

Working with our Tribal Partners

June 16, 2017

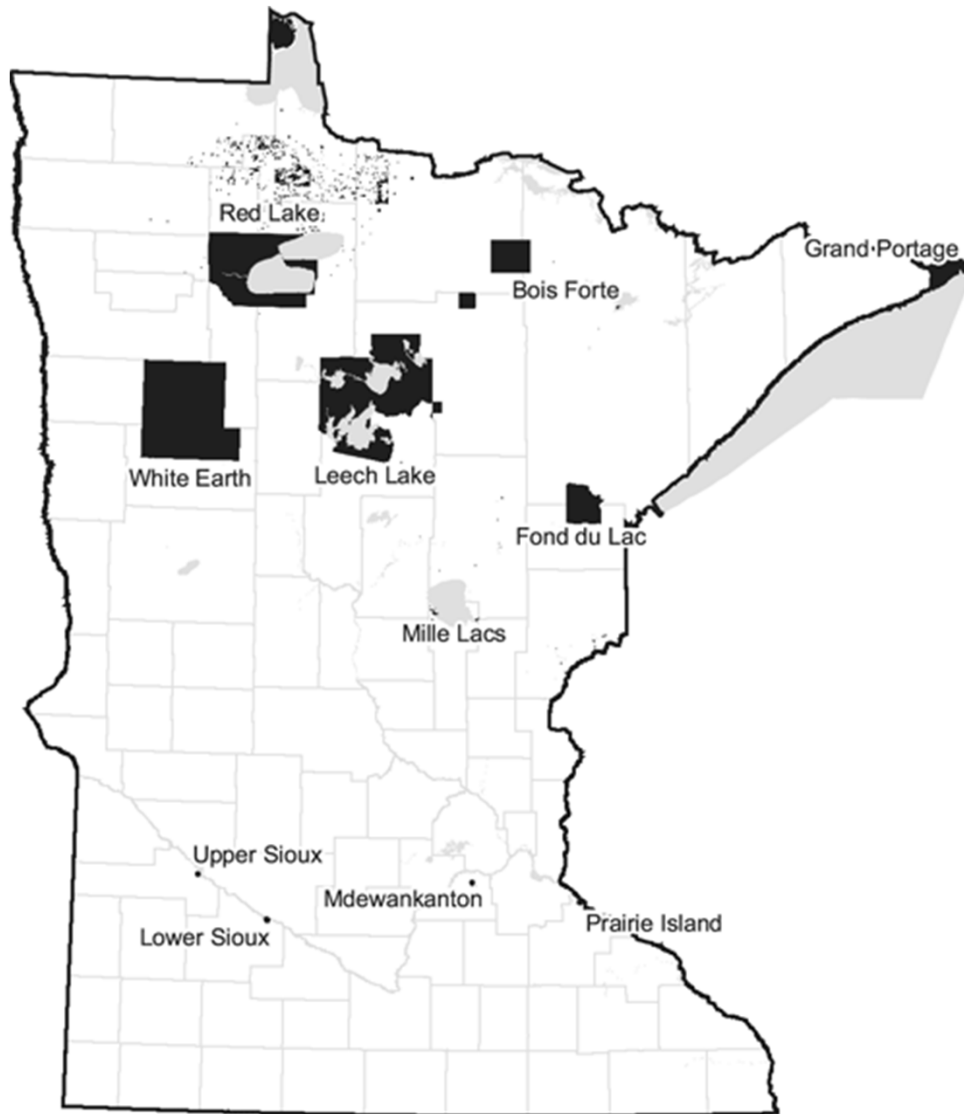
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What will we cover?

- Jurisdiction Overview
- Tribal IV-D Programs
- What to consider when court cases flow between Minnesota State and Tribal Courts.
- What to consider when IV-D cases flow between Minnesota and Tribal IV-D Programs.
- Real World Experiences
- Other Informational Resources



Subject Matter Jurisdiction Over Tribal Members

Jurisdiction: A court's power to decide a case. To decide a case a court must have both **subject matter** jurisdiction and **personal** jurisdiction.

