;
    e. No more than 35% for five or more children.

4. Child support obligations may be impacted by a "Self-Support Reserve" (SSR) which shall be one hundred thirty-five percent (135%) of the poverty income guidelines amount for a single person as reported by the Federal Department of Health and Human Services and shall be part of the child support calculation.

5. Child support obligations shall be based on the percentages contained in this Section and shall be represented as a whole dollar amount in the Court Order, unless the Court finds good cause to deviate pursuant to Section V(F)(4) from the SRMT CSSC or based on the child's needs.

E. Child Support Calculations

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

    a. Determine Total Gross Annual Income of each parent. Total Gross Income is determined by totaling all funds received from any source before taxes or other expenses of any kind are taken out. Total Gross Annual Income does not include public assistance payments or child support received or paid on behalf of children of other relationships

    b. Determine Total Annual Deductions of each parent. Total Annual Deductions is determined by totaling all deductions from income which

include federal, state, and local taxes, state unemployment and disability taxes, and social security taxes, union dues but it does not include deductions such as voluntary retirement contributions and transportation deductions.

c. Calculate Annual Net Income of each parent. Annual net income is calculated by subtracting the total annual deductions (b) above from the total gross annual income (a) above.

d. Calculate Combined Annual Net Income. Combined Annual Net income is determined by totaling the annual net income of the Custodial Parent's (CP) and Non-Custodial Parent's (NCP) annual net incomes with the maximum outlined in the CSSC of the Combined Annual Net Income.

e. Determine the Basic Child Support Obligation. To determine the Basic Child Support Obligation, multiply the Combined Annual Net Income by the appropriate child support percentage listed in the CSSC.

f. Determine Proportional Share of Combined Annual Net Income. To determine each parent's proportional share of combined annual net income in order to calculate their proportional share of the basic child support obligation, divide each parent's annual net income by the total combined annual net income.

g. Calculate Basic Child Support Obligation without consideration of low-income limitations. To calculate each parent's Basic Child Support Obligation without considering low income limitation, multiply the basic child support obligation by each parent's proportional share of combined annual net income.

h. Determine Low Income Limitations. Low income limitations are determined by utilizing the current Federal Poverty Level (FPL) and the Self-Support Reserve (SSR) as reported by the United States Department of Health and Human Services. These limitations are calculated by subtracting each parent's basic child support obligation from their annual net income and then comparing the result with the current FPL and SSR. If the amount falls between the FPL and the SSR, then the presumptive amount will be $25.00 per month ($300.00 annually). If the amount falls below the FPL, then the presumptive amount will be $0.00. If the amount is greater than the SSR, then the low-income limitations do not affect the obligation and the presumptive amount will be the Child Support Obligation as calculated.

i. Determine Social Security Offset. If a child is receiving Social Security cash benefits as a result of the parent's disability, the amount owed for child support shall be reduced by the amount of the child's monthly cash benefit. Should the child's monthly cash benefit exceed the amount of the monthly

child support obligation there shall be no credit against any child support arrears.

j. Offset for other child support obligations. If a parent has more than one child support case, any prior child support obligation shall be deducted from his or her gross income.

k. Amount above maximum of CSSC. If the Combined Annual Income is above the statutory amount of the CSSC then the NCP is responsible for the Basic Child Support Obligation and whatever other amount above the statutory amount as agreed between the parents or as determined in the Tribal Court's discretion utilizing the factors from Section V(E)(4).

2. Medical Costs. Medical support may be considered if one or both parents have accessible and affordable health coverage available for the child at a reasonable cost. Reasonable cost is defined as being no more than 5% of a parent's gross income. If a child is eligible for Indian Health Service, the Tribal Court will not establish a medical support order. However, the Tribal Court may require parents to share in the child care expenses and/or extraordinary medical expenses not covered under any policy, plan, or Indian Health Service (IHS).

3. Non-Cash Support. Non-cash support may be considered by the Tribal Court in lieu of cash child support only when agreed upon by both parties.

   a. In determining whether to permit non-cash support, the Tribal Court shall consider the current circumstances of the parties including whether a non-custodial parent is able to obtain employment, and the availability of other financial resources to meet the current cash child support obligation.

   b. If a low-income limitation is determined, non-Cash Support may be considered per the SRMT Child Support Guidelines.

   c. Non-cash support may not be ordered to repay assigned debts owed to a state or tribal jurisdiction.

   d. All non-cash support orders must describe the type of non-cash support contribution and the SRMT Court must assign a dollar value to the contribution.

