
YUROK TRIBAL CODE

Family Code

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PREFACE

This Family Code is meant to incorporate the evolving relationship practices of the Yurok People. Traditional practices are of continual importance to the Yurok Tribe and its members. However we acknowledge that there are certain historical practices that are no longer a part of the people's relationships. Traditional leader's roles in determining practices will be recognized and will be recognized pursuant to this Code to solemnize marriage, as they have had in the past. This Code is particularly enacted to guide the relationships of the Yurok Tribe and those within its jurisdiction. The Family Code will be interpreted with the intent of the traditional values of the Yurok Tribe which encourages responsibility toward family, including extended family and supporting individual liberty.

SECTION 1. PURPOSE AND DEFINITIONS

1.1 PURPOSE

The Yurok Tribal Council, in accordance with the Constitution of the Yurok Tribe and in the exercise of the Yurok Tribe's inherent sovereign power to safeguard and provide for the health, safety and welfare of the members of the Yurok Tribe, hereby enacts this Code in order to safeguard family relationships, provide for legal recognition of marriages, promote the peaceful and fair settlement of disputes between parties to a marriage, minimize the potential harm to spouses and their children caused by the dissolution of marriages, strengthen parental responsibility for family and child support, and provide procedures for establishing the legal relationship existing between a child and his or her parents in accordance with Yurok culture, tradition, and values.

1.2 DEFINITIONS

As used in this Code, these terms have the following meanings:

- (1) ***Child*** means any person under the age of 18, or any person who is over 18 and is enrolled full-time in high school or a General Equivalency Diploma program, and is not otherwise emancipated, self-supporting, married, or an active member of the armed forces.
- (2) ***Child Support*** means a payment of money, the provision of in-kind, traditional, or customary support, the provision of any benefit (including payment of health insurance, child care, and educational expenses), or arrearages with respect to any of the foregoing, which is intended for the support or care of a child. Unless otherwise provided, a guardian with physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.
- (3) ***Child Support Order*** means a judgment, decree, or order issued by a court or administrative agency of competent jurisdiction for the support and maintenance of a child or of the parent with whom the child is living, which provides for child support and which may include income withholding, related costs and fees, interest and penalties, and other relief.
- (4) ***Child Support Schedule*** is a guideline that the Tribal Court shall use in calculating in a fair and consistent manner the amount of child support payments equitable in any given situation. The Schedule is found at Appendix A.
- (5) ***Community Property*** generally means property acquired during marriage, except by gift, inheritance or devise to either spouse individually. Allotted/assigned property, regalia, and any property created for the primary purpose of

involvement in dance and/or ceremony will be treated as separate property regardless of when it is acquired. All other property acquired during marriage is presumed to be community property.

- (6) **Conciliation Conference** means a conference conducted by an impartial third party to assist married parties in determining the prospects of preserving the marital relationship as opposed to instituting or continuing with dissolution proceedings.
- (7) **Extended Family** means those who are considered extended family by virtue of their relationship to any party to an action pursuant to this Code or the laws and the tradition of the Yurok Tribe.
- (8) **Net Income** is the amount of income remaining after subtracting certain mandatory deductions—including federal, state, local, and tribal taxes, and other deductions determined by Tribal law—from a person’s gross income. Section 7.5(5) describes how to calculate net income.
- (9) **Marriage** is the union of two individuals by any ceremony or practice recognized under Yurok law, and includes marriages according to Yurok custom and tradition.
- (10) **Noncustodial Parent** means a parent of a child or children who is not the parent with primary physical custody, or any person who otherwise has a legal obligation to provide support for that child or children.
- (11) **Obligee** means either the person to whom support has been ordered to be paid, the Yurok Tribe Child Support Services Program or another tribal, state, or federal entity to which the rights under a support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee, or another person designated by the Court to receive the support payment.
- (12) **Obligor** means a person who owes a duty of support and is liable for support payments under a support order.
- (13) **Parent** is defined herein and shall also include those persons who by culture and tradition or practice have parented a child subject to the rules of the Yurok Tribe.
- (14) **Parenting Plan** means a plan for parenting the child, including allocation of parenting functions, which is incorporated in any final decree in an action for dissolution of marriage, declaration of invalidity, legal separation, or child custody.
- (15) **Separate Property** generally means property acquired before marriage or

acquired during marriage by either spouse individually as a result of a gift, inheritance or devise. Separate property also includes allotted/assigned property, regalia, and any property created for the primary purpose of involvement in dance and/or ceremony, regardless of when it is acquired. Property acquired after a legal separation is also separate property provided community property did not generate the funds for the acquisition.

(16) *Spousal Support Order* means a judgment, decree, or order issued by a court of competent jurisdiction for the support and maintenance of a spouse or former spouse.

(17) *Traditional or Customary Support* means any resources or services which may be found to qualify as child or spousal support according to the laws, traditions, customs or practices of the Yurok Tribe (including, but not limited to, provision of fish, game, other food, clothing, firewood, or child care).

(18) *Yurok Child Support Services Program* is the entity charged with child support enforcement on the Yurok Reservation which is authorized to seek enforcement of support orders or laws relating to the duty of support, establishment or modification of child support, determination of parentage, and location of absent parents and their assets.

SECTION 2. JURISDICTION

The Yurok Tribal Court has jurisdiction over actions governed by this Code in accordance with Yurok Tribe Judicial Branch Ordinance Sections 1.1 and 1.2. The Court may hear any action brought pursuant to this Code where both personal and subject matter jurisdiction exists. Actions for the establishment of parentage, custody, and support may be joined with actions for divorce, dissolution, declaration of invalidity, or legal separation.

2.1 CONSTRUCTION

The Court shall construe this section liberally to exercise maximum jurisdiction consistent with applicable tribal, state, and federal law.

2.2 PERSONAL JURISDICTION

(1) Residents. In a proceeding under this Code to establish, enforce or modify a support order, or to determine parentage or child custody, the Yurok Tribal Court may exercise personal jurisdiction over a resident individual, or the individual's guardian or conservator.

(2) Non-Residents. In any proceeding described in Section 2.2(1), the Tribal Court may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, if any of the following applies:

- (A) The individual is personally served with notice within the Yurok Reservation;
- (B) The individual submits to the jurisdiction of the Yurok Tribal Court by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any objection to personal jurisdiction;
- (C) The individual resided with the child on the Reservation;
- (D) The individual resided on the Yurok Reservation and provided prenatal expenses or support for the child;
- (E) The child resides on the Yurok Reservation as a result of the acts or directives of the individual;
- (F) The individual engaged in sexual intercourse on the Yurok Reservation and the child may have been conceived by that act of intercourse; or
- (G) There is any other basis consistent with the Constitution of the United States and the law of the Yurok Tribe for the exercise of personal jurisdiction.

2.3 SIMULTANEOUS PROCEEDINGS IN ANOTHER JURISDICTION

The Tribal Court may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another court only if all of the following apply:

- (1) The petition in Tribal Court is filed before the expiration of the time allowed in the other court for filing a responsive pleading challenging the exercise of jurisdiction by the other state or tribe.
- (2) The contesting party timely challenges the exercise of jurisdiction in the other court.
- (3) The contesting parties agree to a voluntary transfer.

2.4 CONTINUING, EXCLUSIVE JURISDICTION

(1) The Tribal Court has continuing, exclusive jurisdiction over a child support order it has issued for as long as the child is an enrolled member of the Tribe, or for as long as the Reservation remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, or until each individual party has filed written consent with the Tribal Court for a court of another state or tribe to modify the order and assume continuing, exclusive jurisdiction.

(2) The Tribal Court shall recognize the continuing, exclusive jurisdiction of a court of another state or tribe that has issued a child support order consistent with Section

8.2(1)(A)-(B). This requires for recognition that the orders be consistent with our approach etc.

(3) A temporary support order issued *ex parte* or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

SECTION 3. MARRIAGE

3.1 PERSONS WHO MAY MARRY

Marriage is a personal relationship between two individuals arising out of a civil contract to which the consent of the parties is essential, and typically any two persons may marry. However, no marriage license shall be issued or marriage performed unless the persons to be married meet the following criteria:

- (1) Both persons to be married are at least 18 years old;
- (2) At least one of the persons to be married has been domiciled within the Yurok Reservation or has been a member of the Yurok Tribe for at least 90 days prior to the license application; and
- (3) If under the age of 18, but 14 years or older that the party(s) have the consent of their parents/guardian or the Court; and/or
- (4) If under the age of 18 but 16 years or older that the person who is underage be Emancipated by a recognized order of this Court or a Court of competent jurisdiction. Emancipation procedures will be established by the Court upon the petition of an underage person if there is no applicable tribal law.

3.2 PROHIBITED MARRIAGES

(1) Marriages in the following cases are prohibited:

- (A) When either party thereto has a wife or husband living at the time of marriage;
- (B) When the parties are nearer of kin to each other than second cousins;
- (C) It shall be unlawful for any person to marry one of his or her parents, parents' siblings, children, or grandchildren.

(2) Parties to a marriage prohibited under this Section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

3.3 WHO MAY PERFORM MARRIAGE CEREMONIES

(1) A marriage may be solemnized and performed on the Yurok Reservation by the following:

(A) A recognized member of the clergy or person recognized by their religion as having authority to perform marriages;

(B) A judge of the Tribal Court; or

(C) A person with the authority to perform marriage ceremonies according to Yurok custom and tradition who has sought the Certification of the Court for the person of marrying others pursuant to this Code. A certification process will be established by the Court upon the petition of an individual seeking to perform a marriage ceremony if there is no applicable tribal law.

(2) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for lack of such authority, if consummated in the belief of the parties or either of them that they have been lawfully joined in marriage.

3.4 MARRIAGE CEREMONY

No particular form of marriage ceremony is required, provided that the persons to be married shall declare in the presence of the person performing the marriage ceremony their intention to be married to one another and that such declaration is made in the presence of at least two attending witnesses.

3.5 MARRIAGE LICENSES AND CERTIFICATES

(1) No marriage ceremony shall be performed unless the parties have first obtained a marriage license from the Clerk of the Tribal Court.

(2) In addition to payment of a fee to be set by the Tribal Court, the Clerk shall require each party to make and file an affidavit upon forms provided by the Tribal Court showing that the applicants are 18 years of age or older, and that one of the parties has been domiciled on the Yurok Reservation or has been a member of the Yurok Tribe for at least ninety 90 days and/or they have the necessary consents or can show emancipation.

(3) The Clerk shall keep a public record of all marriage licenses and certificates issued.

(4) The marriage license, properly endorsed by the authorized person performing the marriage and two attending witnesses, shall within 30 days of the ceremony be returned to the Clerk, who shall issue a marriage certificate to the parties.

