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## Title 14

# Domestic Relations

**TITLE 14**  
**NOOKSACK INDIAN TRIBE CODE OF LAWS**  
**DOMESTIC RELATIONS CODE**

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**TITLE 14  
NOOKSACK INDIAN TRIBE CODE OF LAWS  
DOMESTIC RELATIONS CODE**

**Chapter 14.01 Marriage**

**14.01.010 Marriage License**

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- (a) No marriage shall be performed under authority of this Code unless the parties have first obtained a marriage license from the clerk of the Tribal Court.
- (b) Upon payment of a fee to be set by the Tribal Court, the clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Code.
- (c) The clerk shall keep a public record of all marriage licenses and certificates issued.
- (d) The marriage license, properly endorsed by the authorized person performing the marriage, shall be returned to the clerk who shall issue a marriage certificate to the parties.

**14.01.020 Existing Marriages**

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- (a) All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.
- (b) All marriages performed or entered into on the Reservation or Tribal Lands prior to the effective date of this Code, including those perfected according to Tribal custom, are declared valid for all purposes under this Code. Parties to such marriages may obtain a marriage certificate upon proof to the clerk by affidavit or otherwise of the validity of their marriage, and payment of a fee to be set by the Court.
- (c) Customary and common law marriages entered into subsequent to the adoption of this Code shall not be recognized by Tribal law but may be recognized as valid pursuant to 14.01.020(a) of this Code.

**14.01.030 Persons Who May Marry**

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No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

- (a) He/she is at least 16 years old and, if over 16 years of age but less than 18 years of age, has the written consent of his/her parent or guardian, properly notarized, to marry;
- (b) At least one of the persons to be married is an enrolled member of the Nooksack Indian Tribe; and
- (c) He/she or he has obtained a blood test to detect venereal disease within 30 days prior to the marriage and such test results were negative or he/she files an affidavit attesting to the fact that he/she is free of venereal disease. A certificate of the test results or the affidavit shall be presented to the clerk before any license is issued.

**14.01.040      Who May Perform Marriages**

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- (a) A marriage may be solemnized and performed on the Reservation by any of the following:
  - (1) recognized clergyman or person recognized by his religion as having authority to marry;
  - (2) a judge of the Tribal Court; or
  - (3) any person recognized by Washington State law as having authority to marry.
- (b) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that he had such authority and that they have been lawfully married.

**14.01.050      Marriage Ceremony**

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No particular form of marriage is required, provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, and two witnesses, that they take each other as husband and wife, and he must thereafter declare them to be husband and wife.

**14.01.060      Void and Voidable Marriages**

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- (a) Marriages between an ancestor and his descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.
- (b) Marriages between a person who is at the time of the marriage married to another person still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:

- (1) actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce or annulment; or
  - (2) actually believed, in good faith, that his or her prior spouse was dead.
- (c) When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.
- (d) If neither party to a marriage is enrollable in the Nooksack Indian Tribe or if either party to a marriage is incapable as a result of some cause or mental dysfunction or legal incapacity to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or fraud; the marriage is voidable.

### **Chapter 14.02 Annulment**

#### **14.02.010      Grounds for Annulment**

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A marriage may be annulled for any of the following causes existing at the time of marriage:

- (a) That the party on whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other party to the marriage as husband and wife;
- (b) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;
- (c) That either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband and wife;
- (d) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;
- (e) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband and wife;
- (f) Impotence which continues and appears to be incurable; or
- (g) That neither party to the marriage was eligible to be enrolled as a member of the Nooksack Indian Tribe.

#### **14.02.020      Action to Annul – Parties and Limitations**

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An action to obtain a Decree of Annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

- (a) For causes mentioned in Subsection 14.02.010 (a), by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of legal consent;
- (b) For causes mentioned in Subsection 14.02.010 (b), by either party during the life of the other, or by such former husband and wife;
- (c) For causes mentioned in Subsection 14.02.010 (c), by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;
- (d) For causes mentioned in Subsection 14.02.010 (d), by the party injured, within two years after discovery of the facts constituting a fraud;
- (e) For causes mentioned in Subsection 14.02.010 (e), by injured party, within four years after the marriage;
- (f) For causes mentioned in Subsection 14.02.010 (f), by the injured party, within two years after the marriage.

#### **14.02.030      Legitimacy of Children**

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When a marriage is annulled for any reason, children begotten before judgment are legitimate and succeed to the estate of both parents. The Court may at the time granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as provided by Nooksack Tribal law.

#### **14.02.040      Conclusiveness of Judgment of Annulment**

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A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

### **Chapter 14.03 Dissolution of Marriage**

#### **14.03.010      Dissolution and Annulment Procedure**

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Proceedings in dissolution and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final Decree of Divorce shall restore the parties to the status of unmarried persons.

#### **14.03.020 Dissolution and Annulment Residency Requirement**

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In order to maintain an action for divorce or annulment in the Tribal Court, at least one party to the marriage must be an enrolled member of the Nooksack Indian Tribe and have lived within the territorial jurisdiction of the Tribal Court for at least three months prior to bringing the action, except that an annulment may be granted where either party lives within the jurisdiction of the Court and the marriage was performed under authority of this Code.

#### **14.03.030 Grounds for Dissolution**

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The sole grounds for dissolution shall be that the marriage is irretrievably broken.

#### **14.03.040 Right to Dissolution**

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The husband may in all cases obtain a dissolution from his wife for the same causes and in the same manner as the wife may obtain a dissolution from her husband.

#### **14.03.050 Pleadings; Findings; Decree**

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The petition for dissolution shall be in writing and signed by the petitioner or the petitioner's counsel or attorney. No Decree of Dissolution shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the Court who shall make and file its findings and decree upon the evidence. The decree shall become absolute upon entry unless the judge orders otherwise in which case the period of time until which it becomes absolute may be up to three months.

#### **14.05.060 Property Rights of Married Persons**

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- (a) Either a wife or a husband can obtain, own, hold, give, sell or otherwise deal with real or personal property as if she/he were unmarried.
- (b) Either a wife or a husband can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.
- (c) Neither a wife nor a husband nor the property of either in which their spouse has no interest is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.
- (d) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.

- (e) All property and debts acquired during the marriage shall be subject to equitable distribution between the husband and wife by the Court.

**14.03.070 Maintenance and Suit Money; Restraint**

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- (a) The Court may order either party to pay for the benefit of the other party a sum of money for the temporary separate support and maintenance of the adverse party and the children.
- (b) The Court may temporarily or permanently restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pending period of the dissolution proceedings. Violation of a current and valid restraining order shall be a Class B offense under the Tribal Criminal Code. In addition, civil contempt or expulsion proceedings may be brought against any person violating a valid court order obtained pursuant to this Code.

**14.03.080 Payments of Costs, Spokesperson or Advocate's Fees, etc.**

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The Court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under this Code and for reasonable spokesperson or Advocate's fees or other professional fees in connection therewith, including sums for legal services rendered and costs.

**14.03.090 Disposition of Property and Children**

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When a Decree of Dissolution is made, the Court may make such orders in relation to the children, property, and parties, and the maintenance of the parties by alimony, as may be equitable. Subsequent changes, modifications or new orders may be made by the Court with respect to the custody of the children as shall be reasonable.

**14.03.100 Custody of Children and Property**

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- (a) Absent a judicial decree of property distribution or custody or otherwise, neither the husband or the wife can remove the other or the children from the place of family dwelling without the consent of the other, provided, however, that children may be removed from the family residence by one parent without the consent of the other if such appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is made to the Court within ten days for an order of the Court, modifiable at any time, approving such removal of the children.
- (b) If either spouse abandons the other spouse, the abandoned spouse is entitled to custody of and legal guardianship over all children under the age of 18 unless a court of competent jurisdiction shall otherwise direct. Abandonment shall be

defined as voluntary absence of a parent from the home in which the children reside for a period of 180 days without intent to return.

**14.05.110 Spousal Maintenance**

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- (a) A spouse, living on the lands of the Nooksack Indian Tribe, who through no fault of his/her own, or by agreement with his/her spouse, is living separate and apart from his/her spouse, or whose spouse has deserted him/her, or has failed to support him/her when otherwise able to do so, may maintain an action for a decree of separate maintenance.
- (b) During the period pending of the action the Court may order the obligor spouse to pay temporary maintenance and suit money as in an action for dissolution.
- (c) If it appears that the spouse is entitled to such, the Court shall grant a decree of separate maintenance awarding custody of children, maintenance, child support and expenses of suit as may be equitable under the circumstances. Any child support award shall be determined according to the Nooksack Child Support Schedule and Nooksack Child Support Code.

**Chapter 14.04 Child Custody**

**14.04.010 Child Custody – Commencement – Notice – Intervention**

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- (a) A child custody proceeding is commenced in the Tribal Court:
  - (1) By a parent:
    - (A) By filing a petition for dissolution of marriage, annulment or declaration of Invalidation; or
    - (B) By filing a petition seeking custody of the child; or
  - (2) By a person other than a parent, by filing a petition seeking custody of the child; but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian. The person filing the petition seeking custody shall provide an original government issued photo identification upon filing the petition, which is to be copied by the clerk and the copy placed in the court file.
- (b) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The Court may, upon a showing of good cause, permit the intervention of other interested parties.