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

F. Child Support Establishment

1. Hearing. If the parties are unable to reach an agreement with respect to the child support and other conditions in Mediation, the hearing shall be held on the date and time shown in the Summons and Petition. At the initial appearance, the Court may enter a temporary based upon the Judge's discretion.

2. Child Support Worksheet. Prior to the parties' appearance the SRMT-CSEU shall file the Child Support Worksheet. After submitting such worksheet, if the SRMT-CSEU receives new information that impacts the child support obligation requested then the SRMT-CSEU shall file a new Child Support Worksheet with the Court with notice being provided to the parties that a new worksheet has been filed. Acceptable forms of notice include a letter to the parties or an email to the parties as long as there is proof of receipt.

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

    a. A statement that SRMT has jurisdiction over the child support case and personal jurisdiction over the respondent;

    b. The amount of child support and any amount to be paid towards arrears, if any exist. Child support arrears may be ordered by the Tribal Court beginning from the date paternity was determined or the date in which the child support petition was filed;

    c. The amount of work-related non-subsidized daycare or health insurance cost to be paid by the NCP;

    d. A statement regarding the circumstances under which the child support obligation will terminate;

    e. A statement that each parent shall notify SRMT-CSEU of any change of employer or address within ten (10) days of said occurrence;

    f. A statement that if a payor becomes delinquent in an amount equal to one month's child support or fails to follow the terms of the Court Order, any and all enforcement remedies available to SRMT- CSEU under this Act shall be taken;

    g. An order to seek work if the NCP is unemployed or underemployed;

    h. That each party may request a review of the support order once every twenty-four (24) months or sooner if there is a change in circumstances warranting a modification;

    i. If the parties request that child support payments not be made to the SRMT-CSEU

pursuant to a Federal Notice of Income Withholding, the Tribal Court will take testimony on how the parties intend to remit payments. If either the CP or NCP demonstrates that there is good cause not to require income withholding, the Court may enter such a finding. However, the order also shall state that if the payor becomes delinquent in an amount equal to one month's child support SRMT-CSEU may issue a Notice of Income Withholding and submit it to the employer or other source of income of the payor; and

j. A referral to any program the Court deems just and proper.

4. Deviation. There is a rebuttable presumption that the worksheet calculations are correct to support the requested award of child support. However, the Tribal Court has discretion to deviate from the child support calculation based on substantial evidence that the calculation would be harmful to the parent. If the Court decides to deviate from the calculations, the Court shall state in a written order the amount that would have been ordered had the guidelines been followed and the Court must justify such deviation. The Court may only rely on one or more of the following reason(s):

   a. The financial resources of the child(ren) and or parent(s) require it;

   b. One of the parents is a seasonal employee of a trade or profession;

   c. The party has a verified and documented legal financial obligation to a person other than the child, to make payments, such as extraordinary medical or educational expenses;

   d. The party has verified and documented extraordinary travel expenses incurred in exercising the right to periods of physical placement or visitation;

   e. The party has verified and documented extraordinary travel expenses incurred to secure employment;

   f. The best interests of the child including physical, mental and emotional needs and the child's educational needs;

   g. The NCP already provides for the child's needs, without a child support order including but not limited to, shelter, food, and extracurricular activities. The NCP shall provide an affidavit attesting to this claim with supporting affidavits from school officials, social service workers, employers, and any other source that can substantiate the claim; or

   h. An agreement by the parties for a deviation.

5. Default Order. When the respondent fails to appear or fails to answer a Petition filed herein, the Tribal Court shall enter a Default Child Support Order pursuant to Section II D.

    a. In issuing the Default Order, the Court must also find that the Petition or the recommendation of SRMT-CSEU is based on available, relevant and material financial information and the respondent's child support obligation, at the amount provided for in the Default Order, has been correctly determined under the guidelines and schedule based on calculation of the income provided or based upon the child(ren)'s needs.

    b. The Default Order shall be served on the respondent by the Tribal Court Clerk per the Service requirements at Section II C.

    c. A Default Child Support order may be reopened upon motion of the party and such motion to reopen shall be liberally granted for good cause.

