

**TITLE 11**  
**LUMMI NATION CODE OF LAWS**  
**DOMESTIC RELATIONS CODE**

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**TITLE 11  
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**Chapter 11.01 Marriage**

**11.01.010 Who May Marry**

Marriage is a civil contract which may be entered into by persons of the opposite sex who reach the age of eighteen (18) years. Persons under the age of eighteen (18) may marry by permission of at least one (1) parent or guardian. Should the appropriate parent or guardian refuse to permit the marriage to take place, the underage person may petition the Tribal Court for permission to marry. In such a proceeding, the Court shall consider the parent's or guardian's wishes, the child's wishes, any reasons put forth for and against the marriage, and any other facts which to the Court shall seem relevant. The parents or guardians of the person desiring to marry shall be entitled to ten (10) days notice of the petition before the court may consider it.

**11.01.020 Prohibited Marriage**

Marriage in the following cases is prohibited:

- (a) When either party to the marriage has a wife or husband living at the time of such marriage.
- (b) When the parties to the marriage are nearer of kin to each other than second cousins, whether of the whole or half blood computed by the rules of civil law.
- (c) It shall be unlawful for any man to marry his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter, or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son, or sister's son.
- (d) When either party to the marriage has been declared mentally incompetent by a court of competent jurisdiction and such disability has not been removed and the incompetent's guardian has not given his consent to the marriage in writing.

**11.01.030 Marriage License**

Before any persons can be joined in marriage, they shall procure a license from the clerk of the Lummi Tribal Court, or from the county auditor of any county in the State of Washington as provided in Title 26 of the Revised Code of Washington.

**11.01.040 Marriage According to Religious Ritual**

All marriages to which there are no legal impediments, solemnized before or in any religious organization or congregation according to the established ritual of a form commonly practiced in that religion, are valid.

**11.01.050 Voidable Marriage**

When either party to a marriage shall be incapable of consenting to the marriage for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud has been imposed.

**11.01.060 Who May Solemnize Marriages**

In addition to the persons authorized to perform religious ceremonies as set out in 11.01.040 of this Title, any judge or associate judge of the Lummi Tribal Court shall have the authority to solemnize marriages.

**Chapter 11.02 Dissolution of Marriages**

**11.02.010 Who May Commence Proceedings**

Either or both parties to a marriage may initiate a proceeding which has as its object a dissolution or termination of the marriage.

**11.02.020 How Commenced - Contents**

A proceeding for the dissolution or termination of a marriage is commenced by the filing of a petition with the court alleging the following:

- (a) The last known address of each party.
- (b) The date and place of the marriage.
- (c) If the parties are separated, the date on which the separation occurred.
- (d) The names, ages, and addresses of any child dependent on either or both of the spouses, and whether the wife is pregnant.
- (e) Any arrangements as to the custody, visitation, and support of any children and maintenance of a spouse.
- (f) A statement specifying whether there is property of the parties to be disposed of.
- (g) The tribal affiliation of the parties, if any.
- (h) The relief sought.

**11.02.030 Jurisdictional Requirements**

No person may invoke the jurisdiction of the tribal court to terminate or dissolve a marriage unless either that person or the other party to the marriage is either an enrolled member of the Lummi Indian Tribe, or a resident of the Lummi Indian Reservation.

**11.02.040 Invalidity of Marriage**

(a) While both parties to an alleged marriage are living, and at least one party is a resident of the Lummi Indian Reservation or a member of the Lummi Tribe, a petition to have the marriage declared invalid may be sought by

- (1) either or both parties, or the guardian of an incompetent spouse, for any cause specified in subsection (d) of this section; or
- (2) either or both parties, the legal spouse, or a child of either party when it is alleged that the marriage is bigamous.

(b) If the validity of a marriage is denied or questioned at any time, either or both parties to the marriage may petition the court for a judicial determination of the validity of the marriage.

(c) In a proceeding to declare the invalidity of a marriage, the court shall proceed in the manner and have jurisdiction, including the authority to provide for maintenance, custody, visitation, support, and division of the property of the parties, as provided by this Chapter.

(d) After hearing the evidence concerning the validity of a marriage, if both parties to the alleged marriage are still living, the Court

(1) if it finds the marriage to be valid shall enter a decree of validity;

(2) if it finds that

(A) the marriage should not have been contracted, because of the age of one or both of the parties, lack of required parental or court approval, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked mental capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage, and that the parties have not ratified their marriage by voluntarily co-habiting after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud, shall declare the marriage invalid as of the date it was purportedly contracted;

(B) the marriage should not have been contracted because of any reason other than those above, shall upon motion of a party, order any action which may be appropriate to complete or correct the record and enter a decree declaring such marriage to be valid for all purposes from the date upon which it was purportedly contracted;

(3) if it finds that a marriage contracted in a jurisdiction other than this jurisdiction, was void or voidable under the law of the

place where the marriage was contracted, and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract or subsequent domicile of the parties, shall declare the marriage invalid as of the date of the marriage.

(e) Any child of parties born or conceived during the existence of a marriage of record is legitimate and remains legitimate notwithstanding the entry of a declaration of invalidity of the marriage.

**11.02.050 Provisions For Child Support, Custody and Visitation - Disposition of Property and Liabilities**

In entering a decree of dissolution of marriage, or declaration of invalidity of marriage, the court shall consider, approve, or make provisions for child custody and visitation, the support of any child of the marriage entitled to support, and the disposition of property and liabilities of the parties.

**11.02.060 Temporary Maintenance or Child Support**

(a) In a proceeding for dissolution of marriage or declaration of invalidity of marriage, either party may move for temporary maintenance or for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested. As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the Court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances and restraining or enjoining any person from

(1) transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business, or for the necessities of life, and, if so restrained or enjoined requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) molesting or disturbing the peace of the other party or of any child of the marriage or of either party;

(3) entering the family home or the home of the other party upon a showing of the necessity for such an order;

(4) removing a child from the jurisdiction of the Court.

(b) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the affidavit in support of the order or other evidence that irreparable injury could result if an order is not issued until the time for responding has lapsed.

(c) The Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper under the circumstances.

(d) A temporary order, temporary restraining order, or preliminary injunction

(1) does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(2) may be revoked or modified;

(3) terminates when the final decree is entered or when a petition for dissolution, or declaration of invalidity is dismissed.

**11.02.070 Failure to Comply**

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to prevent visitation is not suspended, but he may move the Court to grant an appropriate order.

**Chapter 11.03 Husband and Wife - Rights and Liabilities - Property**

**11.03.010 Separate Property of Husband**

Property and pecuniary rights owned by the

husband before marriage and that were acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber or devise by will such property without the wife joining in such management, alienation or encumbrance, as fully and to the same effect as though he were unmarried. Any property held in trust by the United States Government for the benefit of the party, whether acquired before or during the marriage, shall be the separate property of that party.

#### **11.03.020 Separate Property of Wife**

The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property to the same extent and in the same manner that her husband can, property belonging to him. Any property held in trust by the United States Government for the benefit of the party, whether acquired before or during the marriage, shall be the separate property of that party.

#### **11.03.030 Community Property Defined - Management and Control**

Property not acquired or owned as prescribed in 11.03.010 or 11.03.020, acquired after marriage by either husband or wife or both, is community property. Either spouse, acting alone, may manage and control community property, with a like power of disposition as the acting spouse has over his or her separate property, except:

(a) Neither spouse shall give or bequeath by will more than one-half of the community property.

(b) Neither spouse shall give community property without the express or implied consent of the other.

(c) Neither spouse shall sell, convey, or encumber the community real property

without the other spouse joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses.

(d) Neither spouse shall purchase or contract to purchase community real property without the other spouse joining in the transaction of purchase or in the execution of the contract to purchase.

(e) Neither spouse shall create a security interest other than a purchase money security interest as defined in the Uniform Commercial Code, or sell, community household goods, furnishings, or appliances unless the other spouse joins in executing the security agreement or bill of sale.

(f) Neither spouse shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses participate in its management without the consent of the other; provided, that where only one spouse participates in such management the participating spouse may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business, without the consent of the non-participating spouse.

#### **11.03.040 Disposition of Property and Liabilities - Factors**

In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction, the court shall dispose of the property and liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(a) The nature and extent of the community property.

(b) The nature and extent of the separate



property.

(c) The duration of the marriage.

(d) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse having custody of any children.

#### **Chapter 11.04 Child Custody**

##### **11.04.010 Child Custody Proceeding Commencement - Notice - Intervention**

(a) A child custody proceeding is commenced in the Tribal Court

(1) by a parent

(A) by filing a petition for dissolution of marriage, legal separation, or declaration of invalidity; or

(B) by filing a petition seeking custody of the child in the Tribal Court where the child is permanently resident or on the Reservation where he is found or enrolled; or

(2) by a person other than a parent, by filing a petition seeking custody of the child in the Tribal Court where the child is permanently resident or on the Reservation where he is found or enrolled, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.

(b) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file responsive pleadings. The Court may, upon a showing of good cause, permit the intervention of other interested parties.

##### **11.04.020 Relevant Factors in Awarding Custody**

The Court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(a) The wishes of the child's parent or parents as to his custody and visitation privileges.

(b) The wishes of the child as to his custody and as to visitation privileges.

(c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests, including, but not limited to, the child's extended family.

(d) The child's adjustment to his home, school, and community.

(e) Availability of extended family to assist in the care and custody.

(f) The mental and physical health of all individuals involved.

(g) Tribal affiliation of the parties and the child.

(h) The extent of the participation of the parties in tribal cultural activities. The court shall not consider conduct of a proposed guardian that does not affect the welfare of the child.

##### **11.04.030 Temporary Custody Order - Vacation of Order**

A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit. The Court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

If a custody proceeding commenced in the absence of a petition for dissolution of marriage, legal separation, or declaration of

invalidity (11.02.040 (a)) is dismissed, any temporary order is vacated.

#### **11.04.040 Visitation Rights**

A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The Court may order visitation rights for any person when visitation may serve the best interest of the child.

The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the Court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health.

#### **11.04.050 Child Custody Decree - Modification**

(a) The Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the Court shall retain the custodian established by the prior decree unless

(1) the custodian agrees to the modification;

(2) the child has been integrated into the family of the petitioner with the consent of the custodian; or

(3) the child's present environment is detrimental to his physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; Provided, however, that if the child's present environment is adequate for his physical, mental and emotional health but a change in custody would result in a significantly improved environment which would clearly outweigh the detriment

caused by the disruption of the child's living pattern, the Court may order a change in custody.

(b) If the Court finds that a motion to modify a prior custody order has been brought in bad faith, the Court shall assess the attorney's fees and court costs of the custodian against the petitioner.

#### **11.04.060 Powers and Duties of Custodian - Supervision**

Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing including his education, health care, and religious training, unless the Court after hearing finds, upon motion by the non-custodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.

If both parents or all contestants agree to the order, or if the Court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the Court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the Court at any time upon petition by either party.

#### **11.04.070 Temporary Custody Order or Modification of Custody Decree - Affidavits Required**

A party seeking a temporary custody order or modification of a custody decree shall submit together with his motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit to other parties to the proceedings, who may file opposing affidavits. The Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

**11.04.080 Modification of Decree**

The orders of the Court entering a decree which divides property between the spouses shall be final upon entry. Provisions for the custody of a child or the amount of the child support to be paid by a non-custodial spouse may be modified at any time following entry upon a showing of good cause and changed circumstances. Such modification can only be granted upon proper notice to all parties.