**14.04.020 Relevant Factors in Awarding Custody**

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(a) The Court shall determine custody in accordance with the best interests of the child and, secondarily, the traditions and customs of the Nooksack Indian people. The Court shall consider all relevant factors including:

- (1) The wishes of the child's parent or parents as to visitation privileges;
- (2) The wishes of the child as to his custodian and as to visitation privileges;
- (3) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
- (4) The child's adjustment to his home, school, and community;
- (5) The mental and physical health of all individuals involved; and
- (6) The Indian heritage of the child.

The Court shall not consider conduct of a proposed guardian that does not affect the welfare of the child.

(b) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the Tribal Child Welfare Services or by a licensed agency, have had actual custody of the child for a period of one year or more before action is commenced by the natural parent or parents, the Court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

#### **14.04.030      Temporary Custody Order – Vacation of Order**

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- (a) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by affidavit. The Court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of affidavits.
- (b) If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.
- (c) If a custody proceeding commences in the absence of a petition for dissolution of marriage, legal separation, declaration of invalidity or is dismissed, any temporary order is vacated.

#### **14.04.040      Temporary Custody Order or Modification of Custody Decree – Affidavits Required**

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

**14.04.050 Interview with Child by Court – Advice of Professional Personnel**

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- (a) The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation privileges. The Court may permit counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be made part of the record in the case.
- (b) The Court may seek the advice of professional personnel or persons knowledgeable in the welfare of Indian children whether or not they are employed on a regular basis by the Court. The advice given shall be in writing and shall be made available by the Court to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Court.

**14.04.060 Priority Status of Proceedings – Hearings – Record – Expenses of Witnesses**

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- (a) Custody proceedings shall receive priority in being set for hearing.
- (b) Either party may petition the Court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the Court deems necessary to determine the best interests of the child.
- (c) The Court, without jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the Court.
- (d) The Court may make an order sealing the record if it finds it necessary to protect the child's welfare by keeping the record of any interview, report, investigation, or testimony in a custody proceeding confidential.

**14.04.070 Visitation Rights**

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- (a) A parent, grandparent, or any other person able to show to the Court a traditional right or custom of child care, and not granted custody of the child, may be granted reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The Court may

order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

Any person may petition the Court for visitation rights at any time including, but not limited to, custody proceedings.

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

**14.04.080 Powers and Duties of Custodian – Supervision by Appropriate Agency When Necessary**

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- (a) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the Court after hearing, finds, upon motion by the non-custodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.
- (b) If both parents or all contestants agree to the order, or if the Court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the Court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the Court at any time upon petition by any party.

**14.04.090 Child Custody Decree – Modification**

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- (a) Except as otherwise provided in this Code, the Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the Court shall retain the custodian established by the prior decree unless:
  - (1) The custodian agrees to the modification;
  - (2) The child has been integrated into the family of the petitioner with the consent of the custodian or;
  - (3) The child's present environment is detrimental to his physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

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

The Court shall have the power to entertain and grant or deny petitions for temporary guardianship and custody when it determines it to be in the best interest of the person involved.

**14.04.100 Minor or Dependent Child – Court Appointed Advocate or Spokesperson to Represent – Payment of Costs, Fees and Disbursements**

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The Court may appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support and visitation. The Court shall enter an order for costs, fees, and disbursements in favor of the child's Advocate or Spokesperson. The order shall be made against either or both parents, except that, if both parties are indigent, the costs, fees, and disbursements may be borne by the Tribe.

**Chapter 14.05 Guardianship**

**14.05.010 Jurisdiction**

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- (a) The Tribal Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or their estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of either minors or persons incompetent by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.
- (b) The Tribal Court shall have authority to appoint guardians when the person from whom the guardianship is sought is a member of the Nooksack Indian Tribe or the child of a member of the Tribe, whether or not he or she resides on the Reservation or Tribal Lands.
- (c) The Tribal Court may, in its discretion, refer matters concerning the guardianship of a minor to a Juvenile Court.
- (d) The Tribal Court may, in the process of administering an estate for which there is a valid will containing a designation of a guardian for minor children if orphaned by the deceased's death, appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing.
- (e) If the person so designated is unable or unwilling to serve, or if such person's appointment is objected to by the child over 14 years of age, or if the Court deems such to be in the minor's best interest, a separate guardianship hearing shall be held as provided herein.

**14.05.020 Petition**

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- (a) Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the minor or incompetent, or by a minor himself if over 14 years of age. The Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.
- (b) The petition shall set forth the name of the petitioner; the petitioner's relationship to the minor or incompetent and shall list all known relatives of the minor or incompetent and their addresses, relationships and ages insofar as is known to petitioner; shall list all property of the minor or incompetent, real and personal, known to petitioner; shall list in detail the present conditions and circumstances which warrant the appointment of a guardian; shall pray that Letters of Guardianship be issued to himself or some other suitable person to act as guardian of the minor or incompetent.

**14.05.030 Notice – Hearing**

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- (a) The petitioner, or the clerk of the Court, if a minor or the Court itself initiates the proceeding, shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five days before a scheduled hearing. Such notice need not be given in the case of a minor whose parents appear and consent to waive such notice prior to the hearing or in the case of an adult where the spouse and children living on the Reservation or Tribal Lands appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the Court.
- (b) Hearing for minor. At a hearing conducted to appoint a guardian for a minor, the Court shall: examine the minor to determine who he would prefer to have as his guardian; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the scope of the guardian's authority, whether or not security for his performance is to be required, and the duration of such appointment.
- (c) Hearing for incompetent. At a hearing conducted to appoint a guardian for an incompetent, the Court shall: examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than two doctors' reports, written or oral, under oath, to the effect that the incompetent is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interest of the incompetent will be served by having a guardian appointed; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the authority of the guardian, whether or not

security for his performance is to be required, and the duration of such appointment.

**14.05.040 Who May Serve as Guardian**

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Any adult person 21 years of age or older and subject to the jurisdiction of the Tribal Court may serve as a guardian. Preference shall be given to relatives of the minor or incompetent in order of their closeness of relationship and some preference shall also be given to a person with whom the minor or incompetent is living at the time of the guardianship hearing. Preferences shall be given to the person preferred to act as his guardian by a minor or incompetent over 14 years of age, but in all cases, the Court shall determine the best interests of the minor or incompetent in selecting a guardian.

**14.05.050 Security for Faithful Performance of Duties**

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The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Tribal Court for purposes of action against such security.

**14.05.060 Oath - Letters of Guardianship**

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- (a) The guardian appointed by the Court shall be required to take an oath, the form of which to be prescribed by the Court, to the effect that he will faithfully perform his duties as guardian.
- (b) Upon taking the oath and filing with the Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the clerk under the seal of the Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the Letters so issued.

**14.05.070 Inventory and Appraisement**

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- (a) Within 45 days after the appointment of a general guardian or guardian of the property or estate of a minor or incompetent, the guardian shall prepare and submit to the Court an inventory and appraisement of the estate.
- (b) The appraisement shall be made by three disinterested persons who shall certify under oath to their appraisement and may receive reasonable compensation for their services.
- (c) No appraisement shall be required of items of obvious, readily ascertainable value, e.g. bank account assets, or where the value of the entire estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisement is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

**14.05.080 Annual Accounting**

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- (a) The guardian of every estate in value over \$1,000.00 shall submit an annual account of the estate to the court for approval, on such notice as the Court may direct, in each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000.00.
- (b) Such account shall be verified on the oath of the guardian and shall contain an accounting of all additions to and any withdrawals from the estate, and shall be accompanied by supporting cancelled checks, vouchers, receipts, statements, etc.

**14.05.090 Guardian's Compensation**

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- (a) No guardian shall receive any compensation for acting as such, without the prior approval of the Court.
- (b) The guardian of an estate in excess of \$3,000.00 in value may receive annual compensation for acting as such in amount not less than \$25.00 nor greater than 10% of the gross income of the estate; such compensation must be approved by the Court.
- (c) The guardian of an estate less than \$3,000.00 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.

**14.05.100 Powers and Responsibilities of Guardian**

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- (a) Except as otherwise specifically ordered or limited by the Court:
  - (1) A guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of the minor or incompetent and shall be required to care for the health, safety and welfare of such minor or incompetent and provide for their education and medical care as needed or appropriate.
  - (2) A general guardian or guardian of the estate or property of a minor or incompetent shall have authority to invest, manage and dispose of the property of the minor or incompetent in a prudent and reasonable manner and expend such portions of the estate, income and then principle, as he shall deem reasonably necessary for the support, care, including medical care, and education of the minor or incompetent given the size and nature of the estate and the station in life and needs of the minor or incompetent.
  - (3) A general guardian shall have power and authority to represent a minor or incompetent's best interests in actual, threatened or contemplated

litigation or other proceedings of a legal nature (other than of a criminal nature and/or under a Juvenile Code), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Court.

- (b) A guardian of any kind may petition the Court for authority to do any act about which he is uncertain of his authority, and the Court may grant such authority after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the best interests of the minor or incompetent.
- (c) A guardian of any kind shall stand in a fiduciary relationship to the minor or incompetent ward; shall exercise a high degree of care in managing the estate of his ward; shall derive no personal benefit of any kind from his management of the estate of his ward; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two years after the appointment of a new guardian or the removal of the incompetency or the arriving at the age of majority.

