



# Wabanaki Legal News

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## New Welfare Reform Law To Affect Low-Income Tribal Members

### **IMPORTANT WARNING!**

**Many changes may be made to these programs over the next several months. This information is likely to change.**

On August 22, 1996 President Clinton signed a new "welfare reform" bill passed by Congress into law. The new law makes changes to AFDC, ASPIRE, and Food Stamps, and some changes to SSI for children and Medicaid. Even though there are many harsh provisions in the new law, the State of Maine has been given much discretion in how the AFDC and ASPIRE programs are run. The State has the opportunity to do much to improve the program.

Some of the changes may affect you if you are applying for or currently receiving help from any of these programs. Below are the answers to a few questions that you may have about changes in AFDC, ASPIRE, Food Stamps, SSI, Medicaid and immigration. If you have more questions, please contact your tribal social service administrator or call the Pine Tree Legal Assistance office nearest you. *We thank the Maine Equal Justice Project for permission to quote extensively from their work in this article.*

### **CHANGES TO AFDC**

#### **WHAT IS A "BLOCK GRANT"?**

The AFDC, JOBS (ASPIRE), and Emergency Assistance programs were replaced with the Temporary Assistance for Needy Families Program (TANF) "block grant." In the past, these benefits have been paid with both State and Federal dollars on a "matching" basis. Roughly speaking, for every one AFDC dollar the State spent, the federal government would contribute two dollars toward the cost of benefits. There was no limit on the amount of money available to States under this system. Each dollar that a State spent for families had to be matched by the federal government.

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## Discrimination Complaint Against University of Maine Settled

Mary Bassett, a member of the Passamaquoddy community, applied for admission to a writing course offered by the University of Maine at Machias during the spring semester of 1995. When she was denied admission, Mary firmly believed that she was denied because of her race. She also strongly believed that such discriminatory treatment must stop. Mary filed a letter of complaint with the President of the University of Maine at Machias (UMM). She also asked the Native American Unit of Pine Tree for help. We represented Mary in her complaint through the University's complaint process and we also assisted her in filing a complaint with the United States Department of Education, Office for Civil Rights. We continued the battle through months of investigation, meetings, discussions, and negotiations. In July of 1996, the UMM agreed to enter into an agreement to resolve the allegations.

Pursuant to that agreement, the UMM revised the promotion and selection process for all courses, seminars, and workshops with selective enrollments. UMM also agreed to take additional steps to reach out to the Native American communities at Pleasant Point and Indian Township, including sending course offerings for publication in tribal newsletters and conducting at least annually at both communities a general information session by admissions staff about academic programs, support services, admissions process, and financial aid. UMM will also establish a committee with Native American and University representatives to assess the needs of Native Americans who want a higher education and to identify UMM resources available to meet those needs.

According to Mary, "We need to stand up against discriminatory treatment. Although the legal process can be long and difficult, there are allies out there like Pine Tree Legal who can help us. My case resulted in some positive changes. That is important, and provides hope to others." ❖

**The articles in this paper are meant to provide information,**

**NOT to give legal advice.**

**No one should interpret any law without the help of an attorney who has been fully informed of all the facts involved.**



Under the new law this "matching" system ends. Now, the state will get a "block grant" of federal dollars set at a certain amount. That amount will not increase for 6 years. Right now, there are enough federal dollars in Maine's new block grant to cover the current cost of the AFDC, ASPIRE, and Emergency Assistance programs. The problem would come if Maine's economy went downhill and many more families needed help. Under a block grant system, the federal dollars will not increase to meet that need. If the State didn't come up with the additional dollars some families could be left without help.

### WHEN WILL THE AFDC PROGRAM CHANGE?

In November, AFDC families in Maine will receive a notice from the Department telling them that a new law has passed that may affect their AFDC benefits beginning November 1, 1996. In fact, families won't see many changes for a few months.

In the next legislative session, beginning in January, Maine lawmakers will make many decisions about how to change the AFDC program. Until then, the program will be run much like the AFDC program that people are used to, with a few important changes described below.

### WHAT ARE THE NEW AFDC CHANGES?

The two biggest changes that AFDC families will face are a **new focus on work** and a **five year time limit on the federal block grant aid** families can receive.

### WHAT DOES THE 5 YEAR TIME LIMIT IN THE NEW FEDERAL LAW MEAN FOR MAINE?

Families that include an adult can only receive assistance paid for from *the federal block grant* for a total of five years in a lifetime. The State of Maine can decide to exempt some people from this 5-year limit. It can also choose to provide assistance to all families that reach this limit and still need assistance with state dollars. No decision has been made yet on either of these issues.

This limit does not apply to families where there are only children on the grant (for example, where the parent is receiving SSI and not AFDC).

### WHEN DOES THE CLOCK BEGIN TO "TICK" ON THE FEDERAL 5 YEAR LIMIT?

The clock begins to tick on the 5-year time limit for all families in Maine on November 1, 1996. No matter how long you have been on AFDC in the past, the first month of your five years will begin on November 1st.

### WHAT IS THE WORK REQUIREMENT IN MAINE?

Under this requirement "work" means: paid work; subsidized work (for example, on-the-job training); workfare (working for your grant); participation in a work experience program or job search or job readiness programs (for no more than 6 weeks). A family's work requirement varies depending on its circumstances.

- ♦ **Single parent families:** Single parents who have finished two years of education and training in the ASPIRE program must work for at least 20 hours a week.

Also, a single parent who is a **new applicant** for AFDC, is "job ready" and whose youngest child is at least 5 years old will have to look for work as soon as she becomes eligible for AFDC. A "new applicant" is a person applying for AFDC who has never been on the program before. A person is "job ready" if she has worked in the last year **and** she has child care available.

- ♦ **Two-parent families:** In most two-parent families, at least one parent must work 35 hours a week. Five of these 35 hours can be in some other activity besides work, like education or training.

The Department may require both parents to work unless one is exempt, but usually doesn't. However, if the family is receiving federally-funded child care, and the second parent is not disabled or caring for a disabled child, then that parent must also work for 20 hours a week.

This applies to **all** two parent families whether they are receiving AFDC because of unemployment or incapacity. (When we talk about 2-parent families, we are talking about the parents of the children who are getting AFDC; families with step parents are not considered "two parent families" for the purposes of this work requirement.)

### WHAT HAPPENS IF I FAIL TO MEET THE WORK REQUIREMENTS?

If you are required to work and fail to do so **without good cause**, your needs will not be considered when your family's AFDC grant amount is calculated. For example, if you were a family of three, your grant would be reduced from \$418 to \$312.

For the first violation, the penalty continues until you comply with the requirement. For the second violation, the penalty continues for 3 months or until you comply. For any additional violations, the penalty continues for 6 months or until you comply.