**Chapter 11.05 Paternity**

**11.05.010 Purpose**

The purpose of this Chapter is to ensure that the father of each Lummi child or child residing on the Lummi Indian Reservation is identified and paternity established in order to protect the best interest of all children regarding such matters as enrollment, customs and traditions of the tribe, survivorship and inheritance, health, support, and social security benefits. The question whether a person meets the requirements for enrollment as a Lummi tribal member is separately addressed in Title 34 of the Lummi Code of Laws.

**11.05.015 Presumption of Paternity**

A man is presumed to be the natural father of a child if

- (a) He and the natural mother were married at the time of the child’s birth or if the child was born within three hundred (300) days after the marriage was terminated;
- (b) With the man’s consent, he is named as the child’s father on the child’s birth certificate; or
- (c) A genetic test shows a statistical probability, of at least 99.9%, that the alleged father is the biological father.

The presumption may only be overcome by a court decree based on clear and convincing evidence.

**11.05.020 General Provisions**

(a) An unwed father is not entitled to treatment as a parent under this Code unless his name appears on the child’s birth

certificate or unless his paternity is established under this Chapter.

(b) The procedures for establishment of paternity under this Chapter may be used even if an alleged father, or the mother, is dead or otherwise unavailable.

(c) The provisions of this Chapter may be applied to determinations of maternity.

(d) An action to establish paternity under this section is not barred by any agreement between an alleged or presumed father and the mother of the child.

(e) Parties have the right to representation at their own expense. In addition to Spokespersons authorized by the Court to appear before it, employees of Child Support Enforcement Agencies, and tribal officials authorized to speak on behalf of the Lummi Nation in parentage matters, may appear before the Court.

(f) The Court may not establish paternity if it determines that it is not in the best interest of the child to establish paternity because:

- (1) the child was conceived as the result of rape, incest, sexual abuse of a minor, or sexual assault;
- (2) a legal proceeding for adoption is pending before a court of competent jurisdiction; or
- (3) the cooperation of a necessary person in the establishing of paternity is reasonably likely to result in physical or emotional harm to the child or physical harm to that person.

The Court may stay other proceedings on the petition, including genetic testing and discovery, pending its determination under this subsection. Upon its own motion, or a request of a party, the Court may appoint a guardian ad litem or counsel for the child to advise the Court as to the best interests of the child.

(g) As a matter of policy, the Lummi Nation discourages the disestablishment of paternity

that has earlier been established under operation of law. The Court shall require the party seeking to disestablish paternity to show that it is in the best interests of the child to disestablish paternity, prior to other proceedings on the petition, including genetic testing or discovery.

(h) No statute of limitations applies to an action to establish paternity.

#### **11.05.030 Jurisdiction**

(a) The Tribal Court shall have subject matter jurisdiction over any action to establish paternity brought under this Chapter.

(b) In addition to jurisdiction established under LCL 3.01.020, the Tribal Court shall have personal jurisdiction under this Chapter

(1) over a parent and an alleged parent of a child, wherever the child is domiciled, if:

(A) either parent of the child is a member, or eligible to become a member, of the Lummi Nation; or

(B) the child is one-quarter or more Lummi blood quantum;

(2) over a parent and an alleged parent of an Indian child, as that term is defined in LCL 8.01.010, who is domiciled on the Lummi Reservation;

(3) over a parent and an alleged parent of a child, if the Court has asserted jurisdiction over the child under Title 8 of this Code;

(4) at the request of another tribe which has entered into a reciprocal agreement with the Lummi Nation under LCL 11.06.225(d), over parties who are subject to the jurisdiction of that tribe; and

(5) over a child who is the subject of a petition brought under this Chapter.

(c) In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the Tribal Code as now and

hereafter amended.

(d) For the purposes of this section, “domicile” means the physical place where the person lives with the intent to remain, or if the person leaves for a temporary period, the physical place to which the person intends to return. The domicile of a child is the same as the custodial parent’s domicile.

#### **11.05.040 Definitions**

For the purposes of this Chapter, except as otherwise provided herein,

(a) “Child” shall mean any person whose parentage is sought to be determined under this Chapter, including an adult child.

(b) “Court” shall mean the Lummi Tribal Court.

(c) “Lummi Child” shall mean a child, as defined in (a) of this section, who is enrolled or eligible to be enrolled in the Lummi Nation

(d) “Lummi Nation Child Support Program” means the program established in LCL 11.06.225.

#### **11.05.045 Hearings Closed; Records Sealed**

All court records in a paternity action shall be sealed from the public and all hearings shall be closed to the public, except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

#### **11.05.048 Genetic Tests**

(a) For the purposes of this Chapter, “genetic test” means a test which is conducted by a laboratory accredited by the Parentage Testing Committee of the American Association of Blood Banks, or another accredited laboratory approved by the Court with comparable credentials in genetic testing, that tests DNA, HLA (Human Leukocyte Antigens), blood group antigen, red blood cell enzyme, red blood cell antigen, serum enzymes, or serum protein, from a sample collected in accordance with the procedures of that laboratory.

(b) The Court may require the child, mother, and alleged father(s) to submit to genetic tests. If the mother or alleged father is unavailable for testing, the Court may order genetic testing of other persons closely related to the unavailable person if genetic information from that person would assist in the determination of paternity.

(c) In a contested paternity proceeding, the Court shall require genetic testing, except that an alleged father may be excused from submitting to a genetic test if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.

(d) If genetic testing required by the Court confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of the testing.

(e) Within 14 days of receipt of the date of mailing of the genetic test, a party may request the Court to order additional genetic tests by other experts qualified in paternity genetic testing. The Court may hold a hearing on the request for additional testing. The requesting party shall pay for the additional costs of testing in advance, but the Court may order reimbursement in accordance with (d) of this section. The Court may waive the requesting party's obligation to pay the additional testing costs in advance if the requesting party is indigent and

(1) The laboratory performing the initial tests recommends additional testing; or

(2) there is substantial evidence to support a finding of paternity contrary to the initial genetic test results.

(f) The Lummi Nation Child Support Program shall mail all parties, by certified mail to the last known address of the party, a copy of:

(1) the genetic test results;

(2) the accompanying sworn statement of the expert describing the expert's

qualifications and analyzing and interpreting the results; and

(3) documentation of the chain of custody of the genetic samples.

(g) Any objection to genetic testing results must be made in writing within 14 days from the date of mailing of the genetic test results under (f) of this section.. Any hearing on the issue of paternity may not be held sooner than 14 days after a filing of objection to the genetic test. If no timely objection is filed, the genetic test result will be admitted as evidence of paternity, without the need for foundation testimony or other proof of authenticity.

#### **11.05.050 Entry of Order of Paternity by Acknowledgment**

(a) Unless another man is presumed under LCL 11.05.015 to be the father of a child, a man may acknowledge that he is the biological father of a child by filing with the Court a request for entry of order of paternity, and a notarized and sworn statement stating he is the biological father of the child and that he does not know of any other person who is presumptively the father of the child.

(b) A man requesting entry of an order of paternity by acknowledgement shall serve the child's biological mother a copy of the request, the sworn statement, and a notice that she has 21 days from receipt of service to contest the man's acknowledgement of paternity or the Tribal Court will enter an order of paternity by acknowledgment. The notice shall advise that the mother must file any opposition with the Court. All the documents must be served on the mother in accordance with the procedures set out in LCL 3.03.030.

(c) If the biological mother does not file an opposition to the acknowledgment of paternity within twenty-one (21) days of the date she was served in compliance with (b) of this section, the Court will issue an order accepting the acknowledgement as uncontested and enter an order of paternity by acknowledgment. The Court shall send the order to the mother, father, Lummi Nation

Child Support Program, and the Department of Vital Statistics of the state in which the child was born.

(d) Disputes as to paternity shall be resolved under the provisions of LCL 11.05.060.

**11.05.060 Establishing Paternity through Civil Action**

(a) Petitioner. A child, a child's legal custodian, the child's mother, an alleged father of a child, or the Lummi Nation Child Support Program may file a petition requesting the Court to establish paternity. The mother and an alleged father may file jointly. A petition may additionally be filed by the Lummi Nation Child Support Program on request of the Lummi TANF program or an entity to which the duty of support has been assigned.

(b) Petition. A Petition to establish paternity shall include the following:

(1) The name and address of the petitioner, and the names, dates of birth, address, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, and of all others who have legal rights of custody, visitation, or support of the child; the petitioner may file the address of any of these persons under seal and request the Court to order that the information be kept confidential from designated other parties under the standards set out in LCL 11.06.043.

(2) The marital status of the natural mother and the alleged father(s);

(3) The consent, if any, of the natural mother and the alleged father to establish the alleged father as the natural father of the child;

(4) Whether any party has filed an action to determine paternity in any other court, or with any agency, and if a judgment of paternity has been rendered by any other court;

(5) A certified copy of the child's birth certificate, if available, attached as a

supporting document;

(6) Whether the petitioner seeks a change of the child's name, and the proposed new name; and

(7) The notarized signature of the petitioner verifying the truth of the information in the Petition.

(c) Summons. All parties including the child if over 18 years of age, the biological mother, and each man alleged to be the natural father, shall be served with the petition and a summons. Service and proof of service shall be conducted under the rules set forth in LCL 3.03.030, 03.03.040, and 3.03.060. An employee of the Lummi Nation Child Support Program is not a party for the purpose of those sections. The summons shall notify the party that the party must respond to the summons and petition by serving a copy of the written response on the person signing the summons and by filing the original with the Clerk of the Court. The summons shall further notify the party that, if the written response is not filed with the Court within 21 days after receipt of the summons and petition on the party, the Court may enter a default judgment against that party. The summons to be served on the alleged father(s), shall include the following information:

**NOTICE TO ALLEGED FATHER:**

You have been named in a petition alleging that you may be the father of a child. A judgment of paternity would legally designate you as the father of the child; grant parental rights to you; create the right of inheritance for the child to your estate; obligate you to pay child support; and make your failure to pay child support punishable by the Court.

You may request genetic tests which will indicate the probability that you are or are not the father of the child. The Court will order genetic tests on request by you, the Lummi Nation Child Support Program, or any other party to the paternity case. Any person who refuses to take court-ordered genetic tests may be punished for contempt of court.

The petitioner has the burden of proving that you are the father. If a genetic test shows that the statistical probability of your being the father is 99.9% or higher, you are presumed to be the father, but at a hearing, you could present evidence showing by clear and convincing evidence that you should not be presumed to be the father because:

- (1) You were sterile or impotent at the time of conception;
- (2) You did not have sexual intercourse with the mother of the child during the conception period; or
- (3) Another man is at least as statistically likely to have been the father of the child.

You must respond to this summons and petition by serving a copy of your written response on the person signing this summons and by filing the original with the Clerk of the Court. If you do not file a written response within 21 days after the date this summons was served on you, the Court may enter an order of default against you, and the Court may, without further notice to you, enter a decree finding you to be the father and providing other relief requested in the petition including support, custody, and visitation. A default judgment may also be entered against you if you fail to appear at any later stage of the proceedings, including a court-ordered genetic test.

(d) Hearing. The following rules apply to court hearings in a paternity matter:

- (1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.
- (2) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged; however the Court may limit the distribution of medical documents to physical viewing only, upon request of the patient.

(3) The hearing shall be conducted by the judge with no jury.

(4) All hearings shall be closed in accordance with LCL 11.05.045.

