

**NORTHERN ARAPAHO CODE**

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## CHAPTER 1: PRELIMINARY PROVISIONS

**Section 101 - Inherent Tribal Authority.** The power to legislate for the administration of justice for an Indian tribe extends back to time immemorial if not limited by Congress or itself. This exercise of inherent tribal sovereignty provides the basis upon which this Code is enacted. It is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can be reasonably avoided.

**Section 102 - Name of Ordinance.** This ordinance shall be known as the Northern Arapaho Family Support Ordinance and shall be referred to as the Northern Arapaho Family Support Ordinance and abbreviated as NAFSO. Citation to this Ordinance shall be by Title 10 of the Northern Arapaho Code (N.A.C.) and section.

**Section 103 - Controlling Law.** The Northern Arapaho Child Support Enforcement Program ("NACSP" or "Program"), any administrative appeals authority, and the Courts shall abide by the provisions of this Ordinance and the current, approved Northern Arapaho Child Support Program (NACSP) Guidelines and give appropriate deference to the Policies and Procedures of the NACSP.

**Section 104 - Purpose and Construction.**

(a) **Child Welfare.** The children and families of the Northern Arapaho Tribe are the Tribe's most important resource and their welfare is of paramount importance to the Tribe. The Northern Arapaho Tribe has a vested interest in ensuring that tribal children receive emotional and financial support from their parents while also respecting the traditional values and customs of the Tribe and its community.

(b) **Liberal Application.** The rights and remedies under this Ordinance shall be applied liberally for the benefit of the child to the maximum extent permitted by law.

(c) **No Waiver of Sovereign Immunity.** Except as otherwise

expressly provided herein, nothing in this NAFSO shall be construed as a waiver of sovereign immunity.

**Section 105 - Prior Inconsistent Resolutions and Ordinances Repealed.**

**(a) Repeal of Conflicting Resolutions.** Any and all resolutions and ordinances of the Northern Arapaho Business Council (NABC) which conflict in any way with the provisions of this NAFSO are hereby repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit or purpose of this NAFSO. Those which do not conflict will remain in effect.

**(b) Conflicts.** In event that this NAFSO conflicts with the Shoshone and Arapaho Law and Order Code (S&A LOC), the provisions of Northern Arapaho law, including this NAFSO, shall supersede.

**Section 106 - Amendment of Ordinance.**

**(a) Amendment by Business Council.** This NAFSO may be amended by the NABC and amendments shall be made a part hereof for all purposes and shall be certified and incorporated herein in a manner consistent with the numbering and organization hereof.

**(b) Resolution Required.** No amendment shall be effective until adopted by resolution of the NABC.

**(c) Review of Ordinance and Recommendations.** The Program shall review this Ordinance every four (4) years, and make recommendations as necessary for the amendment of this Ordinance.

**Section 107 - Establishment of Child Support Enforcement Program.**

**(a) Designation of Child Support Program.** The Northern Arapaho Tribe designates the NACSP as the program that shall have the authority and responsibilities set forth in this Ordinance to implement the requirements of 45 CFR 309.

**(b) Grievance Process Required.** The Policies and Procedures of the Program shall include a grievance process by which persons aggrieved by a Program decision regarding that person's employment may seek review. Determinations shall be made by the NACSP Director which are final and subject to no further appeal. All other matters may be appealed as provided in this Ordinance.

## **CHAPTER 2: GENERAL**

### **Section 201 - Definitions.**

**(a) Acknowledgment.** "Acknowledgment" of paternity shall mean a voluntary completion of a tribal or state form by an alleged father.

**(b) Courts.** "Courts" shall mean the Northern Arapaho Tribal Court or other Tribal Court duly authorized by the Northern Arapaho Tribe unless otherwise specifically provided.

**(c) Due Diligence.** "Due diligence" means that the NACSP has followed the civil procedures as set out in this Ordinance or other provisions of the Northern Arapaho Tribal Courts Code. For service of process, it shall mean the Program has attempted personal service on at least three (3) occasions, and sent legal documents by certified and personal mail to the respondent's last known address and place of employment.

**(d) Guidelines.** "Guidelines" means the current NABC-approved document that the NACSP maintains and reviews and that is implemented in compliance with Federal regulation requirements of 45 CFR 309 and the laws of the Northern Arapaho Tribe.