(5) The Tribal Court is authorized to develop a marriage license, an affidavit form, and other documents and records necessary to implement this Section.

3.6 VOIDABLE MARRIAGES

When either party to a marriage is incapable of consenting thereto, for want of legal age or sufficient understanding, or when the consent of either party is obtained by force or fraud, such marriage is voidable, but only by the party laboring under the disability or upon whom the force or fraud is imposed, or their parent or family responsible for care, legal guardian or conservator.

3.7 EXISTING MARRIAGES

All marriages performed, other than as provided under this Code, that are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.

SECTION 4. DISSOLUTION, LEGAL SEPARATION AND DECLARATION OF INVALIDITY

4.1 PETITION FOR DISSOLUTION, SEPARATION OR INVALIDITY

(1) The petition in a proceeding for dissolution of marriage, legal separation or declaration of invalidity shall allege that the marriage is irretrievably broken or was never legally valid and shall set forth:

(A) The name, last known address, length of domicile on the Yurok Reservation, and tribal enrollment, if any, of each party;

(B) The date of the marriage and the place where the marriage ceremony was performed;

(C) If the parties are separated, the date on which the separation occurred;

(D) The names, ages and addresses of all living children, natural or adopted, common to the parties and whether the wife is pregnant;

(E) The details of any agreements between the parties as to the parenting and support of the children and maintenance of a spouse;

(F) A statement specifying whether the Tribal Court needs to divide property between the parties and listing any such property; and

(G) The relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) The only defense to a petition for declaration of invalidity of marriage is that the marriage is legally valid.

(4) The Tribal Court may join additional parties necessary for the exercise of its authority. Any child of parents who are parties to a proceeding for dissolution, legal separation, or a declaration of invalidity is also a party to such an action, and the Court may appoint a guardian *ad litem* to represent the child's best interests in the matter.

4.2 INFORMAL DISPUTE RESOLUTION

(1) In any proceeding under this Section, an informal resolution of the contested issues may be arranged with the Tribal Court's permission at or before the time the matter is set for a hearing.

(2) The informal resolution process may include counseling, mediation or another process that is acceptable according to Yurok community standards. The parties may seek the assistance of the Court to establish such a process or seek the approval of the Court for an agreed upon process.

(3) The purpose of the informal dispute resolution process is to encourage cooperation, reduce acrimony and develop an agreement that to the extent possible meets the needs and best interests of all the parties involved. In the course of such an informal dispute resolution process, the Court may apply the customs and traditions of the Yurok Tribe.

(4) Informal dispute resolution proceedings shall be held in private and shall be confidential. By agreement the parties may have extended family members or supporting parties present, if the parties cannot agree as to who should be present the Court after consultation may make the decision and formulate the rules for such participation. No one shall testify in Tribal Court as to any aspect of the proceedings. However, if an agreement is reached by the parties it shall be reduced to writing, signed by the parties and filed with the Tribal Court.

4.3 TEMPORARY ORDER OR PRELIMINARY INJUNCTION

(1) Request for Temporary Order. In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity, either party may move for temporary custody, child support, and spousal support. The motion shall be accompanied by a statement setting forth the factual basis for the motion and the relief requested.

(2) Preliminary Injunction. As a part of a motion for temporary spousal or child support or by independent motion accompanied by a party's statement, either party may request that the Tribal Court issue a preliminary injunction granting any of the following relief:

(A) Restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(B) Enjoining a party from harassing another party or any child;

(C) Enjoining a party from harassing any person who though not a party may be directly involved with the disputing spouses. A request for such relief must be accompanied by a statement setting out the facts of this involvement and the basis for the request;

(D) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result;

(E) Enjoining a party from removing a child from the jurisdiction of the Tribal Court; and

(F) Providing other injunctive relief proper under the circumstances.

(3) Temporary Restraining Order. The Tribal Court may issue a temporary restraining order without requiring prior notice to the other party only if it finds on the basis of the moving party's statement or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(4) Order for Temporary Support. On the basis of the showing made, and in conformity with the Schedule and guidelines for support under this Code, the Tribal Court may issue an order for temporary support in amounts and on terms just and proper under the circumstances.

4.4 SEPARATION AGREEMENT

(1) Provisions of Separation Agreement. To promote amicable settlement of disputes between parties to a marriage or parental relationship upon their separation or upon the filing of a petition for dissolution of marriage, legal separation or declaration of invalidity, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance and support of either of them, and the custody and support of their children.

(2) Effect of Terms. The terms of the separation agreement shall be binding upon the Tribal Court unless it finds, after considering all of the relevant evidence produced by the parties, that the agreement is unfair. Child support may be included in the separation agreement and shall be reviewed in any subsequent proceeding as to its reasonableness consistent with Section 7.

(3) Fairness. If the Tribal Court finds the separation agreement unfair as to disposition of property, support, or custody, it may request that the parties submit a revised separation agreement or may make orders for the disposition of property, support, or custody.

(4) Incorporation by Reference. If the Tribal Court finds that the terms of the separation agreement are fair, the agreement shall be set forth or incorporated by reference in the decree of dissolution, legal separation, or declaration of invalidity and the parties shall be ordered to comply with its terms.

(5) Enforcement. Terms of the agreement set forth or incorporated by reference in an order of the Court shall be enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

4.5 DECREE OF LEGAL SEPARATION

(1) Necessary Findings. The Tribal Court may enter a decree of legal separation if it finds each of the following:

(A) That the marriage was performed on the Yurok Reservation, that the marriage certificate was issued by the Yurok Tribe, that the parties agreed to have the matter heard in the Court, or that one of the parties is an enrolled member of the Yurok Tribe, was domiciled within the Reservation for at least 90 days at the time the action was commenced, or is otherwise subject to the jurisdiction of the Yurok Tribe;

(B) That the marriage is irretrievably broken in accordance with Section 4.8; and

(C) That the other party does not object to a decree of legal separation. If the other party objects to a decree of legal separation, the Tribal Court shall direct one of the parties to amend the pleadings to seek dissolution of the marriage.

(2) Support. If the issue of child support and/or the support of either spouse is before the Court at the time it issues a decree of legal separation under this Section, the Court may concurrently issue an order for child support in accordance with Section 7, and/or for spousal support in accordance with Section 4.10.

(3) Division of Property. At the time the Court issues a decree of legal separation under this Section, the Court may concurrently divide the property and liabilities of the parties in accordance with Section 4.9.

(4) Custody. If the issue of child custody is before the Court at the time it issues a decree of legal separation under this Section, the Court may concurrently issue a parenting plan in accordance with Section 5.2.

4.6 DISSOLUTION OF MARRIAGE – FINDINGS NECESSARY

(1) Necessary Findings. The Tribal Court may enter a decree of dissolution if it finds each of the following:

(A) That the marriage was performed on the Yurok Reservation, that the marriage certificate was issued by the Yurok Tribe, that the parties agreed to have the matter heard in the Court, or that one of the parties is an enrolled member of the Yurok Tribe, was domiciled within the Reservation for at least 90 days at the time the action was commenced, or is otherwise subject to the jurisdiction of the Yurok Tribe; and

(B) That the marriage is irretrievably broken in accordance with Section 4.8.

(2) Support. If the issue of child support and/or the support of either spouse is before the Court at the time it issues a decree of dissolution under this Section, the Court may concurrently issue an order for child support in accordance with Section 7, and/or for spousal support in accordance with Section 4.10.

(3) Division of Property. At the time the Court issues a decree of dissolution under this Section, the Court may concurrently divide the property and liabilities of the parties in accordance with Section 4.9.

(4) Custody. If the issue of child custody is before the Court at the time it issues a decree of dissolution under this Section, the Court may concurrently issue a parenting plan in accordance with Section 5.2.

4.7 DECLARATION OF INVALIDITY OF MARRIAGE

(1) Necessary Findings. The Tribal Court may enter a declaration of invalidity of marriage if the Tribal Court finds each of the following:

(A) That the marriage was performed on the Yurok Reservation, that the marriage certificate was issued by the Yurok Tribe, that the parties agreed to have the matter heard in the Court, or that one of the parties is an enrolled member of the Yurok Tribe, was domiciled within the Reservation for at least 90 days at the time the action was commenced, or is otherwise subject to the jurisdiction of the Yurok Tribe;

(B) The marriage should not have been contracted because of the age of one or both of the parties, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force, duress, or fraud involving the essentials of marriage; and

(C) The parties have not ratified their marriage by voluntarily cohabitating after attaining the age of consent, after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud.

(2) Prior Undissolved Marriage. Notwithstanding Section 4.7(1)(B), if a party reasonably thought a prior marriage was dissolved although it was not, the subsequent dissolution of that marriage will cure or waive its effect of invalidating a later marriage.

(3) Support. If the issue of child support and/or the maintenance of either spouse is before the Court at the time it issues a declaration of invalidity of marriage under this Section, the Court may concurrently issue an order for child support in accordance with Section 7, and/or for spousal support in accordance with Section 4.10.

(4) Division of Property. At the time the Court issues a declaration of invalidity of marriage under this Section, the Court may concurrently divide the property and liabilities of the parties in accordance with Section 4.9.

(5) Custody. If the issue of child custody is before the Court at the time it issues a declaration of invalidity of marriage under this Section, the Court may concurrently issue a parenting plan in accordance with Section 5.2.

(6) Invalidity in Other Jurisdictions. If the Court finds that a marriage contracted in another jurisdiction was void or voidable under the laws of the place where the marriage was contracted and in the absence of proof that the marriage was subsequently validated by the laws of the place of contract, or of a subsequent domicile of the parties, it may declare the marriage invalid.

4.8 IRRETRIEVABLE BREAKDOWN OF MARRIAGE - FINDING

(1) Statement Under Oath or Affirmation. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Tribal Court shall make a finding that the marriage is irretrievably broken.

(2) When Hearing Held. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court may hold a hearing to consider all relevant factors as to the prospect of reconciliation, and may either:

(A) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution or legal separation; or

(B) Continue the matter for further hearing, not more than 60 days later, and order a reconciliation conference. If either party refuses to participate in a reconciliation conference, a finding will be made pursuant to Section 4.8(2) (A). At the rescheduled hearing the Court shall:

(1) Find that the parties have agreed to reconciliation and dismiss the petition; or

(2) Find that the parties have not reconciled. If either party continues to allege that the marriage is irretrievably broken, the Court shall make a finding pursuant to Section 4.8(2) (A).