(e) Evidence. The Court may consider the following types of evidence in paternity cases:

- (1) Evidence as to the results of genetic testing;
- (2) Evidence of sexual intercourse between the mother and an alleged father(s) at any possible time of conception;
- (3) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy; in the absence of competent evidence to the contrary, the conception of a child is presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth;
- (4) Medical or anthropological evidence relating to an alleged father's paternity of the child;
- (5) Cultural evidence and/or a reputation in the community as to paternity;
- (6) A finding of parentage by the Lummi Enrollment Office; or
- (7) Any other reliable evidence which is relevant to the issue of paternity of the child.

(f) Default Judgment of Paternity.

(1) The Court may enter a default judgment against a party who fails to timely answer a petition in accordance with this Chapter. At the time of entry of the default judgment, the Court must determine that there is evidence under (e) of this section that supports the paternity of the alleged father. A default judgment declaring a person to be the father of a child may be reopened upon motion for good cause shown, and upon such terms and conditions as the Court determines are

just, within 91 days of the default judgment.

(2) In addition to a default judgment under (1) of this subsection, the Court may enter a default judgment against an alleged father who fails to appear at any later stage of the proceedings at which his presence is required, including a scheduled genetic test. Such a default judgment may only be set aside if the respondent appears before the Court within twenty-eight (28) days after it is delivered to the respondent or mailed to him at the most recent address he provided to the Court, and he establishes good cause for his failure to appear or to undergo a genetic test.

(g) Judgment of Paternity. The judgment or order of the Court determining whether or not a respondent is a parent of a child shall be based on a preponderance of the evidence. If the judgment or order of the Court establishes a different father than that on the child's birth certificate, the Court shall send the order to the Department of Vital Statistics of the state in which the child was born.

(h) Time for Filing Paternity Action. A petition to determine paternity may be filed at any time. If a petition to determine paternity is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and, in the discretion of the judge, conducting discovery to preserve testimony.

(i) An action to establish paternity may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, support, or any other civil action in which paternity is an issue including a juvenile proceeding.

#### **11.05.065 Contempt of Court**

The Court is authorized to enforce its orders entered under this Chapter by using the procedures set out at LCL 11.06.145 and 11.06.147.

#### **11.05.070 Role of Lummi Enrollment Office**

(a) Statement of Purpose

(1) The establishment of Indian Blood Quantum is essential to the furtherance of Lummi tribal sovereignty. A person who might otherwise be eligible for enrollment as a member of the Lummi Nation may not be able to become enrolled because of incomplete information from only one parent. In the absence of proof of parentage for both parents who may have an Indian blood quantum, the person may not be able to prove that they or their children have at least one-quarter Indian blood to become eligible for enrollment as members of the Lummi Nation.

(2) Without coordination between the Court and the Lummi Enrollment Office in establishing parentage, each entity may duplicate the work of the other.

(3) This section is therefore intended to facilitate coordination between the Court and the Lummi Enrollment Office in establishing parentage to help determine the correct blood quantum of all Lummi children for the purposes of enrollment.

(b) Exchange of Information.

(1) The Tribal Court shall provide the Enrollment Office with notice of each final decision establishing the parentage of a Lummi child within twenty-one (21) days or as soon as possible after entry of the decision. The information in such notice shall become part of the child's confidential file, and may only be released to the child or his or her custodial parent or legal guardian absent an order from the Court.

(2) The Lummi Enrollment Office may request copies of court orders of the parentage of specific individuals, upon a showing that the individual or his or her custodial parent or legal guardian has authorized the release of such information. A finding of parentage by the Lummi Tribal Court shall be sufficient to establish parentage for enrollment purposes, provided that a finding arrived at by an order of default shall not be binding in determinations of enrollment.



(3) A party to an existing action regarding parentage in the Court may subpoena affidavits and other evidence of parentage from the Lummi Enrollment Office. Evidence of parentage in the Enrollment Office's files for a child may, however, be released to the child, or in the case of a minor child, to his or her custodial parent or legal guardian without a subpoena.

#### **11.05.080 Paternity Established by Other Jurisdictions**

(a) Under the standards and procedures set out in LCL 11.06.200, the Court shall give full faith and credit to properly issued court and administrative orders, judgments, or decrees of other Indian tribes, states, or federal agencies establishing paternity.

(b) The petitioning party may request that the Court enter an ex parte temporary order giving full faith and credit to the foreign order under the procedure set out in LCL 11.06.200(e).

### **Chapter 11.06 Child Support**

#### **11.06.010 General Provisions; Purpose**

(a) This Chapter shall be construed to effectuate the following purposes:

- (1) Codify the legal responsibility of both parents to financially support their children;
- (2) Establish, as policy, an adequate standard of support for children;
- (3) Make support payments more equitable by ensuring consistent treatment of persons in similar circumstances;
- (4) Base support payments on the real earning capability of parents as demonstrated in current and prior work history and by their skills, training, and experience that would allow them to obtain work; and
- (5) Improve the efficiency of child support establishment and enforcement.

(b) Any child support award, including one entered in a separate action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, or any other civil action, must comply with this Chapter.

(c) A party's failure to allow visitation, or other alleged wrongdoing by either party not related to the amount or payment of child support, shall not be relevant to the establishment, modification, or enforcement of the child support obligation. The Court may not condition an obligor's visitation rights upon the payment of child support.

(d) This chapter shall be interpreted to allow that, upon the change of custody of a child, the non-custodial parent's child support obligation will transfer without interruption to the new custodian of a child.

(e) This chapter shall be interpreted so as to comply with the requirements of Title IV-D of the Federal Social Security Act (42 U.S.C. § 651) placed on tribal child support programs.

#### **11.06.020 Jurisdiction**

(a) The Tribal Court shall have subject matter jurisdiction over any action brought under this Chapter. The action may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, or any other civil action in which child support is an issue, including a juvenile proceeding.

(b) In addition to jurisdiction established under LCL 3.01.020, the Tribal Court shall have personal jurisdiction under this Chapter

- (1) over a parent of a child, wherever the child is domiciled, if either parent of the child is a member, or eligible to become a member, of the Lummi Nation;
- (2) over a parent of an Indian child, as that term is defined in LCL 8.01.010, who is domiciled on the Lummi Reservation;
- (3) over a parent of a child over whom the Court has asserted jurisdiction under Title 8 of this Code; and

(4) over a parent who has assets or the right to assets located within the boundaries of the Lummi Reservation, or income or the right to income generating from

(A) The Lummi Business Council or any of its agencies, enterprises, or businesses; or

(B) An employer operating within the boundaries of the Lummi Reservation.

(5) At the request of another tribe which has entered into a reciprocal agreement with the Lummi Nation under LCL 11.06.225(d), over parties who are subject to the jurisdiction of that tribe.

(6) As requested by another jurisdiction, to facilitate the consolidation of a case arising in that jurisdiction involving the same obligor, with a case pending before the Lummi Tribal Court.

(c) In addition to any other method provided by this Code, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with this Code as now and hereafter amended.

(d) For the purposes of this section, "domicile" is defined in LCL 11.05.030(d).

#### **11.06.030 Duty of Parent to Support Child**

(a) The "duty of support" means a parent's duty to provide for the needs of a child under (b) and (c) of this section, which may include necessary food, clothing, shelter, education, health care, and general wellbeing. The duty includes any obligation to make monetary payments, to pay expenses, to pay spousal maintenance in cases in which there is a dependent child, and to reimburse another person or agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

(b) Every parent has a duty to support each and every child of that parent while the child

is within the ages defined in LCL 11.06.040(c).

(c) Based on the circumstances unique to the case, a parent's duty to support a child may be extended by order of the Court beyond the ages defined in LCL 11.06.040(c) as follows:

(1) through the child's completion of post-secondary education, up to age twenty-four (24), as provided in LCL 11.06.080(f)(5); and

(2) for an adult child who is living with a parent or family member because the child is incapable of independent living because of mental or physical disability, illness or deficiency, to assist in or reimburse the expenses incurred by that other person.

(d) A parent has a continuing obligation to pay any past due child support arrearages, even after the child has passed the age requiring current support. In the absence of evidence justifying a modification, the amount of the monthly payment towards the arrearages shall be no less than the previous monthly obligation.

(e) Nothing in this Chapter precludes a parent from bringing an action against the other parent, who has a duty of support, for reimbursement in whole or part, as the Court determines is just, of specific expenditures previously incurred on behalf of the child or the unborn child, such as the expenses of pregnancy, confinement, medical costs, funeral, or other necessary support. Nothing in this Chapter impairs the rights of a third party to seek reimbursement for services or support it has furnished on behalf of the child or the unborn child.

#### **11.06.035 Birthing Costs and Related Cost to Mother**

(a) A person who has been legally determined to be the father of a child may be ordered to pay all or part of the costs of the birth and related costs of the mother. An action under this section must be brought within three years of the birth.

(b) Copies of the bills for pregnancy and

child birth are admissible as evidence without requiring third-party foundation evidence.

#### **11.06.040 Definitions**

Except as otherwise provided in this Chapter,

(a) “Adjusted Gross Income” shall mean gross income minus allowable deductions.

(b) “Basic Child Support Obligation” shall mean the monthly child support obligation of a parent calculated pursuant to the Child Support Guidelines, that does not include amounts for day care, health care, and additional expenses set forth in section 11.06.080(e) and (f).

(c) “Child” shall mean a person who is alleged to be the natural or adopted offspring of a parent and who is

(1) under the age of eighteen (18); or

(2) between the ages of eighteen (18) and twenty-one (21), regularly attending high school or its equivalent, and not emancipated according to the laws of the Lummi Nation;

(d) “Child Support” shall mean a financial obligation established through judicial or administrative process for the support of a child, including a child who is over 18 years of age, or maintenance of the parent with whom the child is living. The obligation includes but is not limited to continuing support, payment of arrearages, and the provision of benefits such as health insurance.

(e) “Child Support Guidelines” shall mean all child support guidelines, schedules, and worksheets approved by the Lummi Indian Business Council or the Council’s designee, to implement Chapter 11.06 of the Lummi Code of Laws.

(f) “Child Support Order” shall mean a judgment or order entered by a court or administrative agency that orders payment of a specific or determinable amount of child support, or other support toward the needs of a child, including medical, dental, child care, or educational support.

(g) “Court” shall mean the Lummi Tribal Court of the Lummi Nation.

(h) “Custodial Parent” shall mean the person who has legal custody of the child pursuant to a court order, or who has physical custody of the child on the basis of agreement between the parents or the absence of one or both parents. The term custodial parent includes a grandparent or other relative caring for a child, and a guardian or custodian appointed by a court of competent jurisdiction.

(i) “Divided Custody” shall mean that one parent has primary physical custody of one or more children of the relationship and the other parent has primary physical custody of one or more children of the relationship.

(j) “Emancipated Child” shall mean a person under age eighteen (18) who has been found by a court of competent jurisdiction to be free of parental supervision and control.

(k) “Employer” shall mean any person or entity paying or owing wages or other remuneration to an obligor, including the Lummi Indian Business Council and its subordinate entities, and including all governments, schools, colleges, and commercial and not-for-profit enterprises operating or located within the boundaries of the Lummi Reservation.

(l) “Income” means earnings, income, benefits, and reimbursements from all the sources listed under LCL 11.06.060.

(m) “Imputed Income” shall mean the Lummi median income established under LCL 11.06.050(b)(5) to be applied when the Court has no reliable evidence upon which to base a child support award.