#### **14.05.110 Discharge of Guardian**

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- (a) Every guardian appointed as provided herein shall serve until discharged by the Court.
- (b) A guardian of a minor, not otherwise incompetent, or the minor himself, may petition the Court on or after the date the minor reaches the age of majority to have the guardian discharged and the estate turned over to the minor. The Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incompetent, in which case a hearing shall be held to determine such fact.
- (c) A person, other than a minor, who has had a guardian appointed for reasons of incompetency, or the guardian or a relative of such incompetent may petition the Court for a determination of this restoration to capacity and for the discharge of the guardian. The Court shall hold a hearing, after such notice to known interested persons as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and his guardianship and guardian discharged.

#### **14.05.120 Guardianship Records**

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The clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearings, etc. Any guardian duly appointed shall be entitled to receive, without charge, three certified

copies of the Letters of Guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Court.

#### **14.05.130 Guardianship of Trust Property**

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The Court is hereby authorized to appoint a guardian of the trust estate of minors or incompetent using the procedures and safeguards outlined herein for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such minor or incompetent if it appears that the price to be paid is reasonable and adequate and that such sale is to the best interests of said minor or incompetent, the Court may enter an order authorizing such action. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Superintendent.

#### **14.05.140 Temporary Guardianship and Custody**

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The Court shall have the power to entertain and grant or deny petitions for temporary guardianship and custody when it determines it to be in the best interests of the person involved.

### **Chapter 14.06 Paternity**

#### **14.06.010 Purpose**

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The purpose of this Chapter is to provide a means to establish the paternity of children as it may be in their best interests. The Nooksack Tribe has an interest in the establishment of paternity as it may directly effect the well-being of children, therefore certain methods of establishing paternity in foreign jurisdictions may be recognized for the purposes of establishing or modifying child support obligations, but not be recognized for the purposes of enrollment as a member of the Nooksack Tribe. Only the Nooksack Tribe has authority to regulate its membership eligibility requirements.

#### **14.06.020 Presumption of Paternity**

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- (a) A man is presumed to be the natural father of a child if:
- (1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or
  - (2) Before the child's birth, he and the child's natural mother have 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; or

- (3) 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 he has acknowledged his paternity of the child in writing by an affidavit of paternity; or
- (4) With the man's consent, he is named as the child's father on the child's birth certificate; or
- (5) He is obligated to support the child under a written voluntary promise or by court order; or
- (6) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child.

(b) A presumption under this section may be rebutted only by clear, cogent, and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

#### **14.06.030 Paternity Proceedings – Generally**

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- (a) Establishment of paternity under this Chapter may be used if an alleged father is deceased or otherwise unavailable.
- (b) An unwed father is not entitled to treatment as a parent under this Chapter unless his name appears on the minor's birth certificate, or unless he acknowledges, or establishes his paternity as provided in this Chapter.
- (c) The provisions relating to determination of paternity may be applied to a determination of maternity.

#### **14.06.040 Authority and Jurisdiction**

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- (a) The Nooksack Tribal Court is authorized to make determinations of parentage.
- (b) The Tribal Court shall have jurisdiction:
  - (1) Over any action to establish paternity brought under this Chapter. The action may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, support, or any other civil action in which paternity is an issue including any juvenile proceedings.
  - (2) Over any person who is a member or eligible to be a member of the Nooksack Indian Tribe and who is alleged to be the father of a Nooksack Indian child or a child residing within the jurisdictional boundaries of the Nooksack Indian Tribe.
  - (3) Over any person residing within the boundaries of the Nooksack Indian Tribe who is alleged to be the father of a child residing within the boundaries of the Nooksack Indian Tribe.

- (4) Over any person who has sexual intercourse within the lands of the Nooksack Indian Tribe with a person who is a member or is eligible to become a member of the Nooksack Indian Tribe thereby submits to the jurisdiction of the Nooksack Tribal Court as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the Tribal Code as now or hereafter amended.

#### **14.06.050 Definitions**

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- (a) "Child" as used in this Chapter shall mean any person seeking to have their parentage determined. The term "child" is meant to include any person, regardless of age, seeking to establish parentage, because if paternity is established, they will be determined to be the child of the parent.
- (b) "Indian Child" as used in this Chapter shall mean any person, regardless of age, seeking to have their parentage determined and who is enrolled or eligible to be enrolled in the Tribe.
- (c) "Genetic testing" means an analysis of genetic markers only to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
- (1) Deoxyribonucleic acid; and
  - (2) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
- (d) "Paternity" as used in this Chapter shall mean the legal relationship between a child and father.
- (e) "Presumption" as used in this Chapter is an assumption recognized by law that a particular fact is true and may be admitted as evidence in a legal proceeding or judicially noticed, unless the presumed fact is rebutted by evidence sufficient to prove the fact to be untrue.

#### **14.06.060 Voluntary Acknowledgment of Paternity**

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- (a) An alleged father of a child may voluntarily acknowledge paternity by an affidavit of paternity filed with the Nooksack Tribal Child Support Program. The Child Support Program shall promptly serve notice on the mother of the filing of the acknowledgment.
- (b) Within thirty (30) days after being served with notice of the alleged father's affidavit of paternity, the mother may acknowledge the affidavit of paternity or

dispute the acknowledgment, by filing a written statement with the Nooksack Tribal Child Support Program.

- (c) If another man is already presumed to be the father of the child as provided in this Chapter, the affidavit of paternity shall not give rise to a presumption of paternity, unless the man previously presumed to be the father of the child consents in writing, or until the previously established presumption has been rebutted.
- (d) Disputes regarding paternity shall be resolved as provided in this Chapter.

#### **14.06.070      Establishing Paternity Through Civil Action**

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- (a) A petition to establish paternity may be initiated by:
  - (1) a child,
  - (2) a child's legal guardian if the child is a minor or has been adjudicated incompetent,
  - (3) a child's natural mother,
  - (4) an alleged father of a child, or
  - (5) a designated agency of the Tribe.
- (b) The natural mother and an alleged father may jointly file as co-petitioners.
- (c) The child shall be made a party to the action. If the child is a minor, the child shall be represented by the child's non-parent guardian or a guardian ad litem appointed by the Court. The child's mother or father may not represent the child as guardian or otherwise. 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 Court, shall be given notice of the action in a manner prescribed by the Court and an opportunity to be heard. The Court may align the parties.
- (d) A man presumed to be a child's father as provided in this Chapter may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within one year after obtaining knowledge of relevant facts casting doubt on the presumption. 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.
- (e) In any action under this Chapter any party may be represented by an attorney or spokesperson at their own expense
  - (1) The Tribe may be represented by an attorney from the Tribe's child support program. The Tribe shall not be required to pay for any legal fees and expenses incurred by any party in connection with proceedings under this Chapter.
  - (2) The Nooksack Tribal Child Support Program attorneys represent the interests of the Nooksack Indian Tribe and Nooksack Tribal Child Support Program only and exclusively. Attorneys representing the Nooksack Tribal Child Support Program do not have an attorney-client relationship

between themselves and an applicant for or recipient of child support services. The fact that a recipient of services from the Nooksack Tribal Child Support Program might incidentally benefit from the actions of the Nooksack Tribal Child Support Program attorney shall not be construed as legal representation to the recipient, nor as having formed an attorney-client relationship. Any communications between a Nooksack Tribal Child Support Program attorney and the mother, father, alleged father(s), child, or any other party to a paternity action shall not be considered privileged or confidential unless specifically required by tribal, state or federal law.

- (f) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this Chapter.
- (g) If an action under this Chapter is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.
- (h) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

#### **14.06.080 Paternity Petition Contents**

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- (a) A petition to establish paternity shall include the following:
  - (1) The names, dates of birth, addresses and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, and of all others who have legal rights of custody, visitation, or support of the child;
  - (2) The marital status of the natural mother and the alleged father(s);
  - (3) The consent, if any, of the natural mother and the alleged father to establish the alleged father as the natural father of the child;
  - (4) A statement as to whether any party has filed an action to determine paternity in any other court, or with any agency, and if a judgment of paternity has been rendered by any other court;
  - (5) The signature of the petitioner or their attorney verifying the truth of the information in the petition; and
  - (6) Attach a certified copy of the child's birth certificate to the petition as a supporting document.
- (b) Summons. A summons shall be served on the alleged father(s), along with the Petition, and shall include the following notice, in addition to providing a time and date for appearance:

##### **NOTICE TO RESPONDENT**

- (1) You have been named in a petition alleging paternity. A judgment of paternity would legally designate you as the father of the child, grant parental rights to you, create the right of inheritance for the child to your estate, obligate you to pay child support until the child reaches the age of eighteen (18), or until the child graduates from high school or its equivalent up to age twenty (20), or through the child's completion of post-secondary education up to age twenty-four (24) if ordered by the court, and make your failure to pay child support punishable by contempt of court.

- (2) You may request genetic tests which will indicate the probability of paternity. The Court will order genetic tests if requested by an alleged father, the Nooksack Tribal Child Support Program, or any other party to the paternity case. Any person refusing to submit to court ordered genetic tests may be held in contempt of court.
- (3) The petitioner has the burden of proving paternity by clear and convincing evidence. If a genetic test indicates that you are not excluded as the father and the statistical probability of your being the father is ninety-nine point nine (99.9%) or higher, there is a rebuttable presumption that you are the father.
- (4) The following defenses are available to you:
  - (A) That you were sterile or impotent at the time of conception;
  - (B) That you did not have sexual intercourse with the mother of the child during the conception period; or
  - (C) That another man did have sexual intercourse with the mother of the child during the conception period.
- (5) If you fail to appear at any stage of the proceedings, including a scheduled genetic test, the Court may enter a default judgment finding you to be the father. A default judgment will take effect twenty-eight (28) days after it is served on or mailed to you, unless within those twenty-eight (28) days you present yourself to the Court and establish good cause for your failure to appear or present yourself for the genetic test.
- (6) You may be represented during these proceedings by an attorney or spokesperson at your own expense.