4.9 DISPOSITION OF PROPERTY

In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Tribal Court may, without regard to marital misconduct, divide the property and liabilities of the parties, either community or separate, as is just and equitable after considering all relevant factors including:

- (1) The nature and extent of the community and separate property;
- (2) The nature and extent of any trust or restricted property;
- (3) The duration of the marriage;
- (4) The economic circumstances of each party at the time the division of property is to become effective including:
 - (A) The desirability of awarding the family home or the right to live therein for reasonable periods to a party with whom the children reside the majority of the time; and
 - (2) The desirability of ensuring that both parties' ability to continue working in their chosen field or livelihood is not unreasonably jeopardized;
- (5) The direct or indirect contribution of each party to the education or career development of the other party; and
- (6) Any interruption in education or career opportunities to benefit the others career, the marriage, or any children.

4.10 SPOUSAL SUPPORT

(1) Necessary Findings. In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Tribal Court may grant a maintenance order for either party only if it finds that the party seeking support:

- (A) Lacks sufficient property, including property apportioned to him or her, to provide for his or her reasonable needs; or
- (B) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home.

(2) Determination of Amount. The support order shall be in such amounts and for such periods of time as the Court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

- (A) The financial resources of the party seeking support, including marital property apportioned to him or her and their ability to meet their reasonable needs independently;
- (B) The time necessary to acquire sufficient education or training to enable the party seeking support to find appropriate employment;
- (C) The standard of living established during the marriage;
- (D) The education of one party during the marriage;
- (E) The duration of the marriage;
- (F) The age and physical and emotional condition of the party seeking support;
- (G) The ability of the party from whom support is sought to meet his or her needs while meeting those of the spouse seeking support; and
- (H) Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

(3) Modification or Termination. The provisions of any decree respecting spousal support may be modified only as to installments accruing subsequent to the motion for modification, unless the obligee failed to honestly disclose their actual unmet needs, and only upon a showing of changed circumstances that are substantial and continuing. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future spousal support is terminated upon the death of either party or the remarriage of the party receiving support.

4.11 INDEPENDENCE OF PROVISIONS OF DECREE OR TEMPORARY ORDER

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 comply with a parenting plan is not automatically suspended, but he or she may move the Court to grant an appropriate order.

SECTION 5. CHILD CUSTODY, PARENTING PLANS AND VISITATION

5.1 POLICY – BEST INTERESTS OF THE CHILD

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this Section, the best interests of the child shall be the standard by which the Tribal Court determines and allocates parental responsibilities. The Tribe recognizes the fundamental importance of the parent-child relationship and that the relationship between the child and each parent should be fostered unless inconsistent with the best interests of the child. The interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, tribal and cultural ties, health and stability, educational needs, and physical care. The best interests of the child are ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, educational, mental or emotional harm.

A determination of the best interests of the child should include consideration of the rights of the child as a Yurok and the interest of the Yurok community and Tribe in retaining its children in its society; political membership in the Tribe and the attendant benefits such as hunting and fishing rights; the child's cultural heritage; and the opportunity to participate in the ongoing customary life of the Tribe and maintain the connection that each Yurok has with the Yurok territory, and their extended family.

5.2 PARENTING PLAN

(1) Petition. Either parent or an extended family member may petition the Tribal Court for resolution of a child custody dispute. If the issue of child custody is before the Court at the time it issues a decree of legal separation, dissolution of marriage, or declaration of invalidity of marriage under this Code, the Tribal Court shall concurrently issue a parenting plan under this Section.

(2) Guardian *ad litem*. Any child whose custody is in dispute is a party to an action under this Section, and the Court may appoint a guardian *ad litem* to represent the child's best interests in the matter.

(3) Resolution of Child Custody Dispute. The Court shall resolve child custody disputes by issuing a parenting plan allocating decision-making and custodial responsibility between the parents and any intervening family members on the basis of the best interests of the child with due consideration of tribal custom. In determining the best interests of the child, the Tribal Court shall consider all relevant factors including those factors enumerated in Section 5.1 and in this Section.

(4) Policy of Equal Access to Minor Children. It is the policy of the Yurok Tribe to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. To effectuate this policy, the Court shall if requested by a parent provide substantially equal access to minor children to both parents unless the Court finds that shared parenting would be detrimental to the children. A

parent requesting sole custody shall have the burden to prove that shared parenting would be detrimental to the children, and if the Court makes such a determination it shall be documented in the court record.

(5) Objectives. The objectives of any parenting plan shall be:

(A) To provide for the child's education and physical care and to maintain the child's emotional stability;

(B) To provide for the child's changing needs as the child grows;

(C) To promote and preserve the child's Yurok heritage and to provide for the maintenance of the child's tribal affiliation;

(D) To set forth the rights and responsibilities of each parent consistent with the restrictions noted in Section 5.2(7).

(E) To minimize the child's exposure to harmful parental conflict;

(F) To encourage the placement of siblings together where appropriate; and

(G) To otherwise protect the best interests of the child consistent with the policy expressed in Section 5.1.

(6) Contents of Parenting Plan. A parenting plan shall include:

(A) Process for Dispute Resolution. A process for resolving disputes, other than Tribal Court action, shall be provided unless it is beyond the financial means of the parties, or precluded or limited by the Tribal Court as provided herein. The dispute resolution process may include counseling, mediation, arbitration or another method agreed upon by the parties. In the dispute resolution process:

(1) Preference shall be given to carrying out the parenting plan;

(2) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to child support, unless there is an emergency;

(3) If the Tribal Court finds that a parent has frustrated the dispute resolution process without good reason, the Tribal Court may impose financial sanctions against that parent; and

(4) Both parents have the right to court review of the dispute resolution process.

(B) Decision-making Authority. The parenting plan shall allocate decision-making authority to one or both parents regarding the children's education, health care, and religious or spiritual upbringing. The plan shall state that:

- (1) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, including emergency decisions affecting the health and safety of the child; and
- (2) When mutual decision-making is designated but cannot be achieved, the parents shall make a good faith effort to resolve the issue through the dispute resolution process.

(C) Residential Provisions. The plan shall contain a residential schedule designating in which parent's home each child shall reside on given days of the year, including provisions for holidays, birthdays, vacations, dances or ceremonies, and other special occasions. The plan shall also include provisions for the visitation of the parents and extended family members.

(7) Restrictions in Parenting Plans. The Tribal Court may restrict or limit any provision of a parenting plan based on factors or conduct that the Court finds by a preponderance of the evidence is adverse to the best interests of the child, including:

- (A) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;
- (B) Physical, sexual or emotional abuse of a child;
- (C) A history of acts of domestic violence;
- (D) An assault or sexual assault that causes grievous bodily harm or the reasonable fear of such harm to a parent;
- (E) Neglect or substantial non-performance of parenting functions;
- (F) Long term emotional or physical impairment that interferes with the parent's performance of parenting functions;
- (G) Long term impairment resulting from drug, alcohol or other substance abuse that interferes with the performance of parenting functions;
- (H) Abusive use of conflict by the parent that creates the danger of serious damage to the child's psychological development;
- (I) Withholding from the other parent/or other parents extended family access to the child for a protracted period without actual good cause; or

(J) Such other factors as the Tribal Court expressly finds adverse to the best interests of the child.

(8) When Evidence of Abuse, Neglect or Domestic Violence Offered. If a party offers evidence of abuse, neglect or domestic violence, the Court may hold a hearing to consider such evidence. Prior to the hearing, the Court shall provide notice to the parties that accusations of abuse, neglect, or domestic violence have been raised. At the hearing, the accused party may offer evidence of rehabilitation or other circumstances to rebut the presumption that placement with that party is not in the best interests of the child, or offer a safety plan to allow for continued contact with the child. If the accused party fails to appear or does not offer evidence, the Court may only make a finding of abuse, neglect, or domestic violence by clear and convincing evidence.

(9) Domestic Violence. If the Tribal Court finds by clear and convincing evidence that a parent is a victim of domestic violence, or the child is an indirect victim of domestic violence, it may ensure the safety of the victim by making an order providing any of the following:

- (A) That the address and telephone number of the parent or child be kept confidential in the proceedings.
- (B) That any exchanges of a child occur in a protected setting.
- (C) That visitation be supervised by another person or agency or be subject to any other reasonable conditions. The perpetrator may be ordered to pay a fee to defray the costs of supervised visitation.
- (D) That the perpetrators of domestic violence attend and complete a domestic violence batterer's program and/or counseling.
- (E) That overnight visitation is prohibited.
- (F) That the perpetrators of domestic violence post a bond for the return and safety of the minor child.
- (G) That the perpetrator of domestic violence cannot remove the child from the Yurok Reservation.
- (H) Stay away from certain locations or events, or other safeguards including monitoring and supervision.

(10) When Additional Information Needed. If the parents are unable to reach agreement on the terms of the parenting plan and the Tribal Court determines that it needs additional information before ordering a parenting plan, the Court may:

(A) Convene a family meeting with the parties and/or extended family members and interested parties for the purpose of reaching an agreed upon parenting plan.

(B) Seek an evaluation by appointing an agreed upon evaluator who will make recommendations to the Court. Payment obligations for such an evaluation will be determined by the Court pursuant to any and all resources available.

(C) Order additional reports and/or documents to be secured by the parties and lodged with the Court.

(11) Effect of Failure to Comply. If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.

(12) Uniform Parenting Plan Form. The Tribal Court may authorize and approve the utilization of a uniform parenting plan form for all proceedings under this Section.

5.3 INTERIM PARENTING PLAN

Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time prior to the issuance of a parenting plan under Section 5.2.

5.4 PERSON OTHER THAN NATURAL OR ADOPTIVE PARENT

(1) The Tribal Court may grant visitation rights or the care, custody, and control of a child to a step-parent and/or any extended family member when consistent with Yurok community standards and in the best interests of the child. Sole physical/legal custody of a child shall not be granted to an extended family member to the exclusion of a natural or adoptive parent absent a determination that continuation in the home of the parent would be contrary to the welfare of the child.

(2) A person other than a natural or adoptive parent may petition the Tribal Court for visitation rights or intervene in a proceeding under this Section at any time.

(3) The Court may modify an order granting or denying visitation rights or custody in accordance with Section 5.5.

5.5 MODIFICATION OF PARENTING PLAN OR VISITATION

(1) A parenting plan or visitation with the child may be modified if the Tribal Court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the parenting plan or visitation with the child and the modification is granted, the Tribal Court shall enter on the record the reasons for the modification.

(2) In a proceeding involving the modification of a parenting plan or visitation with a child, a finding by clear and convincing evidence that a crime involving domestic violence has occurred since the last parenting plan or visitation determination is a finding of change of circumstances under Section 5.5(1).

(3) The parties having joint custody of the child may agree to modify the terms of the plan for joint care, custody, and control. The written modification to the plan shall be presented to the Tribal Court by the parties, and if the Court determines the modifications are in the best interests of the child, the Court shall approve the modifications and direct the same to be filed.