Subject matter jurisdiction. The power of a court to hear and determine a type of case.

Parties cannot agree to submit to subject matter of the court.

Minnesota court may or may not have subject jurisdiction over tribal members.

First issue to resolve in your case is what court (Minnesota or Tribal) has subject matter jurisdiction.

Personal jurisdiction: Personal jurisdiction over the parties achieved by compliance with civil procedure rules of personal service.

Parties can agree to submit to personal jurisdiction of the court.

- A state's jurisdiction over Indians is governed by federal law.
State v. Rogers, 2008 Minn. App. Unpub. LEXIS 1348 (Minn. Ct. App. Unpub. 2008)
- Historically, Indian country was beyond the judicial jurisdiction of state governments. **Becker County Welfare Dep't v. Bellcourt, 453 N.W.2d 543, 544 (Minn. Ct. App. 1990)**
- Minnesota has no civil or criminal jurisdiction over Indians residing on an Indian reservation **absent an express grant of jurisdiction from Congress.**
Desjarlait v. Desjarlait, 379 N.W.2d 139, 142 (Minn. Ct. App. 1985)

28 USCS § 1360 “Public Law 280”

State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of Minnesota Indian country affected.....All Indian country within the State,

except the Red Lake Reservation

Public Law 280 – Granted State Court Subject Matter Jurisdiction in certain situations

- Granted **criminal jurisdiction** over Indians regarding offenses committed by or against Indians in all Indian country in Minnesota, **except the Red Lake Reservation**.
- Granted jurisdiction regarding private civil matters involving Indians which arise in Indian country, **except the Red Lake Reservation**.
- Granted jurisdiction over private civil matters involving reservation Indians arising out of Indian country (off reservation), **including Red Lake Reservation**.

State v. R.M.H., 617 N.W.2d 55 (Minn. 2000)

“Public Law 280”

- “Public Law 280 largely eliminated federal restrictions on state jurisdiction. See Act of Aug. 15, 1953, c. 505, 67 Stat. 589 (codified as amended at 28 U.S.C.A. § 1360 (West 1976 & Supp. 1989)). It authorizes state court assumption of jurisdiction over civil causes of action in Minnesota to which Indians are parties. Civil laws that are of "general application to private persons or private property" have full force and effect in Indian country. [4] 28 U.S.C.A. § 1360(a) (Supp. 1989). Civil laws of general application include laws of "contract, tort, marriage, divorce, insanity, descent, etc." *Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 384, 48 L. Ed. 2d 710, 96 S. Ct. 2102 n.10 (1976).”

Becker County Welfare Dep't v. Bellcourt, 453 N.W.2d 543, 544 (Minn. Ct. App. 1990)

Court has ruled that certain acts occur “outside” of Indian Country.

“... by voluntarily invoking the county court's jurisdiction for divorce purposes, Stuart clearly submitted the question of custody to the county court. In addition, Irene and the children have resided off the reservation since December 26, 1984, thereby submitting themselves to the authority of the state courts. See Red Lake Band of Chippewa Indians v. State, 311 Minn. 241, 247, 248 N.W.2d 722, 726 (1976), 311 Minn. 241, 247, 248 N.W.2d 722, 726 (1976).”

Desjarlait v. Desjarlait, 379 N.W.2d 139, 142 (Minn. Ct. App. 1985)

- Case law: Signing Minnesota ROP confers state court subject matter jurisdiction.

“Applying *Desjarlait* and *Beaulieu*, it is appropriate to conclude that the present dispute arose **off the White Earth reservation because Roy invoked the jurisdiction of the State of Minnesota when he signed and filed an ROP.....** For similar reasons, this court in *Beaulieu* and *Desjarlait* concluded that the state had jurisdiction over the obligors, even though they lived on the reservation, because both obligors had taken voluntary actions to invoke the authority of the state government.”

