# CHAPTER III: DUE PROCESS PROVISIONS

# FBIC Law and Order Code, Title V

# (45 CFR 309.65(a)(3))

***FBIC Law and Order Code, Title V***

***45 CFR 309.65(a)(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal IV-D program, including establishment of paternity, and establishment, modification, and enforcement of support orders.***

**A. DUE PROCESS RIGHTS OF INDIVIDUALS AND DEFAULT ORDERS**

**1. Due Process Rights of Individuals**

Due Process is generally defined as a guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before any actions to take away one's life, liberty, or property is conducted.

The Due Process rights of all individuals involved with the Fort Belknap Child Support Program (FBCSP) case or action will be protected. This includes all actions related to the establishment of paternity, the establishment of a child support order, modification of a child support order and enforcement of a child support order as well as intergovernmental cases transferred and/or accepted.

The Fort Belknap Indian Community (FBIC) Court Rules of Civil Procedure as well as the FBIC Domestic Relations Code and Grandparent-Grandchild Relationship Act shall serve as the underlying guide to ensure that the due process rights of all individuals are protected.

# 2. Tribal Court Policy and Default Judgments

Default judgments are those that the Court may issue after Respondent is properly served with notice, but does not show up for Court. Relief granted in Default Orders is limited to that requested in the Petition.

If the Respondent is properly served and fails to appear at the designated date and time the FBIC Court *may*, if no good cause to the contrary exists, enter a default order against the Respondent. Default judgments are limited to what the Petitioner asked for in the original Petition.

A default order will be served on the Respondent personally or by certified mail/return receipt requested to Respondent’s last known address or by publication in the next edition of the Fort Belknap newspaper- *Fort Belknap News*,if Respondent’s address is unknown.

A default order shall take effect thirty (30) days after service unless, within that time, Respondent presents to the FBIC Court evidence of good cause for failing to appear, unless the Court deems otherwise.

# B. DUE PROCESS ASSURANCES

1. Every individual who seeks services from the Fort Belknap Child Support Program will have that contact documented.
2. Contact that will be documented includes: Email, telephone, letters, notes, case discussions with staff and any other contact or communication with FBCSP Office staff.
3. Contact documentation shall indicate the date of the contact, the nature of the contact and the action taken.
4. FBCSP Office staff will follow all notice and hearing requirements for all cases where the FBIC Court has jurisdiction and in accordance with Fort Belknap law and Order Code, Rules of Court and Rules of Civil Procedure.
5. Any party summoned to appear in the FBIC Court in connection to any child support action associated with the establishment of paternity, establishment of a child support obligation, modification of a child support order or enforcement of court-ordered child support must be afforded his/her due process rights pursuant to FBIC Law and Order, Rules of Court and Rules of Civil Procedure.

## C. DUE PROCESS PROCEDURES

1. In order to begin the process for proper service, the FBCSP Office must have a verified address and/or employer for the non-custodial parent (NCP).
2. Personal service is the preferred method of serving individuals believed to be living or working on the Fort Belknap Reservation. However, if the individual is not available for personal service, one of the methods described below may be used to accomplish service, depending on the specific case circumstances.
3. Each interested party to a child support action must be served with a copy of the petition and a summons. The summons will include instructions to the Respondent on how to answer the Petition.
4. An Affidavit of Service must be completed each time personal service is required in a child support action. The Affidavit of Service will include the name of the person serving the pleadings and the date, time and place of service on the individual.
   1. If service was made on a person other than the person entitled to service, the Affidavit of Service will state the name of the person served and the date, time and place of service on that individual.
   2. The original Affidavit of Service will be filed with the FBIC Clerk of Court’s Office with a copy placed in the client’s FBCSP Office case file.