**(e) Informed Consent.** "Informed consent" means that the father was informed in advance that his acknowledgment of paternity would create a legally binding parent-child relationship that may be used as evidence of his voluntary acknowledgment of paternity, for all purposes and with all attendant consequences, including a duty to provide financial support for the child.

**(f) Legal Custodian.** "Legal custodian" means a person other than a parent who is by law responsible for a child.

**(g) NACSP.** "NACSP" or "Program" means the Northern Arapaho Child Support Program that has been designated by the Tribe to administer the IV-D program.

**(h) Parent.** "Parent" means a biological or adoptive parent.

**(i) Tribe.** "Tribe" means the Northern Arapaho Tribe of the Wind River Reservation, its authorized officials, agents and representatives.

**(j) Construction.** Use herein of the masculine or feminine gender includes either or both genders and use of a singular or plural term includes either.

### **CHAPTER 3: JURISDICTION**

#### **Section 301 - Jurisdiction; Tribal Policy.**

**(a) Declaration of Policy.** It is hereby declared as a matter of tribal policy and legislative determination that the public and tribal interests demand that the Tribe provide all individuals subject to the jurisdiction of the Tribe with an effective means of redress for establishment of paternity, and establishment, modification, and enforcement of child support obligations.

**(b) Purpose of Jurisdictional Provisions.** The jurisdictional provisions of this NAFSO are to insure maximum protection for the Tribe, its members, and other residents of the reservation, and shall be applied equally to all persons.

**(c) Availability of NACSP Services.** Any person may request relief from the Courts or services from NACSP.

#### **Section 302 - Full Faith and Credit for Child Support Orders.**

**(a) Valid Child Support Orders.** The Courts and any Court

or administrative hearings office established under the Northern Arapaho Code shall recognize and provide full faith and credit to valid child support orders, including income withholding orders, from a state or another tribe pursuant to the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. 1738B.

**(b) Recognition of Foreign Orders by Private Petition.** Any person or the NACSP may seek recognition of a foreign order of support by filing a Petition for Recognition of Foreign Judgment pursuant to the Courts or by filing a Petition for Recognition of Foreign Order of Support before the Northern Arapaho Administrative Law Judge in compliance with administrative procedures established for such proceedings.

**(c) NACSP to Provide Assistance with Recognition of Foreign Orders.** Any person may seek recognition of a foreign order of support by submitting a request for assistance to the Northern Arapaho Child Support Program.

**(d) Enforcement of Foreign Orders.** A foreign order recognized by the Northern Arapaho Tribal Court or other Tribal Court duly authorized by the Northern Arapaho Tribe or administrative hearings office established under the Northern Arapaho Code shall be enforced in accordance with the provisions of this Ordinance and the NACSP Guidelines.

#### **CHAPTER 4: CIVIL AND ADMINISTRATIVE PROCEDURES; APPEALS**

##### **Section 401 - Hearing Officers.**

**(a) Appointment, Authority and Duties of Administrative Law Judge.**

**(1)** The Tribe shall appoint a disinterested person to serve as Administrative Law Judge ("ALJ") to conduct administrative hearings under this Code, who shall be duly qualified and licensed to practice law before the Tribal Court, a federal court or another tribe's court having admissions standards at least equivalent to the requirements of the Northern Arapaho Tribal Court and who shall conform

to the ethics and standards of conduct applicable to judges of the Tribal Court.

(2) The scope of any hearing under this Ordinance shall include only those issues which arise concerning paternity, child support obligations, and enforcement of those obligations, all as provided in this Ordinance.

(3) Any ALJ duly appointed by the Tribe shall conduct such pre-hearing conferences as the ALJ deems reasonably necessary, shall encourage settlement of disputes to the extent practicable, and may exercise reasonable discretion regarding scheduling, notices and hearing procedures. The ALJ shall issue a written ruling or decision on issues of law or fact which are presented by the parties, but shall not issue advisory rulings or decisions on matters not before him/her.

(4) The ALJ is authorized to issue such orders and subpoenas as he/she deems reasonably necessary to effectuate the purposes of this Code including, without limitation, orders regarding discovery and sanctions for violations of applicable law or regulation, or such orders as are available in civil proceedings in the Tribal Court.

(5) Once appointed, the same ALJ who first heard and considered any matter also should consider any motion for reconsideration or motion for relief from decision and order, to the extent practicable. All appointments, terminations and reappointments of an ALJ are in the sole discretion of the Tribe and not subject to review by any court.