- (c) Service. All parties including the biological mother and each man alleged to be the natural father shall be served with the petition and a summons in accordance with the Nooksack Tribal Rules of Civil Procedure.

#### **14.06.090 Paternity Hearing**

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The following rules apply to paternity hearings:

- (a) Any paternity action brought under this Chapter is a civil action governed by the Nooksack Tribal Rules of Civil Procedure.
- (b) The mother of the child and the alleged father may be compelled to testify.
- (c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth shall not be privileged; however any documentary evidence in the form of medical records may be sealed by the Court upon request of any party to the case.
- (d) In an action against an alleged father, evidence offered by the alleged father that another man, not subject to the jurisdiction of the Court, may have had sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the other man has undergone and made available to the Court genetic tests which do not exclude the possibility of the other man's paternity of the child.
- (e) A man alleged to have had sexual intercourse with the mother at or about the probable time of conception of the child, if identified and subject to the jurisdiction of the Court, shall be made a defendant in the action.
- (f) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that said witness may be incriminated

thereby, and if a party requests, the Court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

(1) If, but for this section, such a witness would have been privileged to withhold the answer given or the evidence produced by him/her, the witness may not refuse to comply with the order on the basis of his/her privilege against self-incrimination; but he/she shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he/she has been ordered to testify pursuant to this section. He/she may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Court.

(g) Paternity trials shall be by bench trial, without a jury. All hearings shall be closed to the public unless all parties otherwise agree.

#### **14.06.100 Genetic Tests**

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- (a) In contested paternity cases, the Court may, upon request of a party, require the child and all other parties to submit to genetic tests. The request shall be supported by sworn testimony, by affidavit or otherwise, alleging paternity, and setting forth facts establishing a reasonable possibility that the alleged father had sexual intercourse with the mother at or about the probable time of conception of the child; or denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.
- (b) The Court shall order genetic tests if it appears that a reasonable possibility exists that the alleged father had sexual intercourse with the mother at or about the probable time of conception of the child
- (c) Genetic testing shall be performed by an accredited laboratory which performs, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.
- (d) The genetic testing laboratory's verified report identifying the genetic characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if:
- (1) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of the expert performing the tests, and
  - (2) the report is accompanied by an affidavit from the expert which describes the expert's qualifications and analyzes and interprets the results. Verified documentation of the chain of custody of the genetic tests is admissible to establish the chain of custody. The Court may consider published sources as aids to interpretation of the test results.

(e) The Court, upon request by a party, may order that additional genetic tests be performed by the same or other experts qualified in paternity genetic testing.

- (1) The request for additional genetic tests must be filed with the Court within fourteen (14) days after the requesting party has received the test results which are in question and the subject of the additional testing request.
- (2) The requesting party shall serve all parties with the request for additional testing.
- (3) The Court may hold a hearing on the request for additional testing.
- (4) At the time of filing the request for additional testing, the requesting party must also file proof that the requesting party has sufficient funds to pay the full costs of the additional testing.
- (5) Failure to timely file a request for additional testing or to file proof of ability to pay in advance the full costs of additional testing shall result in the Court accepting the results of the genetic test results previously filed with the Court.

(f) The Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the Court finds, after hearing, that:

- (1) The requesting party is indigent, and
- (2) The laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial genetic test results. The Court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

(g) In all cases, the Court shall determine the number of additional tests that may be performed and the qualifications of the experts.

#### **14.06.110 Best Interests of the Child Not to Establish Paternity**

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Paternity may not be established if the Court determines it would not be in the best interests of the child because of one of the following:

- (a) The child was conceived as the result of incest or forcible rape; or
- (b) Legal proceedings for adoption are pending and, if, in the opinion of the Court, it would not be in the best interests of the child to establish paternity.

#### **14.06.120 Evidence**

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The Court may consider the following types of evidence in paternity cases:

- (a) Genetic test results, including the impossibility or the statistical probability of an alleged father's paternity, presented by either expert testimony or a written report, accompanied by an affidavit. The following types of genetic tests are admissible as evidence of paternity provided that the results of all tests when taken together, either exclude an alleged father or yield a statistical probability of at least ninety-nine point nine (99.9%) that the alleged father is the biological father: DNA, HLA (human leukocyte antigens), red blood cell enzyme, red blood cell antigen and serum protein tests.
- (b) Evidence of sexual intercourse between the mother and an alleged father(s) at any possible time of conception.
- (c) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy.
- (d) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party, require the child, the mother, and the man to submit to appropriate tests.
- (e) Cultural evidence or a reputation in the community as to paternity.
- (f) A finding of parentage by the Tribal Enrollment Officer.
- (g) Any other reliable evidence which is relevant to the issue of paternity.

**14.06.130 Judgment of Paternity after Failure to Appear**

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If respondent is the alleged father and he fails to appear at any time not waived by the Court, the Court may, if no good cause to the contrary exists, enter an order that the respondent is the child's father. The order of paternity shall be served on respondent personally, or by registered or certified mail to his last known address, or by publication if the respondent's address is not known. Such order shall take effect twenty-eight (28) days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear or to undergo a genetic test.

**14.06.140 Judgment of Paternity**

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The judgment or order of the Court determining the existence or nonexistence of paternity shall be based on clear and convincing evidence and shall be final. If the judgment or order of the Court is different from the child's birth certificate, the Court shall send a certified copy of the order to the Department of Vital Statistics of the state in which the child was born.

#### **14.06.150 Time of Filing Paternity Action**

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A petition to determine paternity may be filed at anytime for the purpose of establishing the existence of a father and child relationship. If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall take place until after the birth, unless the Court determines that an action is necessary to preserve testimony or relevant evidence.

#### **14.06.160 Records Sealed**

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All records shall be sealed except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

#### **14.06.170 Paternity Established by Other Jurisdictions**

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- (a) Properly issued court and administrative orders, judgments or decrees of other Indian tribes, states, or federal agencies establishing paternity will be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according to the laws of that jurisdiction and does not violate the public policy of the Nooksack Indian Tribe.
- (b) A foreign order shall be authenticated by a certified copy of the original order from the issuing court.
- (c) Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid by a preponderance of evidence.
- (d) Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that it does not violate the public policy of the Nooksack Indian Tribe.
- (e) Except as otherwise specified in this section, the Nooksack Rules of Civil Procedure shall govern the granting of full faith and credit to foreign paternity orders.

#### **14.06.180 Artificial Insemination**

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- (a) 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. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.

- (b) The donor of semen provided to a licensed physician for use in artificial insemination 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. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the dates of the insemination and file the agreement with the registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.
- (c) The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.

#### **14.06.190      Establishment of Paternity Has No Effect on Tribal Enrollment**

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Establishment of paternity under this Chapter has no effect on Nooksack tribal enrollment status or Nooksack tribal membership.

### **Chapter 14.07 Child Support**

#### **14.07.010      Purpose – Legal Obligation to Support Children**

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This Chapter shall be construed to effectuate the following purposes:

- (a) To establish the legal duty for parents to provide financial support for the needs of their children, to include, but not be limited to, health care, education and general welfare;
- (b) To establish fair and consistent standards to determine financial support for children that ensures that they are provided for by both parents;
- (c) To ensure consistent treatment of parents and children who are in similar circumstances;
- (d) To provide objective standards on which to base calculations for child support in order to minimize disputes between parents;
- (e) To provide an efficient legal process by giving the court and parents guidance in setting the levels of child support orders and encouraging agreed resolutions; and

- (f) To balance the needs of the children to be supported with the needs of the obligor parent so as not to make child support orders so burdensome that parents obligated to pay are left with insufficient resources for their own necessities.

#### **14.07.020 Jurisdiction**

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- (a) Actions to establish child support may be filed as actions independent from any other cause of action, or may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, or any other civil action in which child support is an issue including any juvenile proceedings.
- (b) The Court shall have subject matter jurisdiction over any child support action brought under this Chapter.
- (c) The Court shall have personal jurisdiction over the following persons:
- (1) Any person who is a member or eligible to be a member of the Nooksack Indian Tribe and who is alleged to be a parent of a Nooksack Indian child or a child residing within the exterior boundaries of the Nooksack Indian Reservation.
  - (2) Over any person residing within the exterior boundaries of the Nooksack Indian Reservation and who is the parent of a child residing within the exterior boundaries of the Nooksack Indian Reservation.
  - (3) Any person who has sexual intercourse within the exterior boundaries of the Nooksack Indian Reservation with a person who is a member or is eligible to become a member of the Nooksack Tribe with respect to a child who may have been conceived by that act of intercourse.
  - (4) In addition to any other method provided by statute, personal jurisdiction may be obtained by service in accordance with the Nooksack Tribal Code as now established and hereafter amended.

#### **14.07.030 Sovereign Immunity of the Nooksack Indian Tribe**

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Nothing in this Chapter shall be construed as to abrogate, waive, diminish or otherwise impair the sovereign immunity of the Nooksack Indian Tribe.