Single parents with a child under age 6 **cannot** be penalized if they aren't working because they can't find child care.

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## ABOUT PINE TREE LEGAL ASSISTANCE

Pine Tree Legal Assistance is a nonprofit organization which provides free legal help to poor people with civil (non-criminal) legal problems. Pine Tree has field offices in Portland, Augusta, Bangor, and Presque Isle. Pine Tree also has outreach offices in Lewiston and Machias which are open only on a part-time basis. The office hours and phone numbers for these locations are listed separately.

Pine Tree has lost over half of its staff in the last three years, largely as a result of federal funding cutbacks. As a result, Pine Tree can only help a small percentage of all the people who contact our offices. High priorities for help from the basic field offices include the following kinds of cases:

- ◆ eviction from public housing
- ◆ home foreclosures
- ◆ domestic violence
- ◆ loss, reduction or denial of government benefits (food stamps, AFDC, Social Security, SSI, unemployment, etc.)
- ◆ problems with Medicaid or Medicare

Low-income tribal members who have a legal problem involving these types of cases should contact the nearest office of Pine Tree for help. They do not need to contact the Native American Unit for help with these basic problems. Also, if you are doing farmwork and have employment problems, you may contact Pine Tree Legal's Farmworker Unit at 1-800-879-7463.

Many people contact Pine Tree for help with a family law problem. Pine Tree does not have the staff to represent people in divorce, child custody or child support cases. However, Pine Tree field offices can provide information about the court procedures for these different kinds of cases.

Pine Tree also operates a special Native American Unit, which is housed in Bangor and has a toll-free number: 1-800-879-7463. The Unit may be able to help low-income tribal members with problems in the following areas:

- ◆ access to health services
- ◆ border crossing issues
- ◆ discrimination
- ◆ Indian Child Welfare Act problems.

The Native American Unit is staffed by attorney Eric Nelson, who has worked for many years at Pine Tree on behalf of migrant farmworkers and Native Americans. Eric lives in Bangor but travels around the State when necessary to handle a case or meet with clients. Pine Tree's executive director statewide is Nan Heald, who worked in the Native American Unit from 1985-1990, primarily on the Micmac recognition effort. Nan works in Portland and can be reached at 207-774-4753.

If you are a tribal member interested in volunteering for Pine Tree's Native American Unit, please call Eric Nelson at 1-800-879-7463. Tribal members can help us provide community education on important legal issues, as well as help with other projects. ☒



## IMPORTANT INFORMATION FOR NATIVE AMERICANS LIVING IN CANADA

Many Native Americans living in Canada come to the United States to work in various jobs for periods of time. For example, some Native Americans have come to Maine to harvest blueberries and potatoes. Some of these workers are now receiving disability or retirement benefits from the United States Social Security Administration. Because of a change in the tax treaty between the United States and Canada effective January 1, 1996, the U.S. is now deducting federal income tax from Social Security benefits paid to residents of Canada. As a result, many Native Americans living in Canada received notices from Social Security stating that federal income tax was now being deducted from their benefits. However, this notice was incorrect because it failed to state that certain individuals with U.S. resident status, like Canadian-born Native Americans with at least 50% Indian blood, are exempt from the tax.

Therefore, if income tax is being deducted from your social security benefits and you are of at least 50% Indian blood, you should contact the Social Security Administration immediately in order to correct this situation. Their number is 1-800-772-1213 or (207) 990-4530. You may also want to talk with the band office because many band officials are familiar with this situation or call the Pine Tree Native American Unit at 1-800-879-7463. ☒







### DOES EVERYONE HAVE TO MEET THE WORK REQUIREMENT?<sup>1</sup>

No. Persons who **do not** have to meet the work requirement include those:

- ◆ with a child under the age of 2;
- ◆ under age 16, or between 16 and 21 who are full-time students in secondary school, or training for employment;
- ◆ who are physically or mentally unable to work, including pregnancy where a doctor agrees that the woman can't work without risk to herself or the unborn child;
- ◆ who are 60 years old or older;
- ◆ required to stay at home to care for an impaired household member; or
- ◆ who are full time VISTA Volunteers.

### HOW WILL I PAY FOR CHILD CARE IF I HAVE TO WORK?

Under Maine law, the Department cannot require you to participate in any ASPIRE activities including workfare, work experience or subsidized work without paying for the child care that you need to participate.

### CAN I STILL GET EDUCATION AND TRAINING FROM ASPIRE?

**Single parent families.** If you are a single parent, you can receive help with two years of education or training before being required to work. This two year period begins on the first day that you begin to participate in an approved ASPIRE program. In ASPIRE, you will be required to participate for 20 hours a week in school, or some combination of school, supervised study, work, or approved volunteer activities.

In deciding the kind of education or training program that you can get, ASPIRE program staff must consider, "to the maximum extent possible", your preference. If the ASPIRE program refuses to let you get the kind of training or education program you want, you have the right to appeal by requesting a fair hearing.

A wide variety of education and training opportunities are available under ASPIRE, including programs at the vocational technical colleges and the university.

A single parent can stay in education for **more than two years** if, in addition to school, you also agree to participate in "work site experience" for 20 hours a week. "Work site experience" means paid employment, workfare, work experience programs, work study, training-related practicums, or anything else approved by the Department.

<sup>1</sup> This explanation of the work requirements is based on both the current State law and the new federal law. This information may change in the next few months.

**Two-parent families.** As described above, at least one parent in a two parent family is required to work 35 hours a week. **Only 5** of those hours can be in education or training. We believe that it is possible for the **second parent** to participate in education and training without also having to work, but this is an area of the rules that is not perfectly clear.

### WILL I STILL GET MEDICAID FOR MYSELF AND MY FAMILY?

Yes. Although the new federal law no longer requires that families receiving AFDC automatically receive Medicaid, the rules in Maine have not changed. At this time, all families receiving AFDC in Maine will also continue to receive Medicaid.

Families will also continue to receive Transitional Medicaid benefits when they lose their AFDC because of their earnings from work. Right now, the Transitional Medicaid Program provides medical benefits for up to **1 year** after the family loses AFDC. Beginning in February, 1997, the Department expects to provide Transitional Medicaid benefits for **3 years** to families who lose AFDC because of earnings.

### WHAT WILL HAPPEN TO MY CHILD SUPPORT UNDER THE NEW SYSTEM?

At present DHS collects the child support for AFDC families. Of the amount collected in a month for a family, the family is sent the first \$50 (the "\$50 pass-through"). In addition, families without other income are also sent a "gap" payment (about \$100 for a family of two; \$135 for a family of three). Any child support remaining from the month's collections is kept by the state and federal governments to reimburse for the AFDC paid. This system will remain the same until at least April 1, 1996. **On April 1, 1996 the \$50 pass through is scheduled to stop -- but the legislature will be making a decision before that time whether to continue it.** Gap payments should continue.