(6) The ALJ may adopt such additional procedures and rules for the conduct of hearings as necessary or convenient, so long as they are consistent with this Code and other provisions of applicable law.

**(b) Funding for ALJ Functions.** The NACSP shall be responsible for providing the necessary equipment, salary, supplies and training for ALJ positions designated to hear cases arising under this Ordinance.



## **Section 402 - Service of Process.**

**(a) Service by Publication.** In addition to the service of process required by provisions of the Northern Arapaho Tribal Courts Code, service by publication shall be made when, after due diligence, the NACSP has been unable to accomplish personal service or it is determined by the ALJ or Court that a party is avoiding service.

**(b) Publication Requirements.** The NACSP shall publish the contents of the Summons in one or more local newspapers of general circulation once per week for four (4) weeks and shall leave an extra copy of the Summons and Complaint with the both the Office of the ALJ and the NACSP for the party.

**(c) Limitations on Service by Mail.** All papers required to be filed may be served by certified or registered mail, except a Summons and Complaint or a Motion for an Order to Show Cause, which shall be served personally or as otherwise provided pursuant to Section 402(a) herein.

## **Section 403 - Legal Actions.**

**(a) Administrative Hearing.** Any person who is aggrieved by the administration of this Code may request an administrative hearing within fifteen (15) days of receiving notice of the action giving rise to the grievance. The request shall be in writing and shall contain a short and plain statement of the basis for the hearing request. The request shall be submitted to the Office of the ALJ and to NACPS.

**(b) NACPS Action.** The NACSP may request an administrative hearing in aid of its interests in the administration of this Ordinance at any time.

**(c) NACSP as Representative of Tribe.** The NACSP shall prosecute paternity and child support actions as the representative of the Tribe on behalf of the best interest of the child, and include the child's name and date of birth on the heading of its pleadings.

**(d) Guardian ad Litem.** The ALJ and Courts may appoint a

Guardian ad Litem for a minor child, but NACSP shall not be responsible to pay the fees for a Guardian ad Litem for a minor child in a paternity or child support action.

**(e) Notice of Proceedings; Service of Process.**

(1) All parties who have filed a timely request for a hearing shall be served by the ALJ with a notice of hearing at least seven (7) days before the date set for the hearing, unless all parties consent to a shorter period. The notice shall state the time and place of the hearing.

(2) All papers served by any party shall be served upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(3) Any document submitted in the proceeding shall be served on all other parties by the party filing it. Orders issued by the ALJ shall be served by the ALJ, who may request the Tribe or NACSP to do so on his/her behalf.

(4) Service of all documents (other than the Summons and Complaint initiating an action filed by NACPS or a Motion for an Order to Show Cause, each of which shall be served personally or by publication as provided by this Ordinance) may be made by personal service by any disinterested party over the age of eighteen (18) years, by certified mail, or by regular mail sent postage prepaid to a party's last known address.

**(f) Pre-Hearing Discovery.**

(1) **Discovery.** Administrative hearings are informal, expedited matters; accordingly, traditional discovery practice common before courts of law is inappropriate. Discovery practice in matters before the ALJ is limited. Parties must undertake to request information from the other parties or the NACSP in a manner consistent with the following guidelines.

**(2) Records.** Requests for documents or other forms of records from the NACSP or interested persons shall be by submission of requests for production. The files and records of the NACSP are often confidential and protected from the scrutiny of any person; therefore, requests for production of documents from the NACSP shall be made by motion to the ALJ, who may make such orders, including limitations on disclosure or dissemination of records as the ALJ deems appropriate.

**(3) Interviews and Depositions.**

**(A)** The ALJ may permit depositions, only in cases of necessity, exigency, a witness' failure to cooperate, witness unavailability for hearing, the inadequacy of an interview, or other similar good cause shown and only if the information sought is not available by other reasonable means. Any request for permission shall describe the nature and scope of information to be sought in the interview or deposition.

**(B)** Depositions shall be conducted under such limitations, terms and conditions as specified in the order authorizing them.

**(C)** In order to promote a free discussion of facts and opinions, the NACSP may make relevant staff available for unrecorded interviews by any party. The NACSP shall cooperate in good faith with reasonable requests of any party, but the NACSP is not obligated to disclose confidential or protected information, absent orders from the ALJ requiring disclosure. The NACSP may require an unrecorded interview to be conducted before the ALJ may authorize a deposition over the NACSP's objection.