(n) “Income Withholding” shall mean the process whereby a court order is directed to an person, employer, bank, or other entity holding monies or property of an obligor parent, to make payments or deliver property to satisfy a child support obligation in accordance with the order.

(o) “Lummi Child” shall mean a child, as

defined in (c) of this section, who is enrolled or eligible for enrollment in the Lummi Nation.

(p) “Lummi Child Support Registry” shall mean the office established within the Lummi Nation Child Support Program to receive and disburse child support payments.

(q) “Lummi Indian Business Council” shall mean the governing body of the Lummi Nation.

(r) “Lummi Nation Child Support Program” shall mean the program established in LCL 11.06.225.

(s) “Non-Cash Payment” shall mean non-cash goods or services, with a determinable cash value, provided by an obligor parent to a custodial parent, and approved by the Court as partial child support payment. A non-cash payment includes food, clothing, shelter, fuel, or firewood provided for the benefit of the child.

(t) “Non-custodial parent” shall mean a parent of a child, whether or not conceived during the course of marriage, who does not hold legal custody of the child pursuant to a court order, or who does not exercise physical custody of the child on the basis of agreement between the parents.

(u) “Obligee” shall mean the person or agency with the right to receive child support, or the person or agency to whom the right to receive or collect support has been assigned.

(v) “Obligor” shall mean the person with an obligation to pay child support.

(w) “Payor” shall mean a person or other entity with a present legal obligation, whether as an employer, contractor, buyer of goods, debtor, pension fund, or otherwise, to pay an obligor. Persons whose obligation to pay is conditional may not be required to pay the amount to a child support obligee until the obligation is no longer conditional. Persons giving gifts are not payors for purposes of this Chapter.

(x) “Post-secondary Education” shall mean

education beyond high school or its equivalent in an academic or vocational school that leads to a degree or certificate of completion.

(y) “Primary Custody” shall mean that, for more than seventy percent (70%) of the year, one parent has legal custody of the child pursuant to a court order, or exercises physical custody of the child on the basis of agreement between the parents or the absence of the other parent.

(z) “Shared Custody” shall mean that the children reside with each parent, as provided in a custody order, for at least thirty percent (30%) of the year, regardless of the status of legal custody.

(aa) “TANF” means the Temporary Assistance to Needy Families program, whether administered by the Lummi Indian Business Council, another tribe, or a state.

#### **11.06.043 Confidentiality**

(a) The Court may order that the address and other location information regarding a party or child shall not be released if the Court finds that release of such information is reasonably likely to result in physical or emotional harm to the child or to the party. In such instance, the information shall not be available for public view and the Court may designate those persons who are allowed access.

(b) The Court shall make provision for the confidentiality of financial records filed by the parties, so that they are secure from view by the general public but may be reviewed by the parties to the case and the Lummi Nation Child Support Program, solely for the purpose of establishing, modifying, enforcing, or distributing child support.

#### **11.06.045 Court Procedures**

(a) Service and proof of service of a petition and summons shall be conducted under the rules set forth in LCL 3.03.030, 03.03.040, and 3.03.060. An employee of the Lummi Nation Child Support Program is not a party for the purpose of those sections.

(b) Documents that must to be served on a party subsequent to service of the petition and summons may be served by acknowledgement of receipt by the party, delivery to the party, mailing by regular mail to the party's last known address, or by facsimile or electronic delivery. Service under this subsection must be verified by filing with the Court an affidavit or certificate of service, or if the party being served has no known address, filing with the Court an affidavit of attempt to serve.

(c) The Rules of Discovery set out in Chapter 3.06 of this Code apply to proceedings under this Chapter. In addition, the Court may order that any person comply with the following discovery requests:

(1) The inspection of property, examination and production of pertinent records, books, information, or evidence; and

(2) A subpoena for testimony under oath, that may include a requirement that the person bring to the deposition or hearing itemized documents or things.

In addition to other sanctions provided in Chapter 3.06 of this Code, a person who fails to comply with an order of the Court to provide discovery may be found to be in contempt of court.

(d) The Court shall allow business, medical, and government records into evidence without a requirement for third-party authentication unless a showing is made that the document is unreliable, in which case the Court shall grant a short period of time for the person requesting entry of the document into evidence to obtain additional evidence of reliability.

(e) In proceedings under this Chapter, parties have the right to representation at their own expense. In addition to Spokespersons authorized by the Court to appear before it, employees of Child Support Enforcement Agencies, and tribal officials authorized to speak on behalf of the Lummi Nation in child support matters, may appear before the Court. The Nation shall not be required to pay for

any fees or expenses incurred by any party in connection with proceedings under this Chapter.

#### **11.06.050 Child Support Guidelines**

(a) The Lummi Nation Child Support Program, shall establish Child Support Guidelines. The Child Support Guidelines shall set the scale of minimum child support contributions and shall be used to determine the amount an obligor parent must pay for support of his or her child pursuant to this Chapter. The Guidelines shall place a duty for child support upon either or both parents based on their respective financial resources and the custodial arrangements for the child(ren) of the parents.

(b) The Child Support Guidelines must, at a minimum:

(1) Take into consideration all the gross and adjusted gross income of the non-custodial parent, or of both parents if custody is shared or divided;

(2) Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child for housing, clothing, food, education, health care, and recreation and goods;

(3) Provide for a minimum amount of monthly child support, not less than \$50.00 per child for children under the age of twelve (12), and \$62.00 per child for children twelve (12) years and older, to establish the principal that every parent regardless of income has an obligation to provide financial support for a child; and

(4) Establish Lummi median income based on sex and age to be imputed as income when the Court has no reliable evidence for a person upon which to base a child support award.

(c) The Lummi Nation Child Support Program shall review the Child Support Guidelines at least once every four years to ensure that the amounts provided for in the

schedule are periodically adjusted as needed for increases or decreases in the costs associated with the care and support of children, and the Lummi median income. The Lummi Nation Child Support Program shall make recommendations for any revisions to the Lummi Indian Business Council or its designee for its approval.

**11.06.060 Determination of Gross Income**

(a) Gross income shall include income from any source, and may include, but is not limited to, income from salaries, wages, fishing income, commissions, stipends, bonuses, dividends, severance pay, per capita payments, interest, trust income, including income received from land held in trust by the United States or subject to a restriction against alienation, annuities, deferred compensation, refunds of deductions from income, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, gaming winnings, prizes, and spousal maintenance. Notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a support obligation, gross income also includes periodic payments from pension programs, retirement programs, and insurance policies. A specific cash value shall be assigned to non-cash benefits. Seasonal income, overtime income, or fluctuating income shall be averaged. When income from a full-time job is consistent with income during the marriage, income earned as the result of overtime hours or a second job may be disregarded.

(b) Gross income shall not include

- (1) Benefits received from means-tested public assistance programs including, but not limited to TANF, supplemental security income, food stamps, or any other program exempted by federal law;
- (2) Income of a parent's new spouse;
- (3) Financial aid received for educational expenses;

(4) Monies received from loans obtained by the obligor; or

(5) Sums received as child support.

(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income.

(d) Expense reimbursements or benefits received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

(e) If the Court has no reliable evidence concerning a parent's income, the Court shall impute income as set forth in the Child Support Guidelines.

(f) If a parent is unemployed or working below full earning capacity, the Court may consider the reasons. Among other factors, the Court may consider whether the parent declined to accept or pursue employment or training opportunities, and the parent's job skills, training, work history, education, health, and age. If the Court finds that earnings are reduced as a matter of choice and not for reasonable cause, the Court shall attribute income to a parent up to his or her earning capacity.

**11.06.070 Determination of Adjusted Gross Income**

Adjusted Gross Income includes gross income minus the following deductions:

- (a) United States income taxes;
- (b) Tribal, state or local income taxes, if not refunded;
- (c) Fishing taxes, if not refunded;
- (d) FICA;
- (e) Health insurance premiums to the extent

paid by an obligor for the benefit of the child;

(f) State industrial insurance premiums;

(g) Child support paid for another child to the extent actually paid;

(h) Court ordered spousal maintenance to the extent actually paid;

(i) Mandatory union and professional dues, and mandatory pension plan payments; and

(j) The amount of reasonable expense for monthly payments on preexisting, jointly acquired debt of the parents, to the extent payment of the debt is actually made. When an deduction for debt service is made, the Court may provide for prospective upward adjustments of support based of the anticipated reduction or elimination of the debt service.

#### **11.06.080 Determination of Child Support Obligation**

(a) The parties shall provide complete disclosure of financial information to the Court and to the Lummi Nation Child Support Program as related to the determination of gross income, adjusted gross income, and the child support obligation. The parties shall execute all necessary releases to allow the Lummi Nation Child Support Program to obtain any such information. The information is confidential as provided in LCL 11.06.043.

(b) The Court shall establish the amount of the child support obligation of the obligor parent by using the Lummi Child Support Guidelines. The Court shall not depart downward from the Guidelines except as provided in LCL 11.06.130. In every case, a minimum amount of child support shall be ordered as provided in the LCL 11.06.050(b)(3).

(c) The standard of proof for establishment of the amount of the child support obligation shall be by a preponderance of the evidence. The petitioner shall bear the burden of proof, except that the respondent shall bear the burden of proof that the Guidelines are unjust as applied to the respondent.

(d) The Basic Child Support Obligation shall be set follows, based on physical custody arrangements for the child:

(1) For primary custody situations, the Basic Child Support Obligation shall be calculated using the non-custodial parent's income. The Court may provide for a partial abatement of child support if there is a visitation schedule allowing for visitation with the non-custodial parent for 30 or more consecutive days during a calendar year .

(2) For shared custody arrangements, the Basic Child Support Obligation shall be calculated using the income of both parents. In shared custody situations, each parent's percentage of custody is equal to the number of twenty-four (24) hour days spent by each child with each respective parent divided by three hundred sixty-five (365).

(3) For divided custody situations, the Basic Child Support Obligation shall be calculated using the income of both parents. When one parent has primary physical custody of one child(ren) of the parties and the other parent has primary physical custody of the other child(ren) of the parties, then all attempts will be made to insure that the amount of support is equal between the children, after consideration of the age of the children.

(e) The following costs shall be paid by each parent in proportion to his or her income, in addition to the Basic Child Support Obligation:

(1) Costs, in excess of \$100 per child per year, for reasonably necessary medical, dental, and counseling services that are not covered by insurance or the Indian Health Service;

(2) Services required for a child with physical and/or mental disability;

(3) Reasonable child care costs incurred on behalf of the child due to employment or job search of either parent.

(f) The child support obligation may also include contribution toward the following expenses not covered by the Basic Child Support Obligation:

(1) Substance abuse counseling and treatment;

(2) any extraordinary educational or extra-curricular expenses for children of the parties;

(3) transportation and communication expenses necessary for long distance visitation or time-sharing; and

(4) traditional cultural activities.

(5) Post-Secondary Education Expenses. At the discretion of the Court, a parent may be ordered to contribute to the support of a child who is actively pursuing a post-secondary education through the completion of post-secondary education, up to the child's twenty-fourth (24<sup>th</sup>) birthday. Factors to be considered include income of both parents, hardship to the parent, the child's needs, desires, aptitude and ability, support by the parent of other children while in post-secondary school, and parental expectations.

(6) other expenses, where the Court finds that the circumstances of the particular case warrant contribution in order to fairly and reasonably set the child support obligation.