### HOW ARE TEEN PARENTS AFFECTED BY STATE AND FEDERAL WELFARE REFORM?

Teen parents **under age 20** who have not finished high school must attend courses to finish regardless of the age of her youngest child. If the teen fails to attend school or make satisfactory progress, she can be required to participate in another employment or training activity.

A teen parent **under age 18** must receive her AFDC benefit in the form of non-cash vouchers. This provision does not apply to married teens living with their spouse.



Teen parents **under age 18** must live with a parent, legal guardian or other adult relative, or in an approved, adult-supervised living arrangement unless the teen has good cause not to. This provision does not apply to married teens living with their spouse.

#### **WILL I LOSE MY AFDC IF I HAVE A CAR, OR IF MY CAR IS WORTH TOO MUCH?**

No. An AFDC family can have one car, regardless of value, without losing benefits.

### **CHANGES TO FOOD STAMPS**

#### **ARE THERE ANY TIME LIMITS ON FOOD STAMPS?**

Most food stamp households will not have a limit on the amount of time they can get food stamps. But, under the new federal law, if you are between the ages of 18 and 50 you could be limited to three months of food stamps in a three year period **unless**:

- 1) you live with a dependent child;
- 2) you are *physically and mentally unfit for work*;
- 3) for at least 20 hours per week you are: working, participating in an employment and training program such as a JTPA or Trade Readjustment Act program, or participating in a workfare program;
- 4) you are responsible for caring for an incapacitated person in your household;
- 5) you are enrolled at least half time in a school, training program or institution of higher education;
- 6) you are participating in a drug addiction or alcohol rehabilitation program;
- 7) you are complying with the work registration requirements of the unemployment compensation program; or
- 8) you are pregnant.

#### **CAN THE MAINE DEPARTMENT OF HUMAN SERVICES (DHS) DO ANYTHING TO GET RID OF THIS TIME LIMIT?**

Yes. DHS may ask the federal government to waive the 3 month time limit on food stamps because of high unemployment. We hope that Maine will seek a waiver for most or all of the state. If such a waiver is granted, then people in the parts of Maine affected by the waiver will not have time limits on food stamps. We do not yet know whether the waiver will be granted.



#### **WHEN DOES THE 3 MONTH TIME FOR RECEIVING FOOD STAMPS BEGIN?**

The new time limit on food stamps is explained (along with other changes in food stamps) in a notice mailed out by DHS in November 1996. If you do not meet one of the above exemptions, **your three months start to run after you receive this notice.** This means that no one will lose benefits because of the time limit until at least March 1997.

#### **IF I LOSE MY FOOD STAMPS BECAUSE OF THE 3 MONTH TIME LIMIT, HOW CAN I GET FOOD STAMPS AGAIN?**

You can requalify if 1) you meet one of the exemptions listed above, 2) you turn 60, or 3) three years goes by from the time your three months started running. Also, if you have been in a job, a workfare slot, or an education and training program more than 80 hours in a thirty day period (about 20 hours per week) and then lose that work or education and training, you can get another 3 months of food stamps in the same 3 year period.

#### **WHAT OTHER CHANGES HAPPENED TO THE FOOD STAMP PROGRAM ?**

Many other, more minor, changes were made to the federal food stamp program. Some of them are:

- ◆ **Emergency food stamps.** Homeless people do not automatically qualify to get their food stamps more quickly when they apply.
- ◆ **Vehicle Asset Limit.** To qualify for food stamps, your vehicle can not be worth more than \$4,650. The asset limit applies to the car's fair market value, even if you had to borrow the money to pay for it. **Exception for AFDC recipients:** The vehicle asset limit for food stamps does not apply to AFDC recipients. If you are on AFDC you can own one vehicle of any value and still qualify for both AFDC and food stamps.
- ◆ **Fraud Disqualification:** The disqualification from food stamps that can be imposed by DHS for fraud has been increased from 6 months to 1 year for the first violation and from 1 year to 2 years for the second.
- ◆ **Work-Related Disqualification:** Under the new law people who are over 16 years old or under 60 can be disqualified from food stamps for 1 to 6 months (depending on the circumstances and the choices the state makes) if they, **without good cause**: 1) refuse to provide information to DHS so that DHS can know their job availability, 2) voluntarily quit a job, or 3) voluntarily reduce their work hours below 30 hours per week.





## IMMIGRATION

♦ **Collection of food stamp overpayments:** If you were accidentally overpaid food stamps because DHS (not you) made a mistake, DHS can now recoup that overpayment by taking a portion of your current food stamps or by collecting the overpayment from your income tax refunds or your unemployment benefits.

♦ **HEAP benefit and food stamp connection:** In figuring out your food stamp benefits, DHS looks at your utility costs. People with higher utilities are often eligible for more food stamps. Under current law if you get HEAP (Home Energy Assistance Payments) for your heating costs, then you are considered automatically to have a certain amount in utility costs. This usually causes people to get more food stamps. This connection between HEAP and food stamps is still in the law. So **people who get HEAP -- even only \$1.00 in HEAP -- will see a benefit in their food stamps.**

## CHANGES IN SSI FOR CHILDREN WITH DISABILITIES

### HOW ARE CHILDREN WITH DISABILITIES AFFECTED BY WELFARE REFORM?

The new law makes it tougher to meet the standard for deciding whether a child is disabled and can therefore get SSI. Many children with disabilities will have their cases reviewed by the Social Security Administration. The children most likely to lose benefits are those who have multiple health problems, particularly those with behavioral problems.

### WILL CHILDREN WHO LOSE THEIR SSI LOSE THEIR MEDICAID TOO?

Probably not. Maine children, whether they are disabled or not, can get Medicaid if their family income is below certain levels. These levels vary by the age of the child. Most children who receive SSI live in low income families and will probably remain eligible for Medicaid.

### WHAT SHOULD I DO IF MY CHILD IS DENIED SSI, OR IS TOLD HE/SHE IS NO LONGER ELIGIBLE?

If you receive a notice that your child cannot get SSI and you disagree with that notice, you can request reconsideration of that decision and then, if necessary, a hearing with an administrative law judge. You have the right to be represented by a lawyer at this hearing. **If you get a notice like this, be sure to read it carefully and appeal within the time allowed.**

### How will welfare reform affect legal immigrants?

The new welfare reform bill makes it much more difficult for legal immigrants to receive federal and state government services. The new law makes legal immigrants generally ineligible for food stamps and SSI until they become U.S. citizens or have worked in the U.S. for ten years.

