

The grid below assumes that paternity is not an issue in the case because:

1. A paternity judgment has already been entered, but no support obligation was established. State v. Peltier, 2018 ND 170.
2. Child was born during a marriage. Lavallie v. Lavallie, 2015 ND 69 (tribal divorce).
3. A valid voluntary paternity acknowledgment has been signed.
4. The obligor is the child's mother. Rolette County Social Services Board v. B.E., 2005 ND 101.

The grid below further assumes that at least one of the parties resides in your state or on a reservation in your state, or else neither jurisdiction would have an interest in the case beyond asking another state or Tribal IV-D program for assistance.

|    | Existing Order? | Does A Party Still Reside in the Jurisdiction that Issued the Last Order? | Does the Opposing Party Reside on the Reservation? | Is the Opposing Party a Tribal Member? | Were There Significant Incidents of Relationship in Jurisdiction of the Moving Party? | Court(s) with jurisdiction |
|----|-----------------|---------------------------------------------------------------------------|----------------------------------------------------|----------------------------------------|---------------------------------------------------------------------------------------|----------------------------|
| 1  | No              |                                                                           | Y                                                  | Y                                      | N                                                                                     | Tribal                     |
| 2  | No              |                                                                           | Y                                                  | Y                                      | Y                                                                                     | Concurrent                 |
| 3  | No              |                                                                           | Y                                                  | N                                      |                                                                                       | Concurrent                 |
| 4  | No              |                                                                           | N                                                  | Y                                      |                                                                                       | Concurrent                 |
| 5  | No              |                                                                           | N                                                  | N                                      | Y                                                                                     | Concurrent                 |
| 6  | No              |                                                                           | N                                                  | N                                      | N                                                                                     | State                      |
| 7  | Tribal          | Y                                                                         |                                                    |                                        |                                                                                       | Tribal                     |
| 8  | Tribal          | N                                                                         |                                                    |                                        |                                                                                       | State                      |
| 9  | ND              | Y                                                                         | N                                                  |                                        |                                                                                       | State                      |
| 10 | ND              | Y                                                                         | Y                                                  |                                        |                                                                                       | State                      |
| 11 | Other           | Y                                                                         |                                                    |                                        |                                                                                       | Other                      |
| 12 | Other           | N                                                                         | Y                                                  | Y                                      |                                                                                       | Tribal                     |
| 13 | Other           | N                                                                         | Y                                                  | N                                      |                                                                                       | Concurrent                 |
| 14 | Other           | N                                                                         | N                                                  | Y                                      |                                                                                       | Concurrent                 |
| 15 | Other           | N                                                                         | N                                                  | N                                      |                                                                                       | State                      |

A field is left blank on the grid above if the question either does not apply, or does not affect the conclusion.

1. Exclusive Tribal jurisdiction.
2. Concurrent state and Tribal jurisdiction. Kelly v. Kelly, 2009 ND 20. This decision suggests that subject matter jurisdiction in establishment cases cannot be resolved solely based on residence and Tribal membership at the time the action is commenced, but also can consider the location of “significant incidents” of the relationship.
3. This is the situation presented in State v. Peltier, 2018 ND 170. State jurisdiction exists because the opposing party is not a member of the Tribe (even if eligible for membership but chooses to be a member of a different Tribe) and nonmembers generally may not use Tribal sovereignty as a shield from state court jurisdiction. Tribal jurisdiction probably exists because the Tribe has jurisdiction over nonmembers who reside on the reservation.
4. This is the situation presented in Rolette County Social Service Board v. B.E., 2005 ND 101. The court concluded that state and Tribal courts have concurrent jurisdiction in this instance. This was also the scenario in Lavallie v. Lavallie, 2015 ND 69, where the court upheld state jurisdiction under Rolette County, even though the obligor was a member of the Tribe, because the obligor was incarcerated off the reservation.
5. Based on the “incidents of marriage” analysis in Kelly v. Kelly, it is possible that a Tribal court will have concurrent jurisdiction to establish support if there are sufficient “incidents” of the relationship that exist within the reservation, such as if the parents lived together on the reservation until the termination of the relationship. State court would have jurisdiction because the non-moving party resides off the reservation, and state courts must be available to Indians against non-Indians, even when the cause of action arise in Indian Country. Three Affiliated Tribes v. Wold (Wold I); State v. Zaman.
6. Exclusive state jurisdiction. Even if the moving party is a Tribal member, the opposing party neither resides on the reservation nor is a Tribal member.
7. Continuing exclusive jurisdiction (CEJ) remains with the Tribe under FFCCSOA, unless all parties have filed written consent with Tribal court for the State to assume CEJ.
8. CEJ transfers to the state when none of the parties reside on the reservation any longer (this assumes that the opposing party resides in your state off the reservation).
9. Continuing exclusive jurisdiction remains with the state under FFCCSOA, unless all parties have filed written consent with state court for the Tribe to assume CEJ.
10. Potential Scenario: Mom and Dad are members of the same Tribe and live in your state off the reservation. A state court divorce judgment establishes a child support obligation for Dad. Mom later requests a modification of the obligation. By that time, Dad resides on his Tribe’s reservation in your state and Mom has moved to another state. For FFCCSOA purposes, Dad resides in both jurisdictions. Since one of those residences is still in your state, the state retains CEJ unless all parties have filed written consent with state court for the Tribe to assume CEJ.
11. This is similar to #7 and #9. Continuing exclusive jurisdiction remains with the Other Jurisdiction under FFCCSOA unless all parties have filed written consent for the state or Tribal court to assume CEJ.
12. This is similar to #1. Although the opposing party resides in your state as well as on the reservation, state court would not be able to acquire CEJ because it would not be able to obtain personal jurisdiction over a Tribal Member living on the reservation.
13. This is similar to #3.
14. This is similar to #4.
15. This is similar to #6.