(g) Upon mutual agreement of the obligee and obligor, and approval of the Court, the Court may allow a portion of the obligation, but no more than fifty percent (50%) of the monthly child support obligation, to be paid through non-cash payment. Non-cash payments may not be used to satisfy a support obligation assigned to a non-custodial obligee. The order shall specify the types of non-cash payments that will be allowed and shall assign a specific value to each type of non-cash payment based on the current value for similar goods and services in the local community.

(h) The Court shall make findings in the record as to its calculation, as applicable, of: gross income, adjusted gross income, imputed income, attributed income, Basic Child Support Obligation, additional support under (e) and (f) of this section, non-cash support payments, support obligation in a shared physical or divided custody situation, and the child support award. The findings may incorporate a worksheet containing this information into the file. Any deviation from the Child Support Guidelines must comply with LCL 11.06.130.

#### **11.06.090 Petition for Child Support Order**

(a) An action to determine child support may be initiated at any time before the child in question has his or her twenty-fourth birthday, and any child support obligation shall be prospective from the time the action is initially filed, except as provided in LCL 11.06.030(e).

(b) Any parent, guardian, emancipated child, or agency authorized to enforce the child support laws of the Lummi Nation may initiate an action for child support by filing a petition for establishment of child support with the Court.

(c) The petition to establish child support shall include, or incorporate by reference, the following:

(1) The name and address of the petitioner, and of the custodial parent or guardian if different; the petitioner may file the address of a custodial parent or legal guardian under seal and request the Court to order that the information be kept confidential under the standards set out in LCL 11.06.043;

(2) The name and date of birth of the child for whom support is requested;

(3) The name of the obligor parent from whom support is requested and whether parentage of the obligor parent has been established, if parentage is not presumed under LCL 11.05.015;



(4) The following additional costs, if applicable:

(A) Cost of the child's medical and dental insurance premiums paid by the custodial parent;

(B) Costs paid by the custodial parent and not covered by insurance or Indian Health Service, in excess of \$100 per child per year, for medical, dental or counseling services for the child;

(C) Costs paid by the custodial parent for services required for a child with physical and/or mental disability;

(D) The cost of child care necessary to permit the custodial parent to work; and

(E) Any additional costs, listed in LCL 11.06.080(e) and (f), that are not covered by the Basic Child Support Obligation and for which the petitioner seeks reimbursement.

(5) If child support is sought for a child beyond the ages defined in LCL 11.06.040(c), the reasons if any why child support should be ordered to extend beyond that age;

(6) If custody is shared between the parents, the percentage of the year (calculated under LCL 11.06.080(d)(2)) during which the obligee parent has physical custody of the child, and the obligee parent's income for the purpose of determining the split support obligation;

(7) If known, the social security number, address, and income of the obligor parent.

(d) The petitioner shall serve a copy of the petition and a summons upon the parent against whom child support is to be established. Service and proof of service must comply with the procedures set out in LCL 11.06.045(a). The summons shall notify the party that the party must respond to the summons and petition by serving a copy of a written response on the person signing the summons, and by filing the original with the Court. The summons shall further notify the

party that, if the written response is not filed with the Court within 21 days after receipt of the summons and petition, the Court may enter a default judgment against that party granting the petitioner's petition. If the petitioner is not the custodial parent, the petitioner shall also serve the custodial parent with a summons. The summons served on the party against whom child support is to be established shall include the following information:

(1) That respondent's employer or others with evidence of the parent's income may be required to provide the Court with records of his or her income;

(2) That if there is no reliable evidence of the respondent's income, income will be imputed according to the Child Support Guidelines;

(3) That if the parent's income is reduced as a matter of choice and not for reasonable cause, the Court will attribute income up to the parent's earning capacity.

(4) That he or she may enter into a support agreement with the other parties as allowed in this Chapter.

#### **11.06.095 Temporary Support Order**

(a) Pending a final order establishing a child support obligation or modification of a child support obligation, if paternity is not at issue in the action, a custodial parent may move under expedited procedures for temporary child support. The motion must be accompanied by a sworn statement setting out the factual basis for the motion and the amount of support and other relief requested.

(b) In determining the amount of a temporary support order, the Court shall apply the Child Support Guidelines based on the information available at that time.

(c) A temporary support order does not prejudice the rights of any party that are to be determined at subsequent hearings in the proceeding. The temporary order may be rescinded or modified upon a showing of good cause.

### **11.06.100 Stipulated Child Support Agreement**

(a) The parties are encouraged to reach agreements for the support of the child(ren) in accordance with this code and the best interests of the child(ren). The agreement must be signed and notarized, and reviewed and approved by the Court. The Court may only approve an agreement for a deviation below the Child Support Guidelines under the procedures established in LCL 11.06.130. The agreed support order must include the provisions required in LCL 11.06.120.

(b) After the entry of an order by the Court approving the child support agreement, the order shall have the same force as any other order issued by the Court. The obligation of the obligor parent to pay child support shall commence on the date specified in the agreement, but no later than the date the agreement is approved and filed by the Court.

(c) The Court may hold in-chambers, ex parte discussions with each party to ensure that the party understands the terms of the proposed order and to assure that each party's consent is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person.

### **11.06.110 Entry of Default Order**

If the respondent fails to answer a petition within 21 days of service, or fails to appear at the hearing for establishment of child support the Court shall enter an order of child support obligation in accordance with LCL 11.06.080 and 11.06.120, based on the evidence. The evidence may be in the form of a sworn statement, declaration, or testimony of the absent parent's actual income, attributed income under LCL 11.06.060(e), or imputed income under the Child Support Guidelines.

### **11.06.120 Child Support Order**

(a) Payments under a child support order shall be made to the Lummi Child Support Registry for distribution to the custodial parent or other obligee. The Court may, however, order payments to be made elsewhere if there is a showing that it is in the best interests of the child. If the Court

permits support payments to be made directly to a parent, the Court shall direct how the parties must keep records of the direct payments so that the paying parent is credited with each payment.

(b) Whether or not the support order is being paid through the Lummi Child Support Registry, each order for child support or maintenance payments shall include an order that the obligor and obligee notify the Lummi Child Support Registry of any change of that person's home phone number, home address, employer, work phone number, and work address; report any change of employer or change of address or telephone number; and report any change of the primary custodian of the child(ren) within ten (10) days of such change. Each party may request and receive this information from the Lummi Child Support Registry unless there is a court order prohibiting the release of such information to that party under the standards established in LCL 11.06.043. The duty to update information under this subsection continues until the obligor satisfies all duties of support, including arrearages that accrued pursuant to the child support order. Service of process on a party may be allowed or accepted as adequate, in any proceeding to enforce or modify the child support order, if it is accomplished by prepaid U.S. mail certified mail to the obligor or obligee at the last address provided. The Court order shall give notice to the parties of their duties, and the possibility of service of process, under this section.

(c) A child support order shall be in favor of the child through his or her custodial parent or guardian when the Lummi Nation, or other federal or state agency, is not making Temporary Assistance to Needy Families (TANF) payments on behalf of the child. The Court may order that payments be disbursed by the Lummi Child Support Registry to another party or through trust if there is a showing that payments to the custodial parent or guardian are not in the best interests of the child. The party opposing distribution to the custodial parent has the burden of showing that the custodial parent is not an appropriate recipient of child support payments for the child.

(d) The custodial parent who receives TANF benefits on his or her own behalf or for the benefit of a child shall assign child support rights for the TANF beneficiary child to the Lummi Nation or other federal or state agency which makes TANF payments to the custodial parent, with the exception of any portion of the payment passed through to the custodial parent by that agency.

(e) A child support order shall provide for automatic income withholding and attachment of gaming winnings and refunds of any income deduction, including fishing income, as a means for payment of a child support obligation. Automatic wage withholding shall not exceed the limits established in 15 U.S.C. § 1673. The Court may only make an exception to the requirement for automatic income withholding when:

(1) One of the parties demonstrates and the Court finds that there is good cause not to require an immediate income withholding provision; or

(2) The parties reach a written agreement approved by the Court which provides for an alternative arrangement. A history of domestic violence between the parties is a basis for denying this exception.

(f) For a child support order entered without an automatic income and attachment provision in accordance with (e) of this section, the Court shall add such a provision upon a showing of a party that the obligor is delinquent in payment, or other good cause.

(g) The Court shall require that each parent take necessary steps to enroll a child for Indian Health Service services, if the child is qualified, and to enroll the child in any medical or dental insurance program that is available at no cost to the parent through the parent's employer or union. Nothing in this subsection precludes an order that a parent provide insurance available at a cost to the parent.

(h) The Court may require each parent to provide life insurance on themselves, if available at reasonable cost, and designating

the minor child(ren) as a beneficiary.

(i) As applicable, the order may contain other provisions directed to various parties to the proceeding concerning the duty of current and future support, extent of any liability for past support, custody and guardianship of the child, visitation privileges with the child, furnishing of bond or other security for the payment of the judgment, and any other matter in the best interests of the child.

(j) A child support obligation is retroactive to the date of filing of the original petition with the Court.

### **11.06.130 Deviation from Child Support Guidelines**

(a) The Court may order child support in an amount different from that which is provided in the Child Support Guidelines, only if:

(1) The party requesting deviation shows by a preponderance of the evidence that application of the Guidelines is inappropriate, unjust or causes substantial hardship in the particular case;

(2) Deviation is in the best interest of the child;

(3) The Court enters written findings of the reasons justifying deviation under this subsection; and

(4) The Court sets out in its order what the monthly support obligation would have been under the Guidelines without the deviation, and what the Court is ordering as the monthly support obligation with the deviation.

(b) In determining whether to deviate from the guidelines, the Court may consider hardship to the obligor's children from other relationships, to whom the obligor owes a duty of support and is actually providing the support, while considering the best interest of the child(ren) who is the subject of the proceeding. Any determination under this subsection shall include consideration of the total financial circumstances of each household, including all income from any

source.

(c) Whenever application of the Child Support Guidelines set forth in this section requires a person to pay to another person more than forty percent (40%) of his or her Adjusted Gross Income for current support, there shall be a presumption of a substantial hardship.

(d) Unemployment or under-employment shall not be a cause for a finding of substantial hardship where the Court determines that the person contesting application of the Guidelines is voluntarily unemployed, voluntarily underemployed, or has declined to accept or pursue employment opportunities. In such cases, the Court shall attribute income as provided in LCL 11.06.060(f).

(e) The Court may deviate from the Guidelines based upon an agreement of the parties only if all of the following criteria are met:

- (1) The agreement is in writing,
- (2) All parties have signed the agreement with knowledge of the amount of support that would have been ordered by the Guidelines but for the agreement,
- (3) All parties have signed the agreement free of duress, coercion, threat, fraud, overreaching, or improper promise on the part of any person; and
- (4) The Court makes written findings as required in subsection (a) of this section.

**11.06.135 Payor's Duties; Income Withholding**

(a) The Lummi Nation Child Support Program shall serve a payor with a notice of an order to withhold income or voluntary wage assignment. The notice may be served on the employer or the employer's place of business by acknowledgement of receipt, personal delivery, certified mail, or by facsimile or electronic delivery with proof of transmission. The notice shall comply with the standard federal income withholding

form. A payor served with a notice of an order to withhold income or voluntary wage assignment shall begin withholding not more than fourteen (14) days after receipt of the notice. An order to withhold income shall also be binding against future payors upon service of notice as provided in this subsection.

(b) No payor shall refuse to honor an income withholding order, a voluntary income assignment executed pursuant to this Chapter, or a court order for seizure or delivery of property belonging to an obligor, including assets owed to the obligor.