## CANADIAN-BORN NATIVE AMERICANS

Canadian-born Native Americans who have at least 50% Indian blood have special status under the Jay Treaty and immigration law. If you were born in Canada and are a Native American and think you were denied assistance because of your status as a Native American born in Canada, please contact us immediately at 1-800-879-7463.

Please remember that this is just a very brief summary of the changes to come. Under the new bill, the state of Maine and Tribal Governments can make their own rules as to who will receive welfare assistance, Medicaid, SSI, social services, or General Assistance basic living expenses. If you think that you are affected by these changes, please contact your Tribal social service director, the Pine Tree office nearest you, or the Maine Department of Human Services at 1-800-442-6003. ☒

## Alcoholism No Longer a Basis for SSI, SSDI

If alcoholism or drug addiction was one of the main factors which made you disabled for purposes of Social Security benefits, you have probably already received a termination notice. Under a new law, both Supplemental Security Income (SSI) and Social Security disability (SSDI) benefits that are based on chemical dependency will be terminated December 31, 1996. **You can appeal this decision.** To appeal, you should call or stop by your local social security office to request the forms. You have 65 days from the date on your termination notice to turn in your appeal forms.

You are entitled to a hearing if you appeal within 65 days of the date on your notice. The four different forms you need to fill out for an appeal are:

- 1) DAA Medical Redetermination Request form
- 2) Disability Report
- 3) Authorization - to release information to the Social Security Administration (SSA)
- 4) Explanation to claimant regarding consultative examination (another release).

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## Superior Court Rules on Penobscot Employment Discrimination Case

A case involving a terminated Community Health nurse and the Penobscot Indian Nation was recently decided by Superior Court Justice Donald Marden on July 25, 1996. In *Fellencer v. Penobscot Indian Nation* a white nurse claimed that she was fired because of discrimination. She was replaced by a Native American nurse as Community Health Nurse/Program Coordinator. In the fall of 1994, she filed a discrimination case with the Maine Human Rights Commission and the federal Department of Labor. She did not however, bring her case to the Penobscot Tribal Court.

In late July Judge Marden ruled that Ms. Fellencer would be allowed to file her racial discrimination suit under the Maine Human Rights Act (MHRA) against the Penobscot Nation. The court decided that the Maine Human Rights Act does apply to the Nation because of the Maine Indian Claims Settlement Act. Judge Marden ruled that the Penobscot Nation is to be treated like a city or town subject to liability under the MHRA. This ruling, which appears to conflict with federal law governing tribal sovereignty, allows the plaintiff to bring the discrimination case in state court. Ms. Fellencer also sought punitive damages against the Penobscot Nation. Judge Marden dismissed that count of the action and one other count. The state court case against the Penobscot Nation is pending.

Kaighn Smith, the attorney for the Penobscot Nation, is working to reverse the decision. He is an attorney in private practice in Portland. Attorney Smith is convinced that the ruling is wrong and will be overturned. When asked about Judge Marden's ruling he replied "[t]he Maine Tribes have the forum for these cases; in this case these forums were ignored." Attorney Smith also acknowledged that "[t]he Penobscots have the ability to resolve these matters internally. Those are the means for dealing with these cases. The solutions are not to be imposed from the outside."

On appeal, Attorney Smith will argue that the ruling goes against a Supreme Court case that established the principle of "internal tribal matters." He will also argue that imposing the MHRA upon the Penobscot Nation "creates state regulation of internal tribal affairs." Finally, when asked what damage would be done if the ruling were not reversed he replied, "it will be just another broken treaty between the U.S. and the Indian Nations." ☒



## ATTORNEY GENERAL ENFORCES MAINE'S CIVIL RIGHTS LAWS

by: Stephen L. Wessler, Assistant Attorney General

The Maine Department of the Attorney General enforces the Maine civil rights laws. Basically, these laws permit the Attorney General to go to court to obtain a restraining order against anybody who commits an act of violence, a threat of violence or property damage motivated by the minority status of victims. The Attorney General's office works closely with local police departments, local advocacy groups, as well as victims who contact the Department concerning potential civil rights violations.

Recently, the Attorney General filed a complaint and preliminary injunction on behalf of a Passamaquoddy man who was the victim of a hate crime in downtown Eastport. The case was filed pursuant to the Maine Civil Rights Act which prohibits discrimination on the basis of an individual's race, color, ancestry, or national origin. The case is still pending in Washington County Superior Court.

The Attorney General's office is committed to aggressively enforcing civil rights laws. If you have been subject to violence, threat of violence or property damage because of your minority status, you should contact either your police department or the Civil Rights Unit of the Department of the Attorney General at 626-8844. ☒

### (ALCOHOLISM, continued)

When filling out the DAA Medical Redetermination Request form, it is very important that SSI recipients request a face to face evidentiary hearing. If your time is nearly expired, try to go to the SSA office and drop off the forms to ensure they are received on time. If you did not make the 65-day deadline to file an appeal and you have a good reason, you should contact the SSA at 1-800-772-1213, the Pine Tree office nearest you, or the **Volunteer Lawyer's Project at 1-800-442-4293.**

You may be able to continue receiving benefits if you have a disability besides alcoholism that keeps you from working. If you think that something other than alcoholism makes you disabled, and you want help with your appeal, you can call the SSA, the Pine Tree Legal office nearest you, or the **Volunteer Lawyer's Project at 1-800-442-4293.** ☒ We thank the *Anishinabe Legal Services Center* for permission to quote extensively from their work in this article.



## FACTS ABOUT THE JAY TREATY FOR CANADIAN-BORN NATIVE AMERICANS

Native Americans may have problems getting jobs, government benefits or services because their rights under existing U.S. law are misunderstood. Many of those rights arose out of the "Jay Treaty". The "Jay Treaty" is an agreement signed by the United States and Great Britain in 1794 to allow Canadian born Native Americans to travel freely across the U.S./Canadian border. The "Jay Treaty" recognized that,

The Indians dwelling on either side of the...boundary line...{shall have the right} freely to pass and repass by land or island navigation...and to navigate all the lakes, rivers and waters thereof, freely, to carry on trade and commerce with each other.

Since 1928, United States law has specifically recognized the right of "American Indians born in Canada to pass the borders of the United States" but has limited that right to "persons who possess at least 50 per centum of blood of the American Indian race." 8 U.S.C. 1359. If you are a Native American born in Canada of 50% or more "Indian blood", you have specific rights and benefits.