Fineday v. Roy, 2008 Minn. App. Unpub. LEXIS 990 (Minn. Ct. App. 2008)

Case law: Criminal nonsupport case

“State court had jurisdiction over tribal member for criminal nonsupport where offenses occurred **off reservation**. Court found that the “state has the authority to enforce its laws in a nondiscriminatory fashion against Indians for offenses that occur off the reservation.”

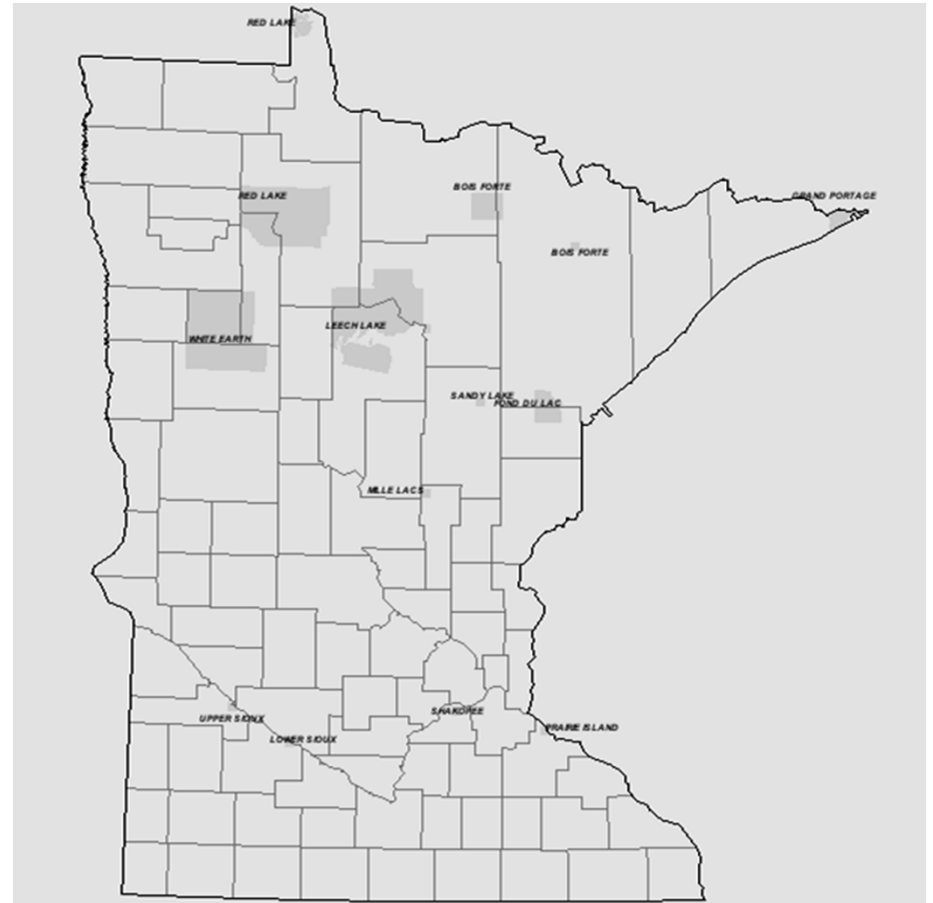
State v. Rogers, 2008 Minn. App. Unpub. LEXIS 1348 (Minn. Ct. App. Unpub. 2008)

Tribal member on a different reservation

- Traffic case.
- “R.M.H., as a nonmember Indian, is not entitled to the same insulation from state government authority on the White Earth Reservation as are enrolled members of the White Earth Band because the White Earth Band's sovereign interest is not as strongly implicated as it would be with an enrolled member. ”

State v. R.M.H., 617 N.W.2d 55, 63 (Minn. 2000)

Tribal IV-D Programs



Minnesota Tribal IV-D Programs

- Tribal IV-D programs in Minnesota:
 - Red Lake Band
 - White Earth Band
 - Leech Lake Band of Ojibwe
 - Mille Lacs Band of Ojibwe