(c) A payor who fails to withhold income for child support as required by this Chapter, or to deliver property in accordance with a court order, shall be liable for the entire amount of moneys or value of property, that should have been withheld or delivered if the payor:

- (1) Fails or refuses, after being served, to promptly comply with notice of a income assignment order, or an order for delivery of property;
- (2) Fails or refuses to submit an answer required by the Court to the notice of income assignment or order of delivery, after being served; or
- (3) Is unwilling to comply with the other requirements of this Chapter.

For the purposes of this subsection, the obligor's income is presumed to have been sufficient to fully pay the amount of the withholding order, unless the payor can prove that the actual withholding based on income from the payor would have been lower.

(d) If, in response to a request from the Court or the Lummi Nation Child Support Program for income or asset information, a payor misrepresents or otherwise assists an obligor to conceal income or assets, the payor is liable for any income or assets that could have been withheld or seized, and for the amount by which a child support obligation was calculated below the obligor's actual income and assets.

(e) An employer may not discharge from employment, refuse to employ, or take disciplinary action against any obligor parent because his or her income is subject to withholding for child support. The employer is subject to a civil fine of \$500 upon a determination by a preponderance of the evidence that the employer has violated this subsection. The Lummi Nation Child Support Program or the obligor may also bring an action against the employer for the obligor's lost wages. The obligor also has a right of action for reinstatement of employment.

(f) A payor who withholds income under a child support order, but who fails to promptly remit the withheld amount shall pay

(1) Double the amount of the withheld amount, for an amount not remitted within 45 days of the date it was withheld from the employee; and

(2) An additional \$50 for each two-week period that elapses thereafter.

(g) The Court may suspend the Lummi business license of a business which violates (d) of this section, or which repeatedly fails to withhold or remit income or assets for payment of child support as required by this Chapter. The business may request reinstatement of the license upon a showing that the business can ensure compliance with this Chapter.

(h) An employer who must pay an amount toward a child support obligation under (c) or (d) of this section may recover no more than 50% of the amount from the obligor.

(i) The Lummi Nation Child Support Program may bring action for civil enforcement under this section using the procedures for civil infractions. Amounts collected under (c), (d), and (f)(1) shall be credited against the obligor's child support obligation. Fines and penalties shall be deposited into the general fund. Nothing in this section precludes other civil remedies or criminal penalties that may apply.

(j) The Lummi Nation Child Support Program shall receive and process income

withholding orders from other tribes and states, and ensure that notice of an order is properly and promptly served on a payor located within the Lummi Reservation.

(k) The Lummi Nation Child Support Program shall promptly stop an income withholding once there is no longer a current order for support and all arrearages have been satisfied. The Lummi Nation Child Support Program will promptly refund amounts which have been improperly withheld.

#### **11.06.138 Notice of Delinquency; Expedited Order for Income Withholding**

(a) If an obligor becomes one or more months delinquent in paying his or her child support obligation, the obligee or Lummi Nation Child Support Program may prepare and send to the obligor, at the obligor's last known address, a Notice of Delinquency. The notice shall inform the obligor of the following:

(1) The terms of the child support enforcement order sought to be enforced;

(2) The period over which the delinquency has accrued and the total amount of the delinquency as of the date of the notice;

(3) The consequences that may follow from the failure to pay the delinquency, which may include an income withholding order for the past-due amount and ongoing support; seizure of property; publication of the obligor's name in a local newspaper; suspension or denial of the obligor's licenses; legal proceedings to hold the obligor in contempt of court; incarceration while in contempt; and court orders imposed placing certain requirements on the obligor that must be performed to avoid incarceration; and

(4) What the obligor must do to prevent the consequences that may follow from failure to pay the amount owed.

(b) If the requesting party seeks an expedited order withholding income, the Notice of Delinquency shall be served in accordance with LCL 11.06.045(a) or 11.06.120(b). The notice shall further advise the obligor that an

order to withhold income in the amount of the ongoing monthly support obligation, and an additional 20% of that amount to be paid towards arrearages, shall be served on the obligor's employer, or any other person owing money to the obligor, within twenty-one (21) days unless the obligor complies with the procedures set under (e) of this section, as explained in the notice, to avoid withholding. The notice of delinquency shall be filed, with proof of service, with the clerk of the Tribal Court.

(c) If, twenty-one (21) days after the service of the notice of delinquency, the obligor has not filed with the Court an opposition alleging a defense under LCL 11.06.140(e), the Court shall issue an order to withhold income to the employer or other payor of the obligor. Such order shall direct that the obligor's income be withheld each month in an amount equal to the monthly support obligation, plus an additional twenty percent (20%) of the support payment, to compensate for the accrued delinquent payment until the delinquency is satisfied; provided that the total amount withheld does not exceed the limits established in 15 U.S.C. § 1673. If the obligor files an opposition to the income withholding, the Court shall set a hearing and proceed under the applicable provisions of LCL 11.06.140.

#### **11.06.140 Enforcement of Order**

(a) Due Date. Absent specific direction of the Court, a payment or installment of a child support obligation established under a child support order is due on the first day of each month.

(b) Automatic Lien. Upon filing of a child support order in the office of the Clerk of the Court where any of the property is situated, or the appropriate recording office for that place, it shall constitute a lien on the real or personal property of the obligor. A copy of the recorded notice shall be sent to the person whose property is attached at his or her last known address. Ceremonial and religious property, and real property held in trust for an individual or for the Lummi Nation, are exempt from such liens.

(c) Judgment. Any payment or installment of a child support obligation established under a child support order is, on and after the day it becomes past due, a judgment by operation of law. In addition to other methods of enforcement of a child support obligation set out in this section, a child support judgment may be enforced under the procedures set out in Title 3.10 of this Code, except that the obligor may only assert a claim of exemption to the extent allowed in (k) of this section.

(d) Continuing Jurisdiction. The Court retains continuing jurisdiction under this chapter, and may enforce the child support order and use its contempt powers until the obligor satisfies all duties of support, including arrearages, that accrued pursuant to the support or maintenance order.

(e) Defenses to Enforcement under this Section. Grounds for contesting the imposition of an order under this section to enforce payment for child support shall be limited to:

- (1) A dispute concerning the existence or the amount of the delinquency;
- (2) Material non-compliance with this Chapter in entry of the child support order or the proceeding to enforce the order;
- (3) Evidence that the delinquency has been cured since the filing of the notice; or
- (4) Evidence of a court approved agreement between the obligor and the obligee for an alternative method of payment of the accrued delinquent amount.

(f) Order to Withhold Income. Upon granting a request for an income-withholding order, the Court shall order withheld from the obligor's income the amount of the monthly support payment, plus an additional twenty percent (20%), or such other amount as the Court may order to allow for meaningful liquidation of the accrued delinquent obligation until the ongoing obligation for support is terminated and the delinquency is satisfied; the total amount withheld by an employer may not exceed the limits established in 15 U.S.C. § 1673.

(g) Seizure or Delivery of Money and Property. Upon written application by the obligee or the Lummi Nation Child Support Program, accompanied by a sworn accounting of the obligor's accrued delinquent obligation, the Court shall issue an order of execution on non-exempt real and personal property, of the obligor, including monies or assets owed to obligor. The order shall authorize seizure or order the delivery of the property to the Lummi Nation Child Support Program, for the benefit of the obligee. When it appears that personal property belonging to the obligor is in the possession or under the control of another person, and the obligor's right to the possession is not substantially disputed, the Court has discretion, with notice to such persons as it deems just, or without notice, to make an order directing the other person to immediately pay the money or deliver the articles of personal property to the Lummi Nation Child Support Program, for the benefit of the obligee. An execution order may be prospective to include property that the defendant may possess or have the right to possess in the future, including state and Indian gaming winnings and refunds of any deductions from income, including fishing income. The Court shall require that non-cash property be sold in a reasonable manner, or that a fair value be set for the property and that it be delivered to the obligee. The Lummi Nation Child Support Program shall give notice to the obligor, under the procedures set out in LCL 11.06.045 or 11.06.120(b):

- (1) Of execution on property, within five days after its receipt of the property; and
- (2) Of a sale of property or a hearing to set the value of property, no later than 10 days before the sale or hearing; except that the program may immediately sell without notice perishable goods, such as natural resources, at the prevailing rate.

(h) Suspension or Denial of Licenses. If the Court finds that the obligor has intentionally failed on more than one occasion to comply with its child support orders it may order, after notice and opportunity to be heard, the suspension or denial of occupational, fishing,

recreational, and motor vehicle licenses. A court order to suspend or deny Lummi-issued licenses shall be binding on and given effect by the license-issuing agencies. The Lummi Nation Child Support Program shall send orders affecting licenses issued by other governmental agencies to those jurisdictions for enforcement.

(i) Publication of Names. If an obligor is at least three months in arrears in paying current child support or owes \$1,000.00 or more in unpaid child support, the Court may authorize, after notice and the opportunity to be heard, the publication of the obligor's name in a newspaper of local circulation.

(j) Proceeding to Enforce Child Support Obligation.

(1) An obligee or the Lummi Nation Child Support Program may petition the Court to enter orders under this section to enforce the payment of the ongoing child support obligation and the accrued delinquent obligation. The petition may be filed in an original action, or under an existing cause number for the action in which the child support obligation arose. Along with the petition, the petitioner must provide a sworn accounting of the obligor's accrued delinquent obligation as of the time of filing.

(2) Except as provided under (g) of this section for seizure or delivery of money and property, the petitioner must serve the obligor, in accordance with LCL 11.06.045(a) or 11.06.120(b), with a copy of the petition, debt calculation, and a notice of hearing. The hearing shall be no sooner than 7 days after the respondent receives notice of the enforcement action.

(3) At a hearing on the petition, the Court shall determine the amount of arrearages and may enter judgment for that amount. If changes have been made since the last accounting, the petitioner shall submit an updated accounting of the obligor's accrued delinquent obligation.

(4) The Court may only deny a petition for enforcement under this section if it enters

written findings that the obligor has met the burden of establishing a defense under this (e) of this section. The Court may additionally deny a petition request for enforcement under (h) or (i) of this section if it finds that if it finds that the obligor has met the burden of establishing that such an order would materially inhibit the obligor in actual efforts to comply with child support orders.

(k) Exemptions. The obligor may claim an exemption under the procedures set out in LCL 3.10.100, except that exemptions are limited to

(1) Ceremonial or religious property

(2) Real property held in trust for an individual or for the Lummi Nation; and

(3) The limits established in 15 U.S.C. § 1673.

(l) Criminal Proceedings. Nothing in this Chapter precludes criminal proceedings under LCL 5.06.010 for criminal failure to support dependent children.

#### **11.06.143 Supplemental Enforcement Proceeding**

(a) If an obligor becomes delinquent in child support payments for more than 30 days after a court-ordered payment is due, an obligee or the Lummi Nation Child Support Program may request the Court to order that the obligor appear before the Court for examination. The Court may order that the obligor appear before the Court with specified documentation and records at a stated time and place to be examined under oath as to income, assets, debts, creditors, debtors, and any other financial or business-related matters that may assist the obligee parent or the Lummi Nation Child Support Program to collect the child support obligation.

(b) In addition to, or instead of, a request for an oral examination under (a) of this section, the requesting party may ask the Court to require the obligor to submit answers under oath to written questions. The obligor shall have no more than 10 days to return answers

to the requesting party.

