

CHAPTER 12
CHILD SUPPORT

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SUBCHAPTER 1
GENERAL PROVISIONS

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Historical and Statutory Notes

The Preamble of Ordinance 26-94 provides: "Be it enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of establishing Child Support and Enforcement for adequate support and nurturing of the children under the jurisdiction of the Band."

The title of Ordinance 06-10 is: “An Ordinance repealing Subchapter I of Chapter 12 (Child Support) in Title 8 of the Mille Lacs Band Statutes Annotated, and amending this Subchapter in order to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child’s best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection.”

The Preamble of Ordinance 06-10 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of repealing Subchapter I of Chapter 12 in Title 8 of the Mille Lacs Band Statutes Annotated in its entirety to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child’s best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection.”

Cross References

Removal of child from proposed adoptive home, support orders, *see* 8 MLBS § 617.

§ 2001. Findings and Purpose.

The Band Assembly finds and determines:

- (a) The health and well-being of the Band depends on the healthy growth, development and well-being of the Band’s children.
- (b) The healthy growth, development and well-being of the Band’s children require that proper care and support be given to them.
- (c) The healthy growth, development and well-being of the Band’s children are jeopardized by financial difficulties and hardship facing many Band children due to a lack of parental support.
- (d) It is a purpose of this chapter and in the best interest of the Band to provide for the establishment of child support obligations that are consistent with traditional Ojibwe values and that motivate parents to provide their children with regular and adequate support in accordance with the parents’ resources and abilities.
- (e) It is a purpose of this chapter and in the best interest of the Band to utilize the civil justice system of the Court of Central Jurisdiction and the Band Authority to implement and enforce the child support obligations established in accordance with this chapter.

- (f) This chapter reaffirms Band sovereignty and self-determination by providing for the exercise of Band jurisdiction over child support and paternity cases involving Band children and families.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 1.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2001.

§ 2002. Sovereign immunity.

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 9.
Band Ordinance 06-10, Title I, §1, Exhibit A, § 2002.

§ 2003. Definitions.

For the purposes of this chapter, the following terms shall have the meaning assigned to them in this section.

- (a) **“Apportioned Veterans’ Benefits”** means the amount the Veterans Administration deducts from a veteran’s award and disburses to a child or a child’s representative payee. The appointment of veteran’s benefits shall be that determined by the Veterans Administration and governed by the U.S. Code of Federal Regulations (C.F.R.), Title 38, §§ 3.450-3.458.
- (b) **“Arrears”** are the amounts that accrue pursuant to an obligor’s failure to comply with a support order. Past support contained in a support order is arrears if the court order does not contain repayment terms. Arrears also arise by the obligor’s failure to comply with the terms of a court order for repayment of past support. An obligor’s failure to comply with the terms for repayment of amounts owed for past support turns the entire amount owed into arrears.
- (c) **“Band”** means the Mille Lacs Band of Ojibwe.
- (d) **“Band Authority”** means the Mille Lacs Band Child Support Enforcement Program.
- (e) **“Band coverage”** means medical, dental, or other health care benefits provided by the Indian Health Service or the Band’s Circle of Health program.

- (f) **“Basic support”** means the basic support obligation determined under the child support guideline in § 2014 of this Title. Basic support includes support for a child’s housing, food, clothing, transportation, and education costs, and other expenses relating to the child’s care. Basic support does not include monetary contributions for a child’s childcare expenses or medical or dental expenses.
- (g) **“Bona fide career change”** or **“aandanokiid awiya”** as used in this chapter, means an educational pursuit or change of profession that is made in good faith. Any party claiming a bona fide career change for purposes of calculating child support shall bear the burden of proof.
- (h) **“Child”** means a person who is younger than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction, or a person for whom child support may be ordered pursuant to § 2006 (i).
- (i) **“Court”** means the Band’s Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe.
- (j) **“Financial Institution”** means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or savings association, and includes a branch or detached facility of a financial institution.
- (k) **“Gross Income”** means the income of a parent calculated under § 2008 of this Title.
- (l) **“Health care coverage”** means medical, dental or other health care benefits that are provided by one or more health plans. Health care coverage includes fee for service, health maintenance organization, and other types of private health insurance and public health care coverage under which medical services are available to the dependent child(ren).
- (m) **“Health plan”** means a plan, other than any form of public medical, dental or other health care assistance, that provides medical, dental, or other health care benefits and is:
 - (1) provided on an individual or group basis;
 - (2) provided by an employer or union;
 - (3) purchased in the private market; or
 - (4) available to a person eligible to carry insurance for a joint child, including a party’s spouse or parent.
- (n) **“IV-D case”** means a case where a party has applied for child support services from a public authority or has assigned to a tribe or a state rights to child support because of

- the receipt of public assistance under Title IV-D of the Social Security Act, 45 U.S.C. § 309.
- (o) **“Joint child”** means a child of both parents in a support proceeding, whether child support is sought from one or both parents in the proceeding.
 - (p) **“Medical support”** means providing medical, dental or other health care benefits for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, or uninsured medical expenses of the joint child.
 - (q) **“Non-cash support”** means support provided in the nature of goods and/or services rather than in cash, which contributes directly to meeting the needs of a child. Non-cash support may include services such as making repairs to an automobile or a home, the clearing or upkeep of property, providing a means for travel, providing needed resources for a child’s participation in tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value.
 - (r) **“Non-joint child”** means a child of one but not both of the parents in a support proceeding.
 - (s) **“Obligee”** means a person to whom child support payments are owed.
 - (t) **“Obligor”** means a person obligated to pay child support.
 - (u) **“Parentage proceeding”** means the proceeding in which paternity is established through a contested or uncontested process.
 - (v) **“Parental Income for determining Child Support (PICS)”** means gross income calculated under §2008 of this Title minus deductions for non-joint children allowed under §2012 of this Title.
 - (w) **“Payer of funds”** means a person or entity that provides funds to an obligor, including an employer as defined under 26 U.S.C. § 3401(d), an independent contractor, a payer of workers’ compensation benefits or unemployment insurance benefits, a financial institution, or a tribe making per capita payments.
 - (x) **“Parent”** means the lawful mother or father of a child or, where applicable throughout this statute, a third-party guardian.
 - (y) **“Per capita income”** and **“per capita payments”** mean monthly bonus payments, minor trust payments to enrolled tribal members authorized by a Tribal Net Revenue Allocation Plan, or both. Per capita payments do not include economic support payments, stimulus payments, or any settlement monies.

- (z) **“Primary physical custodian”** means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.
- (aa) **“Public assistance”** means temporary financial assistance given to needy persons by a tribal or state government agency.
- (bb) **“Public authority”** means a local unit of government acting on behalf of a tribe or a state that is responsible for child support enforcement and includes but is not limited to the Band Authority.
- (cc) **“Social Security benefit”** means the monthly retirement, survivors, or disability insurance benefits that the Social Security Administration provides to a parent for that parent’s own benefit or for the benefit of a joint child. Social Security benefits do not include Supplemental Security Income benefits that the Social Security Administration provides to a parent for the parent’s own benefit or to a parent due to the disability of a child.
- (dd) **“Support payment”, “support obligation”, “child support payment” or “child support obligation”** means a payment or obligation for basic support, childcare support, and/or medical support of a child pursuant to a support order.
- (ee) **“Support order”** means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by any court (including but not limited to the Band’s Court) or administrative agency of a competent jurisdiction in a marriage dissolution, legal separation, annulment, parentage, custody, child support or other proceeding that establishes or modifies a child support obligation.
- (ff) **“Survivors and dependents’ educational assistance”** means funds disbursed by the Veterans Administration under 38 U.S.C. chap. 35 to a child or the child’s representative payee.
- (gg) **“TANF”** means Temporary Assistance to Needy Families provided under Title IV-A of the Social Security Act.
- (hh) **“Third-Party Guardian”** means a person legally appointed by a parent, spouse, or court of competent jurisdiction having the duty and authority to provide care and control of a child.
- (ii) **“Title IV-A”** refers to Title IV-A of the Social Security Act under which the federal government provides funds to tribes or states to provide temporary financial assistance to families using federal dollars.
- (jj) **“Title IV-D”** means Title IV-D of the Social Security Act under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.

- (kk) **“Tribal Court”** means a court established by a tribe, including but not limited to the Band’s Court.
- (ll) **“Tribe”** or **“tribal”** mean a state or federally recognized Indian tribe, including but not limited to the Band.
- (mm) **“Tribunal”** means a tribal or state court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
- (nn) **“Uninsured medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is not covered by a health plan, Band coverage, or public coverage when the expenses are incurred.
- (oo) **“Unreimbursed medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is covered by a health plan, Band coverage, or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to deductibles, co-payments and expenses for orthodontia, prescription eyeglasses and contact lenses, but not over-the-counter medications if coverage is under a health plan.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T I, § 4.04.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2003.