Tribal IV-D Programs Federal Requirements

- Tribal IV-D programs to provide:
 - *Paternity establishment*
 - *Support order establishment, modification and enforcement*
 - *Locate*

Helpful Information Sources

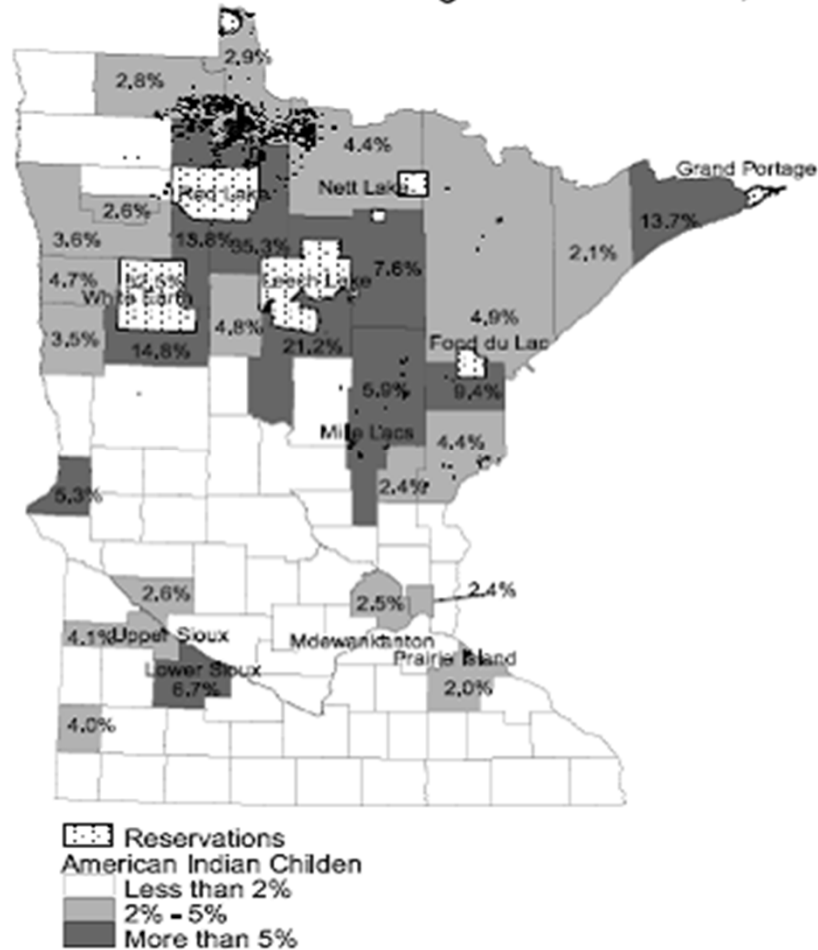
- Federal Office of Child Support Enforcement website:

- <http://www.acf.hhs.gov/programs/cse/>

- Federal Office of Child Support Enforcement Tribal Resources webpage:

- <http://www.acf.hhs.gov/programs/cse/resources/tribal>

Figure 6. American Indian Children in Minnesota as a Percentage of All Children, 2000



Tribal IV-D programs
in Minnesota

Minnesota Tribal Contacts

Red Lake Band

- **Red Lake Band of Chippewa Indians-MN**

Jerry Loud, Director

218-679-2306

- Website:

<http://www.rlnn.com/main/ChildSupportStaff.html>

White Earth

- **White Earth Nation-MN**

Martha Williams

- 218-983-3285 x 5762

- Website: <http://www.whiteearth.com/home.html>

Leech Lake

- **Leech Lake Band of Ojibwe**

David Quincy

218-339-5640

- <http://www.llojibwe.com/>

- Tribal court webpage: <http://www.llojibwe.org/legal/tribalcourt.html>

Mille Lacs

- **Mille Lacs Band of Ojibwe Indian Reservation-MN**

Rachel Sam

320-532-4181 (General number)

- <http://millelacsband.com/>

- Tribal Court webpage:

http://millelacsband.com/Page_TribalCourt.aspx

Additional Resources

National Tribal Child Support Association

- http://www.supporttribalchildren.org/resources_programs.htm
- Resource Guide:
<http://www.supporttribalchildren.org/TribalIVDandNonIVDProgramInfo.pdf>

How
does this
work?