Some of the specific rights include the right to:

- ◆ Cross the U.S./Canada border freely
- ◆ Visit the United States
- ◆ Live or work in the United States

You do not have to:

- ◆ Have an alien card "green card".
- ◆ Register at the Post Office as an alien.
- ◆ Obtain work authorization.

The U.S. Government cannot:

- ◆ Deport You.
- ◆ Exclude You from entry.
- ◆ Deny You services.
- ◆ Impound or search sacred objects you have in your possession having religious significance to you as a Native American.

Private Employers cannot:

- ◆ Deny you employment for lack of a "green card".

This is a very brief summary of the rights and benefits which are recognized by the Federal government and the State of Maine. This list should not be considered a complete summary of the aboriginal border crossing rights of Native Peoples and First Nations. For more information on your rights as a Canadian-born Native American, please call the Pine Tree Legal Assistance Native American Unit at 1-800-879-7463. ☒



## SOCIAL SECURITY YOUR PROTECTION FOR THE FUTURE

Some employers do not make FICA, or Social Security, deductions. Below are just a few answers to questions many workers have about Social Security. If you have more questions, please contact your local Social Security Administration office.

**What is it?** The FICA tax is a deduction of 7.65% of your wages. This amount is paid to the Social Security Administration by your employer for your benefit. The employer must also pay an equal amount (7.65%) of its own money to the government. This money goes in your account to establish your eligibility for Social Security benefits and to determine the amount of benefits you may receive. You receive Social Security benefits when you retire, if you are disabled, or they may be given to your family in the event of death.

**How does it work?** A worker can earn a maximum of 4 credits a year. The amount of wages to gain one credit changes periodically. To qualify for benefits later on, a person must show that they have earned the required number of credits, which changes according to your age. FICA must be deducted if you earn more than \$150 from an employer.

**Why is it important?** It is important to build your credits both to establish eligibility and also to determine the amount of benefits you will receive in the future.

**How can I make sure deductions are being made?** Start by filling out a Form W-4 with your employer before beginning to work. Every worker should do this in order to get their credits. If you do not, you will not receive your credits. You can also look at your check stubs or your itemized statement. It will also be reported on your Form W-2 at the end of the year for your tax records.

**What if I am being treated as an independent contractor?**

If an employer tries to avoid making your FICA payments by saying you are an independent contractor, this may be wrong. Migrant farmworkers, for example, should rarely be considered independent contractors. If you work for an independent contractor, they must deduct FICA and you should receive a list of the deductions.

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## Indian Child Welfare Act Update

*Below are just a few answers to questions you may have.*

### What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is a federal law which regulates placement proceedings involving Indian children. If your child is a member of a tribe or eligible for membership in a tribe, your family has the right to protection under the ICWA. These rights apply to **any child protective case, adoption, guardianships, termination of parental rights action, runaway/truancy matter, or voluntary placement of your children.**

### When was this law passed?

The ICWA was created in 1978 by the federal government in order to re-establish tribal authority over the adoption of Native American children. The goal of the act when it passed in 1978 was to strengthen and preserve Native American families and culture.

### Why was this law passed?

Before the ICWA was passed, a very high percentage of Indian families were broken up because non-tribal agencies removed children from their homes. One reason for the high removal rate was because state officials did not understand or accept Indian culture.

### What does the law do?

The ICWA requires that placement cases involving Indian children be heard in tribal courts if possible, and permits a child's tribe to be involved in state court proceedings. It requires testimony from expert witnesses who are familiar with Indian culture before a child can be removed from his/her home. If a child is removed, either for foster care or adoption, the law requires that Indian children be placed with extended family members, other tribal members, or other Indian families.

Today, the ICWA sets minimum standards for the removal of Indian children from their homes.

### Who does it apply to?

The law applies to Native American children who are unmarried and under age eighteen. The child must be either a member of a federally recognized Indian tribe or must be eligible for membership in a federally recognized Indian tribe.

### What if a child is not living on the reservation does the ICWA still apply?

Yes. The ICWA has a notice requirement. This means that if a state takes a child into custody, it must give notice to the child's tribe, wherever the child may be in the U.S.

### Does the act apply to a couple getting a divorce?

No.

### What if a parent allowed someone else to become a guardian of their child and later changes their mind?

The ICWA provides that an Indian parent always has the right to revoke a guardianship.

### Which Maine tribes does the law apply to?

The law applies to all four Maine tribes: the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Indian Nation. ~~The Indian Child Welfare Act defines an Indian tribe as any Indian tribe, band, nation,~~ or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of the Interior] because of their status as Indians.

### Who decides if am a member of the tribe?

The law does not apply a specific blood quantum as the criteria for membership, it leaves it up to each Native American tribe to make such determinations on their own.

### What court can hear a case involving a Native American child?

Currently only the Penobscot and Passamaquoddy Tribes can decide these cases in Tribal Court. Cases involving Micmac or Maliseet children are likely to be held in Probate or District Court.

### What are the proposed changes in the law ?

Recently, the United States Senate passed a number of amendments to amend the Indian Child Welfare Act (ICWA). Although these amendments have been approved by the Senate, they have not been enacted into law. The proposed changes are aimed at improving the legal process for adopting Native American children.

The proposed amendments to the Indian Child Welfare Act (ICWA) will set strict guidelines throughout the adoption process so that all parties involved, including the tribes, are assured the chance to participate.





(ICWA, continued from previous page)

In *Maine*, the bill would also do the following:

- Set limits on when an Indian birth parent may withdraw his or her consent to an adoption. The new law would allow Native American birth parents to withdraw their consent to an adoption in only two specific instances.
- Clarify that the Penobscot and Passamaquoddy Tribes retain exclusive tribal court jurisdiction to determine whether ICWA applies to Native American children who are members of their tribes.
- Limit the rights of the Penobscot and Passamaquoddy Tribes to intervene in a court proceeding involving foster care placement or termination of parental rights which would authorize voluntary agreements for rights of visitation.
- Clarify that the Indian Child Welfare Act applies to voluntary consents in adoptive, pre-adoptive, and foster care placements.
- Establish criminal sanctions for lawyers or social workers or any other person who falsifies or covers up a fact concerning whether the child or the biological parent is Native American.

Please remember that this is a brief summary of the proposed changes in the law. If you are a Penobscot or Passamaquoddy tribal member and have further questions about the new law you may contact the Tribal court directors.

- \* **Penobscot Tribal Court Administrator:** George Tomer at 827-7776.
- \* **Passamaquoddy Tribal Court Administrators** at Pleasant Point: Vera Francis 853-2600 or Wanda Doten at Indian Township 796-2301.