#### **11.06.145 Civil Contempt**

(a) An obligee or the Lummi Nation Child Support Program may file an ex parte motion with the Court for an order from the Court that an obligor or payor show cause why the person should not be held in contempt of court for failure to comply with a court order issued under this Chapter. The motion shall specify which provisions of an order that are alleged to have been violated and shall be accompanied by a sworn statement setting out the factual allegations that are the basis for the motion and the obligor's payment history during the applicable period of time. The request for an order to show cause may be combined with a petition filed under LCL 11.06.140(d).

(b) If the Court finds reasonable cause to believe that the obligor or payor has failed to comply with an order, the Court shall issue an order for the obligor or payor to appear at a stated time and place for a hearing at which the person may show cause why the person should not be held in contempt of court. The order to show cause, along with a copy of the motion and supporting documents, shall be served on the person in accordance with LCL 11.06.045(a). The hearing shall be no sooner than 7 days after the respondent receives notice of the hearing.

(c) After the moving party makes a prima face case of noncompliance with the Court's orders, the burden of proof shifts to the obligor to show by clear and convincing evidence why the obligor should not be held in contempt. If the obligor contends at the hearing that he or she lacked the means to comply with a support or spousal maintenance order, the obligor shall establish that he exercised due diligence in seeking employment, in conserving assets, or otherwise rendering himself able to comply with the court's order.

(d) The Court may find the obligor in civil contempt if it finds by a preponderance of the evidence that:

(1) The Court has personal and subject



matter jurisdiction;

(2) The child support order underlying the civil contempt proceeding is valid;

(3) The obligor had actual knowledge of the child support order;

(4) The obligor had the ability to comply with the child support order; and

(5) The obligor was willful in his/her noncompliance with the child support order.

(e) Upon a finding of civil contempt, the Court may impose coercive incarceration and fines, and compensatory fines.

(f) The Court shall set conditions that allow the obligor to purge the contempt. Purge conditions ordered by the Court shall:

(1) Serve a remedial aim;

(2) Be clearly specified;

(3) Be reasonably related to the cause and nature of the contempt; and

(4) The obligor should be able to fulfill the conditions.

(g) Purge conditions the Court may impose include, but are not limited to:

(1) Payment of a designated amount by a date in the immediate future;

(2) Active employment search;

(3) Active participation in job training;

(4) Active participation in income-generating activities;

(5) Application for services, benefits, licenses, permits, and natural resource validations, for which the Respondent is eligible, that will assist the Respondent in obtaining income;

(6) Transfer or sale of designated assets;

(7) Non-cash payments in accordance with LCL 11.06.080(g);

(8) Participating in Lummi work crew whenever not occupied with income-generating activities, employment search, or job training;

(9) Electronic home-detention during periods when not occupied with employment, employment search, or job training; and

(10) Payment of ongoing child support obligation and designated amounts towards arrearages.

(h) Coercive fines or incarceration shall continue until the obligor complies with the purge conditions. The Court may release the obligor from incarceration if it finds that the confinement has lost its coercive force. The obligor has the burden of proving that there is not a substantial likelihood that continued confinement will accomplish its coercive purpose.

(i) Nothing in this section precludes contempt proceedings under Chapter 4.06 of this Code.

#### **11.06.147 Bench Warrant for Failure to Appear**

(a) An order to appear for examination under LCL 11.06.143, or to appear to show cause under LCL 11.06.145, shall contain the following language in capital letters:

**YOUR FAILURE TO APPEAR AS SET FORTH AT THE TIME, DATE AND PLACE STATED HEREIN MAY CAUSE THE COURT TO ISSUE A BENCH WARRANT FOR YOUR ARREST AND CONFINEMENT IN JAIL UNTIL SUCH TIME AS THE MATTER CAN BE HEARD, UNLESS BAIL IS POSTED AS PROVIDED IN THE BENCH WARRANT.**

(b) Upon proof of that the obligor had actual notice of the hearing and received notice as provided in (a) of this section, the Court may issue a bench warrant and incarcerate an obligor who fails to appear at the examination

or show cause hearing. Such bench warrant shall provide for bail in the amount of \$500.00 unless the total arrearages are less than \$500.00, in which case bail shall be set at that lesser amount.

(c) Upon arrest on a civil bench warrant, the defendant shall be released by the jail upon posting the bail amount in cash and signing a promise to appear at the Lummi Tribal Court on the next day the Court is open to set a court date. The Clerk shall set a new date and time for a hearing and notify the parties.

(d) Upon completion of the proceeding for which the respondent originally failed to appear, the bail shall be exonerated unless the Court orders it held as provided herein. The obligee or the Lummi Nation Child Support Program may request the Court to forfeit the bail and apply the bail funds to the child support arrearages. The obligor has the burden to show by clear and convincing evidence why the posted bail should not be forfeited and applied to the child support arrears.

#### **11.06.149 Award of Costs**

The Court may order that the obligor pay an obligee the obligee's costs and reasonable disbursements related to bringing an enforcement action or supplemental enforcement proceeding.

#### **11.06.150 Modification of Order**

(a) An obligee, obligor, or the Lummi Nation Child Support Program on behalf of the children may file a motion for the Court to modify the terms of the child support obligation. The motion shall state the nature of modification requested and the basis for the request, supported by a sworn statement. The moving party shall serve the other parties who would be affected by the modification request in accordance with the procedures set out in LCL 11.06.045(a) or 11.06.120(b).

(b) The moving party has the burden to prove the grounds for the Court to modify the order, which shall be:

(1) An increase or decrease of 20% in the "gross income" that was the basis of the

current support order;

(2) A change in custody of a child;

(3) The obligor no longer has a duty of support under LCL 11.06.030 for a child for whom support was ordered;

(4) A change in the Lummi Child Support Guidelines;

(5) To require health insurance coverage or to modify an existing order for health insurance coverage;

(6) More than two years have passed since the Court established the order or last reviewed the order for modification;

(7) A need to amend the order to comply with this Chapter;

(8) A need to extend the order for the support of a child under LCL 11.06.030(c); or

(9) A change in circumstance that causes a severe hardship on either party or the child if the order is not modified.

(c) If provisions required under LCL 11.06.120 are not contained in the order being modified, the Court shall include such provisions in the modified order.

(d) If the Court finds cause to modify a child support obligation, the modification shall be effective retrospectively and calculated back to the date of filing of the request for modification, unless the Court finds good cause to set a different effective date.

(e) The amounts of past due support may not be modified except as provided in (f) and (g) of this section, and LCL 11.06.160-11.06.175. If the child support award becomes unjust due to changed circumstances of the obligor, the obligor has the duty to petition the Court for a changed award at that time.

(f) The monthly child support obligation is not due, and no arrearage accrues, during a period:

(1) After the death of the child for whose support the payment would be made;

(2) After the death of the obligor parent;

(3) When the child lives with the obligor parent pursuant to court order or agreement transferring primary custody to the obligor parent.

(g) The monthly child support obligation is temporarily reduced to the minimum set under LCL 11.06.050b(4) during the following periods if the obligor can demonstrate by a preponderance of the evidence that:

(1) the obligor has been incarcerated, but not including participation in a work release program, in excess of 30 consecutive days and during that period had no income or assets from any source with which to make the payment;

(2) the obligor was temporarily and totally disabled due to an injury or sudden illness, and during that period had no income or assets from any source with which to make the payment; for any period beyond three months, the obligor must seek a long-term modification of the child support amount and additionally show efforts to obtain alternative sources of income; or

(3) the obligor has been in an in-patient substance abuse program, which the obligor successfully completed, and during that period had no income or assets from any source with which to make the payment.

(h) The Lummi Nation Child Support Program may administratively adjust the monthly child support obligation:

(1) To adjust the order to the Child Support Guidelines, for a child support order that entered based on the Child Support Guidelines, without deviation, when

(A) A child has reached the age of 12; or

(B) The duty of support for one of the

children has terminated under LCL 11.06.030; the program shall calculate the new child support obligation based on the remaining number of children who are subject to the child support order, and the income level that was the basis for the existing order; and

(2) Under (f) and (g) of this section.

The Lummi Nation Child Support Program shall send a notice of the adjustment to the parties, by certified mail to the last known address. The notice shall advise them of the change, and give the parties twenty-one days to object to the adjustment. A modification based on a change of income cannot be implemented administratively under this (1) of subsection. An adjustment under this subsection does not change the obligor's duty to pay past arrearages. The Lummi Nation Child Support Program shall provide notice to the Court of an administrative action under this subsection.

(i) If, by court order or the action of a custodial parent, the custody of a child changes to a new custodial parent other than the obligor, the Lummi Nation Child Support Program may administratively re-direct payments of the non-custodial parent's child support obligation to the new custodial parent. The Lummi Nation Child Support Program shall send a notice to the obligor, former custodial parent, and current custodial parent, by certified mail to the last known address, of the re-direction of payments. The notice shall advise them of the change, and give the parties twenty-one days to object. The program's action to re-direct payments under this subsection does not modify the amount of the obligation. The Lummi Nation Child Support Program shall provide notice to the Court of an administrative action under this subsection.

#### **11.06.160 Charge-Off of Support Arrearages Owed to Public Entity**

(a) This section only applies to charge-off of any child support arrearages owed the Nation or another tribe or state.

(b) The Lummi Nation may accept offers of

compromise of disputed claims or may grant partial or total charge-off of child support arrears owed to the Nation up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. Arrearages owed to another tribe or state may only be charged off with the agreement of that entity. The Lummi Nation Child Support Program shall assist the obligor in applying for a charge-off by that entity.

(c) In determining whether to grant partial or total charge-off for support arrears owed to the Lummi Nation, the responsible agency shall consider the factors that would be considered by a Court under LCL 11.06.165(e).

(d) The current and future rights of the obligee parent for receipt of child support shall not be adversely affected by a partial or total charge-off under this section.

#### **11.06.165 Adjustment of Support Arrearages owed to Obligee Parent**

(a) The Court shall have the jurisdiction to inquire into, determine the facts of, and attempt to resolve matters in which Upon the written request for review or modification filed by a party or obligee, the Court may determine facts in dispute regarding the amount of child support arrears, and may modify or reduce the child support arrears in accordance with this section.

(b) The party requesting the Court to review or reduce the child support arrearages shall serve a copy of the motion on any person or agency who is an obligee or a party to the proceeding, in accordance with the procedures set out in LCL 11.06.045(a) or 11.06.120(b), along with a notice of hearing. The notice shall state that a hearing has been scheduled, and inform the parties of the time and place of the hearing, which must be at least 21 days after the notice is served.

(c) The Court may take testimony or receive evidence by sworn statement or other written submission together with written or oral argument. The Court may request persons having specific familiarity with the matter at

issue or technical expertise with the subject to advise the Court.

(d) The Court shall make a written decision that shall include a statement as to personal jurisdiction over any obligee or any party who was not a party to the underlying proceeding, and the basis for the decision.

(e) The Court shall base a decision to grant adjustment of arrearages on the following considerations:

(1) Error in law or legal defects impacting an order establishing a child support obligation that materially diminish chances of collection;

(2) Substantial hardship to the obligor, as provided in (f) of this section;

(3) Costs of collection action in the future that are equivalent to or greater than the amount to be charged off;

(4) Settlement by lump-sum cash payment that is beneficial to the obligee considering future costs of collection and likelihood of collection;

(5) A correction of improperly calculated arrears;

(6) The parties mutually understood that the terms of the child support obligation were different than those set out in the order, and acted in reliance on that understanding; or

(7) Basis exists that would allow a Court to relieve a person from judgment under LCL 3.09.010(b).