§ 2004. Band Authority.

- (a) There is hereby established the Mille Lacs Band Child Support Enforcement Program (the Band Authority) within the Band’s Department of Administration.
- (b) The Band Authority is authorized to provide child support enforcement services to all parents and children subject to the jurisdiction of the Band. The Band Authority is authorized, among other things, to:
 - (1) locate custodial parents and noncustodial parents, as well as their sources of income, assets, and debts;
 - (2) seek a determination of parentage;
 - (3) seek the establishment or modification of child support;
 - (4) enforce support orders and laws relating to the duty of support;

- (5) make reasonable information requests from state and tribal governments, to include other Band departments, for the purpose of establishing, modifying, and enforcing a child support obligation; and
 - (6) seek Court orders authorizing holds on Band members' monthly per capita (or other bonus) payments to facilitate either a determination of parentage or the administration of a child support obligation.
- (c) In providing child support enforcement services, the Band Authority may provide the services of an attorney or an attorney's representative to a party seeking to establish, modify or enforce a child support obligation.
- (1) The provision of such services shall not create an attorney-client relationship between the attorney or attorney's representative and the party to whom such services are provided. Attorneys and attorney's representatives employed by or under contract with the Band Authority have an affirmative duty to inform applicants for and recipients of services from the Band Authority that no attorney-client relationship exists or will be formed between the attorney or attorney's representative and the applicant for or recipient of such services. In providing such services, the Band Authority shall be the sole client of the attorney or attorney's representative and an attorney-client relationship shall exist between the attorney or attorney's representative and the Band Authority.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2004.

§ 2005. Judicial Proceedings.

- (a) The Court shall have jurisdiction under this chapter over all parents and children subject to the jurisdiction of the Band. Except as otherwise provided by Federal law, such jurisdiction shall include, but not be limited to:
 - (1) all persons who are members of or are eligible for membership who reside within the Band's geographic limits,
 - (2) all persons who are alleged to be the parent of a child, including an unborn child, and whose parenting partner is a member of or is eligible for membership in the Band or is a member of or eligible for membership in another tribe and resides within the Band's geographic limits, and
 - (3) all persons who knowingly consent to the jurisdiction of the Band under this chapter.

- (b) Except as otherwise provided by Federal law, if another federal, state or tribal court has jurisdiction over any matter provided for in this chapter, the Band Court shall have concurrent jurisdiction over the same matter.
- (c) An action to establish, modify, or enforce a child support obligation may be filed separately or may be joined with an action for divorce, annulment, legal separation, or child custody or guardianship.
- (d) Unless an action to establish, modify, or enforce a child support obligation has been joined with an action for child custody or guardianship, in establishing, modifying, or enforcing a child support obligation, the Court shall not change or modify the custody or guardianship of the child.
- (e) Except as otherwise expressly provided in this chapter, in every action under this chapter:
 - (1) the Court shall inform the parties to the action that they have the right to have a lawyer or other person(s) they have selected represent them in the proceeding at their own expense;
 - (2) if it appears that a party to the action cannot afford private counsel, the Court shall inform the party of available services that might provide counsel at a reduced fee or pro bono;
 - (3) the parties to the action shall have the opportunity to introduce, examine, and cross-examine witnesses in accordance with the Court's rules;
 - (4) the parties to the action shall have the opportunity to discover, offer, or inspect evidence in accordance with the Court's rules; and
 - (5) the parties to the action shall have the opportunity to present arguments and statements in accordance with the Court's rules.
- (f) All judicial proceedings in an action to establish, modify, or enforce a child support obligation are confidential. In accordance with this provision:
 - (1) When providing service by publication in such an action, the names of the children subject to the action shall not be disclosed. Only the children's initials shall be used.
 - (2) Court files and hearings in such an action will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.

- (3) Any person, including but not limited to any employee or official of the Band, who willfully discloses otherwise confidential information related to an action to establish, modify, or enforce a child support obligation, except as expressly authorized and provided for by Court order or otherwise pursuant to this chapter, and who is found guilty of an unauthorized disclosure of information, may be subject to a civil fine not to exceed Five Hundred Dollars (\$500.00).
- (g) Child support proceedings should not be discussed with the children involved or with other children in the household. Parents are to refrain from using their children as tools against each other.
- (h) If the Court has knowledge that a protective order exists with respect to a party involved in a child support proceeding, the Court shall not release any private data regarding the physical or employment location of the party protected by the protective order to the party or their representatives against whom the protective order was established. The Court may utilize its discretion to authorize separate proceedings to ensure the safety of the protected party while encouraging the utmost participation by the parties.
- (i) To ensure an equal distribution of child support amongst a supported child or children, the Court may schedule a hearing to address multiple child support orders pertaining to the same child or children. The Court may utilize its discretion to determine how such a hearing will be structured.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 2.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2005.

Cross References

Disclosure by judge of information relating to pending case, *see* 5 MLBS § 117.

§ 2006. Support order.

- (a) **General.** Incorporation of support order in decree of dissolution, legal separation, or annulment; provision for child support in other proceedings. The Court shall incorporate in every decree of dissolution, legal separation, or annulment an order providing for the support of the parties' children as provided in this chapter. The Court shall also provide for the support of the parties' children in any other proceeding related to custody, parenting time, or support.
- (b) **Designation of support and maintenance payments.** Every support order incorporated in a decree of dissolution, legal separation, or annulment shall clearly

designate whether payments ordered are for child support or for maintenance of the spouse or former spouse.

- (1) If payments are ordered for child support and spousal maintenance, the order shall clearly state the amount that is for child support and the amount that is for spousal maintenance.
 - (2) An award of payments from future income or earnings of the parent who is the primary physical custodian of the child or children subject to the order is presumed to be for spousal maintenance, and an award of payments from the future income or earnings of the parent who is not the primary physical custodian of the child or children subject to the order is presumed to be for child support, unless otherwise designated by the Court.
- (c) **Marital misconduct not to affect support obligations.** The Court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.
 - (d) **Stipulations for child support.** The Court shall approve a child support stipulation of the parties if each party is represented by independent counsel or if the Court makes a finding that the stipulation is fair to both parties and is in the best interest of the child.
 - (e) **Percentage payments.** The Court may order an obligor to pay child support in the form of a percentage of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount.
 - (f) **Lien on property; appointment of trustee.** With the exception of property held by the United States in trust for an obligor, the Court may make any support order a lien or charge upon the property of the obligor, either at the time of the entry of the order or by subsequent order upon proper application. In addition, the Court may appoint a trustee to receive funds or other property awarded as support money. When appropriate, the Court may name the Band Authority as trustee.
 - (g) **Payments made to Band Authority or other public authority.** In any support order, the Court may require that child support payments be made to the Band Authority or other public authority for the benefit of the obligee.
 - (h) **Seasonal income.** The Court shall establish the annual child support obligation of an obligor with a seasonal income so that the obligor makes either the same monthly payments throughout the year or monthly payments that reflect variations in the obligor's income.

- (i) **Duration of support payments.**
 - (1) Child support payments shall stop when the child is 18 years old unless the Court finds that:
 - (i) it would be in the best interests of the child to continue support payments until the child is 21 years old; and
 - (ii) the child is (i) disabled or (ii) between 18 and 21 years old and enrolled in high school on a full-time basis.
 - (2) If the Court makes such findings, it may order that support payments shall continue while the child is between 18 and 21 years old, but only for so long as the child is disabled or enrolled in high school on a full-time basis.
 - (3) When a child's full-time high school enrollment status is in dispute, the Court shall make the determination.
- (j) **Notice of address or residence change.** Every obligor under a support order shall notify the obligee and the public authority responsible for collection of support money, if any, of a change of address or residence within 60 calendar days of the address or residence change.
 - (1) The Court may waive or modify the requirements of this paragraph by order if necessary to protect the obligee from contact by the obligor.
- (k) **Satisfaction of child support obligation.** The Court may conclude that an obligor has satisfied a child support obligation by providing a home, care, and support for the child while the child was living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee and child support payments were not assigned to a public authority or other public agency.
- (l) **Other custodians.** If a child resides with a person other than a parent and the Court approves of the physical custody arrangement, the Court may order child support payments be made to the person having physical custody regardless of whether the person has legal custody. A duly executed Delegation of Parental Authority, on its own, does not establish physical custody.
- (m) **Adjustment to support order.** A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the obligor, the amount of support otherwise due under the order may be reduced.
- (n) **Determination of controlling order.** In situations in which more than one support order involving the same obligor and child exists, the obligor, the obligee, or the public authority responsible for collection of support money, if any, may request that

the Court determine which order is the controlling order. The Court shall presume that the latest order that involves the same obligor and child is controlling in the absence of proof to the contrary.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 4.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2006.