SECTION 6. PARENT AND CHILD RELATIONSHIP

6.1 DEFINITION

As used in this Section, “parent and child relationship” means the legal relationship existing between a child and his or her natural parent, a child and a person who has formed a parental like relationship with a child as defined in the Children’s Code, a child and a person who has formed a parental relationship as defined by Yurok culture and tradition, a child and a person who have formed a parental like relationship as may be defined by the child’s experience, and/or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

6.2 MEANS OF ESTABLISHING RELATIONSHIP

The parent and child relationship between a child and:

- (1) The natural mother may be established by proof of her having given birth to the child, or under this Section;
- (2) The natural father may be established under this Section;
- (3) An adoptive or permanent parent may be established by proof of adoption or other relationship evidencing a permanent parental relationship under the laws of the Yurok Tribe; and/or
- (4) If a person including those detailed in this section or a person other than those noted above seeks to establish a parental relationship with a child they may present the factual basis for such a claim.

6.3 PRESUMPTION OF PATERNITY

- (1) A man is presumed to be the natural father of a child if:

(A) He and the child's natural mother are or have been married to each other and the child was born during the marriage, or within three hundred days after the marriage was terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court;

(B) Before the child's birth, he and the child's natural mother attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation;

(C) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his own;

(D) Both parents have acknowledged the man's paternity of the child in a writing filed with the Office of Vital Statistics of the State of California, or the Yurok Tribe Enrollment Department;

(E) After the child's birth, he and the child's natural mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; and

(1) With his consent, he is named as the child's father on the child's birth certificate; or

(2) He is obligated to support the child under a written promise or by court order.

(F) Statistical probability of paternity is established at 98% or more by scientifically reliable blood, genetic or DNA tests, the Court can condition orders or proceedings on the requirements that the parties involved test pursuant to this provision; or

(G) He signed the child's birth certificate.

(2) A presumption under this Section may be rebutted only by clear and convincing evidence.

6.4 ARTIFICIAL INSEMINATION

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife.

(2) The donor of semen provided to a licensed physician or a licensed sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is

treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father. Any such agreement must be in writing and signed by the donor and the woman.

6.5 ACTION TO DETERMINE FATHER AND CHILD RELATIONSHIP

(1) Who May Bring Action.

(A) A child's natural mother, a man alleged or alleging himself to be the father, a child's guardian or personal representative, the Yurok Tribe, a prospective adoptive parent, or another interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father/parent and child relationship for any child up to and including 18 years of age.

(B) A child may bring an action under Section 6.5(1)(A) at any time, including as an adult.

(C) A man presumed to be a child's father under Section 6.3 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Contents of Petition. The petition to establish parentage must include, so far as known, the following:

(A) The name, address, date of birth, income, social security number, gender, and tribal affiliation, if any, of the child or children whose parentage is at issue, the custodial parent or guardian, and the person who is claimed to be the parent. The petition may include any other information that may assist in locating or identifying the father, unless the father is the filing party.

(B) The relief sought.

(C) Evidence of parentage including, but not limited to, birth certificates, marriage licenses, and genetic tests performed.

(D) A certified copy of any order pertaining to parentage that is in effect.

(3) Hearing. Upon receipt of the petition, the Court shall schedule a hearing to determine parentage within 50 days from the date the petition is filed. The Clerk of the Court shall issue a summons providing notice of the date and subject matter of the hearing with a copy of the petition to the petitioner for service on the respondent.

(A) Findings. The factual determinations made at the hearing shall be limited to the parentage of the child or children and the income and expense information necessary to determine the appropriate level of support under Section 7.

(B) Use of Custom and Tradition. The Yurok Tribal Court shall consider Yurok customs and traditions relevant to parentage or child support, in making any determination under this Section.

(4) Summons. The summons described in Section 6.5(3) shall inform the respondent of the following:

(A) That if he or she chooses not to appear at the hearing or enter a defense to the petition challenging the authority of the Court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence;

(B) That parentage will be established at the hearing and that genetic tests may be ordered if parentage is disputed;

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

(D) That he or she may enter into a stipulated support agreement or voluntary acknowledgment of parentage;

(E) That any answer to the petition must be served on the petitioning party and filed with the Court within 20 days of the date of service of the petition.

(5) Service. The petition shall be served in person, unless service in person is not feasible. If personal service is not feasible, the petition may be served by certified mail at the last known address of the respondent or by another method approved by the Court.

(6) Default. If the respondent fails to appear at the hearing, the Court may enter an order of parentage and/or child support upon a showing of valid service and the presentation of evidence of parentage and/or a support obligation.

6.6 ACTION TO DETERMINE MOTHER AND CHILD RELATIONSHIP

Any interested party may bring an action to determine the existence or nonexistence of a mother/parent and child relationship. Insofar as practicable, the provisions of Section 6 applicable to the father and child relationship apply.

6.7 STIPULATED AGREEMENT

(1) At any time, the parties may enter into a stipulated agreement as to the establishment of parentage, although the Court will not approve an agreement that provides for a level of child support that is substantially less than that provided for by the Yurok Tribe Child

Support Guidelines established pursuant to Section 7.5 unless the Court makes the findings discussed in Section 7.6

(2) The signed stipulated agreement shall be submitted to the Yurok Tribal Court for approval and enforcement, and if approved by the Court it shall have the same force as an order issued by the Court.

6.8 PARTIES

(1) The child shall be made a party to any action brought under this Section. If the child is a minor, the child may be represented by the child's general guardian or a guardian ad litem appointed by the Tribal Court.

(2) The natural mother, each man presumed to be the father, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the Tribal Court, shall be given notice of the action and an opportunity to be heard.

6.9 BLOOD, GENETIC OR DNA TESTING

(1) If parentage is disputed, the Tribal Court may require the child, mother, or any alleged father who has been made a party to submit to blood, genetic or DNA testing. If an alleged father objects to a proposed order requiring him to submit to paternity testing, the Tribal Court shall require the party alleging or denying paternity to provide a sworn statement setting forth facts establishing a reasonable possibility of the existence or nonexistence of the requisite sexual contact between the parties.

(2) The Tribal Court shall identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable blood, genetic or DNA tests to identify the father or exclude the alleged father. Payment obligations for such testing will be determined by the Court pursuant to any and all available resources.

6.10 EVIDENCE RELATING TO PATERNITY

Evidence relating to paternity may include:

(1) Testimony by the parties or other evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) An opinion concerning the statistical probability of the alleged father's paternity based upon the timing and duration of the mother's pregnancy;

(3) Blood, genetic or DNA test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

(4) Other medical evidence relating to the alleged father's paternity of the child based on tests performed by experts; and

(5) All other evidence relevant to the issue of paternity of the child.

6.11 JUDGMENT AND ORDER DETERMINING PARENTAGE

(1) The judgment and order of the Tribal Court determining the existence or nonexistence of parentage shall be determinative for all purposes.

(2) If the judgment and order of the Court is at variance with the child's birth certificate, the Court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding concerning the duty of current and future support; the extent of any liability for past support furnished to the child if that issue is before the Tribal Court; the furnishing of bond or other security for the payment of the judgment; or any other matter in the best interest of the child. The judgment and order may also direct the father to pay the reasonable expenses of the mother's pregnancy.

(4) After considering all relevant factors, the Court may order either or both parents to pay an amount of child support determined pursuant to Section 7.

(5) On the same basis as provided in Section 5, the Court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party.

(6) In any dispute between the natural parents of a child and a person or persons who (A) have commenced adoption proceedings or who have been granted an order of adoption, and (B) pursuant to a Court order, or placement by the Tribe's Department of Social Services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the Tribal Court shall consider the best interest and welfare of the child, including the child's need for situational stability, and need for cultural and family support for the purposes of long term adjustment and stability, in determining the matter of custody.

6.12 HEARINGS OR TRIALS TO BE IN CLOSED COURT

(1) Any hearing or trial held under this Section shall be held in closed Tribal Court without admittance of any person other than those necessary to the action or proceeding or for the orderly administration of justice.

(2) All papers and records, other than the final judgment and matters related to the enforcement of the final judgment, pertaining to the action or proceeding are subject to inspection by a nonparty only upon an order of the Tribal Court for good cause shown following reasonable notice to all parties of the hearing where such order is sought.

SECTION 7. CHILD SUPPORT

7.1 PURPOSE

(1) Children are the most vital resource to the continued existence and integrity of the Yurok Tribe, and the Tribe has a compelling interest in promoting and maintaining the health and well-being of all Yurok children. Provision for child support is in the best interests of Yurok families and children who have a right and need to receive parental support. Both parents have an obligation towards their children that includes much more than financial support; it includes time and attention as well as guidance and the teaching of Yurok values.

(2) By adopting these child support guidelines, the Tribe affirms and recognizes both parents' obligation to provide support for their children as their respective income, resources and abilities allow. Child support orders shall reflect the understanding that in order for children to prosper, their parents must also prosper. Therefore, child support awards should not be so burdensome that the parents obligated to provide them are left with insufficient resources necessary for their own livelihood.

(3) In adopting this Section, it is the intention of the Yurok Tribe to ensure that it is in compliance with federal regulations for child support guidelines.

7.2 PETITION

(1) When Action May Be Brought. An action to establish or modify a support order in a proceeding under this Code may be initiated at any time before the child in question has reached the age of 18, or thereafter under circumstances specified in Section 7.5(13) or 7.6(2)(E).

(2) Who May Bring Action. Any custodial parent or guardian, or any Tribal, state or federal agency authorized to enforce child support obligations, may initiate an action for child support by filing a petition for establishment of child support with the Clerk of the Yurok Tribal Court.

(3) Contents of Petition. The petition to establish child support must include, so far as known, the following:

(A) The name, address, date of birth, income, social security number, gender, and tribal affiliation, if any, of the custodial parent or guardian, the child or children for whom support is requested, and the noncustodial parent from whom support is requested. The petition may include any other information that may assist in locating or identifying the respondent.

(B) The relief sought.

(C) A certified copy of any support order that is in effect.

(D) An itemized list of any of the following, if actually paid by the custodial parent: the cost of the children's health care and dental insurance premiums, the cost of child care necessary to permit the parent to work, and any extraordinary costs associated with caring for the child, such as necessary medical or educational costs, including costs related to athletic or academic pursuits.

(E) If custody is split between the parents, the percentage of the days of the year during which petitioner has physical custody of the child. If a child voluntarily chooses to reside with one parent as opposed to another parent who is equally fit the Court may consider this in the calculation of support.