6. Modification of Child Support Determination. Any party to an action may request a child support review from SRMT-CSEU to determine if there has been a substantial change in circumstances since the last order for child support or if the child support order has not been reviewed for twenty-four (24) months or more. A substantial change in circumstances includes, but is not limited to, a change in annual income of 15% or a change in the actual residence of a child(ren) has changed. If a modification is justified, the SRMT-CSEU shall file a petition for modification of child support. The petition shall be subject to the same procedures as an initial petition for child support including the requirement for Mediation, a worksheet calculation, and a court hearing to review the petition.

7. Termination of Child Support. Child support shall continue until the child reaches the age of twenty-one (21) years, unless emancipated pursuant to a valid court order. When the child reaches the age of twenty-one (21), the SRMT-CSEU shall file a motion with the Tribal Court to request the termination of any child order.

G. Payment of Child Support

1. SRMT-CSEU will be responsible for the receipting, distribution and disbursement of all child support payments pursuant to their IV-D Plan.

2. After an agreement is reached between the parties or the issuance of an order for child support, SRMT-CSEU, if appropriate, will file a Federal Income Withholding Order/Notice for Support (IWO) (Form # OMB0970-0154) and submit to the employer or other source of income of the payor.

3. An IWO shall indicate the amounts to withhold and any additional amounts to repay any arrearages pursuant to the terms of the Order. The employer must submit all amounts withheld to SRMT-CSEU no later than five (5) days following the date the income was withheld.

4. The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor's disposable income available for child support. For the purpose of calculating the amount of income subject to garnishments, Disposable Income means an individual's compensation (including salary, overtime, bonuses, commission, and paid leave) after the deduction of health insurance premiums and any amounts required to be deducted by law. Amounts required to be deducted by law may include federal, state and local taxes, state unemployment and disability taxes, social security taxes, and other garnishments or levies, union dues, but does not include such deductions as voluntary retirement contributions and transportation deductions. This requirement shall be so stated in the court order and any SRMT-CSEU correspondence.

5. If the Court has not ordered income withholding, the income of the NCP shall become subject to withholding, at the earliest, on the date when the payments which the NCP has failed to make are at least equal to the support payable for one month. In that case, SRMT-CSEU shall issue a Notice of Income Withholding and submit it to the employer or other source of income of the payor.

6. No employer shall refuse to honor a Notice of Income Withholding or a party's wage withholding request issued under this Act. If the employer fails to withhold income in accordance with the terms contained in the Notice of Income Withholding, the employer may be held liable for all amounts that should have been withheld from the payor. The SRMT-CSEU has the authority and standing as the Tribal agency with authority to enforce this Tribe's interest in child support, to initiate an action to recoup such amounts. The SRMT-CSEU Standard Operating Procedures will provide detail on when and how this will occur.

7. An employer may not discharge, refuse to employ or take disciplinary action against an employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section may subject an employer to appropriate penalties as to be determined under SRMT law or custom.

8. When there is no current child support order and all arrearages have been satisfied, the SRMT-CSEU shall promptly terminate an Income Withholding Order/Notice for Support and provide the employer or other source of income, a termination notice.

9. Parties will be provided with a detailed account statement, broken down by month, annually and upon request. The SRMT-CSEU will promptly refund amounts which have been improperly withheld.

10. The SRMT-CSEU shall allocate withheld amounts across multiple withholding orders to ensure that withholding occurs for each case and does not result in any case not being implemented.

H. Enforcement of Child Support Orders

1. Should a payor fail to pay his or her support pursuant to the Tribal Court Order, SRMT-CSEU may report the delinquency to credit bureaus and pursue any other enforcement action available under applicable law.

2. The SRMT-CSEU may take the following enforcement actions by requesting a court order for any or all of the following:

    a. That any tribally issued licenses or permits, or other forms of "permission needed" licenses or permits issued by the Saint Regis Mohawk Tribe from the Tribal Council be suspended or revoked;

    b. That the gaming winnings of the payor be seized;

    c. That the payor seek work if unemployed or under-employed;

    d. That the payor attends classes to achieve a high school diploma or equivalent;

    e. That the payor cooperates with SRMT-CSEU and follow any referrals made for services;

    f. That the payor's non-essential personal property be seized and sold to pay off the arrears.

3. In the event that any of the foregoing does not result in the payor making his/her child support obligations or in the SRMT-CSEU's discretion any other enforcement efforts are futile the SRMT-CSEU may request assistance from other State and Tribal IV-D agencies to take any actions necessary to collect such support. Such actions may include but are not limited to:

    a. Seizure of state and federal tax refunds;

    b. Placement of liens on personal property or real property located off-reservation;

    c. Passport denial;

    d. Driver's license and professional license suspension;

    e. Seizure of bank and other financial accounts;

    f. A finding contempt and possible incarceration.