§ 2007. Providing income information

- (a) In any proceeding for dissolution, legal separation, or annulment where the parties have joint children for whom a support order must be entered under this chapter, or in any other proceeding in which a support order may be entered under this chapter, the parties shall serve and file with their initial pleadings or motion documents a financial affidavit disclosing all sources of income for purposes of calculating gross income under § 2008 of this Title.
 - (1) The financial affidavit shall include relevant supporting documentation necessary to calculate gross income and parental income for determining child support including, but not limited to, pay stubs for the previous three months and employer statements or statements of receipts and expenses if self-employed. The supporting documentation shall also include relevant copies of each parent's most recent federal tax returns including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification for the financial affidavit, including verification of per capita income, if applicable.
- (b) In addition to the requirements of § 2007(a), at any time after a proceeding seeking child support payments has been commenced or when a child support order is in effect, a party to the proceeding, the obligor or obligee under the support order, or the Band Authority may request that a party to the proceeding or the obligor or the obligee under the support order produce a copy of the most recent federal tax returns filed with the Internal Revenue Service by the person to whom the request is directed.
 - (1) The person to whom the request is directed shall provide a copy of the tax returns to the person making the request within 30 calendar days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause for more frequent requests.
- (c) If a parent subject to the jurisdiction of the Court does not serve and file the financial affidavit and supporting documentation with the parent's initial pleading or motion documents, the Court shall set income for that parent based on credible evidence

before the Court or in accordance with § 2011 of this Title. The Court may consider credible evidence from one party that the financial affidavit submitted by the other party is false or inaccurate.

- (d) If the Court determines that a party does not have access to documents that are required to be disclosed under this section, the Court may consider the testimony of that party as credible evidence of that party's income.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 4.01.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2007.

§ 2008. Calculation of gross income.

- (a) Subject to the exclusions and deductions in this section, gross income includes any form of periodic payment to a parent including, but not limited to, salaries, wages, commissions, self-employment income as defined in § 2009 of this Title, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pensions and disability payments, spousal maintenance payments pursuant to a court order entered in a prior proceeding or in the current proceeding, Social Security and veterans benefits, including Social Security and veterans benefits provided for a joint child to the extent specified in § 2010 of this Title, potential income as defined in § 2011 of this Title, and per capita payments authorized by a Tribal Net Revenue Allocation Plan.
 - (1) Salaries, wages, commissions, or other compensation paid to a parent by third parties shall be included in gross income notwithstanding the parent's participation in an employer-sponsored benefit plan that allows the parent to pay for a benefit or expense using pretax dollars, such as flexible spending plans and health savings accounts.
 - (2) Pension deductions not exceeding ten percent of gross wages shall not be included in gross income.
- (b) A parent's gross income does not include compensation received by the parent for employment in excess of a 40-hour week, provided that:
 - (1) Child support is ordered in an amount at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on gross income not excluded under this clause; and
 - (2) The parent demonstrates and the Court finds that:

- (i) The excess employment began after the filing of the petition for dissolution, legal separation, or annulment or a petition related to custody, parenting time, or support;
 - (ii) The excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;
 - (iii) The excess employment is voluntary and not a condition of employment;
 - (iv) The excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of the hour; and
 - (v) The parent's compensation structure has not been changed for the purpose of affecting the parent's child support obligation.
- (c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be included in the parent's gross income if they reduce the parent's personal living expenses.
- (d) A parent's gross income may be calculated either on an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying weekly income by 4.33.
- (e) A parent's gross income does not include child support payments received by the parent.
- (f) It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are not gross income. This presumption may be rebutted if such payments are used for the recipient's personal living or other expenses unrelated to the adoption, guardianship, or foster care.
- (g) A parent's gross income does not include the income of the parent's spouse.
- (h) Child support or spousal maintenance payments ordered by a court for a non-joint child or former spouse or ordered payable as part of the current proceeding shall be deducted from other periodic payments received by the parent making such payments for purposes of determining that parent's gross income.
- (i) A parent's gross income does not include public assistance benefits received under the TANF program, the Minnesota Family Investment Program, or other programs of public assistance based on need.

- (j) A parent's gross income does not include grants and/or scholarships for post-secondary education.
- (k) For purposes of calculating gross income of a third-party guardian or other custodial party who is not a biological parent, the Court shall not utilize the third-party guardian's income.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I., § 4.03.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2008.

§ 2009. Income from self-employment or operation of a business.

- (a) For purposes of this chapter, a parent's income from self-employment or operation of a business, including joint ownership of a partnership or closely held corporation, is defined as the parent's share of gross receipts minus the costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation.
- (b) The following items shall be excluded from ordinary and necessary expenses in calculating a parent's income from self-employment or operation of a business: amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses; investment tax credits; and any other business expenses determined by the Court to be inappropriate or excessive for determining gross income for purposes of calculating child support.
 - (1) If challenged, the parent seeking to deduct an expense, including depreciation, has the burden of proving that the expense is ordinary and necessary.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I., § 4.02.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2009.

§ 2010. Social Security or veterans' benefit payments received on behalf of a child.

- (a) The amount of the monthly Social Security benefits or apportioned veterans' benefits provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.
- (b) The amount of the monthly survivors' and dependents' educational assistance provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.

- (c) If Social Security or apportioned veterans' benefits are provided for a joint child based on the eligibility of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits shall be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.
- (d) If the survivors' and dependents' educational assistance is provided for a joint child based on the eligibility of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.01.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2010.

§ 2011. Potential income.

- (a) **General.** This section applies to child support orders including orders for past support. If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.
 - (1) For purposes of this determination, it is a rebuttable presumption that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom practice, or agreement use a normal work week of more or less than 40 hours in a week.
- (b) **Methods.** Determination of a parent's potential income must be made according to one of the following two methods, as appropriate:
 - (1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings level in the community; or
 - (2) if the parent is receiving unemployment compensation or workers' compensation, the parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received.

- (c) **Parent not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis.** A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:
- (1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;
 - (2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of the parent's diminished income on the child; or
 - (3) the unemployment, or underemployment, or employment on a less than full-time basis is because the parent is physically or mentally incapacitated or incarcerated, except where the reason for incarceration is the parent's nonpayment of support.
- (d) **TANF Recipient.** If the parent of a joint child is a recipient of a TANF cash grant, no potential income is to be imputed to the parent.
- (e) **Caretaker.** If a parent stays at home to care for a child who is subject to the child support order, the Court shall consider the following factors when determining whether the parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis:
- (1) parenting and child care arrangements before the child support action;
 - (2) the stay-at-home parent's employment history, recent employment earnings, and the availability of jobs within the community for an individual with that parent's qualifications;
 - (3) the relationship between the employment-related expenses including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with that parent's qualifications;
 - (4) the child's age and health including whether the child is physically or mentally disabled; and
 - (5) the availability of child care providers.

This paragraph does not apply if the parent stays at home only to care for non-joint children.

- (f) **Economic Conditions.** A self-employed parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.
- (g) **Per Capita Income.** If income is imputed to an obligor and the obligor receives per capita income, the Court shall not include the per capita income as part of the obligor's gross income. This provision shall not prevent the Band Authority from intercepting per capita income in order to enforce any child support order.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.02 to 5.04.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2011.

§ 2012. Deduction from gross income for non-joint children.

- (a) When a parent is legally responsible for a non-joint child or children, a deduction from that parent's gross income shall be calculated under this section if:
 - (1) the non-joint child or children primarily resides in that parent's household;
and
 - (2) that parent is not obligated to pay basic child support for the non-joint child or children to the other parent or a legal custodian of the non-joint child or children under an existing order.
- (b) The Court shall use the guideline under § 2014 of this Title to determine the basic child support obligation for the non-joint child or children by using the gross income of the parent for whom the deduction is being calculated. If the number of non-joint children to be used for the determination is greater than two, the determination must be made using the number two instead of the greater number.
- (c) The deduction from gross income for a non-joint child or children is 50 percent of the guideline amount determined under § 2012(b).

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.02.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2012.

§ 2013. Presumptive child support obligation.