(4) Response. The obligor shall respond to the petition no later than 20 days after service by filing a statement with the Tribal Court, and shall appear for a hearing on the date set by the Court. The filing deadline may be extended to provide respondents who are deployed on active duty in the armed forces or are seasonally employed outside California with an adequate opportunity to respond.

(5) Nondisclosure of Information in Exceptional Circumstances. Upon a finding, which may be made *ex parte*, that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Tribal Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this Code.

7.3 CASE TRANSFER

The Yurok Child Support Services Program shall attempt to obtain the transfer of appropriate child support cases involving tribal members from other jurisdictions. The Program shall be responsible for identifying tribal members who are noncustodial parents or potential fathers in state child support cases, and may initiate a case transfer procedure for the identified cases. Upon receiving from a state or tribal child support agency a written request to verify tribal membership for a noncustodial parent or potential parent, the Tribe shall verify tribal enrollment may request the child support agency to transfer or refer the case to the Tribe.

7.4 CHILD SUPPORT SCHEDULE

(1) Establishment of Guidelines. The Yurok Child Support Schedule, attached as Appendix A to this Section, establishes guidelines that the Tribal Court shall follow when setting child support. The Tribal Court may order either or both parents owing a duty of support to a child to pay an amount reasonable and necessary for support in any proceeding under this Code for dissolution of marriage, legal separation, declaration of invalidity, custody or visitation, or support.

(2) Periodic Review. The Yurok Tribe Child Support Services Program may amend the Schedule, and shall review it at least once every four years to ensure that it results in

appropriate child support award amounts designed to meet the needs of Yurok children. This review shall consider economic data on the cost of raising children and analyze case data relating to application of and deviations from the guidelines.

(3) Forms. The Tribal Court is authorized to adopt supplemental forms, such as worksheets and explanatory materials, as are found necessary for the effective implementation of this Section.

7.5 CALCULATING CHILD SUPPORT

(1) Basic Child Support Obligation. A child support obligation shall be set at the basic support amount listed in the attached Yurok Child Support Schedule based on the combined net income of both parents and the number of children receiving support, and shall be apportioned between the parents in accordance with Sections 7.5(2) and 7.5(3). For combined monthly net income amounts falling between amounts shown in the Schedule, basic child support obligation amounts shall be extrapolated.

(2) Share of Net Income. The basic child support obligation derived from the Child Support Schedule shall be divided between the parents in the same proportion as each parent's monthly net income bears to their combined monthly net income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined net income by the total monthly child support obligation. It is presumed that a parent with sole or primary physical custody of a child is contributing his or her portion of the child support obligation to meet the daily needs of the child.

(3) Shared Parenting Time. When the parents share physical custody of the child or children by order of the Court or stipulation, the base monthly child support obligation owed after apportionment pursuant to Section 7.5(2) shall be adjusted as follows:

(A) The amount of support the obligor parent would otherwise be obliged to pay the custodial parent shall be reduced by the percentage of time the child spends with the obligor parent.

(B) The percentage of time a child spends with each parent shall be calculated by determining the number full days the child is in the physical custody of each parent over the course of a year and dividing that number by 365.

(4) Gross Income. Gross income shall be calculated by adding income received from all sources, whether or not it is reported or taxed under federal law, including: (A) Salaries; (B) Wages; (C) Commissions; (D) Revenue from sales of goods and services; (E) Deferred compensation; (F) Overtime; (G) Contract-related benefits; (H) Income from second jobs; (I) Dividends; (J) Tribal per capita benefits; (K) Interest; (L) Trust income; (M) Severance pay; (N) Annuities; (O) Capital gains; (P) Pension/retirement benefits; (Q) Workers' compensation; (R) Unemployment benefits; (S) Spousal maintenance actually received; (T) Bonuses; (U) Social security benefits (SSA); (V) Disability insurance

benefits; (W) Gifts and prizes; (X) Tips; and (Y) benefits received from any public assistance programs. For seasonal or fluctuating income, gross monthly income shall be calculated by taking the annual income of the preceding year and dividing by twelve, unless the Court finds that another method is more reasonable under the circumstances.

(5) Net Income. Monthly net income shall be calculated by deducting the following expenses from monthly gross income: (A) Federal, state and tribal income taxes; (B) Federal Insurance Contributions Act (FICA) deductions; (C) Mandatory pension plan payments; (D) Mandatory union or professional dues; (E) State industrial insurance premiums; (F) Court-ordered spousal or child support to the extent actually being paid; (G) Up to \$2000 per year in voluntary pension payments actually made; (H) Medicare withholding; (I) Medical insurance premiums paid for the benefit of the children; and (J) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

(6) Monthly Net Income above \$5000. When combined monthly net income exceeds \$5,000, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of \$5,000 unless good cause is found to deviate below that amount, but the Tribal Court may exceed the presumptive amount of support set for combined monthly net income of \$5,000 upon written findings of fact establishing such increase as both necessary and in the best interests of the child(ren).

(7) Monthly Net Income below \$600. When combined monthly net income is less than \$600.00, a support order for not less than \$25.00 per month per child shall be ordered.

(8) Health Care Expenses. Ordinary health care expenses are included in the Child Support Schedule, and shall be provided for by the parents through health insurance coverage and/or cash medical support. Health insurance premiums paid on behalf of the child by the obligor are deducted from the obligor's support obligation. Extraordinary health care expenses not covered by private health insurance or Indian Health Services (i.e., those expenses that exceed 5% of the basic support obligation) shall be shared by the parents in the same proportion as the basic child support obligation.

(9) Day Care Expenses. Work or education related day care expenses are included in the Child Support Schedule, and shall be treated as an offset against the obligation of the parent paying them.

(10) Limit on Child Support Obligation. Neither parent's total child support obligation shall exceed 40% of his or her net earnings unless good cause is shown, in which case the support obligation shall not exceed 50% of his or her net earnings.

(11) Confidentiality. All income and resources of each parent's household shall be disclosed and considered by the Tribal Court. All such disclosures, including worksheets, pay stubs, and tax returns shall be confidential and available only to the parties and the Tribal Court, and solely for the purpose of determining child support obligations.

(12) Disability Benefits. Before including a parent’s receipt of disability benefits in gross income calculations, the Tribal Court shall consider the actual needs of the disabled party and the effect of the inclusion of such benefit on the disabled party, as well as the needs of the child(ren).

(13) Age of Child. Parents are usually only required to support their child until that child reaches the age of 18. However, the parents are required to support an unmarried child that turns 18 while the child is still attending high school or a General Equivalency Degree program full time. Parents are no longer required to support a child that becomes “emancipated” by marriage, active military service, or court order of emancipation.

7.6 DEVIATION FROM SUPPORT GUIDELINES

(1) Findings. The amount of child support calculated from the attached Schedule is presumptively correct, but that presumption may be rebutted and the obligation increased or decreased if the Tribal Court makes a written finding or states on the record the following:

- (A) That application of the guidelines is inappropriate or unjust in the particular case;
- (B) The reasons the amount of support ordered differs from the guideline Schedule amount;
- (C) The reasons the amount of support ordered is consistent with the best interests of the children; and
- (D) The amount of support that would have been ordered under the guideline Schedule.

(2) Factors. The amount that would be ordered under the Schedule may be found to be inappropriate or unjust if one or more of the following factors applies:

- (A) Stipulation.** The parties have stipulated to a different child support arrangement.
- (B) Substantial Hardship.** Application of the guidelines may be inappropriate or unjust if it would cause substantial hardship to the noncustodial parent, the custodial parent, or the subject children under the circumstances.
 - (i) Whenever application of the child support guidelines requires a person to pay more than 40% of his net income for current, non-delinquent support of a single child, there shall be a presumption of substantial hardship.

(ii) There shall be a presumption of substantial hardship if the obligor's income falls below the federal poverty line and the guideline child support amount would require the obligor to pay more than 10% of net monthly income.

(C) Seasonal or Non-recurring Income. If the income of either parent is seasonal or non-recurring, the obligation may be set at a different amount than it otherwise would be, or it may be set on a schedule that varies the amount at different times of the year.

(D) Services Provided by Tribe or Other Agency. Whenever the Tribe or another agency provides health care, housing, or other basic needs for the child(ren) at no cost or reduced cost, such services may be considered as a basis for setting a lower amount of support than would otherwise be determined.

(E) Mental or Physical Disability. In the case of a child with a serious mental or physical disability which prolongs his or her dependence on his or her parental income, the Tribal Court may when appropriate order that support continue past the age of 18 and be paid to the parent or guardian with whom the child resides, or to the child. A child's special medical or other needs may be considered as a basis for setting a higher amount of support.

(F) Substantial Wealth. In the case of a parent with substantial wealth, the Tribal Court may set a higher amount of support than would otherwise be determined.

(G) Voluntary Unemployment. When a parent has declined to pursue employment opportunities reasonably open to them based on their ability and local employment opportunities, the Court may impute to them that amount of income that they are reasonably capable of earning and calculate a child support award based on the imputed income. The amount of income imputed shall be the amount a person with comparable education, training and experience could reasonably expect to earn in the locality.

(H) Education. The Court may order that the costs of educating a child be added to a child support obligation.

(I) Use of Residence. If a noncustodial parent gives up the right to live in the parents' former marital or jointly-owned residence, the value of the use of the residence may be treated as an offset against the support obligation of that parent. If a parent offers their residence to be used for visitation purposes, they may receive a credit against their support obligation reflecting the value of the use.

7.7 IN-KIND, TRADITIONAL OR CUSTOMARY SUPPORT

Consistent with Yurok community standards, the Tribal Court shall utilize in-kind, traditional or customary support as a setoff against a child support obligation whenever

practicable. The provision and terms of such support shall be agreed to by the parties, and the Tribal Court shall incorporate clear written standards relating to issues of quantity, quality, and value in its order.

(1) Whenever a parent is able to provide appropriate and acceptable in-kind services or resources for the support of the child(ren), including but not limited to food, clothing, items of cultural significance where appropriate, firewood, child care, diapers, home or auto repair, or items meeting other basic needs, such services or resources may be applied as a set off against the support obligation if authorized by court order.

(2) Whenever extended family or community members are able to provide the support described in Section 7.7(1), such services or resources may be applied as a setoff against the support obligation if authorized by court order.

(3) Support orders allowing non-cash payments shall:

(i) State the specific dollar amount of the support obligation; and

(ii) Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order. Said non-cash support will be itemized and valued for the purpose of establishing the set-off value. If the parties cannot agree as to the valuation the Court may set a value.

(4) Non-cash payments are not permitted to satisfy support obligations when the rights to such support have been assigned to a government entity.