**(4) Interrogatories.**

**(A)** Each party may serve up to ten (10) written interrogatories upon each adverse party, each of which shall consist of a single, particularized question without subparts and without multiple subjects or

objectives. Additional interrogatories may be served only with permission of the ALJ upon a showing of good cause.

(B) Unless otherwise ordered by the ALJ, responses to the interrogatories shall be provided to all parties within twenty (20) days of service of the interrogatories.

(C) The answering party may reasonably object to any interrogatory, and thereby avoid answering until directed to do so upon resolution of the objection by the ALJ.

**(5) Additional Discovery Rules.**

(A) Unless otherwise ordered by the ALJ, discovery shall be completed no later than seven (7) days in advance of the hearing date.

(B) Upon good cause shown, the ALJ may allow additional discovery, may further limit discovery, or may modify the time limits set forth in this rule.

(C) Parties are under a continuing obligation to update, correct, supplement or amend any information previously provided, and to do so in a timely manner until the conclusion of the hearing.

(D) Witnesses are encouraged, but not obligated, to freely share information with all parties. A party shall have unrestricted ability to contact other non-party witnesses for these purposes.

**(g) Conduct of Hearings.**

(1) The proceedings at the hearing shall be recorded or transcribed.

(2) Oral evidence shall be taken only upon oath or affirmation.

(3) Each party to a hearing shall have the right to be

represented by an attorney; to call and examine witnesses; to introduce exhibits relevant to the issues of the case; to cross-examine opposing witnesses in any matters relevant to the issue of the case; to impeach any witness regardless of which party called him to testify; and to offer rebuttal evidence.

(4) A person who is not a party may be called and examined.

(5) The hearing shall not be conducted according to rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to relying in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

(6) The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, although such evidence may be otherwise subject to objection.

(A) The ALJ may take official notice of any fact which may be judicially noticed by a federal court. The parties shall be informed of any information, matters or facts so noticed and shall be given a reasonable opportunity, on request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the ALJ. The ALJ may, in his/her discretion, before rendering a decision, permit the filing of amended or supplemental documents and shall notify all parties thereof and provide a reasonable opportunity for objections thereto.

(B) If any person in proceedings before the ALJ disobeys or resists any lawful order, refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct at the hearing or

so near the place thereof as to obstruct the proceeding, the person may be punished for contempt if the ALJ certifies the facts underlying the contumacious behavior to the Magistrate or other Tribal Court. Thereafter, such Court shall have jurisdiction in the contempt matter, and the same proceeding shall be had, the same penalties may be imposed, and the person charged may purge himself or herself of the contempt in the same way as in the case of a person who has committed contempt in the trial of a civil action before such Court.

(7) Any two or more parties may stipulate to offer into evidence as an exhibit or other evidence any fact or matter in issue of substance or procedure. The ALJ shall enter an order approving or disapproving any stipulation offered into evidence, or may require modification as a condition for approval.

(8) Before the commencement of the hearing, each party sponsoring an exhibit must furnish a copy to each other party.

(A) The ALJ may limit the number of copies to be furnished where reproduction is burdensome.

(B) The ALJ shall disregard exhibits provided but not admitted into the record; in like fashion, they shall not be included in the record unless specific request therefor is made.

(C) Rebuttal exhibits and evidence need not be provided in advance to be admitted into evidence.

(9) Except in matters of exigency, no witness may testify by electronic means without prior approval of the ALJ, upon motion timely made and good cause shown.

**(h) Rehearing and Post-Decision Relief.**

(1) The ALJ may, upon motion made within ten (10) days after the service of the decision and order, order a rehearing on such terms and conditions as he may deem just

and proper when the ALJ finds cause to believe that the decision and order should be reconsidered in view of the legal, policy or factual matters advanced by the moving party.

(2) Upon motion made within a reasonable time, but in no event later than one (1) year from the service of the decision and order, the ALJ may relieve a party from the decision and order upon a showing that there is additional evidence which is material and necessary and which would be reasonably likely to change the decision of the ALJ, and that sufficient reason existed for failure to present such evidence at the hearing. The motion shall be supported by the affidavit of the moving party or his/her counsel showing, with particularity, materiality and necessity of the additional evidence and the reason why it was not presented at the hearing. Upon rehearing, rebuttal evidence to the additional evidence shall be admitted. After rehearing, the ALJ may take such action as the additional evidence may warrant.