- (a) To determine the presumptive child support obligation of a parent, the Court shall follow the procedure set forth in this section.
- (b) To determine the obligor's basic support obligation, the Court shall:
 - (1) determine the gross income of each parent under § 2008 of this Title;
 - (2) calculate the parental income for determining child support (PICS) of each parent by subtracting from gross income the deduction, if any, for each parent's non-joint children under § 2012 of this Title;
 - (3) determine the percentage contribution of each parent to the combined PICS by dividing the combined PICS into each parent's PICS;
 - (4) determine the combined basic support obligation by application of the guideline in § 2014 of this Title;
 - (5) determine the obligor's share of the basic support obligation by multiplying the percentage figure from § 2013(b)(3) by the combined basic support obligation from § 2014(b)(4); and
 - (6) determine the parenting expense adjustment, if any, as provided in § 2016 of this Title and adjust the obligor's basic support obligation accordingly. If the parenting time of the parties is presumed equal, § 2016 (c) of this Title applies to the calculation of the basic support obligation and the determination of which parent is the obligor.
- (c) The Court shall determine the obligor's child care support obligation as provided in § 2020 of this Title.
- (d) The Court shall determine each parent's medical support obligation as provided in § 2021 of this Title. Unreimbursed and uninsured medical expenses are not included in the presumptive amount of support owed by a parent and are calculated and collected as described in § 2021 of this Title.
- (e) Subject to the provisions of § 2013(f), the Court shall determine each parent's total presumptive child support obligation by adding together each parent's basic support, child care support, and medical support obligations as provided in this section.
- (f) If Social Security benefits or veterans' benefits are received by one parent as a representative payee for a joint child based on the other parent's eligibility, the other parent's presumptive child support obligation shall be reduced by the amount of such benefits in accordance with § 2010 of this Title.

- (g) A parent's actual child support obligation may be different than the parent's presumptive child support obligation under the circumstances described in § 2006 (d) of this Title, if the provisions in § 2022 of this Title are applicable, or as a result of the Court's consideration of the factors identified in § 2023 of this Title.
- (h) A final child support order shall separately designate the amount owed for basic support, child care support, and medical support.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.06.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2013.

§ 2014. Guideline used in child support determinations.

- (a) **Use of guideline.**
 - (1) The guideline in this section establishes a rebuttable presumption of the appropriate level of basic support for a joint child and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under this chapter. The actual level of basic support for a joint child may deviate from the guideline level in accordance with other provisions of this chapter.
 - (2) The presumptive basic support obligation for a joint child shall be determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents.
 - (3) If a joint child is not in the custody of either parent and a support order is sought against one or both parents, the basic support obligation shall be determined separately for each parent against whom a support order is sought by referencing the guideline for the appropriate number of joint children and that parent's individual parental income for determining child support, not the combined parental incomes for determining child support of both parents.
- (b) **Basic support; guideline.** Unless otherwise agreed to by the parents and approved by the Court when establishing basic support, the Court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support (PICS). The presumptive level of basic support must be computed in accordance with MINN. STAT. § 518A.35, or other Minnesota child support statute, subject to any contrary Mille Lacs Band law.

- (c) **More than six children.** If a child support proceeding involves more than six children, the Court may derive a support order without specifically following § 2014(b). However, the Court must consider the basic principles encompassed by the guideline and both parents' needs, resources, and circumstances.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.07.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2014.

§ 2015. Non-cash support.

An obligor's provision of non-cash support may satisfy up to 50 percent of the obligor's child support obligation, but only under the following circumstances:

- (a) The obligor and obligee agree to the type of non-cash support that will be provided and the extent to which it will satisfy the obligor's child support obligation;
- (b) The Court approves the provision of non-cash support in a written order that:
 - (1) states the specific dollar amount of the obligor's total child support obligation;
 - (2) describes the type(s) of non-cash support that will be provided;
 - (3) states that no more than 50% of the obligor's total child support obligation may be satisfied by the provision of such non-cash support; and
 - (4) provides that the non-cash support shall not satisfy any portion of the obligor's child support obligation that has been or in the future is assigned to a public authority or other public agency.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2015.

§ 2016. Parenting expense adjustment.

- (a) **General.** The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs cost of caring for the child, including, but not limited to, costs of food, transportation, recreation, and household expenses.

- (1) Every child support order shall specify that the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time or is otherwise designated. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods or separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The Court may consider the age of the child in determining whether a child is with a parent for a significant period of time.
- (2) If there is no court order awarding parenting time, the Court shall determine the child support award without consideration of the parenting expense adjustment.

If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.

- (b) Calculation of parenting expense adjustment. The obligor is entitled to a parenting expense adjustment calculated as provided in this paragraph. The Court shall:
 - (1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor as follows:

Percentage Range of Parenting Time	Adjustment Percentage
Less than 10 percent	No adjustment
10 percent to 45 percent	12 percent
45.1 percent to 50 percent	Presume parenting time is equal

- (2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment; and
 - (3) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after the parenting expense adjustment.
- (c) Calculation of basic support when parenting time is presumed equal.
 - (1) If the parenting time is presumed equal under § 2016(b) and the parental incomes for determining child support of the parents also are equal, no basic support shall be required unless the Court determines that the expenses for the child are not equally shared.

- (2) If the parenting time is equal but the parents' incomes for determining child support are not equal, the parent having the greater parental income for determining child support shall be obligated for basic support calculated as follows:
 - (i) Multiply the combined basic support calculated under § 2014 of this Title by 0.75;
 - (ii) Prorate the amount under § 2016(c)(2)(i) between the parents based on each parent's proportionate share of the combined PICS; and
 - (iii) Subtract the lower amount from the higher amount. The resulting figure is the basic support obligation after the parenting expense adjustment for the parent with the greater parental income for determining child support.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 6.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2016.

§ 2017. Written findings.

- (a) **No deviation.** If the Court does not deviate from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
 - (1) Each parent's gross income;
 - (2) Each parent's PICS; and
 - (3) Any other significant evidentiary factors affecting the child support determination.
- (b) **Deviation.** If the Court deviates from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
 - (1) Each parent's gross income;
 - (2) Each parent's PICS;
 - (3) The amount of the presumptive child support obligation calculated under § 2013 of this Title;
 - (4) The reasons for the deviation; and

- (5) How the deviation serves the best interests of the child.
- (c) **Written findings required in every case.** The provisions of this section apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The Court must review any stipulations presented to it for conformity with § 2013 of this Title. The Court is not required to conduct a hearing, but the parties must provide sufficient documentation to verify the child support determination and to justify any deviation.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 6.91.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2017.

§ 2018. Equitable Distribution of Child Support.

Where practical, the Court should seek to establish child support orders that equally apportion child support to all of the children of an obligor.

- (a) **One Order.** Where multiple joint children are supported by one child support order, the Court may order support on a per-child basis.
- (b) **Multiple Orders.** Where an obligor owes child support to separate obligees, the Court may equitably apportion child support by determining the maximum child support amount that the obligor is able to pay and thereafter ensuring that each child is supported equally to the maximum extent possible.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.071.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2018.

§ 2019. Modification of orders or decrees.

- (a) **Authority.** After entry of a temporary or permanent support order under this subchapter, on motion of either of the parents, a copy of which must be served on a public authority of payments are made through it, or on motion of a public authority, the Court may, from time to time, modify any term or condition of the order or make a new order respecting any matter which it might have made in the original proceeding, to the extent and under the circumstances described in this section.
- (1) A parent or a public authority may also bring a motion for contempt of court if the obligor is in arrears in support payments.

(b) **Modification.**

- (1) The terms of an existing support order may be modified or a new order may be made upon a showing that there has been a substantial change in circumstances from those prevailing when the existing order was entered and that one or more of the terms of the existing order is unreasonable and unfair under the new circumstances.
- (2) Any one or more of the following facts is sufficient to establish that there has been a substantial change in circumstances from those prevailing when the existing order was entered:
 - (i) substantially increased or decreased gross income of an obligor or obligee;
 - (ii) substantially increased or decreased need of an obligor or obligee of the child or children that are subject to the proceedings;
 - (iii) receipt of assistance under the TANF program;
 - (iv) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics;
 - (v) extraordinary medical expenses of the child not provided for under § 2021 of this Title;
 - (vi) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs;
 - (vii) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or
 - (viii) the emancipation of the child.
- (3) Any one or more of the following facts is sufficient to create a rebuttable presumption that the terms of the existing support order are unreasonable and unfair under the new circumstances:
 - (i) the application of the child support guideline in § 2014 of this Title to the current circumstances of the parties results in a calculated basic support obligation that is at least 20 percent and at least \$75.00 per month higher or lower than that provided in the existing support order or, if the basic support obligation under the existing support order is less than \$75.00, it results in a calculated basic support obligation that is at least 20 percent higher or lower;