If you would like more information on the Indian Child Welfare Act you may call the Pine Tree Legal Assistance Native American Unit at 1-800-879-7463. ☒

### ☛ We Want to Hear From You! ☛

- ♦ *If you have comments, articles or ideas on how this newsletter can be helpful to you please let us know. Please send articles or letters to the Editor, Wabanaki Legal News, Pine Tree Legal Assistance, 88 Federal Street, P.O. Box 547, Portland, ME 04110-0547.*

## NEED A LAWYER FOR ANY OF THESE MATTERS ?

⇒ **ACCESS TO HEALTH SERVICES**  
(including mental health and substance abuse)

⇒ **BORDER CROSSING ISSUES**  
(including religious freedom issues)

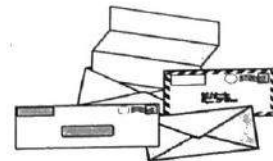
⇒ **DISCRIMINATION**  
(including consumer, housing and employment)

⇒ **INDIAN CHILD WELFARE ACT**  
(The ICWA applies to custody proceedings involving Indian children. We are able to provide representation in limited circumstances; for example, if you are a Native American parent who is attempting to revoke a guardianship to obtain custody or if you are a grandparent or other relative wanting custody of a child who has spent the majority of his or her life with you).

### IF SO, CALL:

PINE TREE LEGAL ASSISTANCE  
NATIVE AMERICAN UNIT  
at 1-800-879-7463  
Tuesday, Thursday & Friday  
9:00-3:00 p.m.

*Pine Tree Legal Provides Free Legal Services To  
Eligible Low-Income Individuals, And We May Be  
Able To Help You*



(SOCIAL SECURITY, continued from page 8)

*How can I confirm that my FICA deductions are going into my account?* Use the form SSA-7050-F3 to request the information you want. You can get it by calling the Social Security Administration at 1-800-772-1213 or go to the closest SSA office.

*Can I correct my record?* Yes. If you discover that an employer has not properly reported your wages, you may have your record corrected. It is important to report an employer who is not making or paying deductions so that you and other workers will get proper credit and benefits for the future. ☒



## A Self-Help Guide To The Tribal Court System

by Hon. Chief Tribal Judge Gary Growe

### INTRODUCTION

This article is designed to provide a guide to any individual who has the occasion to appear in Tribal Court in connection with a Civil (any non-criminal) matter.

The Penobscot Nation Tribal Court was established in 1979. It exists to serve the legal needs of the members of the Penobscot Nation community and particularly, although not exclusively, tribal members who reside on the Penobscot Reservation. In that sense it shares a common purpose with other Tribal Courts throughout Indian Country. Of the approximately 500 Federally recognized Tribes, upwards of 200 Tribes have their own Court systems. The Courts are as varied as the Tribes themselves and range from tradition-based systems with little or no written rules or codes to systems that mirror Courts in the Federal and State systems (that is, Courts with a formalized, rule-based, adversary system). The Penobscot Tribal Court, in many significant ways, resembles a typical State of Maine District Court. In each case, however, the Courts are designed to serve their respective Tribal communities.

It should also be noted that the scope of this article is somewhat limited and will address only the most common situations. Each case has its own set of facts which may alter the outcome of that particular situation. While it may raise as many questions as it answers, it is my hope that it can, nevertheless, serve as a useful tool for those parties who, either by choice or necessity, appear in Tribal Court without benefit of an attorney.

Bear in mind that, although the Passamaquoddy Tribal Court and the Penobscot Nation Tribal Court (the only Tribal Courts in Maine) have much in common, they are distinct entities and the guidelines set out here are not necessarily applicable to practice in the Passamaquoddy Tribal Court. Questions about the Passamaquoddy Tribal Court should be directed to the Clerk of that Court.

### I. WHERE DO I START?

The Clerk's Office is usually the first stop in any Civil proceeding. The Clerk's Office is the source of various forms that may be required to begin a civil proceeding. The Clerk is prohibited from providing legal advice. While the Clerk can explain the nature of various forms, the parties must complete the forms on their own without the assistance of the Clerk. Court fees in connection with beginning a civil action are fairly small in most cases and can be, if requested, reduced or entirely waived by the Judge.

### II. WHAT KINDS OF CASES CAN BE HEARD IN TRIBAL COURT?

Generally, the Penobscot Tribal Court is able to hear a wide range of civil matters, including divorces, child custody disputes, probate matters as well as Complaints for Protective Orders (both Protection from Harassment and Protection from Abuse). In certain cases (where both parties are members of either the Passamaquoddy Tribe or Penobscot Nation and both parties live on the Penobscot Reservation), it is the only Court that can hear the dispute.

### III. I HAVE AN ABUSIVE FAMILY MEMBER, (OR BOYFRIEND OR NEIGHBOR). CAN THE TRIBAL COURT HELP ME?

Family and household members who are the victims of domestic abuse are entitled to protection from further abuse as well as the right to live their lives without the threat of future abuse. The Court takes its obligation in the area of domestic violence with the utmost seriousness. There is a mechanism which, to the extent possible, can provide relief for such victims as well as remedial services to both the victim and the abuser.

Since "Protection From Abuse" actions and "Protection From Harassment" actions are somewhat similar and often confused it is useful to begin with a few definitions.

"ABUSE" is defined by the Penobscot Tribal Ordinance as the occurrence of the following acts between family or household members:

- A. Attempting to cause or causing bodily injury or offensive physical contact, or
- B. Attempt to place or placing another in fear of imminent bodily injury.







**"FAMILY OR HOUSEHOLD MEMBERS"** are defined as "spouses or former spouses, individuals presently or formerly living as spouses, natural parents of the same child, or adult household members related by consanguinity or affinity. Holding oneself out to be a spouse shall not be necessary to constitute living as spouses."

In plain terms, if you are assaulted or threatened with assault by a spouse, former spouse, ex-boyfriend (or girlfriend) with whom you once lived or any family member, you may seek relief from the Court.

**"HARASSMENT"** is defined as "any repeated (emphasis added) act of intimidation, harassment, physical force or threat of physical force directed against any person, family or their property or advocate with the intention of causing fear or intimidation or to deter free exercise or enjoyment of any rights or privileges secured by the Indian Civil Rights Act of 1968, as amended". This definition does not include any act protected by the constitutional guarantee of free speech.

With those definitions in mind we can now look at the specific process. In each case (whether "abuse" or "harassment"), the process begins by the filing of a complaint/petition which provides a factual basis for the alleged "abuse" or "harassment". This can be in the form of a narrative or story which explains the events that occurred. It is important to be as specific as possible especially with regard to names, dates and events. The allegations should be in your own words. Essentially, this statement, which is sworn to be true, is your version of what happened.