(3) A motion for relief from a decision and order which is based on any ground other than the presentation of newly discovered evidence shall be governed as to both timeliness and sufficiency by the rules governing similar motions before the federal court.

**Section 404 - Appeal to Magistrate Court.** Any rulings of the ALJ may be appealed within thirty (30) days of the ALJ's final decision to the Magistrate Court pursuant to the Northern Arapaho Tribal Court's Code, in an action naming the NACSP or other interested persons as defendants. In any such action, the Court shall give appropriate deference to the expertise of the NACSP and of the ALJ. The sovereign immunity of the Tribe is waived only with respect to such action, but only if filing deadlines are strictly followed, and only to the extent of declaratory or injunctive relief ordered by the ALJ or (a) a ruling by such Court affirming, reversing or modifying the ALJ's order, or (b) regarding assessment of penalties by the ALJ, to an order reversing, abating, reducing or enhancing that penalty. The Magistrate Court may impose conditions on the above awards of relief.

**Section 405 - Attorney Fees and Other Costs.**

**(a) Attorney's Fees or Other Costs.** In no event may any court assess prejudgment interest, costs, back pay, attorney's fees, or other damages or relief against the Tribe or NACSP or any other entity of the Tribe.

**(b) Filing Fees.** The Northern Arapaho Tribal Courts may charge a filing fee on cases brought by NACSP, provided there is a payment agreement between the Court and NACSP.

**Section 406 - Final Appeals.** An appeal of a decision by the Magistrate Court shall be made to the Northern Arapaho Tribal Court of Appeals or other Tribal Court duly authorized by the Northern Arapaho Tribe. All such appeals are final and subject to no further appeal. However, notwithstanding any other provision of law, nothing in this Code authorizes any court other than the Magistrate Court to make any determinations or issue any rulings which restrict or diminish the sovereign authority of the Northern Arapaho Tribe.

**CHAPTER 5: PATERNITY**

**Section 501 - Relationship Established.** The parent and child relationship may be established between a child and:

**(a) The Mother of a Child.** The natural mother by proof of her having given birth to the child;

**(b) The Natural Father.** The natural father through traditional practices recognized by the Tribe, voluntary acknowledgment by a state or tribal process, a stipulation and order, or order of the Courts establishing the parent and child relationship; or

**(c) An Adoptive Parent.** An adoptive parent by proof of adoption.



**Section 502 - Artificial Insemination.**

**(a) Husband as Natural Father.** If, under the supervision of a licensed physician and with the informed consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated as if he were the natural father of a child thereby conceived; provided:

(1) The husband's consent shall be in writing and signed by him and his wife; and

(2) The physician shall certify their signatures and the date of the insemination and file the husband's consent with the state office of vital records and services.

**(A)** The physician's failure to do so does not affect the father and child relationship.

**(B)** All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the Courts for good cause shown.

**(b) Donor Not to be Treated as the Natural Father.** The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated as if he were not the natural father of a child thereby conceived.

**Section 503 - Rebuttable Presumptions.**

**(a) Marital Presumption.** A man is presumed to be the natural father of a child if he and the natural mother were married at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated.

(1) Any action to challenge a marital presumption must be filed within two (2) years of the date of the child's birth, unless good cause is established for a challenge

filed more than two (2) years after the date of the child's birth.

(2) If paternity has been established pursuant to the laws of the Tribe, another tribe or a state, and due process has been provided, the NACSP is prohibited from providing IV-D paternity services. The person contesting paternity under this presumption may obtain genetic testing through alternative means at their own expense.

**(b) Application of Genetic Test Results.** There is a rebuttable presumption that an alleged father is the biological father in any case where the genetic test results indicate a statistical probability of paternity of ninety-nine percent (99%) or more.

**(c) Presumptions.** A presumption under this Ordinance may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

**(d) Effect of Paternity Establishment under this Ordinance upon Tribal Membership.** The Northern Arapaho Tribe, when identifying or defining family or extended family pursuant to Tribal tradition and customs, or how it defines its membership, need not rely upon a determination of paternity under this Ordinance.

#### **Section 504 - Commencement of a Paternity Proceeding.**

**(a) Persons Who May Commence a Proceeding.** Any parent, legal custodian, interested family member of the minor child who has custody of the child, or the NACSP may commence a proceeding authorized under this Ordinance.