- (ii) the medical support provisions of the order established under § 2021 of this Title are not enforceable by a public authority or the obligee;
 - (iii) health coverage ordered under § 2021 of this Title is not available to the child for whom the order is established by the parent ordered to provide such coverage;
 - (iv) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount;
 - (v) the gross income of an obligor or obligee has decreased by 20 percent through no fault or choice of the party; or
 - (vi) a deviation from the child support guideline was granted based on the factor identified in § 2023 (a)(4) of this Title and the child no longer resides in a foreign country or the factor is otherwise no longer applicable.
- (4) By itself, the fact that an obligor or obligee has become responsible for the support of an additional non-joint child since the entry of an existing support order is not a substantial change in circumstances from those prevailing when the existing order was entered and does not create a rebuttable presumption that the terms of the existing order are unreasonable and unfair. However, § 2012 of this Title shall be considered if there are other grounds which allow a modification of the existing order.
- (5) If an obligor is receiving per capita income, incarceration and corresponding inability to earn an income shall not serve as a basis for modification of a child support order.
- (6) On a motion for modification of support, the Court:
- (i) shall apply §§ 2013 and 2014 of this Title, and shall not consider the financial circumstances of either parent's spouse, if any; and
 - (ii) shall not consider compensation received by a parent for employment in excess of a 40-hour week if the parent demonstrates, and the Court finds, that:
 - (A) the excess employment began after entry of the existing support order;
 - (B) the excess employment is voluntary and not a condition of employment;

- (C) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;
- (D) the parent's compensation structure has not been changed for the purpose of affecting a support obligation; and
- (E) in the case of an obligor, existing child support payments are at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on income not excluded under this subparagraph;

provided that, in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

- (7) A modification of support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the Band Authority or other public authority if public assistance is being furnished.
 - (8) Subject to the requirements of § 2017 of this Title, the Court need not hold an evidentiary hearing on a motion for modification of support if both parents agree to modify the child support award and submit an Agreed Order to the Court for approval.
 - (9) An enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order except as expressly provided in such enactment, amendment, or repeal.
 - (10) In the event that a single obligor owes child support to separate obligees, the Band Authority may move the Court to simultaneously modify all of the obligor's child support orders within the Court's jurisdiction in order to equally distribute the support amount amongst all of the children.
- (c) **Child Support on Death of Obligor.** Unless otherwise agreed in writing or expressly provided in a support order, provisions for the support of a child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate under the circumstances.
 - (d) **Child Support on Death of Obligee.** When a custodial party receiving arrears payments becomes deceased, the Court shall make a determination as to whether the arrears should be expunged or whether the payments should continue and the Band

Authority should be appointed as a trustee to disburse ongoing arrears payments to the child(ren), regardless of whether the child(ren) have reached the age of majority.

- (1) If children receiving arrears payments have reached the age of majority, the children may become a party to the child support matter and may motion the Court for forgiveness of the obligor's arrears.
- (2) If the Band Authority is appointed as a trustee, the Court may require regular reports on how the arrears payments have been disbursed.

(e) **Automatic Termination of Support.**

- (1) Unless a support order provides otherwise, a child support obligation that specifies a specific amount for a specific child terminates with respect to that child automatically and without any action by the obligor to reduce, modify, or terminate the order when the requirements of § 2006(i) of this Title have been met.
- (2) Unless a support order provides otherwise, a child support obligation for two or more children that is not based on and does not otherwise specify a specific amount for each child continues in the full amount until all of the children for whose benefit the order was made are 18 years old unless modified by the Court. The obligor may request modification of the child support obligation under such an order when one or more of the children become 18 years old. Upon such request, the Court shall determine the new child support obligation under all applicable provisions of this subchapter on the basis of the income of the parties at the time the modification is sought.

(f) **Form.** The Band Authority shall prepare and make available to Court administrators, obligors, and persons to whom child support is owed a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for modification of an order for support or for contempt of court.

(g) **Child Care Exception.** Child care support must be based on actual child care expenses. The Court may provide that a decrease in the amount of child care support based on a decrease in actual child care expenses is effective as of the date the expense is decreased.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.05, 5.08, Title II, §§ 1, 2.05.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2019.

§ 2020. Child care support.

- (a) **Child Care Costs.** Unless otherwise agreed by the parents and approved by the Court, the Court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parents' combined monthly PICS.
- (1) The amount of work-related or education-related child care costs required by this section to be divided between the obligor and obligee is the total amount received by the child care provider from the obligee and any public agency for the joint child or children.
 - (2) Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of the joint child.
- (b) **Determining Costs.**
- (1) The Court must require verification of employment or school attendance and documentation of child care expenses from the obligee and the public authority, if applicable.
 - (2) If child care expenses fluctuate during the year because of the obligee's seasonable employment or school attendance, or because the obligor has extended periods of parenting time with the child or children, the Court must determine child care expenses based on an average monthly cost.
 - (3) The amount allocated for child care expenses is considered child support but is not subject to a cost of living adjustment under § 2019 of this Title.
 - (4) The Court may allow the additional parenting time to a parent with whom a joint child does not reside to care for the joint child while the parent with whom the joint child does reside is working or attending school, if the Court determines this arrangement is reasonable and in the best interests of the child. In making this determination, the Court shall consider:
 - (i) the ability of the parents to cooperate;
 - (ii) methods for resolving disputes regarding the care of the child, and the parents' willingness to use those methods; and
 - (iii) whether domestic abuse has occurred between the parties.

Historical and Statutory Notes**Source:**

Band Ordinance 26-94, Ch. 29, Title II, § 2.04.
 Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2020.

§ 2021. Medical support.

(a) **Medical support order.**

- (1) A completed national medical support notice issued by the Band Authority or a Court order that complies with this section is a qualified medical child support order under the Federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1169(a).
- (2) Every order addressing child support must state:
 - (i) The names, last-known addresses, and Social Security numbers of the parents and the joint child that is subject of the order unless the Court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan providing health care benefits for the joint child.
 - (ii) If a joint child does not presently have appropriate health care coverage, whether appropriate health care for the joint child is available and, if so:
 - (A) The parents' responsibilities for carrying health care coverage;
 - (B) The cost of premiums and how the cost is allocated between the parents; and
 - (C) The circumstances, if any, under which an obligation to provide health care coverage for the joint child will shift from one parent to the other.
 - (iii) If appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required; and
 - (iv) How unreimbursed or uninsured medical expenses will be allocated between the parents.

(b) **Determining appropriate health care coverage.** In determining whether a parent has appropriate health care coverage for a joint child, the Court must consider the following factors:

- (1) Comprehensiveness of health care coverage providing medical and dental benefits, as well as benefits pertaining to the child's vision.
 - (i) Dependent health care coverage providing medical benefits is presumed comprehensive if it includes medical, dental, and hospital

coverage and provides for preventive, emergency, acute, and chronic care.

- (ii) If both parents have dependent health care coverage providing medical and dental benefits that is presumed comprehensive under this subparagraph, the Court must determine which parent's coverage is more comprehensive by considering what other benefits are included in the coverage.

(2) **Accessibility.**

- (i) Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:

- (A) Primary care is available within 30 miles of the joint child's residence and specialty care is available within 60 miles of the joint child's residence;
- (B) The health care coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and
- (C) No pre-existing conditions exist to unduly delay enrollment in health care coverage.

(3) The joint child's special medical needs.

(4) **Affordability.**

- (i) Dependent health care coverage is affordable if it is reasonable in cost.
- (ii) If both parents have dependent health care coverage available for a joint child that is comparable with regard to comprehensiveness of medical and dental benefits, accessibility, and the joint child's special needs, the least costly health care coverage is presumed to be the most appropriate health care coverage for the joint child.

(c) **Ordering Health Care Coverage.**

- (1) If a joint child is presently enrolled in a health care plan or plans providing medical and dental benefits, the Court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parents agree otherwise or a parent requests a change in health care coverage and the Court determines that other health care coverage is more appropriate.

- (2) If a joint child is not presently enrolled in a health care plan or plans providing medical and dental benefits, upon motion of a parent or the Band Authority, the Court must determine whether appropriate health care coverage providing medical and dental benefits for the joint child is available to one or both parents.
- (3) If appropriate health care coverage providing medical and dental benefits to the joint child is only available to one parent, the Court must order that parent to carry the coverage for the joint child.
- (4) If appropriate health care coverage providing medical and dental benefits to the joint child is available to both parents, the Court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:
 - (i) A parent expresses a preference for health care coverage providing medical and dental benefits to the joint child that is available to the parent with whom the joint child does not reside;
 - (ii) The parent with whom the joint child does reside is already carrying dependent health care coverage providing medical and dental benefits for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or
 - (iii) The parents agree as to which parent will carry health care coverage providing medical and dental benefits to the joint child and agree on the allocation of costs.
- (5) If the exception in § 2021(c)(4)(i) or (ii) applies, the Court must determine to which parent the most appropriate health care coverage providing medical and dental benefits to the joint child is available and order that parent to carry health care coverage for the joint child.
- (6) If appropriate health care coverage providing medical and dental benefits to the joint child is not available to either parent, the Court must order the parents to contribute toward the actual health care costs of the joint child based on a pro rata share, unless § 2021(c)(7) shall apply.
- (7) If the joint child is receiving any form of public coverage, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of public coverage.
 - (i) The amount of the noncustodial parent's contribution is determined by applying the noncustodial parent's PICS to the premium schedule for public coverage. If the noncustodial parent's PICS meets the eligibility

requirements for public coverage, the contribution is the amount of the premium for the highest eligible income on the appropriate premium schedule for public coverage. For purposes of determining the premium amount, the noncustodial parent's household size is equal to one parent plus the number of children who are the subject of the child support order.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2021.

