State-Tribal Relations Committee
62nd Montana Legislature

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March 28, 2012

Rep. Frank Smith
P.O. Box 729
Poplar, MT 59255-0729

Re: Full faith and credit for tribal court child custody and child support orders

Dear Rep. Smith:

You have requested an opinion with respect to whether Montana district courts are required to grant full faith and credit to child custody orders and child support orders. It is my understanding that you have heard that there are state district courts who are not allowing full faith and credit of tribal court orders, relying on a 1991 Attorney General's opinion (44 A.G. Op. 15).

In 1991, Attorney General Racicot opined that:

> A judgment, decree, or order of an Indian tribal court may not be filed as a foreign judgment under the provisions of the Uniform Enforcement of Foreign Judgments Act, unless the judgment, decree, or order concerns an Indian custody proceeding.

44 A.G. Op. 15. Attorney General Racicot noted an exception for enforcement of foreign judgments for Indian custody proceedings under 25 U.S.C. § 1911(d). Since Attorney General Racicot provided that opinion, however, Montana law has clarified state courts' application of tribal orders for child support, child custody, and protective orders, granting the equivalent of full faith and credit status to those orders.

There are several statutes in the Montana Code Annotated that describe the relationship between Montana Indian tribes and the state courts. Under the Uniform Child Custody Jurisdiction and Enforcement Act, tribal courts have equal footing with state district courts:

> **40-7-135. Application to Indian tribes.** (1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.
>
> (2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-7-140, and part 2 of this chapter.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter.

§ 40-7-135, MCA. Enforcement of a child custody order is effective if notice and opportunity to be heard is given to all persons entitled to be heard. The Act does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard. § 40-7-105, MCA.

The Uniform Interstate Family Support Act requires a court to determine jurisdiction and recognition of child support orders from more than one tribunal. In the definitions under § 40-5-103, MCA, Indian tribes are defined as a "State":

> (20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. **The term "state" includes an Indian tribe or a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.**

(Emphasis added.) Section 40-5-151, MCA, clearly sets out which child support order controls and must be recognized between state courts and tribal courts when multiple orders from multiple jurisdictions exist. The Act also provides bases for jurisdiction over nonresidents (§ 40-5-145, MCA), procedures for simultaneous proceedings in another state (§ 40-5-148, MCA), procedures for income-withholding orders of another state (§ 40-5-157, MCA), administrative enforcement of orders (§ 40-5-180, MCA), and modification of a child support order of another state (§ 40-5-194, MCA).

Additionally, under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, Title 40, ch. 15, part 4, MCA, the courts of this state shall enforce a valid foreign protection order, including orders of an Indian tribe or band that has jurisdiction to issue protection orders. §§ 40-15-402, 40-15-403, MCA.

Montana statutory law supports the conclusion that valid tribal court decisions related to child support orders, child custody orders, and protective orders are recognized and enforced by Montana courts. Should you wish to discuss this matter detail, please do not hesitate to contact me.

Sincerely,

Daniel J. Whyte
Legislative Attorney

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