**(b) Minor Parents.** When a mother or a potential father is a minor, the minor's parent, a legal custodian, or interested family member of the minor child who has custody of the child may take action or apply for IV-D services on behalf of the minor child.

**(c) Limitations on Commencement of Action.** An action to establish paternity must be filed on or before the date on which the child reaches the age of eighteen (18) years, except as provided by subsection (d) of this Section.

**(d) Extension of Time for Minor Child.** A child for whom paternity has not been determined may bring an action on their own behalf within three (3) years of turning eighteen (18) years of age.

**(e) Use of Court Forms.** The NACSP shall use the Court's approved forms, petitions and summons when commencing a paternity action.

#### **Section 505 - Procedures in the Best Interests of the Child.**

**(a) Closed Hearings.** A hearing involving the paternity of a child shall be closed to the public.

**(b) Expedited Determination.** When a child that may be eligible for enrollment with the Tribe is or may become involved in an action under the Indian Child Welfare Act or adoption proceeding, the Tribe shall make an expedited determination of paternity pursuant to NACSP Policy and Procedure.

**(c) NACSP Not Required to Bring Paternity Action in Certain Cases.** In cases of incest or rape, where legal proceedings for adoption are pending or upon a determination by the Courts that it is not in the best interest of the parties to determine paternity, the NACSP shall not be required to determine paternity.

#### **Section 506 - Genetic Testing.**

**(a) Provision of Genetic Testing.** When paternity is contested by either party, whether married or unmarried, the Tribe, through NACSP, shall provide for genetic testing, unless otherwise barred in this Ordinance. If both parties voluntarily request genetic testing, the NACSP shall provide genetic testing.

**(b) Contents of Petition to Establish Paternity.** A

contested paternity determination shall be based upon a sworn statement that sets forth:

(1) A reasonable possibility of the requisite sexual contact between the parties; or

(2) A reasonable possibility of the nonexistence of the requisite sexual contact between the parties.

**(c) Use of Accredited Laboratory Required.** When paternity is determined by genetic testing, NACSP, or any individual party, must utilize an accredited genetic testing laboratory that provides for a genetic testing process that is medically and legally acceptable pursuant to NACSP Policy and Procedures.

**(d) Objection to Testing Results.** A party that contests a paternity presumption based on genetic testing results shall have an affirmative duty to present good cause for requesting a second set of genetic testing.

(1) The contesting party must pay for a second set of tests within in sixty (60) days of the Court's order and failure to do so may result in a default judgment.

(2) The contesting party may choose another accredited genetic testing laboratory at their own expense.

#### **Section 507 - Voluntary Acknowledgment of Paternity.**

**(a) Notice of Right to Acknowledge Paternity and of the Effects of Acknowledgment.** All correspondence, notices, and legal documents from the NACSP that address the need for a determination of paternity shall inform the alleged father of his right to voluntarily acknowledge his paternity, his right to request genetic testing, his right to participate in the child's life as the father, the obligation for child support, and the possible penalties for nonpayment of support.

**(b) Standards for Voluntary Acknowledgment.** A voluntary acknowledgment of paternity may be in the form of an NACSP approved form filed with NACSP or the Courts, any state's vital record form, or any tribe's equivalent form provided:

(1) Due process has been provided pursuant to the laws of the jurisdiction; and

(2) The time to appeal the voluntary acknowledgment has expired.

(c) **Tribal Custom.** A tribal tradition or practice that involves the acknowledgment and welcoming of a child into a family may be considered when determining paternity.

## CHAPTER 6: SUPPORT OBLIGATIONS

### Section 601 - Child Support Guidelines.

(a) **Guidelines to be Maintained by NACSP.** On behalf of the Northern Arapaho Tribe, the NACSP shall maintain one set of Guidelines that shall be uniformly and consistently applied under this Ordinance in all cases.

(1) The NACSP shall review and revise, if appropriate, the Guidelines once every four (4) years, at a minimum, to ensure they reflect the values of the Tribe, the social and economic realities of tribal members, and are in compliance with the regulation requirements of 45 CFR 309.

(2) The NACSP Guidelines shall take into account the needs of the child and the earnings and income of a parent who has the responsibility to make payment of financial support.