§ 2022. Ability to pay; self-support adjustment.

(a) **Ability to pay.**

- (1) It is a rebuttable presumption that a child support obligation should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, the Court shall follow the procedure set out in this section.
- (2) The obligor's income available for support is the obligor's monthly gross income minus a monthly self-support reserve equal to 120 percent of the federal poverty guidelines for one person. If the obligor's income available for support is equal to or greater than the obligor's child support obligation calculated under §§ 2013 and 2023 of this Title, the Court shall order child support under §§ 2013 and 2023.
- (3) If the obligor's income available for support is more than the minimum support amount under § 2022(b), but less than the amount calculated under §§ 2013 and 2023 of this Title, the Court shall reduce the child support obligation calculated under § 2013 in the following order, until the child support obligation is equal to the obligor's income available for support:
 - (i) Medical support obligations;
 - (ii) Child care support obligation; and
 - (iii) Basic support obligation.
- (4) If the obligor's income available for support is equal to or less than the minimum support amount under § 2022 (b) or if the obligor's gross income is less than 120 percent of the federal poverty guidelines for one person, the Court shall order child support in the minimum support amount under § 2022(b).

- (5) If the obligor receives no income and completely lacks the ability to earn income, the Court shall not order child support.
 - (6) This section does not apply to an obligor who is incarcerated. The Court shall not reduce the child support obligation of an obligor who is incarcerated under this section.
- (b) **Minimum support amount.**
- (1) The minimum support amount is:
 - (i) For one or two children, \$50 per month;
 - (ii) For three or four children, \$75 per month; and
 - (iii) For five or more children, \$100 per month.
 - (2) If the Court orders the obligor to pay the minimum support amount under this paragraph, the obligor is presumed unable to pay child care support and medical support.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2022.

§ 2023. Deviation from presumptive child support obligation.

- (a) **General factors.** The Court must take into account the factors listed in this section in establishing or modifying a child support obligation. These factors are in addition to the child support guideline in § 2014 of this Title and the other factors used to calculate the presumptive child support obligation under § 2013 of this Title. On the basis of the factors listed in this section, the Court may deviate upward or downward from the presumptive child support obligation. The Court may deviate from the presumptive child support obligation in order to encourage prompt and regular payment of child support, to prevent either parent or the joint child or children from living in poverty, or for other purposes. Among the factors to be considered are the following:
- (1) All earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of § 2008 (b) of this Title;
 - (2) The extraordinary financial needs and resources, physical and emotional conditions, and educational needs of the child to be supported;

- (3) The standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;
 - (4) Whether the child resides in a foreign country or more than one year that has a substantially higher or lower cost of living than this country;
 - (5) Which parent is entitled to claim the child as a dependent for income tax purposes and the financial benefit that parent receives from claiming the child as a dependent;
 - (6) The parents' debts as provided in §2023(b);
 - (7) The obligor affirmatively demonstrates having made significant contributions toward the support of the child that have not otherwise been quantified or considered; and
 - (8) Whether the obligor's total payments for court-ordered child support exceed the limitations set forth in 24 MLBS §3353.
- (b) **Debt owed to private creditors.**
- (1) In establishing or modifying a support obligation, the Court may consider debts owed to private creditors, but only if:
 - The right to support has not been assigned;
 - (i) The Court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income.
 - (A) If the debt was incurred for the necessary generation of income, the Court may consider only the amount of debt that is essential to the continuing generation of income; and
 - (ii) The parent requesting a deviation from the presumptive child support obligation produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the original debt amount, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.
 - (2) A schedule prepared under § 2023(b)(1)(iii) must contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the parent's control.
 - (3) Any deviation below the presumptive child support obligation that is based on a consideration of debts owed to private creditors must not exceed 18 months

in duration. After 18 months the support obligation must increase automatically to the level determined by the Court without consideration of such debts. In addition, the Court may order one or more step increases in the support obligation during the 18-month period to reflect debt retirement.

- (4) If payment of debt is ordered pursuant to this section, the payment must be ordered to be in the nature of child support.
- (c) **Evidence.** The Court may receive evidence on the factors in this section to determine if the presumptive child support obligation should be modified in a particular case.
- (d) **Payments assigned to a public authority.** If the child support payments are assigned to a public authority or other public agency under MINN. STAT. §256.741, the Court may not deviate downward from the presumptive child support obligation unless the Court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.
- (e) **Joint legal custody.** An award of joint legal custody is not a reason for deviation from the presumptive child support obligation.
- (f) **Self-support limitation.** If the obligor establishes that, after payment of income and payroll taxes, their monthly income is less than the monthly self-support reserve described in § 2022(a)(2) of this Title, the Court may provide for a downward deviation from the presumptive child support obligation.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2023.

§ 2024. Notice to Band Authority.

The petitioner shall notify the Band Authority of all proceedings for dissolution, legal separation, annulment, determination of parentage, or the custody of a child if either parent is receiving public assistance or applies for it subsequent to the commencement of the proceeding. The notice must contain the full names of the parties to the proceeding and their birth dates.

Historical and Statutory Notes

Source:

Ordinance 06-10, Title I, § 1, Exhibit A, § 2024.

SUBCHAPTER 2

PATERNITY

Section

2031. Purpose.

2032. Paternity proceedings generally.

2033. [Reserved].

2034. Establishing paternity through court order.

2035. Establishing paternity by acknowledgment.

2036. Paternity established by other jurisdiction.

§ 2031. Purpose.

The purpose of this subchapter is to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote, and help provide for the child's best interests. This shall include—but not be limited to—the health, education, and support of the child; the child's receipt of survivorship, inheritance, and Social Security benefits; and the transmission of the customs and traditions of the Band to the child.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2031.

§ 2032. Paternity proceedings generally.

- (a) This subchapter provides for the establishment of paternity through court order and by acknowledgment. Establishment of paternity by court order is generally a contested process but may also be used if an alleged father is deceased or otherwise unavailable. Establishment of paternity by acknowledgment is an uncontested process allowing a father to swear under oath that he is the biological parent of a child.
- (b) An unwed father is not entitled to treatment as a parent under this Title unless his name appears on the child's birth certificate or unless his paternity is established or acknowledged as provided in this subchapter.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2032.

§ 2033. [Reserved].

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2033.

§ 2034. Establishing paternity through court order.

- (a) **Who may file.** A child, a child’s legal guardian, a child’s biological mother, an alleged father of a child, or the Band Authority may file a petition requesting the Court to establish paternity. The biological mother and an alleged father may file jointly.
- (b) **Petition.**
 - (1) A petition to establish paternity shall include the following:
 - (i) The names, dates of birth, addresses, and tribal affiliations, if any, of the biological mother, the alleged father(s), the child, and all others who have legal rights of custody, visitation, or support of the child;
 - (ii) A short statement alleging facts to establish a reasonable possibility of the requisite sexual contact between the biological mother and alleged father;
 - (iii) The marital status of the biological mother and the alleged father(s);
 - (iv) The consent, if any, of the biological mother and the alleged father to establish the alleged father as the biological father of the child;
 - (v) Whether any party has filed an action to determine paternity in any other court or with any agency and, if so, whether a judgment or other determination of paternity has been rendered by any other court or agency;
 - (vi) A copy of the child’s certified birth certificate attached as a supporting document; and
 - (vii) The notarized signature of the petitioner verifying the truth of the information in the Petition.
 - (2) In a case where domestic violence has been an issue, an address is not required for the aggrieved party.

- (c) **Notice.** All parties, including the biological mother and each man alleged to be the biological father, shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard. The party required to provide notice shall do so in compliance with the notice requirements found in the Federal Rules of Civil Procedure.
- (d) **Summons.** The summons to be served on the alleged father(s) along with the Petition 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 the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of eighteen (18), or, if the child is disabled or is attending high school on a full-time basis and the Court so orders, until the child reaches the age of twenty-one (21), and make your failure to pay child support punishable by contempt of court.
- (2) You may request genetic tests which will indicate the probability that you are or are not the father of the child. The Court will order genetic tests on request by you, the Band Authority, or any other party. Any person who refuses to take court-ordered genetic tests may be punished for contempt of court.
- (3) The petitioner has the burden of proving by a preponderance of the evidence that you are the father. If a genetic test shows that you are not excluded as the father and that the statistical probability of your being the father is ninety-two percent (92%) or higher, you are presumed to be the father.
- (4) The following defenses are available to you:
 - (i) That you were sterile or impotent at the time of conception;
 - (ii) That you did not have sexual intercourse with the mother of the child during the conception period; or
 - (iii) That another man did have intercourse with the mother of the child during the conception period.
- (5) If you fail to appear at any state 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 and present yourself for the genetic test. The Court's entry of a default

judgment does not make a child eligible for enrollment in the Mille Lacs Band of Ojibwe.