What is the procedure and
what laws apply?

FLOW OF COURT
CASES BETWEEN
STATE AND TRIBAL
COURTS

APPLICABLE LAWS

- Federal law – Full Faith and Credit for Child Support Orders Act.
 - 28 U.S.C. § 1738(b)
- State law, which in some situations might include UIFSA.
- Tribal law – unique to each tribe.
 - May or may not have enacted UIFSA.
 - UIFSA has not been enacted by any Minnesota tribe.

Federal Full
Faith and
Credit for
Child Support
Orders Act

28 USC 1738B

FFCCSOA IS



Full Faith and Credit for Child Support Orders Act Overview

- **Effective October 20, 1994.** FFCCSOA was passed **before** UIFSA was mandated to be passed by all states.
 - Provides for “one order” continuing exclusive jurisdiction scheme for all child support cases, **whether or not UIFSA enacted by a state or tribe.**
- In 1996, PWRORA mandated nationwide passage of UIFSA by all states.
- Tribes were **not** required to pass UIFSA. **Many have not.**

FFCCSOA Provisions

- 1738B(a) General rule
 - States must enforce other state's orders if made consistent with the provisions of FFCCSOA; and
 - Shall not modify except in accordance with subsections (e), (f), and (i).
- 1738B(b) Definitions.
 - “State” means State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

Requirements of Child Support Orders 1738B (c)

- For an order to be consistent with FFCCSOA:
 - The issuing court must have had subject matter jurisdiction and personal jurisdiction over the contestants; and
 - The contestants must have been given reasonable notice and opportunity to be heard.

Continuing Jurisdiction 1738B(d).

- A state or tribe has continuing, exclusive jurisdiction over its order if the state or tribe is the child's residence or the residence of any individual contestant unless the court of another state or tribe, acting in accordance with subsections (e) and (f) has modified the order.
- Same scheme as UIFSA, ***but not UIFSA.***

FFCCSOA - Authority to Modify Orders 1738B(e)

- A state or tribe may modify its own order as long as it has continuing, exclusive jurisdiction.
- A state or tribal court may modify the order of another state or tribe if it has jurisdiction and
 - the issuing state or tribe no longer has continuing, exclusive jurisdiction; or
 - if each individual contestant files written consent with the state or tribe of continuing, exclusive jurisdiction.
- FFCCSOA prohibits a state or tribe from modifying an existing order issued by another state or tribal court, unless these criteria are met.

Recognition of Child Support Orders 1738B(f)

Provisions for determining controlling for prospective enforcement and CEJ. FFCCSOA consistent with UIFSA provisions.

- (1) If only one court order issued for same obligor/child that order is recognized.
- (2) If 2+ courts issued support orders, and only one of the courts would have CEJ, the order from court with CEJ is recognized.
- (3) If 2+ orders and more than one of the courts would have CEJ, the order from the child's home state is recognized. If no order from child's home state, the most recent order is recognized.

Recognition of Child Support Orders, FFCCSOA, cont.

- (4) If 2+ orders and none of the courts would have CEJ, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.
- (5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection.

Same scheme as UIFSA, ***but not UIFSA.***

Enforcement of Modified Orders 1738B(g)

- If a state or tribe no longer has continuing, exclusive jurisdiction it may enforce the nonmodifiable aspects of the order and collect on arrearages that accrued before the date on which the order was modified under subsections (e) and (f).
- Similar to UIFSA – ***but not UIFSA***

Choice of Law Section 1738B(h)

- In a proceeding to establish, modify, or enforce a child support order, the law of the forum state or tribe applies.
- Exemption: courts must apply the law of the state or tribe that issued the order when interpreting the order's obligations, such as the amount **and duration of support payments**.
- In a proceeding for arrearages, the statute of limitations under the laws of the forum state or tribe or the issuing state or tribe, **whichever is longer, applies**.
- Similar to UIFSA – ***but not UIFSA***.