(3) The NACSP Guidelines shall be based on specific, descriptive, and numeric criteria that result in a computation of a support determination.

(4) The Program may issue written directives regarding the Guidelines on an emergency or temporary basis pending review and approval by NABC.

(b) **In-Kind Support Recognized.** The Northern Arapaho Tribe recognizes the value of in-kind contributions to the support of children and may enter in-kind support obligations pursuant to the NACSP Guidelines.

(1) An in-kind support obligation must also include the equivalent dollar amount that would be paid but for the in-kind order.

(2) An in-kind support obligation may not be used to satisfy assigned obligations due to another tribe or a state and may only be used to satisfy custodial arrears with the consent of the custodial parent to whom the arrears are due.

**(c) Rebuttable Presumption in Favor of Guidelines.** There shall be a rebuttable presumption that the application of NACSP Guidelines is the correct and appropriate amount of support to be ordered. If the ALJ or Courts make a different finding, it must:

(1) Identify the specific criteria relied upon to deviate from the application of the NACSP Guidelines;

(2) Include the reasons and justification for deviating from the NACSP Guidelines that would make the application unjust or inappropriate;

(3) Indicate that the needs of the child were taken into consideration; and

(4) Make a written finding on the record of what the required and appropriate support amount would have been and the amount of support ordered.

**(d) Deviation from Guidelines.** The ALJ or Courts may deviate from the Child Support Guidelines on a showing of good cause, including but not limited to, the following:

(1) The child or children are in protective custody and the parent is actively working to complete a case plan through the Northern Arapaho Department of Family Services or another child protection agency;

(2) Both parties have entered into a written stipulation that deviates from the Child Support Guidelines and the ALJ or Courts finds the needs of the child are met;

(3) The parent has extraordinary expenses for the support of another child; or

(4) Evidence including, but not limited to, one or more of the following factors:

(A) the financial resources of the parent required to pay support and child;

(B) the standard of living the child would have enjoyed had a marriage not been dissolved;

(C) the special physical, emotional and educational condition of the child and his/her needs; or

(D) substantial contributions toward the emotional welfare and care of a child from the extended family.

(e) **Extended Family Contributions.** Contributions from the extended family of a party that has a support obligation may be allowed. Such payments or contributions must be made through the NACSP.

(f) **Hierarchy of Payments.** When ordering payment of support obligations, the Courts and NACSP shall comply with the hierarchy of payments as set out in 45 CFR 309.115.

#### **Section 602 - Modification of Support Obligations.**

(a) **Review Hearing Notice.** The NACSP shall provide notice of the right to a review hearing for NACSP clients every thirty (30) months. If both parties decline the opportunity, no hearing will be required.

(b) **Change of Circumstances.** Any party may request a modification based upon a substantial change in circumstances as defined in the NACSP Guidelines.

(c) **Tribal Traditions.** When making, establishing or modifying a child support obligation, the Courts may take into consideration tribal traditions and customs.

## CHAPTER 7: ENFORCEMENT OF SUPPORT OBLIGATIONS

### Section 701 - Enforcement Required.

(a) **Enforcement of Support Orders.** Support obligations ordered pursuant to the NAFSO or foreign orders of support that have been given full faith and credit shall be enforced when a party who is required to pay support fails to do so in a timely and consistent manner.

(b) **Persons Subject to Enforcement Processes.** All persons or entities that are subject to the jurisdiction of the Tribe shall also be subject to the enforcement processes set out in this Ordinance and the NACSP Guidelines.

### Section 702 - Income Withholding.

(a) **Mandatory Income Withholding.** The income of a party who is required to pay support shall be subject to immediate income withholding unless:

(1) Either party demonstrates and the ALJ or Courts enter a finding that there is good cause not to require mandatory income withholding; or

(2) There is a stipulation between the parties that provides for an alternative arrangement and the ALJ or Courts have signed an order reflecting the terms and directives of a stipulation.

(b) **Failure to Make Voluntary Payment.** Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a child support order are equal to one (1) month's support, or more;

(c) **Grounds for Contesting Order.** The only basis for contesting an income withholding order is an error in the amount that is ordered to be withheld or mistake in the identity of the person against whom the income withholding order is issued.



**(d) Arrearages.** In addition to an amount sufficient to pay current support, the Court shall order an amount to be paid to liquidate custodial arrears and may order an amount to be paid to liquidate TANF arrears due to a Tribe or State, unless waived by the applicable State or Tribal agency.