#### **14.07.040 Duty of Parent to Support Children**

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- (a) Every parent has a duty to support each and every child of that parent:
- (1) until the child reaches the age of eighteen (18); or
  - (2) until the child graduates from high school or its equivalent up to the age of twenty (20); or

- (3) through the child's completion of post-secondary education up to age twenty-four (24) if the Court has ordered a parent to pay for a portion of post-secondary education expenses.
- (b) In cases in which a dissolution of marriage proceeding is pending, a non-custodial parent shall have a duty to support children that are not the biological children of that non-custodial parent, when he/she supported the children during the marriage. The duty to support non-biological children shall cease upon entry of the final decree of dissolution of marriage, unless the Court finds good cause to continue support.

#### **14.07.050 Definitions – Generally**

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- (a) "Adjusted Gross Income" shall mean gross income minus allowable deductions as specified in this chapter.
- (b) "Basic Child Support Obligation" shall mean the monthly child support obligation of a parent calculated pursuant to the Child Support Guidelines, excluding amounts for day care, health care, and extraordinary expenses as set forth in section 14.07.090(c).
- (c) "Child" means any child dependent on the financial support of at least one parent for their basic needs and for whom a support order has been established or for whom a duty of support is owed.
- (d) "Child Support" shall mean the total financial obligation an obligor parent has towards his or her child established through judicial or administrative process.
- (e) "Child Support Guidelines" shall mean all child support guidelines, schedules, and worksheets approved by the Tribal Council or Council's designee.
- (f) "Child Support Order" shall mean any judgment or order of a court ordering payment of a specific amount or determinable amount of child support, and other support, including medical, dental, child care, or educational support.
- (g) "Court" shall mean the Nooksack Tribal Court.
- (h) "Custodial Parent" shall mean the parent who has been awarded legal custody of the child pursuant to a court order, or who exercises physical custody of the child on the basis of agreement between the parents or the absence of one parent. The term custodial parent shall also include a guardian or custodian appointed by a court of competent jurisdiction.
- (i) "Duty of support" means the duty to provide for the needs of a dependent child, which may include necessary food, clothing, shelter, education, and health care. The duty includes any obligation to make monetary payments, to pay expenses,

including spousal maintenance in cases in which there is a dependent child, or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

- (j) "Employer" includes the United States government, a state or local unit of government, and any person or entity who pays or owes earnings or remuneration for employment to the obligor.
- (k) "Earnings" means compensation paid or payable for personal services or remuneration for employment, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support or spousal maintenance obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type.
- (l) "Non-cash support" is support provided to a family in the nature of goods and/or services, rather than in cash, but which, nonetheless, has a certain and specific dollar value.
- (m) "Obligee" means the person or agency with the right to receive child support payments, or the person or agency to whom the right to receive or collect support has been assigned.
- (n) "Obligor" means the person with an obligation to pay child support.
- (o) "Post-secondary education" shall mean for the purposes of this chapter educational instruction sought after having obtained a high school diploma or G.E.D., to include a four-year degree program, a two-year degree program or vocational instruction leading to a degree or certificate of completion.
- (p) "Support or maintenance order" means any judgment, decree, or order of support or spousal maintenance issued by a court or authorized agency; or a judgment, decree, or other order of support or spousal maintenance issued by a court or agency of competent jurisdiction from another tribe, state or country, which has been registered or otherwise made enforceable through the Nooksack Tribal Court.
- (q) "Tribe" shall mean the Nooksack Indian Tribe.

#### **14.07.060     Scope of Child Support Guidelines**

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- (a) The establishment of Child Support Guidelines is authorized pursuant to this code section in order to provide consistent and fair calculations for child support obligations that an obligor parent must pay for the financial support of his/her

child. The Guidelines shall place a duty for child support upon either or both parents based on their respective financial resources and the custodial arrangements for the child(ren) of the parents.

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

- (1) Take into consideration all gross income of both parents;
- (2) Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child for housing, clothing, food, education, health care, recreation, and goods and services required by physical and/or mental disability;
- (3) Provide for the actual child care expenses reasonably necessary to enable both parents to maintain employment or to conduct an active search for employment;
- (4) Provide for the child's health care needs, through health insurance coverage which supplements those health care goods and services provided by the federal government, where appropriate;
- (5) Provide for review and revision, where appropriate, of the Child Support Guidelines at least once every (3) three years to ensure that the amounts provided for in the schedule are periodically adjusted for increases and decreases in the costs associated with the care and support of the child(ren).
- (6) Provide for circumstances which may support written findings on the record of a judicial proceeding for the award of child support, to reduce support contributions on the basis of hardship to the obligor parent or other children while considering the best interest of the child(ren) who is/are the subject of the judicial proceeding.
- (7) Provide for an imputed median income to be applied to an obligor parent when the Court has no reliable evidence upon which to base a child support award.

**14.07.070 Calculation of Gross Income**

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- (a) Gross income shall include income from any source, and may include, but is not limited to, income from salaries, wages, any income, commissions, stipends, bonuses, dividends, severance pay, pensions, tribal per capita payments, interest, trust income, including income received from land held in trust by the United States or subject to a restriction against alienation, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, gaming winnings, prizes, and spousal maintenance. Cash value shall be assigned to in-kind or other non-cash benefits. Seasonal income, overtime income, or fluctuating income shall be averaged. When income from a full-time job is consistent with income during the marriage, income earned as the result of overtime hours or a second job may be disregarded.

- (b) Gross income shall not include benefits received from means-tested public assistance programs including, but not limited to, TANF, supplemental security income, food stamps, or any other program exempted by federal law, or sums received as child support.
- (c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus reasonable, ordinary and necessary expenses required to produce income.
- (d) Expense reimbursements, benefits or bonuses received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if the amounts are significant and reduce personal living expenses.
- (e) If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If an obligor parent reduces his or her earnings as a matter of choice and not for good cause, the Court may impute an income amount based on the obligor parent's past earning history.
- (f) Income of a parent's new spouse shall not be calculated as income of that parent.

#### **14.07.080 Calculation of Adjusted Gross Income**

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Adjusted Gross Income includes gross income minus the following deductions:

- (a) United States income taxes;
- (b) Tribal, state or local income taxes;
- (c) FICA;
- (d) Health insurance premiums to the extent paid by an employee;
- (e) State industrial insurance premiums;
- (f) Child support paid for another child to the extent actually paid;
- (g) Court ordered spousal maintenance to the extent actually paid.

#### **14.07.090 Calculation of Child Support Obligation**

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- (a) To establish or modify child support, the Child Support Guidelines shall be applied to determine the amount of child support due. In every case, a minimum amount of child support shall be ordered as provided in the Child Support Guidelines.
- (b) The Basic Child Support Obligation shall be calculated based on the income of the obligor parent. Unemployment or underemployment shall not excuse an obligor parent from the obligation to provide child support.
- (c) The Basic Child Support Obligation shall be based on physical custody of the child(ren) arrangements as follows:

- (1) For primary custody situations, the Basic Child Support Obligation shall be calculated using the non-custodial parent's income. The Court may consider a motion for partial abatement of child support for visitation schedules allowing for the child to reside with the non-custodial parent for periods exceeding one month or longer during a one-year period. A month shall mean a calendar month of consecutive days and not days added up over a one-year period to total the equivalent of a month of time (30 days).
  - (2) For shared custody arrangements, the Basic Child Support Obligation shall be calculated using the income of both parents. In shared custody situations, each parent's percentage of custody is equal to the number of twenty-four (24) hour days spent by each child with each respective parent divided by three hundred sixty-five (365).
  - (3) For divided custody situations, the Basic Child Support Obligation shall be calculated using the income of both parents. When one parent has primary physical custody of one child(ren) and the other parent has primary physical custody of the other child(ren), then all attempts shall be made to insure that the amount of support is equal between the children.
  - (4) Imputed Income. If the Court has no reliable evidence concerning a parent's income, the Court shall impute to that parent a median income as set forth in the Child Support Guidelines.
- (d) The costs of providing medical and dental care for the children of the parties and the reasonable child care costs incurred on behalf of the children due to employment or job search of either parent shall be paid by each parent in proportion to his or her income, in addition to the Basic Child Support Obligation. While acknowledgment or establishment of parentage for purposes of receipt of medical and dental services through the Public Health Service, Indian Health Service (I.H.S.), is required, each parent shall provide their proportional share of the costs of supplemental medical and dental insurance, which may be available to them through their employment.
- (e) The child support obligation may also include partial payment of the following expenses, to include children who are students up to the age of twenty-four (24) years, if the student is a dependent of one of the parents. Eligible expenses may include the following expenses not covered by the Basic Child Support Obligation:
- (1) Up to fifty percent (50%) of extraordinary medical, dental and counseling expenses incurred on behalf of the child(ren), including substance abuse counseling and treatment. Extraordinary expenses are defined as uninsured expenses exceeding a total amount of \$100.00 per child per year.
  - (2) Additional educational or extra curricula expenses, up to fifty percent (50%).