7.8 MODIFICATION AND TERMINATION OF CHILD SUPPORT

(1) Duration of Support Order. Every child support order shall remain in effect until the 18th birthday of the child for whose benefit it is entered, absent modification or legal termination of parental responsibilities, such as through emancipation or adoption of the child. If the child has not yet graduated from high school at the time of his or her 18th birthday, the order shall remain in effect so long as he or she is a full-time student in high school or a General Equivalency Diploma (GED) program. Unless a child is mentally or physically disabled, the support obligation terminates when the child reaches the age of 18 and graduates from high school or receives a GED, as long as the parties have not agreed to a different arrangement in writing.

(2) Change of Circumstances. Either parent may petition the Court for a modification of a child support order based upon a showing of a change of circumstances that are substantial and continuing. A substantial and continuing change of circumstances will be presumed if, at the time of application for the modification, support as calculated under this Section would be more than 15% greater or less than the amount provided for in the existing support order. Such petition shall require the other parent to appear and show

cause why the decision previously entered should not be prospectively modified. A hearing shall be set for not more than 50 days from the date of service of the motion for modification and order to appear and show cause.

(3) Without Change of Circumstances. An order of child support may be modified one year or more after it has been entered without a showing of changed circumstances that are substantial and continuing if:

(A) The order works a severe economic hardship on either party or the child;

(B) A child is still in high school, upon a finding that there is a need to extend support beyond the 18th birthday to complete high school; or

(C) There has been a change to the Child Support Schedule.

(4) Past Due Support. The amounts of past due support may not be modified unless there is a showing of exceptional circumstances, such as the noncustodial parent's presence in prison, insanity or lack of any legal, actual, or constructive notice of the award which prevented that person from requesting a modification of the child support obligation at an earlier time.

7.9 COLLECTION OF PAST DUE SUPPORT

(1) Petition. To collect the payment due, the custodian of a child shall file the following with the Tribal Court:

(A) A petition requesting establishment of a judgment for past due support;

(B) A statement that one or more payments of support are 30 or more days past due and that specifies the amounts past due and the dates they became past due, as well as any other terms of the child support order sought to be enforced; and

(C) Proof of service of the petition, affidavit, and notice on the obligor.

(2) Response. The obligor shall respond no later than 20 days after service by filing a statement with the Tribal Court. If the obligor's statement claims that any of the amounts alleged to be delinquent have been paid, describes in detail the method of payment or offers any other defense to the petition, then the obligor is entitled to a hearing. The filing deadline may be extended to provide respondents who are deployed on active duty in the armed forces or are seasonally employed in employment e.g., fire fighting that requires deployment from home with an adequate opportunity to respond.

(3) Entry of Judgment. After the hearing, the Tribal Court shall enter a judgment for the amount of money owed. If the obligor does not file a statement under this Section, the Tribal Court may enter a default judgment against the obligor.

(4) Income Withholding

When the Tribal Court orders a party to pay an amount for support, including support past due, it shall include an income withholding provision that orders the employer of the obligor to pay to the obligee that portion of the obligor's earnings due or to become due in the future as will be sufficient to satisfy the child support order.

(A) For each noncustodial parent against whom a support order is or has been issued or modified, so much of his or her income must be withheld as is necessary to comply with the order, except that per capita, trust, or Individual Indian Money (IIM) payments need not be subject to withholding.

(B) In addition to amounts withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(C) Notwithstanding any other provision of this Code, the total amount to be withheld may not exceed 50% of the individual's net income for any subject pay period, but may be set at a lower amount.

(D) Income withholding must comply with the procedural due process requirements established by Tribal law.

(E) Income withholding shall promptly be terminated in cases where there is no longer a current order for support and all arrearages have been satisfied. Any amounts that have been improperly withheld must be promptly refunded.

(F) If the employer fails to withhold income in accordance with the provisions of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

(G) Income shall not be subject to withholding in any case where:

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

(ii) A signed, written agreement is reached between the noncustodial and custodial parent which provides for an alternative arrangement, and it is reviewed and entered into the record by the court.

(H) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which payments which the noncustodial parent has failed to make under a Tribal Court support order are at least equal to the support payable for one month.

(I) Withholding may be contested based on a mistake of fact, which for the purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(J) To initiate income withholding, the Tribal Court or the Yurok Tribe Child Support Services Program shall send the noncustodial parent's employer a notice using the standard federal or state income withholding form.

(K) The Tribal Court or the Yurok Tribe Child Support Services Program must allocate withheld amounts across multiple withholding orders to ensure that allocation in no case results in a withholding for one child not being implemented.

(L) The Tribal Court or the Yurok Tribe Child Support Services Program shall receive and process income withholding orders from states, tribes, and other entities, and ensure that such orders are properly and promptly served on employers within the Tribe's jurisdiction.

(M) The Yurok Tribe may enter into a reciprocal child support enforcement agreement with the State of California, or its political subdivisions, for the purpose of enforcing support obligations and distributing collected support on the Yurok Reservation.

(N) An employer is subject to a fine determined to be appropriate by the Tribal Court for discharging, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

(O) An employer may deduct the actual costs of complying with an order for income withholding, not to exceed five dollars, from the amount withheld. The employer must justify such deductions in a written itemization presented to the Child Support Services Program and forwarded to the parties.

(5) Income Tax Refund Interception. When the Tribal Court orders a party to pay an amount for support, it may provide for income tax refund interception, whereby all or a portion of the income tax refund of an obligor noncustodial parent may be intercepted directly from the United States or any state or tribe, if permissible under the laws of such state or tribe, for the payment of a support obligation. Any collections received based on income tax refund offset must be applied to satisfy child support arrearages.

(6) Security or Bond. The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment.

(7) Stay or Waiver of Order to Withhold Income

If the noncustodial parent wants to prevent an order to withhold income from being served, he or she must file a petition to stay service with the Clerk of the Yurok Tribal Court within 20 days after service of the custodial parent's petition requesting past due support. Grounds for the petition to stay service shall be limited to:

- (A) A dispute concerning the existence or amount of the delinquency;
- (B) Non-compliance with this Code;
- (C) Evidence that the delinquency has been cured since the custodial parent filed the petition requesting past due support; and
- (D) Evidence of a court-approved agreement between the noncustodial parent and the custodial parent for an alternative method of payment.

(8) Enforcement of Orders for Provision of In-Kind Goods and Services

Failure to comply with an order to provide traditional and customary support to meet a child support obligation may be enforced in the same manner as orders for financial support, except that the Court may not compel persons to perform services. Income may be withheld to provide the custodial parent with the financial value of the traditional goods or services that were not provided; if the goods or services not provided were not given a specific valuation in the original order, a hearing may be held to value such goods or services.

7.10 SUPPORT PAYMENTS – TO WHOM PAID

(1) The Tribal Court may upon its own motion or upon motion of either party, order support payments be made to:

- (A) The child's custodial parent or guardian for the benefit of the child;
- (B) The Clerk of the Yurok Child Support Services Program for remittance to the person entitled to receive the payments;
- (C) Any appropriate tribal department;
- (D) The California Department of Child Support Services or other appropriate state or tribal support enforcement agency; or
- (E) Another party or trustee if there is a showing that payment through the custodial parent or guardian is not in the best interests of the child.

(2) If payments are made to the Clerk of the Child Support Services Program:

(A) The Clerk shall maintain records listing the amount of payments, the date payments are made, and the names and addresses of the parties affected by the order;

(B) The Clerk shall promptly disburse any amounts received as directed by the order; and

(C) The parties affected by the order shall inform the Clerk of any changes of address.

(4) Delivery of in-kind, traditional or customary support shall be made to the home of the child or elsewhere as the Court orders or the parties arrange.

7.11 LOCATION OF PARENTS

The Tribal Court or the Yurok Tribe Child Support Services Program must use all sources of information and records reasonably available—including the federal parent locator service and registry and those of other states and tribes when possible—to attempt to locate custodial or noncustodial parents or sources of income and/or assets when location is required to take necessary action brought under this Code. The Child Support Services Program is authorized to establish agreements with appropriate state and tribal agencies to provide locate services.

APPENDIX A – CHILD SUPPORT SCHEDULE

Combined Monthly Net Income	One Child (25%)	Two Children (30%)	Three Children (35%)	Four Children (40%)	Five Children (45%)
\$600	\$150	\$180	\$210	\$240	\$270
700	175	210	245	280	315
800	200	240	280	320	360
900	225	270	315	360	405
1000	250	300	350	400	450
1100	275	330	385	440	495
1200	300	360	420	480	540
1300	325	390	455	520	585
1400	350	420	490	560	630
1500	375	450	525	600	675
1600	400	480	560	640	720
1700	425	510	595	680	765
1800	450	540	630	720	810
1900	475	570	665	760	855
2000	500	600	700	800	900
2100	525	630	735	840	945
2200	550	660	770	880	990
2300	575	690	805	920	1015

2400	600	720	840	960	1080
2500	625	750	875	1000	1125
2600	650	780	910	1040	1170
2700	675	810	945	1080	1215
2800	700	840	980	1120	1260
2900	725	870	1015	1160	1305
3000	750	900	1050	1200	1350
3100	775	930	1085	1240	1395
3200	800	960	1120	1280	1440
3300	825	990	1155	1320	1485
3400	850	1020	1190	1360	1530
3500	875	1050	1225	1400	1575
3600	900	1080	1260	1440	1620
3700	925	1110	1285	1480	1665
3800	950	1140	1320	1520	1710
3900	975	1170	1355	1560	1755
4000	1000	1200	1400	1600	1800
4100	1025	1230	1435	1640	1845
4200	1050	1260	1470	1680	1890
4300	1075	1290	1505	1720	1935
4400	1100	1320	1540	1760	1980
4500	1125	1350	1575	1800	2025
4600	1150	1380	1610	1840	2070
4700	1175	1410	1645	1880	2115
4800	1200	1440	1680	1920	1965
4900	1225	1470	1715	1960	2010
5000	1250	1500	1750	2000	2055

SECTION 8. RECOGNITION OF FOREIGN SPOUSAL SUPPORT, CHILD SUPPORT AND CHILD CUSTODY ORDERS

8.1 DEFINITION

“Foreign spousal support or child support order” means any judgment, decree or order for spousal support or child support of any tribal or state court or agency other than the Yurok Tribal Court or the Yurok Child Support Services Program.

8.2 FOREIGN CHILD AND SPOUSAL SUPPORT ORDERS

(1) Foreign Child Support Orders

(A) Full Faith and Credit. Pursuant to the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. §1738B, the Tribal Court shall recognize and afford full faith and credit to any child support order of a state or tribe according to its terms if:

- (i) The proponent of the foreign order complies with the procedure set forth in this Section;
- (ii) The rendering court, pursuant to the laws of the state or tribe in which the court is located:
 - (a) has subject matter jurisdiction to hear the matter and enter such an order; and
 - (b) has personal jurisdiction over the contestants; and
- (iii) reasonable notice and opportunity to be heard was given to the contestants by the rendering court.