Once a Complaint/Petition is filed with the Court, the matter will be set for a full hearing within 21 days. At that hearing, the party who initiated the complaint/petition has the burden of proving their case by a preponderance of the evidence. This means the party who filed the complaint/petition (Plaintiff) must convince the Court that their version is more likely than not to be the truth and that the events took place as they allege.

The party alleged to have committed the abuse or harassment (Defendant) will be served with a copy of the complaint/petition as well as a Summons requiring he or she to appear at the Final Hearing. In the event the Defendant fails to appear, an order can be entered against that person in their absence. Parties can also agree to have Protective Orders entered against them. Likewise, if the Plaintiff fails to appear at a Final Hearing, the case will be dismissed, absent good cause which is made known to the Court prior to the hearing.

#### IV. SO WHAT HAPPENS IN BETWEEN THE COMPLAINT/PETITION AND THE FINAL HEARING?

If the Court finds that the Plaintiff is in "immediate and present danger" (emphasis added) of physical abuse" from the Defendant or other good cause as the Court may determine from the allegations in the complaint/petition, the Court may, without giving notice to the Defendant, enter a Temporary Order which provides the Plaintiff with the necessary relief or protection.

This "temporary" (before the Final Hearing) protection can include an Order which prohibits the Defendant from any of the following:

- A) Imposing any restraint upon the person or liberty of the Plaintiff;
- B) Threatening, assaulting, molesting, harassing or otherwise disturbing the peace of the Plaintiff;
- C) Entering the Plaintiff's residence; or
- D) Taking, converting or damaging property in which the Plaintiff may have a legal interest.

In the case of complaints which allege abuse, the court may also enter a Temporary Order concerning the care and custody of any minor children residing in the household.

People who believe they are being abused or harassed and who change their address in an effort to avoid the abuse or harassment should know that their address can be deleted from the record in order to protect them, if the Court believes it is necessary.

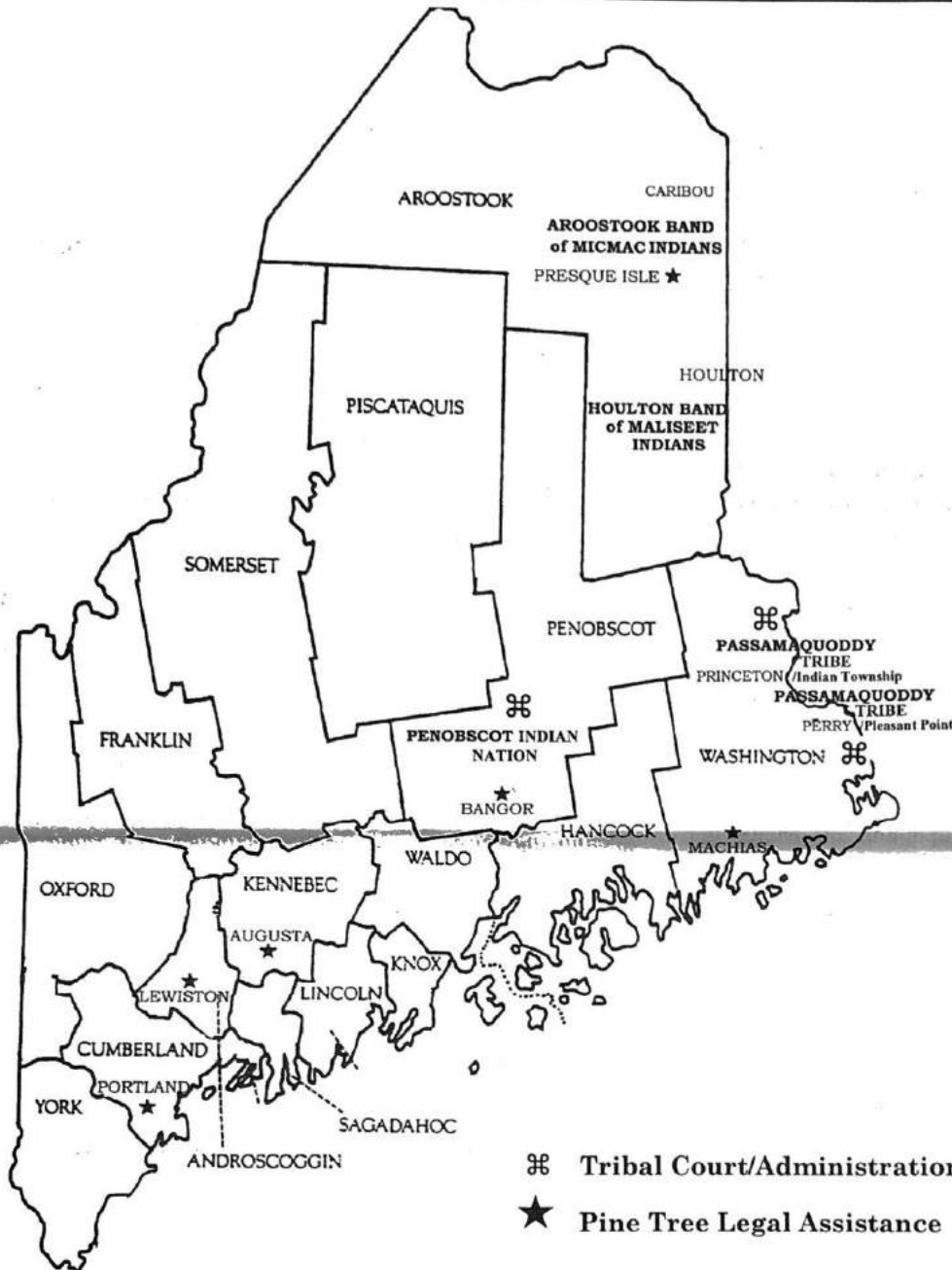
This process is not tilted completely in favor of the person alleging the abuse or harassment. The Defendant who is the subject of a Temporary Order may, on two-day's notice to the Plaintiff or shorter notice as the Court may direct, appear before the Court and ask the Court to dissolve or modify the Temporary Order.

The Final Hearing itself is relatively straight forward. The Plaintiff will be required to present their side of the case. This can be done by the Plaintiff's own testimony and/or the testimony of any witnesses. If witnesses refuse to appear voluntarily, the Court can issue a subpoena to compel them to appear. You must request any subpoenas you feel are necessary as soon as possible in order not to cause undue delay of the case.

While these hearings are conducted in accordance with the Maine Rules of Civil Procedure (which have been adopted by the Penobscot Nation Tribal Court) the Court has considerable discretion in applying those rules in order to achieve fairness for all parties.