- (3) Transportation and communication expenses necessary for long distance visitation or time-sharing, up to fifty percent (50%).
  - (4) Traditional tribal cultural activities. The Court may take testimony from a tribal elder or tribal cultural expert to determine whether the activity is considered a Nooksack tribal cultural activity. The maximum amount that the Court may award for traditional tribal cultural activities per month is twenty-five percent (25%) of the total monthly child support obligation for that parent. (For example: A parent with a monthly child support obligation of \$400 per month could be required to pay a maximum of \$100 per month [25% of \$400] toward cultural activities, for a total support obligation for that month of \$500.)
  - (5) Post-Secondary Education Expenses. The Court shall have discretion to order a parent to pay up to fifty percent (50%) of post-secondary education expenses for a child through the completion of post-secondary education up to the child's twenty-fourth (24<sup>th</sup>) birthday if there is no significant hardship to the obligor parent. Factors to be considered include income of both parents, aptitude and ability of the child, and parental expectations.
- (f) Non-cash payments or "In-Kind Support". A portion of a monthly child support obligation can be paid with in-kind support or non-cash goods or services by an obligor parent, if agreed to by the parties in writing with the Court having final authority to grant or deny the in-kind contribution agreement. In-kind support may include food, clothing, shelter, fuel, or firewood. No monthly child support obligation can be paid solely by in-kind goods and services. The maximum percentage that will be allowed for in-kind goods and services during a one month period will be fifty percent (50%) of the total child support obligation. The Court shall assign a cash value to all in-kind payments using current market rates for similar goods and services in the local area. In-kind support will not be permitted to satisfy assigned support obligations.
- (g) Findings. The Court shall make findings in the record as to: Gross Income, Adjusted Gross Income, Basic Child Support Obligation, medical, childcare, and educational support, in-kind support, support obligation in a shared physical or divided custody situation, and the child support award and reasons for deviation, if any. The findings may be made by incorporating a worksheet containing this information into the record.
- (h) There shall be a rebuttable presumption, in any proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established consistent with this chapter is the correct amount of child support to be awarded.
- (i) Guideline Review. The Child Support Guidelines shall be reviewed and revised, if appropriate, at least once every three (3) years. It shall be the responsibility of the Nooksack Tribal Child Support Program to recommend any revisions to the Tribal Council.

#### **14.07.100 Initiating a Child Support Action**

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- (a) An action to establish child support may be initiated at any time before the child in question has his or her twenty-fourth (24<sup>th</sup>) birthday, and shall be prospective in nature.
- (b) An action for child support may be initiated by any parent or guardian, or any agency authorized to enforce the child support laws of the Nooksack Tribe by filing a petition for establishment of child support with the Nooksack Tribal Court and initiating service of the summons and petition upon the parent against whom child support is to be established.
- (c) The petition and summons shall be served by personal service. If personal service cannot be accomplished after reasonable attempts, the summons and petition may be served by certified mail at the last known address of the respondent or by other method authorized by the Nooksack Tribal Code.
- (d) The petition to establish child support shall include the following:
  - (1) The name, address and income of the custodial parent or guardian;
  - (2) The name and date of birth of the child for whom support is requested;
  - (3) The name of the obligor parent from whom support is requested and whether parentage of the obligor parent has been established;
  - (4) The cost of the child's health care and dental insurance premiums paid by the custodial parent, if any;
  - (5) The cost of child care necessary to permit the custodial parent to work;
  - (6) Any extraordinary costs associated with caring for the child, such as necessary medical costs or education costs or costs associated with the child's extracurricular activities or unusual costs or transportation for visitation between parents sharing custody;
  - (7) If child support is sought for a child beyond the age of eighteen (18), the reasons, if any, why child support should be ordered beyond the child's eighteenth (18<sup>th</sup>) birthday;
  - (8) If custody is split between the parents, the percentage of the year (calculated as number of days in the year with each parent) during which the petitioner has physical custody of the child;
  - (9) If known, the social security number, address, and income of the obligor parent. If the address of the obligor parent is unknown, the Court shall refer the matter to the Federal Parent Locator Service.
- (e) Upon receipt of proof of service of the summons and petition on the respondent, the Court shall schedule a hearing to determine child support no sooner than twenty (20) days after the respondent receives notice of the child support action. The Clerk of Court shall send a notice of hearing with a hearing date and a brief description of the subject matter of the hearing on both the custodial and non-

custodial parents, and any other parties to the case. The notice shall inform the respondent of the following:

- (1) 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 decide the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence;
  - (2) That parentage may be established at the hearing if parentage has not yet been established pursuant to the Nooksack Tribal Code;
  - (3) That an order of child support may obligate the respondent to pay child support until the child reaches eighteen (18) or until the child graduates from high school or its equivalent up to age twenty-one (21);
  - (4) That the Court may authorize publication of an obligor's name in a local newspaper and/or suspension or denial of an obligor's tribal licenses for failure to pay child support;
  - (5) 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;
  - (6) That if the respondent is unemployed he or she will still be imputed to be able to provide some degree of child support and an order of support will be calculated according to the Nooksack Tribal Child Support Guidelines unless the Court makes written findings of injustice in their application;
  - (7) That he or she may enter into a stipulated support agreement; and
  - (8) That any answer to the petition must be filed with the Court within twenty (20) days of the date of service of the petition, and a copy served on the petitioning party.
- (f) Answers must be filed with the Court and served on the petitioning party within twenty (20) days of the date of service of the petition.
- (g) Upon written request by either party, the Court shall issue subpoenas to the adverse party, his or her employer, or any other person or entity in possession of relevant information to appear or produce documents to the Court. Failure to comply with such a subpoena may be punishable as contempt of court.
- (h) Child support obligations shall begin accruing from the time of filing the original petition with the Court.

#### **14.07.110      Temporary Support**

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- (a) If the Court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the Court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) The Court shall apply the Child Support Guidelines to all temporary support orders.

(c) A temporary support order:

- (1) Shall not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;
- (2) May be revoked or modified;
- (3) Terminates when the final order is entered or when the petition is dismissed; and
- (4) May be entered in a proceeding for the modification of an existing order.

#### **14.07.120 Stipulated Agreements**

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- (a) At any time prior to the date of the hearing, the parties may enter into a stipulated agreement as to the amount of the child support obligation. The court shall not approve an agreement that provides for an amount of child support that is substantially less than that provided in the Child Support Guidelines. If the respondent contends that the Guidelines are unjust as applied to his or her situation, he or she must establish this contention at a hearing before the Court.
- (b) The voluntary agreement shall be signed by all parties to the agreement before a notary public.
- (c) The voluntary agreement shall not be valid and enforceable until approved by the Court. The Court shall not approve a voluntary agreement unless the court determines the agreement is in the best interests of the child. Agreements approved by the Court shall have the same force as an order or judgment issued by the Court.
- (d) The obligation of the obligor parent to pay child support shall commence on the date specified in the agreement, but no later than the date the agreement is approved and filed by the Court.

#### **14.07.130 Hearing Procedures**

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- (a) The factual determinations made at the hearing shall be limited to the income and expense information necessary to determine the appropriate level of support according to the Child Support Guidelines.
- (b) The Court shall have authority to utilize mandatory discovery procedures to obtain any information relevant to the establishment or enforcement of child support. These procedures shall include the following:

- (1) The inspection of property, examination and production of pertinent records, books, information, or evidence;
- (2) The subpoena of any person for testimony under oath, for production of documents or things;
- (3) Punishment by contempt for refusal to comply with the discovery orders of the Court.

(c) Establishment of Level of Support

- (1) The Court shall establish the amount of the child support obligation of the obligor parent by using the Child Support Guidelines. The Court shall not depart downward from the Guidelines unless the court finds that it would be unjust to apply the Child Support Guidelines in a specific case. The Court's findings shall be in writing.
- (2) The standard of proof for establishment of the amount of the child support obligation shall be by a preponderance of the evidence. The petitioner shall bear the burden of proof, except that the respondent shall bear the burden of proof that the Guidelines are unjust as applied to the respondent.

(d) Default. If the respondent fails to file an answer or appear at the hearing, then upon a showing of valid service and upon presentation of evidence by the petitioner of the obligation by the absent party, the Court may enter an order of child support obligation as established by the evidence.

**14.07.140      Legal Representation**

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- (a) In any Court hearings under this Chapter any party may be represented before the Court by a spokesperson of the party's choice at their own expense, provided the spokesperson has been admitted to practice before the Court. The Tribe shall not be required to pay for any fees and expenses incurred by any party in connection with proceedings under this Chapter.
- (b) The Nooksack Tribal Child Support Program attorneys represent the interests of the Nooksack Indian Tribe and Nooksack Tribal Child Support Program exclusively. Attorneys representing the Nooksack Tribal Child Support Program do not have an attorney-client relationship between themselves and an applicant for or recipient of child support services. The fact that a recipient of services from the Nooksack Tribal Child Support Program might incidentally benefit from the actions of the Nooksack Tribal Child Support Program attorney shall not be construed as legal representation to the recipient, nor as having formed an attorney-client relationship. Communications between the recipient, parents, obligees, obligors or any other party or witness to a child support action shall not be considered privileged or confidential unless specifically required by tribal, state or federal law.

#### **14.07.150 Right of Appeal to the Tribal Court of Appeals**

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Any final order entered by the Court under this Chapter may be appealed to the Nooksack Tribal Court of Appeals. Appeals filed under this Chapter shall be governed by the Nooksack Tribal Court Rules of Appellate Procedure. No stay of appeal shall be granted in any action to establish or modify child support. An obligor parent must be current with child support payments at the time of filing a notice of appeal in order to perfect their right of appeal.