(e) **Hearing.** The following rules apply to paternity hearings:

- (1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.
- (2) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
- (3) The hearing shall be conducted by the judge with no jury.
- (4) Paternity hearings will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.

(f) **Genetic Tests.**

- (1) If the alleged father(s) is alive and available, the Court may require the child, mother, and alleged father(s) to submit to genetic tests, unless the Court determines it would not be in the best interest of the child in accordance with § 2034(i) of this Title.
- (2) An alleged father may be excused from the requirement to submit to a genetic test if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.
- (3) If genetic testing is required by the Court, such testing shall be performed by an expert in paternity genetic testing approved by the Court.
 - (i) If such test confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of testing.
 - (ii) The Band Authority shall not be required to pay for any genetic testing ordered by the Court in a non-child support matter.
- (4) The Court may order additional genetic tests by other experts qualified in paternity genetic testing upon reasonable request of a party, at that party's expense.

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

- (1) 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-two percent (92%) that the alleged father is the biological father: DNA, HLA (Human Leukocyte Antigens), red blood cell enzyme, red blood antigen, and serum protein tests;
 - (2) Evidence of sexual intercourse between the mother and the alleged father(s) at any possible time of conception;
 - (3) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;
 - (4) 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;
 - (5) Cultural evidence, a reputation in the community as to paternity, or both; or
 - (6) Any other reliable evidence which is relevant to the issue of paternity of the child.
- (h) **Presumption of Paternity.** A man is presumed to be the biological father of a child if he and the biological mother were married at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated. The presumption can only be overcome by genetic testing proving another man is the father by a statistical probability of ninety-two percent (92%).
- (i) **Best Interest of the Child Not to Establish Paternity.** The Court may determine that it is not in the best interest of the child to establish paternity if:
- (1) The child was conceived as a result of rape, incest, sexual abuse of a minor, or sexual assault;
 - (2) A legal proceeding for adoption is pending before a court of competent jurisdiction; or
 - (3) The cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.
- (j) **Judgment of Paternity After Failure to Appear.** If the respondent is the alleged father and fails to appear for a Court proceeding or for a genetic or other test 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 father, which 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.
- (1) 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 at the proceeding or to undergo the genetic or other test.
 - (2) No default order shall be entered by the Court unless the respondent was properly served with notice of the proceeding or test at which he failed to appear in accordance with § 2034(c) and (d) and the Federal Rules of Civil Procedure.
- (k) **Judgment of Paternity.** The judgment or order of the Court determining the existence or nonexistence of paternity shall be based on a preponderance of the evidence and shall be final subject only to an appeal to the Band's Court of Appeals.
- (1) If the judgment or order of the Court is different from the child's birth certificate, the Band Authority shall send the order to the Department of Vital Statistics of the state in which the child was born. The Court shall order the child's parents to reimburse the Band Authority for any associated expenses.
- (l) **Reopening Default Judgment of Paternity.** A default judgment declaring a person to be the father of a child may be reopened upon petition for good cause shown within ninety-one (91) calendar days of the default judgment.
- (m) **Time for Filing Paternity Action.** A petition to determine paternity may be filed at any time 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 be conducted until after the birth unless the court shall determine that an action is necessary in order to preserve testimony.
- (n) **Hearing Closed, Records Sealed.** Paternity proceedings shall be closed and 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.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2034.

§ 2035. Establishing paternity by acknowledgment.

- (a) **Request for recognition.** The mother and alleged father of a child born to a mother who was not married to the child's alleged father nor to any other man when the child

was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the Court, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents.

- (1) The recognition must be on the form prepared by the Band Authority under § 2035(f), except that it may also include the joinder in recognition provisions under § 2035(b). The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under § 2035(b).
- (b) **Joinder in recognition by husband.** A man who is a presumed father under § 2034(h) of this Title may join in a recognition of parentage that recognizes that another man is the child's biological father.
- (1) The man who is the presumed father under § 2034(h) must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under § 2034(h) and recognizing that the father who is executing the recognition under this section is the biological father of the child.
 - (2) A joinder in a recognition under this paragraph must be executed within one year after the child's birth and the joinder must be filed with the Court.
 - (i) The joinder must be on a form prepared by the Band Authority.
 - (ii) Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under this section.
 - (iii) A joinder without a corresponding recognition of parentage has no legal effect.
- (c) **Revocation of recognition.** A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the Court within sixty (60) calendar days after the recognition is executed or the date of a hearing in an action relating to the child in which the revoking party is a party.
- (1) A joinder in a recognition may be revoked in a writing signed by the person who executed the joinder and filed with the Court within sixty (60) calendar days after the joinder is executed.
 - (2) Upon receipt of a timely revocation of the recognition of parentage or joinder in a recognition, the Court shall forward a copy of the revocation to the non-revoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition, and the recognition shall have no further force or effect.

- (d) **Effect of recognition.** Once a recognition has been properly executed and filed with the Court in accordance with § 2035(a), if there are no competing presumptions of paternity under § 2034(h) of this Title or if any such presumption has been renounced under § 2035(b), and if neither the recognition nor the joinder in recognition, if any, has been revoked under § 2035(c) and no other recognition has been filed for the same child, the recognition:
- (1) has the force and effect of a judgment or order determining the existence of the parent-child relationship, is determinative for all purposes related to the existence of the parent and child relationship, and is entitled to full faith and credit in other jurisdictions;
 - (2) precludes any further action to determine parentage regarding the signatory of the recognition, except as provided in § 2035(e); and
 - (3) is a basis for bringing an action:
 - (i) to award legal and physical custody or parenting time to either parent, provided that, until an order is entered granting custody to another, the mother shall have sole custody of the child;
 - (ii) to establish a child support obligation, which may be retroactive for up to two years immediately preceding the commencement of the action;
 - (iii) to obtain an order for contribution to the reasonable expenses of the mother's pregnancy and confinement; and/or
 - (iv) to obtain an order for reimbursement of the costs of blood or genetic testing.
- (e) **Action to vacate recognition.**
- (1) An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, the child who was the subject of the recognition, or the Band Authority.
 - (i) A mother, father, or husband or former husband who executed a joinder must bring the action within one year of the execution of the recognition or within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child.
 - (ii) A child must bring an action to vacate within six months after the child obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child, or within one year of reaching the age of majority, whichever is later.

- (iii) If the Court finds a prima facie basis for vacating the recognition, the Court shall order the child, mother, father, and husband or former husband who executed a joinder to submit to blood or genetic tests.
 - (A) If the Court issues an order for the taking of blood or genetic tests, the Court shall require the party seeking to vacate the recognition to make advance payment for the costs of the blood or genetic tests.
 - (B) If the party fails to pay for the costs of the blood or genetic tests, the Court shall dismiss the action to vacate with prejudice.
 - (C) The Court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney's fees, costs, and disbursements.
 - (D) If the results of the blood or genetic tests establish that the person who executed the recognition is not the father, the court shall vacate the recognition.
 - (E) If a recognition is vacated, any joinder in the recognition under § 2035(b) is also vacated.
 - (F) The Court shall terminate the obligation of a party to pay ongoing child support based on the recognition.
 - (G) A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition but only from the date of service of notice of the motion on the responding party.
- (2) The burden of proof in an action to vacate the recognition is on the moving party. Such request must be on the basis of fraud, duress, or material mistake of fact.
 - (i) The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.
- (f) **Recognition form.** The Band Authority shall prepare a form for the recognition of parentage under this section. In preparing the form, the Band Authority shall consult with the individuals specified in § 2035(g). The recognition form must be drafted so that the force and effect of the recognition, the alternatives to executing a recognition,

- and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition, the revocation procedure under § 2035 (c), and the procedure for vacating the recognition under § 2035 (e). The form must include a provision for each parent to verify that the parent has read or viewed the educational materials prepared by the Band Authority describing the recognition of paternity. The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. Each parent must receive a copy of the recognition.
- (g) **Paternity educational materials.** The Band Authority shall prepare educational materials for new and prospective parents that describe the benefits and effects of establishing paternity. The materials must include a description and comparison of the procedures for establishment of paternity through a recognition of parentage under this section and an adjudication of paternity under § 2034 of this Title. The Band Authority shall consider the use of innovative audio or visual approaches to the presentation of the materials to facilitate understanding and presentation. In preparing the materials, the Band Authority shall consult with child advocates and support workers, battered women’s advocates and advocates for domestic abuse victims, social service providers, educators, attorneys, hospital representatives, and people who work with parents in making decisions related to paternity. The Band Authority will make the materials available without cost to hospitals, requesting agencies, and other persons for distribution to new parents.
- (h) **Hospital distribution of educational materials; recognition form.** Hospitals that provide obstetric services and the Band Authority shall distribute the educational materials and recognition of parentage forms prepared by the Band Authority to new parents and shall assist parents in understanding the recognition of parentage form in accordance with § 2035 (f).
- (i) **More than one recognition.** If the Court receives more than one recognition of parentage for the same child, the Court shall notify the signatory on each recognition that the recognition is no longer effective and that each man has only a presumption of paternity.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2035.