(f) In making a determination of substantial hardship that would justify an adjustment to the amount of arrears, the Court shall measure the Adjusted Gross Income and all available assets and resources of the obligor. The Court may consider, but is not limited to consider, the following factors if applicable in making its determination:

(1) The burden that has been placed on the custodial parent as a result of the obligor's

failure to make timely payment of the obligation;

(2) The burden placed on an obligor who has a child support debt in an amount that cannot be paid in full despite the obligor's best good faith efforts;

(3) The best interests of the child;

(4) the child on whose behalf support is owed is reunited with the obligor because the:

(A) Formerly separated parents have reconciled; or

(B) The child has returned to the care of the obligor from foster care, the care of a relative, or the care of an obligee parent or custodian.

(5) The obligor's income and assets are exempt from collection, and there is no reasonable basis to find that the respondent's financial circumstances will change so that the obligor will have income or assets that can be collected;

(6) The obligor seeking charge-off of a debt is the mother of a child, on whose behalf the debt was incurred, and who was conceived as a result of incest or rape; in support of this basis, the mother must present evidence of rape or incest acceptable under 45 C.F.R. 232, 43(c).

(7) Payment on the arrears obligation interferes with the responsible parent's payment of current support to another child living outside the home.

(8) The obligor's past efforts to pay support and the extent of the parent's participation in the child's parenting;

(9) The obligor's reduced income, during some time period over which the arrears accrued, based on disability, incarceration, participation in in-patient substance abuse treatment, or participation in a cultural initiation ceremony; and

(10) The size of the obligor's debt, the

obligor's current income, and the prospects for increased income and resources in the future.

### **11.06.170 Conditional Order of Charge-Off of Arrearages**

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(a) The Tribal Court may:

(1) Reduce collection on the obligor's support debt to an amount that alleviates the hardship without altering the amount of the support where grounds to make an adjustment exist, but the circumstances creating the hardship are temporary. Temporary hardship situations may include the factors listed in LCL 11.06.160(e) and, in addition, the applicant's receipt of public assistance on the applicant's behalf or on behalf of a child in the applicant's home.

(2) Create incentives to promote payment or family unity by entering a conditional order of total or partial charge-off or reduced payment on the support debt conditioned on:

(A) Continued payment of a monthly amount established on a payment schedule imposed by the Court; or

(B) Continued reconciliation; or

(C) A family remaining off of TANF.

(b) When creating incentives or providing conditional relief under this section, the Court shall:

(1) Not create a conditional charge-off without specifying a period of performance after which the charge-off is permanent;

(2) Not create a charge-off conditioned on the parties remaining reconciled unless the parties have been reconciled for at least six months at the time of the Court hearing; and

(3) Consider whether the conditions would create incentives for abuse or intimidation of the obligee.

(c) If the obligor no longer meets the terms of a conditional charge-off or fails to pay the reduced payment amount imposed by the Court under this section, the Court, after notice and opportunity for a hearing may enter an order reimposing the remaining amount of the accrued debt. The Court shall not reimpose that amount that was not paid during the interim as a result of the conditional order.

(d) Even if the obligor later comes into compliance with the terms of the conditional charge-off order, it may only be reinstated upon written agreement of the obligee or by order of the Court.

**11.06.185 Offset of Child Support Arrearages**

(a) If a custodial parent owes child support arrearages to the current obligor for an earlier period when the current obligor had custody of the child, the provisions of this section apply. The current obligor may offset a portion of the arrearages against the obligor's current monthly obligation to the custodial parent. The offset shall be subtracted from the monthly obligation in a fashion that the current monthly child support obligation:

- (1) is not reduced by more than 1/3; and
- (2) may not be less than the minimum monthly child support obligation established in the Child Support Guidelines.

(b) If the current obligor and custodial parent each owe arrearages to the other, the arrearages shall be adjusted so that one is subtracted from the other. Nothing in this subsection excuses the current obligor from making payments on the current monthly obligation established in (a) of this section.

**11.06.190 Statutes of Limitation**

(a) Notwithstanding any provision in a Statute of Limitation or Limitation of Action set out elsewhere in this Code,

- (1) As to custodial parents and others acting on behalf of the child, any limitations for an action for the

enforcement of child support is tolled from the child's birth until the child reaches the age of twenty-four (24).

(2) As to children acting on their own behalf, any limitations for the child's right of action to establish a child support obligation is tolled from the child's birth until the child has reached the age of twenty-one (21), regardless of emancipation.

(b) A person owing a support debt may execute a written extension or waiver of any code provision which may bar or impair the collection of the debt.

**11.06.200 Full Faith and Credit for Foreign Child Support Orders**

(a) The Court shall give full faith and credit, pursuant to 28 U.S.C. §1738B, to properly issued court and administrative orders, judgments, or decrees of other Indian tribes, states, or federal agencies that relate to child support. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according to the laws of that jurisdiction, and the order does not violate the public policy of the Lummi Nation.

(b) A foreign order is authenticated by reasonable proof that the document is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a court seal, is sufficient evidence of authenticity.

(c) The party requesting the Court to give full faith and credit to a foreign order shall give notice to the other parties affected by the order, and opportunity to respond to the request for full faith and credit.

(d) Upon the filing of a foreign order, the Court may issue an ex parte temporary order and a preliminary injunction under the

procedures set forth in Chapter 3.04 of this Code to give interim full faith and credit to the child support provisions of a foreign child support order. The Lummi Indian Business Council finds that, for the purposes of Chapter 3.04, provision of uninterrupted support for children is an emergency situation warranting a temporary order without notice to all parties, and that immediate and irreparable damage or loss would result from a delay in the enforceability of an existing child support order until such time that a hearing may be held before the Tribal Court to determine whether the foreign order meets the requirements of this section.

(e) Unless defects are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to notice of the order and to timely contest it, the Court shall enforce it as a Lummi Tribal Court Order.

(f) Where a foreign order fails to meet one of the requirements set out in (a) of this section, the Court may adopt some or all of its provisions as an original order of the Lummi Tribal Court to the extent that it does not violate the public policy of the Lummi Nation.

(g) A child support order of the Lummi Tribal Court may supersede an administrative order of another jurisdiction as to the future obligations of the parties. A child support provision in a court order of another jurisdiction may be modified within any restrictions imposed by federal law.

#### **11.06.220 Right of Appeal to Lummi Tribal Court of Appeals**

Any final order entered by the Court under this Chapter may be appealed to the Lummi Tribal Court of Appeals under the procedures set out in Title 1.07. An appeal shall not stay an order establishing or modifying support, and does not prevent an action to enforce the order, including proceedings for civil contempt. An order of enforcement or civil contempt may only be stayed in accordance with LCL 3.10.030.

#### **11.06.225 Obligation to Cooperate with Lummi Nation Child Support Program**

(a) Upon the request of the Lummi Nation Child Support Program, the following shall provide to the Lummi Nation Child Support Program any information necessary to carry out its duties, including but not limited to locating obligees and obligors; determining their income and assets, locating their assets; determining their status and participation in employment, school, employment training, and job search; determining a child's participation in schooling after the age of 18; and determining custody placement:

(1) Any employer operating within the boundaries of the Lummi Reservation;

(2) Any utility, financial institution, or other business operating within the boundaries of the Lummi Reservation; and

(3) The Lummi Business Council and any of its agencies, enterprises, or businesses, including but not limited to Employment and Training, Vocational Rehabilitation, Accounting, Natural Resources, Lummi Schools, Family Services, General Assistance, and Human Resources.

(b) If the Lummi Nation Child Support Program must seek judicial intervention to obtain information under this section, the entity that has failed to timely comply with this subsection is liable for the resulting attorney fees and costs, and a fine up to \$500.

#### **11.06.230 Lummi Nation Child Support Program**

(a) The Lummi Nation Child Support Program is established to carry out the purposes set out in LCL 11.05.010 and 11.06.010, in accordance with this Code the Lummi Nation Child Support Program shall act to further:

(1) The best interest of the child;

(2) The resolution of any controversy; and

(3) The integrity and proper application of the law.

(b) The Lummi Nation Child Support Program shall operate its program in compliance with Title IV-D of the Federal Social Security Act (42 U.S.C. § 651) for the establishment of paternity, establishment and modification of child support obligations; enforcement of child support obligations; disbursement of child support collections; and location of custodial and non-custodial parents.

(c) Upon request of a parent, an obligee, an obligor, or a tribal or state agency with authority to make such a request, the Child Support Program may initiate legal action; join a legal action; or otherwise act to establish parenthood of a child, locate a non-custodial parent, or to establish, modify, or enforce a child support obligation. In such an action, the Child Support Program does not represent the requesting party or any other party to the action, but instead acts on behalf of the child.

(d) The Lummi Nation Child Support Program may not take legal action to disestablish paternity that has earlier been established under operation of law.

(e) The Lummi Nation Child Support Program shall keep confidential all information and records in its possession except as release is necessary to carry out its duties.

(f) An attorney representing the Lummi Nation Child Support Program has an attorney – client relationship only and exclusively with the Lummi Nation and with the Lummi Nation Child Support Program. The attorney does not have an attorney – client relationship with any applicant for or recipient of child support services. Any communication between the attorney and a mother, father, alleged father(s), child, or any other party in a paternity or child support action shall not be considered privileged or confidential unless specifically required by tribal or federal law.

(g) The Lummi Nation Child Support Program shall maintain the Lummi Child Support Registry for receipt and disbursement

of child support amounts, and for maintenance of records submitted under LCL 11.06.120(b). The Lummi Nation Child Support Program shall establish procedures in compliance with 42 U.S.C. § 651 and other provisions in this Code for the disbursement of child support amount.

(h) The Lummi Nation Child Support Program may enter into reciprocal agreements with other tribes to assist each tribe in establishing parenthood of a child or establishment, modification, or enforcement of a child support obligation for that tribe's members.

### **Chapter 11.07 Procedures for Name Change**

#### **11.07.010 Procedures for Name Change**

(a) The Lummi Tribal Court, in its discretion, may order a name change for a person or a person's minor child in accordance with this Chapter.

(b) A person may petition the Lummi Tribal Court for change of the person's name or of the person's minor child as follows:

(1) The petitioner shall set out the reasons for the change; and

(2) The petitioner shall certify that the petitioner, or the petitioner's child as applicable, is not disqualified from obtaining a name change under (c) of this section.

(c) The Court may not grant a name change to:

(1) a sex offender who is subject to the registration requirements of LCL 5.09C.06;

(2) a person who has been convicted of a crime that would be a felony under the laws of the Lummi Nation, and who is still under the supervision of the jurisdiction where the conviction was entered; or

(3) a person seeking the name change for



the purpose of avoiding creditors.

(d) Unless the Court finds reasonable basis that the name change would assist in protecting the child or the child's parent from physical harm, the Court may not grant a name change for a minor child unless both parents have been given notice and the opportunity to be heard. If the parent's disagree as to the name change, the Court shall consider the best interests of the child in determining whether to grant the petition.

(e) Upon the request of the petitioner, the Court shall seal the name change file if it finds that the petitioner, or the petitioner's child, is a victim of domestic violence as defined in Title 5A of this Code and that there is a reasonable fear for the person's safety or that of the child.

(f) A person may also seek a name change for the person or the person's child as part of a dissolution of marriage proceeding under Chapter 2 of this Title.

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