#### **14.07.160 Content and Effect of Order**

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- (a) Payment under a child support order shall be made to the Nooksack Tribal Child Support Registry for distribution to the custodial parent or other resident guardian of the child. The Court may, however, order payments to be made elsewhere if there is a showing that it is in the best interests of the child. The Court may also order that any confidential information regarding the location and contact information of any party shall not be released to another party if the Court finds that release of such information is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.
- (b) Each order for child support or maintenance payments shall include an order that the non-custodial parent and custodial parent notify the Nooksack Tribal Child Support Registry of any change of employer or change of address within ten (10) days of such change. Each party may request and receive this information from the Child Support Registry unless there is a court order prohibiting the release of such information to that party.
- (c) In the event the order contains a determination of child support obligation, the order shall be in favor of the child through his or her custodial parent or guardian when the Tribe, or other federal or state agency, is not making Temporary Assistance to Needy Families (TANF) payments on behalf of the child. The payments may be disbursed by the Child Support Registry to another party or through a trust account in the child's name if there is a showing that payments to the custodial parent or guardian are not in the best interests of the child.
- (d) The custodial parent who receives TANF benefits on his or her own behalf or for the benefit of a child shall assign child support rights for the TANF beneficiary child to the Tribe or other federal or state agency which makes TANF payments to the custodial parent, with the exception of any portion of the payment passed through to the custodial parent.
- (e) In the event the order contains a determination of child support obligation, the order shall provide for automatic wage withholding and attachment of any gaming winnings and income tax refunds as a means for execution on any unpaid child support obligation. Wages shall not be subjected to withholding when:

- (1) One of the parties demonstrates and the Court finds that there is good cause not to require immediate income withholding; or
  - (2) The parties reach a written agreement that provides for an alternative arrangement.
- (e) Upon motion by any party, child support orders issued by a court before the effective date of the Nooksack Child Support Code may be subject to automatic wage withholding upon a finding of good cause.
- (f) 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 Court; the custody and guardianship of the child, visitation privileges with the child; 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 direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
- (g) Support judgment and orders shall be for periodic payments which may vary in amount. The Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Court deems just: Provided however, that the Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for support and other services previously furnished to the child.

**14.07.170      Deviation from Child Support Guidelines**

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- (a) By Court Order. The Court may order child support in an amount different from that which is provided in the Child Support Guidelines, if all of the following five criteria are met:
- (1) The party requesting the deviation shows by a preponderance of the evidence that application of the Guidelines would be inappropriate, unjust or would cause a substantial hardship in the particular case;
  - (2) Deviation is in the best interest of the child;
  - (3) The Court makes written finding regarding (1) and (2) above;
  - (4) The Court's written finding shows the award amount before the deviation;  
and
  - (5) The Court's written finding shows the award amount after the deviation.
- (b) A substantial hardship to the obligor shall not include substantial hardship to a second or subsequent family of the obligor.
- (c) Whenever application of the Child Support Guidelines set forth in this section requires a person to pay to another person more than forty percent (40%) of his or

her Adjusted Gross Income for current support, there shall be a presumption of a substantial hardship.

- (d) Employment status shall not be a cause for a finding of substantial hardship where the court determines that the person contesting application of the Guidelines is voluntarily unemployed, voluntarily under-employed, or has declined to accept or pursue employment opportunities. In such cases, the court shall attribute to the obligor parent that amount of income that the obligor parent is reasonably capable of earning and calculate a child support award based on this amount.
- (e) By Agreement of the Parties. The Court may deviate from the Guidelines upon agreement of the parties if all of the following criteria are met:
  - (1) The agreement is in writing,
  - (2) All parties have signed the agreement with knowledge of the amount of support that would have been ordered by the Guidelines but for the agreement,
  - (3) All parties have signed the agreement free of duress and coercion, and
  - (4) The Court makes written findings that the deviation is in the best interests of the child.

#### **14.07.180 Enforcement of Child Support Orders**

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- (a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Code or under other or prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent it has furnished or is furnishing these expenses.
- (b) The Court may order support payments be made to the Tribal IV-D Program, to a parent, the clerk of the Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Court.
- (c) All remedies for the enforcement of judgments apply.
- (d) Automatic Wage Withholding
  - (1) In cases where a support order has been issued or modified at the request of the Nooksack Tribal Support Program under the Tribal IV-D plan, or is being enforced under such plan, there shall be an income withholding order issued by the Court in an amount necessary to comply with the child support order.

- (A) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must also include an amount to be applied toward liquidation of any overdue support or arrears.
  - (B) Income shall not be subject to withholding in any case where:
    - i. Either the custodial or noncustodial parent demonstrates, and the Court 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 is reviewed and entered into the record by the Court.
  - (C) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payment which the obligor parent has failed to make under a Tribal support order is at least equal to the support payable for one month.
- (2) To initiate income withholding, within thirty-five (35) days of the issuance of the wage withholding order, the Nooksack Tribal Child Support Program shall serve the noncustodial parent's employer:
- (A) Notice using the most current version of the standard federal income withholding form, and
  - (B) A copy of the automatic wage withholding order.
- (3) No employer shall refuse to honor a wage withholding order or voluntary wage assignment executed pursuant to this Chapter. An employer shall begin withholding within fourteen (14) days after service of a wage withholding order or voluntary wage assignment made pursuant to this Chapter.
- (4) Any employer failing to withhold income in accordance with the provisions of the income withholding order, shall be liable for the accumulated amount of support money that should have been withheld from the obligor parent-employee's earnings. Failure to withhold income may be found where the employer:
- (A) Fails or refuses, after being served with a wage assignment order, to deduct promptly and remit from the unpaid earnings the amounts of money required in the order;
  - (B) Fails or refuses to submit an answer to the notice of wage assignment after being served; or

(C) Is unwilling to comply with the other requirements of this Chapter.

- (5) An employer shall be subject to a fine not to exceed \$500.00, if it is determined by a preponderance of evidence that the employer discharged an obligor parent from employment, refused to employ, or subjected any obligor parent to disciplinary action because of withholding. The action may be brought by the Nooksack Child Support Program using the rules of procedure for adjudicating civil infractions.
- (6) An employer who repeatedly fails to withhold child support as required may have his tribal business license revoked or suspended until compliance is assured.

(e) Notice of Delinquency

- (1) In the event that the obligor parent is at least one-month delinquent in paying a child support obligation, the obligee or Nooksack Tribal Child Support Program may prepare and serve upon the obligor parent a notice of delinquency. Service shall be by prepaid U.S. mail certified return receipt and addressed to the obligor parent's last known address, or service may be by any other method provided by law. The notice shall inform the obligor parent of the following:

- (A) The terms of the child support enforcement order sought to be enforced;
- (B) The period and total amount of the delinquency;
- (C) The procedures to avoid immediate withholding;
- (D) That an order to withhold income shall be served on the obligor's employer, or any other person or entity owing money to the obligor, within twenty (20) days unless the obligor complies with the procedures to avoid withholding. A copy of the notice of delinquency shall be filed, along with proof of service, with the Nooksack Tribal Court.

(f) Stay of Order to Withhold Income

- (1) If the obligor parent wants to prevent an order to withhold income from being served on the obligor parent's employer, or any other person or entity owing money to the obligor parent, he or she must file a petition requesting the Court to stay service of the order to withhold income. The petition shall be filed with the Nooksack Tribal Court within twenty (20) days after service of the notice of delinquency.
- (2) Grounds for the petition to stay, or contest, an order of withholding shall be limited to:
  - (A) A mistake of fact or error in the amount of current or overdue support;

- (B) A mistake of fact in the identity of the alleged obligor parent; or
- (C) Evidence of a court approved agreement between the obligor parent and the obligee parent for an alternative method of payment, as provided in this Chapter.

(3) The Court may only stay the order to withhold income if it finds that the obligor parent has met the burden of showing good cause why income should not be withheld. The Court shall issue written findings stating the reasons for such good cause.

(g) Order to Withhold Income and Give Security for Debt

- (1) If the obligor parent fails to petition for a stay after having been served the notice of delinquency, the Court shall serve an order to withhold income on the employer or other payor of the obligor parent. Such order shall direct that the obligor parent's wages and other benefits be withheld in an amount equal to the monthly support payment. An additional twenty percent (20%) of the support payment, or such amount as the Court may order after notice and hearing, shall be withheld each month to compensate for any accrued delinquent payment until the delinquency is satisfied; provided that the total amount withheld does not exceed the limits established in 15 USC 1673(b).
- (2) A payor served with an order to withhold income shall begin withholding within fourteen (14) days after service of notice. An order to withhold income shall be binding against future payors upon actual notice of the order of service by personal delivery or certified mail upon the payor.

(h) Allocation of Withholding

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

(i) Duty to Process Foreign Withholding Orders

The Nooksack Tribal Child Support Program shall be responsible for receiving and processing income withholding orders from states, tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

(j) Refunds

The Nooksack Tribal Child Support Program will promptly refund amounts which have been improperly withheld.

(k) Termination of Withholding

The Nooksack Tribal Child Support Program will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(l) Seizure of Property

Upon issuance of a written order of execution, non-exempt real and personal property may be seized and sold in a reasonable manner after notice to the owner in payment of a child support obligation that has been adjudicated delinquent by the Court. Ceremonial or religious property and real property held in trust for individuals are exempt from writs of execution.

(m) Suspension or Denial of Licenses.

Three or more refusals to comply with child support orders by an obligor parent may result in the suspension or denial of occupational, fishing and hunting, recreational and motor vehicle licenses. A court order to suspend or deny tribal issued licenses shall be binding on and given effect by the tribal licensing department or agency. The Nooksack Tribal Child Support Program shall send orders affecting licenses issued by other tribal, state or federal agencies for enforcement by those agencies.