§ 2036. Paternity established by other jurisdiction.

- (a) The Court shall give full faith and credit to properly issued court and administrative orders, judgments, or decrees of other Indian tribes, states, or federal agencies establishing paternity.

- (1) 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 order and 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 pursuant to the laws of that jurisdiction and does not violate the laws of the Band.
- (b) An order described in § 2036(a) must be authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the order as it is recorded in the agency or court of the issuing jurisdiction.
 - (1) An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.
- (c) Unless defects in jurisdiction are apparent on the face of an order described in § 2036(a), the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Court shall enforce it as a Band Court Order.
- (d) Where an order described in § 2036(a) 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 laws of the Band.
- (e) An order described in § 2036(a) does not automatically establish paternity for Band enrollment purposes.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2036.

SUBCHAPTER 3

ENFORCEMENT

Section

2051. Withholding.

2052. Withholding upon notice from obligee or public authority.

2053. Withholding hearing; service of withholding order.

2054. Effect of notice or order for withholding; commencement and amount of withholding; orders from other jurisdictions.

2055. Priority.

2056. Employer expenses.

2057. Notice from obligor to employer.

2058. Notice to Court upon termination of employment.

2059. Order terminating income withholding.

§ 2051. Withholding.

- (a) Court-ordered child support shall be withheld from the obligor's income, regardless of the source, in accordance with this subchapter.
- (b) If a determination is made that an obligor has made excess child support payments, the Band Authority must be responsible to immediately reimburse the obligor. To recover its costs, the Band Authority may motion the Court to recoup the excess payments from the obligee..

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29. T. II, § 1.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2051.

§ 2052. Withholding upon notice from obligee or public authority.

- (a) Except as provided in § 2052(c), an employer or other payer of funds must withhold income or other payments from an obligor upon notice from an obligee or public authority when the following conditions are met:
 - (1) the obligor is at least 30 days in arrears in making Court-ordered child support payments to the obligee;
 - (2) the obligee or public authority serves written notice of income withholding, showing the current child support obligation and the amount of the arrearage, on the obligor at least 20 days before serving the notice of income withholding and a copy of the Court's order establishing the child support obligation on the employer or other payer of funds;
 - (3) within the 20-day period, the obligor fails to move the Court for an order denying or changing the amount of withholding on the grounds that an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, or that the notice contains a mistake of fact with respect to the amount of the current child support obligation or the amount of the arrearage; and
 - (4) the obligee or public authority serves a copy of the notice of income withholding, showing the current child support obligation and the amount of the arrearage, a copy of the Court's order, and the provisions of this subchapter on the employer or other payer of funds.

- (b) The obligor may, at any time, waive the written notice required by § 2052(a)(2).
- (c) Income or other payments shall not be subject to withholding where:
 - (1) Either the custodial or noncustodial parent demonstrates, and the Court enters a finding, that there is good cause not to require withholding of income or other payments; or
 - (2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative to withholding, and the agreement is reviewed and entered into the record by the Court.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.01, 2.03.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2052.

§ 2053. Withholding hearing; service of withholding order.

- (a) Within 30 days from the date an obligor files a motion with the Court to deny or change the amount of withholding under § 2052(a)(3) of this Title, the Court shall hold a hearing on the motion and notify the parties of its decision.
 - (1) If the Court finds an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, the Court shall enter an order denying withholding.
 - (2) If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but that there was a mistake in the amount of the current support obligation or the amount of the arrearage, the Court shall order income withholding in the corrected amount. If the Court finds there was no mistake of fact, the Court shall order income withholding in the amount specified in the notice. If the Court orders income withholding, it shall order withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing.
- (b) The Band Authority will promptly refund amounts which have been improperly withheld.
- (c) If the Court issues an order for withholding under § 2053(a), it shall provide a copy of the order to the Band Authority. The Band Authority shall serve notice of the order on the obligor's employer or other payer of funds using the standard Federal withholding form together with a copy of the order. The Band Authority must allocate 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.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 3.
 Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2053.

§ 2054. Effect of notice or order for withholding; commencement and amount of withholding; orders from other jurisdictions.

- (a) Notwithstanding any law to the contrary, a notice of withholding served in accordance with § 2052(a) of this Title or a withholding order issued and served in accordance with § 2053 of this Title, is binding on an employer or other payer of funds who is subject to the jurisdiction of the Band
- (b) Withholding shall begin no later than the first pay period that occurs after 14 days following the date of service of the notice to the obligor's employer or other payer of funds under § 2052(a)(4) of this Title or § 2053(c) of this Title.
 - (1) An employer shall not discharge, refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this subchapter.
 - (2) An employer who is found to have violated this provision shall be subject to a fine of \$500.00.
- (c) Except as provided in § 2054(d) and (h), an employer or other payer of funds shall withhold and pay to the obligee or public authority, as specified in the notice served on the employer or other payer of funds:
 - (1) the obligor's current child support obligation; and
 - (2) an additional amount not to exceed 20 percent of the current monthly obligation until the arrearage is paid.
- (d) An employer or other payer of funds shall not withhold an obligor's earnings more than the maximum amount permitted under the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)(2).
- (e) Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, income withholding shall continue in effect or may be implemented in an amount equal to the support order until all arrears have been paid in full.
- (f) If an employer or other payer of funds fails to withhold income or other payments in accordance with this subchapter, the employer or other payer of funds will be liable

for the accumulated amount the employer or other payer of funds should have withheld from the obligor.

- (g) The Band Authority is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring that such orders are properly and promptly served on employers and other payers of funds within the Band's jurisdiction. The Band Authority will extend the full range of services available to respond to all requests from, and cooperate with, State and Tribal IV-D agencies.
- (h) The Band, the Court, and the Band Authority will recognize child support orders issued by other Tribes and Tribal organizations and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. The Court may not delay enforcement of any foreign child support orders.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.02, 4, 5.02.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2054.

§ 2055. Priority.

- (a) A notice or order for withholding under this subchapter or execution or garnishment upon a judgment for child support arrears shall have priority over any other attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor, except as provided for in this subchapter. Amounts withheld from an employee's income shall not exceed the maximum permitted by law.
- (b) In the event that there is more than one withholding order for child support for an obligor, the employer or other payer of funds shall put the orders into effect, giving priority first to amounts currently due and not in arrears up to the maximum amount allowed by law. If there are two or more orders for child support which cumulatively exceed the maximum amount allowed by law, the amount each obligee receives from the withholding shall be determined as the amount equal to the number of each obligee's children for whom support payments are due as a percentage of the total number of children for whom support payments are due. This paragraph pertains to withholding only and shall not affect the actual amount of support ordered.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 5.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.

§ 2056. Employer expenses.

An employer or other payer of funds may deduct two dollars from the obligor's remaining income or other payments for each payment made pursuant to a withholding order under this subchapter to cover the expenses involved in the withholding.

Historical and Statutory Notes

Source:

Band Ordinance 2-94, Ch. 29, T. II, § 6.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.

§ 2057. Notice from obligor to employer.

When an individual is hired for employment, the employer shall request that the individual disclose whether or not the individual has Court-ordered child support obligations that are required by law to be withheld from income and the terms of the Court order. The individual shall disclose this information at the time of hiring. When an individual discloses that the individual owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order and under this subchapter.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, §7.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2057.

§ 2058. Notice to Court upon termination of employment.

When withholding is in effect and the obligor's employment is terminated, the obligor and the obligor's employer or other payer of funds shall notify the Court and the obligee or public authority responsible for child support enforcement of the termination within ten days of the termination date. The notice shall include the obligor's home address and the name and address of the obligor's new employer or payer of funds, if known. Information disclosed under this subchapter shall not be divulged except to the extent necessary for the administration of child support or when authorized by law.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 7.01.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2058.

§ 2059. Order terminating income withholding.

Whenever an obligation for child support terminates under the terms of the order of this chapter, and where the obligation is enforced by income withholding from the obligor, the Court shall enter an order directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 8.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2059.