Registration for Modification 1738B(i) :

- If all of the individuals have left the issuing state or Indian country, the party seeking to modify an order issued in another state or tribe must register that order in a state or tribe with jurisdiction over the nonmoving contestant for purposes of modification.
- Either a state IV-D agency or a tribal CSE agency may be a party who is seeking to modify and enforce an order under this subsection.
- Similar to UIFSA – ***but not UIFSA.***

One Order Scheme Under FFCCSOA

- Requires enforcement of terms of orders issued by a court or administrative authority of the issuing state.
- Prohibits modification of other states' child support orders unless certain jurisdictional requirements are met.
- Similar to UIFSA – ***but not UIFSA!***

Enforcement of other state/tribe's order.

Under the FFCCSOA, a child support order issued by a court another State/Tribe must be enforced if:

1. The issuing court had **subject-matter** jurisdiction to hear the matter and enter an order;
2. The issuing court **had personal** jurisdiction; and
3. The parties were given reasonable notice and opportunity to be heard.

FFCCSOA IS



State Laws

Minnesota
Statutes

Minnesota
Court Rules

UIFSA: Minn. Stat. Chap. 518C

When does it apply?

- Can apply UIFSA provisions if seek to register a Tribal order or order from another state **in Minnesota State Court.**
- If a Tribe has **not** adopted UIFSA (likely has not) **cannot use UIFSA provisions to register a State Court order in Tribal court.**
 - Can use FFCCSOA to register an order with the Tribal Court. *FFCCSOA is similar – but it is not UIFSA.*
 - UIFSA and FFCCSOA include “Indian Country” and “Indian Tribe” under the definition of the word “state.”
 - ***Not all tribes have adopted UIFSA.***
 - *All states have adopted a version of UIFSA.*

Minnesota Rule of General Practice 10

– Rule 10.1: When Tribal Court Orders and Judgments Must Be Given Effect.

(a) **Recognition Mandated by Law.** Where mandated by state or federal statute, orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe shall be recognized and enforced.

(b) **Procedure.**

(1) **Generally.** Where an applicable state or federal statute establishes a procedure for enforcement of any tribal court order or judgment, that procedure must be followed.

Think: FFCCSOA!

See also *Decisions of the Minnesota Supreme Court: A Legacy Of Public Law 280: Comparing And Contrasting Minnesota's New Rule For The Recognition Of Tribal Court Judgments With The Recent Arizona Rule.* **31 Wm. Mitchell L. Rev. 479**

FLOW OF
IV-D CASES
BETWEEN
MINNESOTA
STATE AND
TRIBAL IV-D
PROGRAMS

DHS-SIR Tribal Policy

- Provides guidance for IV-D case flow between Minnesota State and Tribal IV-D programs.

- Minnesota DHS and Minnesota Tribal IV-D Agencies have worked together to develop operational IV-D Tribal programs and coordinate services between the programs.
- Coordinate data sharing and case management by entering into cooperative agreements.
- Agreement to coordinate management of matched cases.

Terms To Know

–*Matched Case*

–*Shared Interest Case*

What is a Matched Case?

- Both the State and Tribal IV-D agencies have a IV-D case with the same participants **in the same roles**.
- Roles = NCP (noncustodial parent) or CP (custodial parent)
- Cases are “matched.” CSED Tribal Liaison will review and compare the cases and then one of the following actions will be taken:
 - Ask the CSO to assign the case to the CSED Tribal Liaison worker; or
 - Ask the CSO to complete the pending case action; or
 - Ask the Tribe to transfer the case to the State.
- Only one IV-D agency will maintain the IV-D case UNLESS there is support assigned to the State. (Shared Interest case.)