(B) Continuing Jurisdiction

- (i) A state or tribe has continuing, exclusive jurisdiction over an order issued by a court of that state or tribe if the state or tribe is the child's residence or the residence of any individual contestant unless the court of another state or tribe, acting in accordance with Section 8.2(1)(C), has modified the order.
- (ii) If one or more child support orders have been issued with regard to an obligor and a child, the Tribal Court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:
 - (a) If only one court has issued a child support order, the order of that court must be recognized.
 - (b) If two or more courts have issued child support orders for the same obligor and child, and only one of the courts would have continuing, exclusive jurisdiction under this Section, the order of that court must be recognized.
 - (c) If two or more courts have issued child support orders for the same obligor and child, and more than one of the courts would have continuing, exclusive jurisdiction under this Section, an order issued by a court in the current home state or tribe of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.
 - (d) If two or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, the Tribal

Court, if it has jurisdiction over the parties, shall issue a child support order.

(C) Modification of Child Support Orders. The Tribal Court may modify its own order as long as it has continuing jurisdiction, and may modify a foreign child support order if:

- (i) The Tribal Court has jurisdiction over the nonmovant, and the party or support enforcement agency seeking modification registers the order with the Tribal Court; and
- (ii) The issuing jurisdiction no longer has continuing, exclusive jurisdiction of the child support order because it is no longer the residence of the child or any individual contestant; or
- (iii) Each contestant has filed written consent with the state or tribe having continuing, exclusive jurisdiction for a court of another state or tribe to modify the order and assume continuing, exclusive jurisdiction over the order.

(2) Foreign Spousal Support Orders

(A) The Tribal Court may use principles of comity to determine whether it is appropriate to recognize a foreign spousal support order.

(B) The Tribal Court may recognize and enforce a foreign spousal support order if the rendering court meets the requirements of Section 8.1(A)(i)-(iii), and in addition:

- (i) The proponent of the foreign order complies with the procedure set forth in this Section;
- (ii) The order does not contravene the public policy of the Yurok Tribe and is not otherwise prejudicial to the interests or general welfare of the Yurok Tribe or its members;
- (iii) The issuing jurisdiction gives or would likely give reciprocal treatment to an order of the Yurok Tribal Court;
- (iv) The order was not obtained by fraud;
- (v) The order does not violate any federal law or tribal law, custom, or tradition; and
- (vi) The order does not violate the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301-1341, the U.S. Constitution, or rights contained in the relevant state or tribal constitution.

(3) Procedure for Recognition and Enforcement of Foreign Support Orders

(A) Required Documents and Information. A support order or income withholding order of another state or tribe may be registered in the Tribal Court by sending all of the following documents and information to the Tribal Court:

- (i) A letter of transmittal requesting registration and enforcement;
- (ii) A certified copy of all orders to be registered, including any modification of an order;
- (iii) A sworn statement by the party seeking registration, or a certified statement by the custodian of records, showing the amount of any arrearage;
- (iv) The name of the obligor and any of the following that are known:
 - (a) The obligor's address and social security number;
 - (b) The name and address of the obligor's employer and any other source of income of the obligor;
 - (c) A description of property of the obligor on the Yurok Reservation, including its location, that is not exempt from execution.
- (v) Except as provided in Section 7.2(4), regarding Nondisclosure of Information in Exceptional Circumstances, the name and address of the obligee and, if applicable, the agency or other person to whom support payments are to be remitted.

(B) Notice. Upon proper filing of a foreign support order with the Tribal Court, the Tribal Court shall issue a summons directing the defendant to appear and respond to the motion requesting the Tribal Court to recognize and enforce the foreign support order. Such summons shall be served on the defendant in a manner consistent with Rule 2.7 of the Yurok Tribal Court Rules of Court. The notice must inform the nonregistering party of all of the following:

- (i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by the Tribal Court;
- (ii) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(iii) That failure to appear as directed by the summons or failure to contest the enforcement of the foreign order in a timely manner will result in confirmation and enforcement of the order precluding further contest of that order with respect to any matter that could have been asserted; and

(iv) The amount of any alleged arrearages.

(4) Procedure to Contest the Validity or Enforcement of Registered Order.

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

(B) Scheduling and Notice. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the Tribal Court shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

(C) Defenses. A party contesting the validity or enforcement of a registered order, or seeking to vacate the registration, has the burden of proving one or more of the following defenses:

(i) That the issuing tribunal lacked personal jurisdiction over the contesting party.

(ii) That the order was obtained by fraud.

(iii) That the order has been vacated, suspended or modified by a later order.

(iv) That the issuing tribunal has stayed the order pending appeal.

(v) That there is a defense under Tribal law to the remedy sought.

(vi) That full or partial payment has been made.

(D) When Defense Is Established. If a party presents evidence establishing a full or partial defense under Section 8.2(4)(C), the Tribal Court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, or issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under Tribal law.

(5) Choice of Law. When interpreting the obligations created by a foreign support order, the Tribal Court shall apply the law of the state or tribe that issued the order.

8.3 FOREIGN CHILD CUSTODY ORDERS

(1) Purpose and Scope. In accordance with the goals of the Parental Kidnapping Prevention Act, 28 U.S.C. §1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act, the Tribal Council intends to ensure that parents and children are able to move across state and tribal boundaries without losing the ability to enforce custody orders they have previously obtained. As a matter of comity, the Tribal Court will recognize and enforce a foreign custody order that meets all requirements of this Section.

(2) Registration of Child Custody Determinations.

(A) Required Documents and Information. A child custody determination issued by a court of another state or tribe may be registered with the Tribal Court, with or without a simultaneous request for enforcement, by sending to the Clerk of the Tribal Court:

- (i) A letter or other documentation requesting registration and the appropriate filing fee;
- (ii) A certified copy of the determination sought to be registered and statement that to the best of the knowledge and belief of the person seeking registration, the determination has not been vacated, stayed or modified;
- (iii) A statement that to the best of the knowledge and belief of the person seeking registration, the issuing court had personal jurisdiction over the parties and/or the child and had subject matter jurisdiction over the cause of action;
- (iv) A statement that to the best of the knowledge and belief of the person seeking registration, the custody order was rendered under a system that provides impartial tribunals and procedures compatible with the requirements of due process of law;
- (v) A statement that to the best of the knowledge and belief of the person seeking registration, the issuing jurisdiction would give reciprocity to a Yurok Tribe order; and
- (vi) The name and address of the person seeking registration and any parent or person acting as parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(B) Notice. On receipt of the documents required under Subsection (A), the Tribal Court shall cause notice to be served upon the persons named pursuant to Subsection (A)(vi) and provide them with an opportunity to contest the registration.

(C) Defenses. A person seeking to contest the validity of a registered determination must request a hearing within 20 days after service of the notice. At that hearing, the Tribal Court shall confirm the registered determination unless the person contesting registration establishes that:

- (i) The issuing state or tribal court did not have jurisdiction over the parties and child under the laws of the issuing jurisdiction;
- (ii) In the case of jurisdiction over a party based on personal service, the issuing court was an unusually inconvenient forum for the trial of the action;
- (iii) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so;
- (iv) The person contesting registration was entitled to notice, but notice was not given in the proceeding before the court that issued the determination for which registration is sought;
- (v) The cause of action on which the custody order is based is repugnant to the public policy of the tribe or would be contrary to the general welfare of the Tribe or its members; or
- (vi) The foreign custody determination would serve to violate any federal law or tribal law, custom or tradition, or the laws of the issuing jurisdiction violate Yurok custom, tradition, or sense of justice.

(D) Default. If a request for a hearing to contest the validity of the registration is not made within 20 days, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation. The deadline for requesting a hearing may be extended to provide respondents who are deployed on active duty in the armed forces or are seasonally employed outside California with an adequate opportunity to respond.

SECTION 9. ESTABLISHMENT OF CHILD SUPPORT SERVICES PROGRAM

9.1 ESTABLISHMENT OF CHILD SUPPORT SERVICES

The Yurok Tribal Council hereby establishes the Child Support Services Program (“CSS”) within the Yurok Tribal Court in order to meet the objectives of this Code. The Child Support Services Program is authorized to enter into contracts within and without

the Yurok Reservation for the purposes of enforcement of child support orders. In collaboration with the Yurok Tribal Court, CSS is authorized to seek the following:

- (1) Enforcement of support orders or laws relating to the duty of support;
- (2) Establishment or modification of child support;
- (3) Determination of parentage; and
- (4) Location of absent parents and their assets.

9.2 DETERMINATION OF PARENTAGE AND COLLECTION OF CHILD SUPPORT

(1) In any action for a determination of parentage or the establishment, modification, or enforcement of child support brought under this Code, the Court may order that parentage be determined or that child support be computed and/or collected by CSS.

(A) When the Court orders that child support shall be computed and/or collected by CSS, the parties shall be ordered to provide proof of income to CSS within 10 days of the court order. If a party does not comply with such order, then all income alleged by the opposing party may be accepted as true.

(B) When so ordered, CSS shall act as a referee of the Court, compute the amount(s) to be paid as child support, designate method(s) of payment, and make all other necessary determinations within 20 days of the court order. CSS shall provide such determinations to the parties and to the Court for placement in the case file. The determinations of CSS shall have the effect of a child support order upon receipt and approval by the Court.

(C) If a party contests a determination of CSS, the party may apply to the Court for a hearing on the matter. If an application for a hearing is granted, the matter shall be heard within 30 days of the date of application.

(2) In any action brought under this Code, including actions for the establishment of paternity and the establishment, modification, and enforcement of child support orders, the due process rights of all individuals involved will be protected under the laws of the Yurok Tribe. Such rights will be protected regardless of whether the arbiter is the Child Support Services Program or the Tribal Court.

SECTION 10. CONFIDENTIALITY

(1) All proceedings under this Code are confidential unless otherwise provided. The Tribal Court and Yurok Tribe Child Support Services Program shall ensure that disclosure of confidential personal information received or maintained in the course of actions brought under this Code, including actions to establish paternity or to establish,

modify or enforce child support, is limited to purposes directly connected with the administration of such actions.

(2) In addition, the release of information on the whereabouts of a party or the child shall not be allowed to the following:

(A) Another party against whom a protective order with respect to the former party or the child has been entered; or

(B) Another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child.

(3) Appropriate sanctions shall be imposed for the unauthorized use or disclosure of information covered by this Section.