**(e) Limits on Withholding.** At no time shall the amount withheld from a parent who is responsible to pay support exceed the limits set out in the Consumer Credit Protection Act, although the Courts may set lower amounts.

**(f) Notice.** Notice of income withholding must be sent by using the standard federal Income Withholding form, as required by 45 CFR 309.110(1).

**(g) Due Process.** Income withholding must be carried out in compliance with the procedural due process requirements established by the Northern Arapaho Tribe through the NACSP's Policy and Procedure.

**(h) Improper Withholding.** The NACSP shall promptly refund any funds that have been improperly withheld.

**(i) Termination.** The NACSP shall promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

**(j) Allocation.** The NACSP shall allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in withholding for one of the support obligations not being implemented.

**(k) Orders from Other Jurisdictions.** The NACSP is responsible for receiving and processing income withholding orders from States, Tribes and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction. This shall be done pursuant to Section 302 of this Title governing recognition of foreign orders.

**Section 703 - Other Enforcement Techniques.** The Courts may order any person who has been found to have failed to comply with an order of the Courts to comply with any of the following

enforcement measures:

- (a) Obtain services that address employment and training issues;
- (b) Obtain services that address social and mental health issues;
- (c) Obtain services that address personal issues;
- (d) Obtain services that address family issues;
- (e) Obtain services that address the health and welfare of a child; or
- (f) Participate in cultural or traditional guidance.

**Section 704 - Civil Sanctions.** The remedies and sanctions provided in the NAFSO are in addition to the contempt powers provided in the Northern Arapaho Tribal Courts Code or other applicable laws of the Tribe.

## **CHAPTER 8: MISCELLANEOUS PROVISIONS**

### **Section 801 - Safeguarding and Confidentiality.**

(a) **Domestic Violence.** The Courts and NACSP shall be prohibited from releasing information on the whereabouts of any party when a protective order is in place or domestic violence is suspected.

(b) **Release of Information Prohibited.** NACSP shall be prohibited from disclosing information maintained in NACSP files except to other IV-D programs, IV-A programs, and Medicaid, and may only release information that is necessary for the administration of those programs.

### **Section 802 - Employer Compliance.**

(a) **Application of Enforcement Actions to Employers.** All

employers who are subject to the jurisdiction of the Northern Arapaho Tribe, including the Tribe itself and its programs, departments, agencies or other entities, shall:

(1) Honor income withholding orders from the ALJ and Northern Arapaho Courts or Notices from NACSP and withhold the amount required. If they fail to do so, the employer shall be liable for the accumulated amount that should have been withheld; and

(2) Be prohibited from refusing to hire, discharging an employee, or taking disciplinary action against an employee based upon income withholding.

**(b) Violation of Enforcement Order.** Any person who violates this section shall be subject to the following sanctions:

(1) A written warning and participation in appropriate training;

(2) Suspension from employment, not to exceed three (3) days per incident; or

(3) A fine, not to exceed Five Hundred Dollars (\$500) per incident.

**(c) Limited Waiver of Sovereign Immunity.** For purposes of the enforcement of preceding sections (a) and (b) only, the Northern Arapaho Tribe, through this Ordinance, provides a limited waiver of sovereign immunity only for actions brought by the Tribe's authorized child support program in the Courts.

History: Title 10. The Northern Arapaho Family Support Ordinance was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated October 12, 2007, Resolution No. 2007-9836; technical amendments enacted on May 13, 2008, by Resolution No. 2008-9966; substantive amendments established an administrative law judge system for dispute resolutions enacted on January 31, 2014, by Resolution No. NABC-2014-365; substantive amendments to Section 302 authorizing enforcement of foreign orders by administrative law

judge enacted on July 17, 2014, by Resolution No. NABC-2014-406; and substantive amendments to Section 505 paternity actions, Section 702 income withholding, and Section 801 release of information enacted on February 5, 2015, by Resolution No. NABC-2015-486. Technical amendments for the purpose of clarifying references to tribal courts were enacted on August 17, 2016, by Resolution No. NABC-2016-702, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713. Amendments to Section 702 regarding income withholding were enacted on December 15, 2017, by Resolution No. NABC-2017-893. Amendments to Section 601 regarding child support guidelines were enacted on August 17, 2018, by Resolution No. NABC-2018-1015.