4. In the enforcement of any child support order, the following shall be exempt from execution as follows:

    a. Supplemental Security Income (SSI); Temporary Assistance for Needy Families (TAN-F);

    b. All wearing apparel of every person in the family except that only $500 in value in furs, jewelry, beadwork and personal ornaments for the person owing the child support obligation;

    c. Items of bona fide religious or cultural significance;

    d. Equipment, vehicles, tools, instruments and/or other materials determined by the Court to be necessary to enable the payor to obtain income;

    e. Any lands within the SRMT reservation that are used by the payor as a primary residence.

SECTION VI: FOREIGN ORDERS

A. Registration for Enforcement of Foreign Order

1. The SRMT Court shall recognize and enforce any valid child support order that is properly registered with the Tribal Court pursuant to the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B).

2. Foreign Orders may be registered with the Tribal Court by request of the transferring foreign court or by petition of the SRMT-CSEU. Any requests to the Tribal Court from a foreign jurisdiction for enforcement of a child support order shall be referred to SRMT-CSEU for processing of the petition under this section.

B. Petitions for Registration of Order.

1. A petition and proposed order shall be filed with the Tribal Court requesting registration of the foreign child support order. The Petition shall include:

    a. The name of the petitioner;

    b. The name of the payor;

    c. Statement that upon information and belief the payor is an enrolled member or employee of the Saint Regis Mohawk Tribe;

    d. The name of the child and other children that the payor may have child support obligations to;

    e. The amount of arrears, if any;

f. A copy of the most recent court order from the foreign jurisdiction for which enforcement is sought;

g. The record of payment over the past twelve months;

h. The person or entity that should be paid if the petition is granted;

i. Any other relevant information that will aid the court.

j. Identification of what child support enforcement services are being requested.

2. The Tribal Court shall serve the petition for registration along with a Notice of Registration by certified mail a copy of the petition with the notice of registration to the payor. The payor shall be notified of the right to object in writing to the registration within twenty (20) days of the mailing. The only allowable objection to the recognition and enforcement of a judgment is a mistake of fact or that the court lacked jurisdiction to hear the matter.

C. Enforcement of Foreign Judgment

1. If twenty (20) days have lapsed and no objection from the payor has been received, the Tribal Court shall issue an order within seven days recognizing the judgment as enforceable

2. The Tribal Court Order shall not allow any modification of the underlying child support order or otherwise change the payment percentage, or other payment amount in the underlying child support order unless the parties agree the originating Court no longer has exclusive, continuing jurisdiction to hear the matter. The foreign court retains exclusive, continuing jurisdiction until neither party nor the child reside there or the parties agree to have SRMT Tribal Court assume jurisdiction.

3. Upon issuance of the Order recognizing the judgment, the SRMT-CSEU shall issue a Federal Notice of Income Withholding and submit the Notice to the employer or other source of income of the payor, if applicable.

4. Income Withholding Order/Notice for Support shall indicate the amounts requested to be withheld and any additional amounts to repay any arrearages pursuant to the terms of the order. The employer must submit all amounts withheld to the SRMT-CSEU no later than five (5) days following the date of withholding from the payer's income.

5. The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor's gross income as outlined above in § V G (4).

6. An employer may not discharge, refuse to employ or take disciplinary action against an employee because his or her wages have been subjected to withholding for child support.

7. Failure to comply with this section may subject an employer to appropriate penalties as to

be determined under SRMT law or custom.

8. All other provisions of this Act shall be followed with respect to enforcement of the order.

D. Motion to Transfer.

1. Any motion to transfer a proceeding from a jurisdiction shall include a (i) a certified copy of the underlying order; (ii) a statement of arrears; (iii) (if known) proof of tribal affiliation or minimum contacts with the Tribe; and (iv) a statement that the forwarding jurisdiction has complied with all of its procedures to effectuate the transfer .

2. The Court shall issue an Order granting or denying transfer to the parties and to the SRMT-CSEU within twenty (20) days of receiving a motion to transfer.

SECTION VII: LOCATION OF PARENTS AND ASSETS

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

SECTION VIII: APPEALS

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

SECTION IX: SEVERABILITY

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

SECTION X: SOVEREIGN IMMUNITY NOT WAIVED

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

SECTION XI: AMENDMENT

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

SECTION XII: REPEALER

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