**D. SERVICE OF PROCESS FOR INDIVIDUALS BELIEVED TO BE LIVING/WORKING ON THE**

**FORT BELKNAP INDIAN RESERVATION**

1. The FBCSP Office will arrange, to the extent possible, for personal service on individuals believed to be living and/or working on the Fort Belknap Indian Reservation.
   1. Personal service on the named Respondent is preferred.
   2. Service may be made on a person other than the named Respondent if that person is over the age of eighteen (18) and lives/was at the residence of the Respondent.
2. If personal service is unsuccessful after reasonable attempts, the FBCSP Office may file a motion with a supporting declaration requesting the FBIC Court issue an order allowing Service by Certified Mail/Return Receipt Requested.
   1. Upon the FBIC Court issuing an order allowing service by certified mail/return receipt requested by, the FBCSP Office may serve the Respondent by certified mail/return receipt requested And by prepaid USPS first-class mail to Respondent’s last known address.
   2. FBCSP Office staff can file an Affidavit of Service with the FBIC Court Clerk’s Office upon:

1. Receipt of the returned receipt post card; or

2. Return of the certified mailing with notification that Respondent’s mail was

unclaimed/refused AND the prepaid USPS first-class mail addressed to the same

address was NOT returned within twenty-one (21) days of mailing.

1. If personal service and certified mail/return receipt requested are unsuccessful, the FBCSP Office may file a motion with a supporting declaration requesting the FBIC Court for an order allowing **Service by Publication** in the next edition of the Fort Belknap newspaper *Fort Belknap News* and the *Blaine County Journal.*
   1. Upon the FBIC Court entering an order allowing service by publication, the FBCSP Office will hand deliver and/or email a copy of the summons to the Office of the FBIC newspaper and the Blaine County Journal.

b. The FBCSP Office can file an Affidavit of Service with proof of publication with the FBIC Court Clerk’s Office twenty (20) days allowing an additional five (5) days for mailing for a total of twenty-five (25) days after publication of the summons in the newspapers, the *Fort Belknap News* and the Blaine County Journal*,* and after that edition of the tribal newspaper has been distributed.

### E. SERVICE OF PROCESS FOR INDIVIDUALS BELIEVED TO RESIDE OFF THE FBIC RESERVATION

1. Service by Certified Mail/Return Receipt Requested is the preferred way of serving individuals believed to be living outside the exterior boundaries of the Fort Belknap Reservation.
2. If the Respondent is believed to reside off the Fort Belknap Reservation, the FBCSP Office may file a motion with a supporting declaration requesting the Tribal Court for an order allowing **service by Certified Mail/Return Receipt Requested**.

a. Upon the FBIC Court entering an order allowing service by certified mail/return

receipt requested, the FBCSP Office may serve the Respondent by certified

mail/return receipt requested AND prepaid USPS first-class mail to the Respondent’s

last known address. All returned undelivered letters shall be placed unopened in the file.

b. The FBCSP Office can file an Affidavit of Service with proof of service with the FBIC Court Clerk’s Office upon:

1. Receipt of the returned receipt post card; or
2. Return of the certified mailing with notification that Respondent’s mail was unclaimed/refused AND the prepaid USPS first-class mail addressed to the same address was NOT returned within twenty-one (21) days of mailing.

3. If service by certified mail/return receipt requested is unsuccessful, the FBCSP Office may file a motion with supporting declaration requesting the FBIC Court to issue an order allowing **Service by Publication** in the next edition of the Fort Belknap newspaper *Fort Belknap* News and the Blaine County Journal.

1. Upon the FBIC Court entering an order allowing service by publication, the FBCSP Office will hand deliver and/or email a copy of the summons to the Office of the Newspaper.
2. The FBCSP Office can file an Affidavit of Service with proof of service by publication with the FBIC Court Clerk’s Office twenty (20) days allowing an additional five (5) days for mailing for a total of twenty-five (25) days after publication of the summons in the Fort Belknap newspaper, *Fort Belknap News* and the Blaine County Journal, and after that edition of the newspapers have been distributed.

**F. PROCEEDING TO HEARING**

1. The FBCSP Office may request a hearing be set in the child support matter twenty (20) days after the date the Respondent is deemed to have been properly served.
2. The FBCSP Office will file the original Notice of Hearing with the FBIC Court Clerk’s Office and send a copy of the Notice of Hearing to all parties allowing fourteen (14) days plus three (3) days for mailing for appropriate service by USPS pre-paid first-class mail.