SECTION 11. WAIVER OF COURT FEES AND COSTS

Either party may request that court fees and costs otherwise required to be paid under this Code be waived because of that person's financial condition. The Court may require a person requesting a waiver to submit an application in order to determine eligibility under the laws of the Yurok Tribe, and may authorize the Clerk of the Court or another appropriate tribal officer to make reasonable efforts to verify an applicant's financial condition. If there is conflict concerning the applicant's eligibility, a hearing may be held. With or without a hearing, the Court may waive part or all of the fees and costs.

SECTION 12. FORMS

The Tribal Court may from time to time adopt forms for use by parties in proceedings under this Code.

SECTION 13. FAMILY LAW GUARDIANSHIPS (2017 AMENDMENT)

Yurok Tribal Family Code Amendment adding Section 13 "Family Law Guardianships" was adopted by emergency legislative act, pursuant to Section 5009 of the Yurok Public Hearing Ordinance on January 18, 2017. Council found that there was an immediate threat to the welfare of Tribal members and the Tribe.

13.1 DEFINITION

A Yurok Family Law Guardianship is a court proceeding in which a legal guardian is appointed by the Yurok Tribal Court to protect a child.

If custody of the child was awarded to a non-parent through the Yurok Children's Ordinance, as amended, this section does not apply.

13.2 PURPOSE AND APPLICABILITY

- (1) A Yurok Family Law Guardianship may be granted by the Yurok Tribal Court if the Court finds that it is necessary or convenient and in the best interest of the child. A Yurok Family Law Guardianship is established because a child is living with an adult who is not the child's parent, and the adult needs a court order to make decisions on behalf of the child. A Yurok Family Law Guardianship suspends, but does not terminate, parental legal rights.
- (2) Situations where the Yurok Tribal Court may find a Yurok Family Law Guardianship appropriate include, but are not limited to, cases where one or more parent:
 - a. Has a serious physical or mental illness, that has rendered them unable to provide care to the child
 - b. Is in the military and is being deployed away from their home area and/or has to leave the area for work and/or school
 - c. Has decided to go to a rehab program for what may be an undetermined period of time
 - d. Is going to jail and/or prison for a period of time
 - e. Has a drug or alcohol abuse problem that has rendered them unable to provide care for the child
 - f. Has a history of being abusive to this child or a sibling of this child; or
 - g. Cannot take care of their child for some other reason.
- (3) When determining whether or not to grant a Yurok Family Law Guardianship, the Yurok Tribal Court will look at what is in the best interest of the child to make sure the child is raised in a safe, stable, and loving environment.

13.3 PROCEDURE

- (1) To initiate a Yurok Family Law Guardianship, petitioner must file with Yurok Tribal Court. A Yurok Family Law Guardianship can be petitioned by a relative or other person on behalf of the child. A Yurok Family Law Guardianship cannot be initiated by the Tribe, including the Yurok Department of Social Services.
 - a. The child must be residing with petitioner at the time petitioner files for a Yurok Family Law Guardianship and/or the parent/Indian Custodian/legal guardian must be prepared to place said child with the petitioner upon the granting of the petition.
 - b. Yurok Family Law Guardianships are for children under the age of 18 but may be extended to adult dependents in the Court's discretion, if warranted by the facts.
 - c. If the Yurok Family Law Guardianship petition involves allegations of parental neglect or abuse or incapacities based on behavior that could result in said allegations the Yurok Tribal Court must refer the case to Yurok Department of Social Services (YSS) or other agency for assessment. All Yurok Family Law Guardianship proceedings shall be suspended until

- YSS or other agency investigates and reports back to the Court. If YSS or other agency determines not to act, the Yurok Family Law Guardianship proceedings may then continue.
- d. If the parents voluntarily agree to a Yurok Family Law Guardianship, whatever the allegations against them, the Yurok Tribal Court may grant a Yurok Family Guardianship and the parents forfeit any right to challenge the guardianship order on the basis that the Yurok Tribal Court failed to make a YSS referral.
- (2) If a parent contests the Yurok Family Law Guardianship, the Court may order Yurok Department of Social Services (YSS) to conduct a full investigation of all parties. The Court may also order the YSS to conduct an investigation into the appropriateness of a parent having custody of the child. Reports of these investigations are confidential and are provided to the Court for the judicial officer's consideration.
 - (3) Petitioner is responsible for satisfying the noticing requirements of this section.
 - a. Notice shall be provided to all necessary parties at least 10 business days prior to hearing. Necessary parties shall include: parent, if any, Indian Custodian, if any, legal guardian, if any, all known previous adult supervisors, and any person who has requested and been granted special notice by the Tribal Court. The parent or Indian Custodian can request up to 20 additional days to prepare for the proceeding upon written request to the Tribal Court.
 - i. If the party to be served is an enrolled member of the Yurok Tribe, petitioner may notice party through the address on file at the Yurok Enrollment Department. If the petitioner does not have the party's address or it is known by the petitioner that the address is outdated or incorrect, the petitioner must request a Notice by Publication in the Yurok Newsletter. Notice must be posted in one edition of the Yurok Newsletter. The notice date is the date of publication date of the Yurok Newsletter.
 - ii. If the party to be served is not an enrolled member of the Yurok Tribe, petitioner may notice party through the last known address. If the petitioner does not have the party's address or it is known by the petitioner that the address is outdated or incorrect, the petitioner must request a Notice by Publication in a paper of general circulation in the county of last known residence for at least two consecutive Sundays.
 - iii. If the birth father is listed as blank or unknown, the Court shall hold a prove up hearing to determine what type of notice is proper in the case.
 - b. Notice shall include name of child, birthdate of child, copy of enrollment status of child from the Yurok Enrollment Department, copy of the petition, location, mailing address, and telephone number of the Tribal Court, and date and time of the hearing.

- c. Petitioner shall mail a notice of the hearing and a copy of the petition at least 10 days prior to the hearing to the Tribal agency designated to investigate guardianships to the Court.
- (4) Unless waived by Yurok Tribal Court, a court investigator or Tribal agency designated to investigate potential dependency shall make an investigation and file with the Yurok Tribal Court a report and recommendation concerning each of the proposed guardians. Prior to ruling on the petition for guardianship, the court shall read and consider all reports submitted pursuant to this section. All reports authorized by this section are confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The court investigator or Tribal agency designated to investigate potential dependency shall serve all parties a copy of the confidential report as expeditiously as possible. For purpose of writing a report authorized by this section, the person making the investigation and report shall have access to the child's school records, probation records, and public and private social services records, and to an oral or written summary of the child's medical records and psychological records prepared by any physical, psychologist, or psychiatrist who made or who is maintaining those records. The report for Yurok Family Law Guardianship shall include, but not be limited to, an investigation and discussion of all of the following:
 - a. Social history of guardian.
 - b. Social history of the child, including, to the extent feasible, an assessment of any identified developmental, emotional, or psychological needs of the child and the capability of the petitioner to meet those needs.
 - c. The relationship of the child to the guardian, including duration and character of relationship.
 - d. The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child.
- (5) The Court shall make findings consistent with this section and grant a Yurok Family Law Guardianship where petitioner has proven that it is necessary or convenient and in the best interest of the child to appoint petitioner as guardian of the child.
- (6) Upon granting a Yurok Family Law Guardianship, the Tribal Court will hold Review Hearings, at minimum, every six months. The guardian shall provide to the court a status report. The Court shall develop a form for the status report.
- (7) There may be a situation where a child in a long-term Yurok Family Law Guardianship may be defined as a Child In Need of Aid (CINA) under the Yurok Children's Ordinance, as amended. A qualifying petitioner may petition the Yurok Tribal Court for termination of parental rights under the Yurok Children's Ordinance if the child is defined as a CINA.
- (8) At any time, a parent may file a petition to terminate the Family Law Guardianship. The court shall order an investigation at that time. The guardian and the parents may agree to mutually terminate the guardianship but the court must legally make the order for termination. The guardian may wish to terminate their responsibility of the minor but there must be an appropriate adult to take over of the care and custody of the minor or the minor may be placed in protective

custody. The Court may grant termination upon a showing that the Family Law Guardianship is no longer necessary or convenient and/or that termination of the guardianship is in the best interest of the child.

- (9) The Guardianship shall automatically terminate when the minor reaches the age of 18, is adopted, marries, is emancipated by Court Order, enters military service, or dies. If the child is adopted through a Tribal Customary Adoption, the Family Law Guardianship shall terminate effective the date of the Tribal Court Order.

13.4 GUARDIANSHIP RESPONSIBILITIES

Under a Yurok Family Law Guardianship, the guardian has the same responsibilities to care for the child as a parent would. The guardian has full legal and physical custody of the child and can make all the decisions about the physical care of the child that a parent would make.

The guardian is responsible for the child's care, including the child's:

- Food, clothing and shelter
- Safety and protection
- Physical and emotional growth
- Medical and dental care
- Education and any special needs

The guardian is also be responsible for supervision of the child and may be liable for any intentional damage the child may cause.

13.5 FINANCIAL SUPPORT

The parent continues to be financially responsible for the support of a child in a Yurok Family Law Guardianship. Support can be an informal arrangement between parent and legal guardian or through the child support services department, as described in this Code.

Where parental support is lacking, there may be financial aid. Applications may be submitted to the Yurok Tribal Department of Social Services eligibility office. The child's eligibility for Supplemental Security Income disability benefits or Social Security Act death or disability benefits on the account of a parent can also be explored.

Prospective Yurok Family Law Guardianship guardians should be aware that the benefits available to Yurok Family Law Guardianship guardians are not at the same level offered to caregivers who become guardians of children who were in foster care.

13.6 GUARDIANSHIP OF THE ESTATE

A Guardianship of the Estate is designed to manage a child's income, money, or other property until the child turns 18. Guardianships of the Estate may be ordered by the Yurok Tribal Court pursuant to rules and procedures developed by the Court.

13.7 ALL PREVIOUS TRIBAL COURT ORDERS

All previous Yurok Tribal Court Orders related to a Yurok Family Law Guardianship remain valid unless otherwise terminated.

C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING EMERGENCY ORDINANCE, ENTITLED THE AMENDED YUROK TRIBAL FAMILY CODE WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON JANUARY 18, 2017, AT WHICH A QUORUM WAS PRESENT, AND THIS EMERGENCY ORDINANCE WAS ADOPTED BY A VOTE OF 5 FOR, 0 OPPOSED AND 0 ABSTENTIONS IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUROK TRIBE.

DATED THIS 18th DAY OF JANUARY 2017

Thomas P. O'Rourke, Sr., Chairperson
Yurok Tribal Council

ATTEST:

Mindy Natt, Secretary
Yurok Tribal Council

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FOR