What is a “Shared Interest” Case ?

- *A “matched” IV-D case in which both the Band and the State of Minnesota have an interest in the child support case.*
- *State of Minnesota has an interest in the case typically when money in the form of Public Assistance has been expended and support is assigned to State.*
 - o Public Assistance Arrears; or
 - o Ongoing Public Assistance
- If support is assigned to the State, both the State and Tribal IV-D Agency will maintain the “shared interest” IV-D case.

What happens to a “Shared Interest” Case?

- IV-D “PRISM” file transferred to Tribal Liaison’s number.
- Selected portions of IV-D “hard copy” file sent to Tribal Liaison.
 - *Certified copies of orders and COLA notices are sent.*
 - *If concurrent enforcement action needed, County has original IV-D “hard copy” file.*
 - *Suggestion: Retain work product in County Attorney file or a “CA section” of IV-D file.*
- All administrative enforcement remedies in place STOP and are removed by Tribal Liaison.
- County IV-D Office case activities are ended.

Pending Legal Action

- Per DHS Policy, the CSO must consult the County Attorney regarding pending legal action. The County Attorney may or may not wish to stop legal action.
- If legal action is not stopped, the case will not be assigned to the CSED Tribal Liaison worker until the legal action is completed.
- See DHS Policy, Matched Case.

Different IV-D Services Applicants

- A person may apply for IV-D services with either the Tribe or the State IV-D program.
- The obligee may make an application and the obligor may make an application.
- If the person who applied for Tribal IV-D services is not the same person who applied for State IV-D services, the CSED Tribal Liaison and the Tribal IV-D Agency will work together to determine how to provide IV-D services.
 - See DHS Policy regarding Matched Cases

Request for Service (Legal Action)

- The State or Tribal IV-D agencies can initiate a request to have legal action started.
- See DHS Policy “Request for Service.”

Real World Lessons

What does it mean to “TRANSFER” a case?

- “Transfer” is a misnomer.
- Cases should be registered for modification and/or enforcement
 - Register under FFCCSOA (*not UIFSA, unless tribe has adopted UIFSA*)
- The Tribal Agency becomes the “maintaining” support agency but this is not the same as changing “maintaining county” between two Minnesota counties.
- The Tribal Court can enforce/modify the legal action, akin to “out-UIFSA” for modification to another state.
 - Could take action to **enforce** in state court if necessary, but if registered for modification in other jurisdiction, lose CEJ.
- The Court file DOES NOT MOVE!
 - Child welfare cases historically have transferred court files, and parties may have more familiarity with that process.
 - Child support law is different. There may be confusion between these two processes.

How to Register a Case in Tribal Court

- Application made at the Tribal Child Support Office.
- “Shared Interest” case?
- Tribal Liaison, a DHS staff member, becomes involved.
- Conversations take place between the Tribal and the Tribal Liaison.
- Consider utilizing **FFCCSOA to register state** Minnesota State court order in Tribal court, *similar* to registration under UIFSA – ***but not UIFSA!***

Stipulation

- In the alternative to the “formal” registration process (akin to UIFSA) a Stipulation could be drafted and filed in County District Court, if appropriate, which details how the certified copies of the case’s order(s) will be registered in Tribal court.
- Sample form stipulation in materials.
 - Revise as needed for your specific case. May register for enforcement, modification, or both.
- All parties must agree and sign off.

Contact Information

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Remember:

- Transferring a case from a Minnesota county IV-D agency to a Tribal IV-D agency is **not** the same as “maintaining county” case transfers.
- Register under FFCCSOA.
 - Registration, not change of venue, should be used to “*transfer*” a case between State and Tribal courts.
- Communication is key. The process is new to everyone.
- Review DHS-SIR Tribal Policy.

**REMEMBER: FFCCSOA
IS**



QUESTIONS?