(n) Publication of Names

The Court may authorize the publication of an obligor parent's name in a newspaper of local circulation if an obligor parent is at least three (3) months in arrears in paying current child support or owes \$1,000.00 or more in unpaid child support.

**14.07.190 Modification of Child Support Order**

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- (a) Any party may petition the Court for modification of a child support order. A petition for modification shall be supported by an affidavit setting forth the facts showing a change of circumstances justifying a modification of the existing child support order.
- (b) The petition for modification shall require the other parent to appear and show cause why the decision previously entered shall not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the other parent in the same manner as the notice of delinquency. A hearing shall be set for not more than thirty-five (35) days from the date of service.
- (c) The amounts of past due support may not be modified except as provided in this Chapter. If the child support award becomes unjust due to changed circumstances

of the obligor parent, the obligor parent has the duty to petition the court for a changed award at that time. The obligor parent may not raise as a defense a change in circumstances as a reason not to pay a past due award.

- (d) An amendment or modification to the Child Support Guidelines that would constitute a change in the amount of an existing child support order shall be considered a change in circumstances and shall justify a request for a modification of a child support order.
- (e) A child support obligation modified by the court shall be effective retrospectively and calculated back to the date of filing the petition or motion for modification.

#### **14.07.200 Statute of Limitations**

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As to custodial parents or others acting on behalf of the child, no statute of limitations shall apply to an action for the enforcement of child support for any child from birth until the child reaches the age of twenty-four (24).

As to children acting on their own behalf the statute of limitations for a child's right of action for child support shall be tolled while the child is in infancy, and shall not begin to run until that child has reached the age of eighteen (18).

#### **14.07.210 Full Faith and Credit for Foreign Child Support Orders**

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

A foreign order is authenticated by reasonable proof that the document tendered to the Clerk of Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. A certified copy of the original order from the issuing court shall constitute sufficient evidence of authenticity.

Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to notice of the order and to timely contest it, the Court shall enforce the foreign order.

Where a foreign order is invalid by reason of lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an

original order of the Court to the extent that it does not violate the public policy of the Nooksack Indian Tribe.

#### **14.07.220 Civil Contempt Authorized**

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The Nooksack Tribal Court is authorized to hold civil contempt proceedings to encourage noncompliant obligors to comply with child support orders.

#### **14.07.230 Civil Contempt – Procedure**

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Civil contempt for willful noncompliance with a child support order shall be initiated by filing a motion for order to show cause with the Nooksack Tribal Court. The motion for order to show cause shall be a supplementary proceeding in an underlying child support case in the Nooksack Tribal Court.

Both the motion for order to show cause and order to show cause must contain specific allegations sufficient enough to allow the obligor to prepare a defense at the show cause hearing.

The motion for order to show cause must be supported by an affidavit by the obligee or payee alleging the specific provisions of the child support order that have been violated, and set forth the obligor's payment history during the applicable period of time at issue.

The obligor must be served with a copy of the motion for order to show cause, the supporting affidavit, and the order to show cause with notice of the date and time of the show cause hearing.

Service shall be by personal service or by certified mail with return receipt and restricted delivery. The court must have proof of actual notice to the obligor in order to issue a bench warrant for failure to appear at the show cause hearing.

The Court is authorized to issue a bench warrant directing the Nooksack Tribal Police to arrest an obligor who has been properly served with an order to show cause and fails to appear at the show cause hearing. Bail shall not exceed the amount of child support alleged due and owing.

#### **14.07.240 Civil Contempt – Show Cause Hearing**

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When an obligee parent makes a prima facie case of contempt due to noncompliance, the burden of proof shifts to the obligor parent. The obligor must show an inability to pay or present some other defense by clear and convincing evidence.

Civil contempt occurs when the failure to comply with a child support order is willful and contemptuous; contempt cannot be ordered as a result of inability to pay.

In order to find someone in civil contempt for failure to comply with a child support order the Court must find:

- (a) The Court has personal and subject matter jurisdiction;
- (b) The child support order underlying the civil contempt proceeding is valid;
- (c) The obligor had actual knowledge of the child support order;
- (d) The obligor had the ability to comply with the child support order; and
- (e) The obligor was willful in his/her noncompliance with the child support order.

#### **14.07.250 Civil Contempt – Remedies**

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The Court shall be authorized to impose the following civil contempt remedies upon a finding of civil contempt:

- (a) Incarceration;
- (b) Coercive fines; and
- (c) Compensatory fines

A finding of civil contempt may lead to the imposition of remedial and coercive remedies which the Court is authorized to impose by setting conditions that allow contemnors to purge themselves of contempt. Purge conditions ordered by the Court shall:

- (a) Serve a remedial aim;
- (b) Be clearly specified;
- (c) Be reasonably related to the cause and nature of the contempt; and
- (d) The contemnor should be able to fulfill the conditions.

Fines and/or incarceration shall continue until the obligor complies with the purgation conditions, or if the Court finds that confinement has lost its coercive force. The contemnor has the burden of proving that there is not a substantial likelihood that continued confinement will accomplish its coercive purpose.

The Court shall not use the remedy of incarceration if the child(ren) that are the subject of the child support order have attained the age of majority.

#### **14.07.260 Bail Forfeiture**

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The Court shall have authority to apply an obligor's bail money to child support arrears and a current child support obligation when the obligor has posted the bail to obtain release on a bench warrant for failure to appear at the order to show cause hearing.

The request for bail forfeiture shall be by motion with a supporting affidavit. The obligor is entitled to a hearing on the issue of bail forfeiture, which may be held at the same hearing as the show cause hearing for noncompliance with a child support order.

The obligor has the burden of showing by clear and convincing evidence why the posted bail should not be forfeited and applied to child support arrears and a current child support obligation.

#### **14.07.270 Supplemental Child Support Proceedings Authorized**

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An obligor parent that becomes delinquent in child support payments for more than thirty (30) days after an ordered child support payment is due, may be required to appear before the Court for examination. The obligee parent, or interested party, may make a motion for the Court to order the obligor to appear, with documentation and records, at a specified time and place before the court to be examined as to his/her income, assets, debts, creditors, debtors and any other financial or business related matters that may assist the obligee parent, or interested party, in an action to collect child support payments.

#### **14.07.280 Interrogatories**

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Prior to examination, the party requesting the examination may make a motion to have the court require the obligor parent to answer written interrogatories, under oath. The written interrogatories are to be prepared by the party requesting the examination, who shall also be responsible for service of said interrogatories on the obligor parent. After service, the obligor parent shall have no more than ten (10) days to answer and return the interrogatories to the moving party.

#### **14.07.290 Examination**

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Upon an examination, the answer of the party or witness examined must be under oath. The judge may adjourn any proceedings, from time to time, as the judge thinks proper.

#### **14.07.300 Order Requiring Delivery of Money or Property**

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Where it appears that the obligor parent has in his/her possession or under his/her control money or other personal property belonging to him/her, or that is in the possession or under the control of another person, and the obligor parent's right to the possession is not substantially disputed, the judge has discretion to give such notice to such persons as he/she deems just, or without notice, make an order directing the obligor parent, or other person, immediately to pay the money or deliver the articles of personal property to the Nooksack Tribal Child Support Office, for the benefit of the obligee parent.

#### **14.07.310 Discontinuance or Dismissal of Proceedings**

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Proceedings may be discontinued at any time upon such terms as justice requires, by an order of the judge made upon the motion of the obligee parent, or interested party. Where the obligee parent, or interested party, unreasonably delays or neglects to proceed, or where it appears that the judgment has been satisfied, the proceedings may be dismissed.

**14.07.320 Awarding of Costs**

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The judge may make an order against the obligor parent, awarding the obligee parent, or interested party bringing the action, court costs and reasonable disbursements related to supplemental proceedings.

**14.07.330 Disobedience Punishable by Contempt**

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A person who refuses to, or without good cause, fails to obey an order of a judge pursuant to any of the supplemental proceedings provisions duly served upon him/her, or an oral order issued directly to him/her by a judge in the course of the supplemental proceedings, or fails to appear before the Court according to the command of a subpoena duly served upon him/her, may be subject to civil contempt proceedings.

**14.07.340 Show Cause Requirements**

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A show cause order requiring the personal attendance of a party to be examined in open court and in orders to show cause for civil contempt, shall include the following words in capital letters:

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

The failure to include such wording will be grounds for the Court to refuse to issue a bench warrant.

**14.07.350 Bench Warrant**

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In the event the obligor parent fails to appear for examination in supplemental proceedings, the Court may issue a Bench Warrant for the obligor parent's arrest upon plaintiff's motion, provided that proof of service on the obligor parent of the order to appear for examination has been filed. Such Bench Warrant shall provide for bail in the amount of \$500.00 unless the total judgment, including costs and fees, is less than \$500.00, in which case bail shall be set at such lesser amount. Upon arrest on a Civil Bench Warrant, the defendant shall be released by the jail upon posting the bail amount in cash. The jail shall require the defendant to sign a jail release form to appear at the Nooksack Tribal Court the next day the Court is open to set a court date. The Clerk shall set a new date and time for the Supplemental Proceeding and notify both parties.

Upon completion of the examination of the obligor parent, the bail shall be exonerated unless the Court orders otherwise.

**14.07.360 Civil Procedure**

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The Nooksack Code of Civil Procedure shall control timing of motions, service requirements, legal delays and all other procedural matters necessary to ensure the just and efficient adjudication of supplemental proceedings, except where specific procedures have been otherwise provided.