(Continued on page 14)





## PINE TREE LEGAL ASSISTANCE OFFICE HOURS



## OFFICES

39 Green St. **Augusta**, ME  
Phone Intake: 622-4731  
Hours: M-F 8:30-12:30

61 Main St. **Bangor**, ME  
Phone Intake: 942-8241  
Hours: M-F 8:00-3:00

City Hall 3d Fl. Conference Room  
**Lewiston**, ME Mon. 1:00-4:00  
Phone Intake: 784-1558  
Hours: M-F 8:30-12:30

12 Cooper St. **Machias**, ME  
Phone Intake: 255-8656  
Hours: Mon. & Wed. 8:00-4:00

88 Federal Street **Portland**, ME  
Phone Intake: 774-8211  
Hours: M-F 8:30-12:30

373 Main St. **Presque Isle**, ME  
Phone Intake: 764-4349  
Hours: M-F 9:00-12:00

Native American Unit  
61 Main Street  
Bangor, ME  
Intake: Tues, Thurs, Fri.  
(800)879-7463

Farmworker Unit  
61 Main Street  
Bangor, ME  
Intake: Mon, Wed, Fri.  
(800)879-7463

Volunteer Lawyers Project  
88 Federal Street  
Portland, ME  
Phone: 774-4348 or (800) 442-4293



*(SELF-HELP GUIDE, continued)*

**V. IF THE COURT FINDS THE ABUSE/HARASSMENT HAS OCCURRED WHAT CAN IT DO TO STOP IT?**

If the Court makes a finding, following the hearing, that the abuse/harassment has occurred, it has a wide range of remedies.

These remedies are the same as those set out in connection with Temporary Orders. However, in addition, if the Court enters a Protective Order after a Final Hearing it can:

- 1) require either or both parties to receive counseling;
- 2) order restitution to the Plaintiff for any losses suffered as a result of the abuse/harassment and, in the case of Protection From Abuse Orders the Court may divide personal property (but not real estate) as well as award temporary custody/support of minor children.

Violations of the Court's Orders regarding Abuse or Harassment Complaints are crimes (in cases where the violation involves the personal safety of the Plaintiff or the Plaintiff's property or residence) and can be punished by jail and fines. Violations which involve Orders regarding counseling or payment of fees of various kinds, are treated as contempt actions and are punished accordingly.

**VI. HOW LONG AM I PROTECTED?**

Protective Orders shall be for a fixed period not to exceed one year. They can be, if the Plaintiff requests and the Court finds it to be necessary, extended for such time as the Court may Order. The Court may, upon request by either party and if that party can establish good cause, modify the Order as circumstances may require.

**VII. DIVORCE/CHILD CUSTODY**

The Penobscot Nation Tribal Court (and likewise the Passamaquoddy Tribal Court) have exclusive jurisdiction over divorce and support issues where the tribal members (either Tribe) both reside on the reservation. Both Tribal Court's also have exclusive jurisdiction over child custody matters involving an Indian child who lives on the reservation. In cases where an Indian child is a ward of a Tribal Court, the Tribal Court retains exclusive jurisdiction no matter where the child may be physically.

Tribal Courts of both the Passamaquoddy and Penobscot tribes maintain concurrent (i.e. cases may be heard in the Tribal Court but may likewise be heard in an appropriate State Court) jurisdiction and also hear such family matters as:

- A. Domestic relations matters between tribal members residing off-reservation who voluntarily submit themselves to the jurisdiction of the Tribal Court (that is, the parties simply agree to proceed in Tribal Court).
- B. Divorce between a tribal member and a non-Indian spouse residing on the reservation.
- C. Paternity determinations and parental rights actions between a tribal member parent and a non-Indian parent of tribal member children where all parties reside on the reservation.

It should be noted that non-tribal members who reside within Penobscot Indian Territory do so by virtue of residency permits issued to them by the Penobscot Nation. As a conditions of those permits, the non-tribal member agrees to submit to tribal jurisdiction.

Although the two tribes have the right to develop their own unique domestic relations law they have, to date, simply adopted Maine's domestic relations laws as their own.

As in civil cases generally, matters are brought to the Court's attention for some action only by way of formal requests. In matters of divorce these "requests" are generally referred to as "complaints" and forms to begin proceedings can be obtained from the Tribal Court Clerk. In custody or post-divorce matters (such things as changes in visitation) this process is begun by what is commonly referred to as a "motion". While the Penobscot Tribal Court uses the Maine Civil Rules of Procedure, the Court has the authority to treat the rules in a manner which makes the Court accessible to the parties. While parties who appear without attorneys are bound to follow the same procedural rules as parties who are represented by attorneys, the Court makes every effort, within the law, to accommodate pro se litigants. In short, there is no reason to be intimidated by the process. There are surprisingly few requirements in order to bring your case before the Court and have it presented at a hearing.

It is important in matters of divorce/custody to be able to provide a list of any property you may own (e.g. land, a mobile home, cars, household items) and any debts you may owe. The Court will require this kind of information in order to properly act on requests for alimony, child support or the division of marital property. Forms can be obtained from the clerk that will help you organize this type of information.

Bear in mind that parties are generally always free to reach agreements with each other on their own. Those agreements can then be presented to and reviewed by the Court. If the proposal is otherwise within the law, the Court can issue an order that incorporates the parties' mutual understanding and binds the parties.

*(Continued on next page)*





## Update on the Maine Indian Tribal-State Commission

by: Diana Scully

**What is the Maine Indian Tribal-State Commission?** The nine-member Maine Indian Tribal-State Commission is an inter-governmental entity created by the 1980 Maine Indian Claims Settlement Act. Four members are appointed by the State, two by the Passamaquoddy Tribe, and two by the Penobscot Indian Nation. The ninth, who is the chairperson, is selected by the eight appointees.

**What are its responsibilities?** The Commission is required to continually review the effectiveness of the Settlement Act and the social, economic, and legal relationship between the Passamaquoddy Tribe, the Penobscot Indian Nation, and the State. The Commission also has the authority to adopt fishing rules for certain ponds, rivers, and streams adjacent to or within Indian Territory.

**What has it been doing recently?** At present, the Commission is supporting the work of a Task Force on Tribal-State Relations established to make recommendations about how to improve Tribal-State relations, including the effectiveness of the Commission. The final report will be submitted to the Tribal Councils and the Maine Legislature before the end of the year.

**What types of activities has the Commission worked on?** The Commission's activities in recent years have included the following:

1. **Fish and Wildlife:** The Commission has promulgated fishing rules for three bodies of water under its jurisdiction in Penobscot Indian Territory, sponsored a number of workshops for State and Tribal biologists and wardens to discuss fishing regulation and enforcement issues, and published a pamphlet on fish and wildlife provisions under the Settlement.

2. **Legislation:** The Commission has made recommendations to the legislature to support the addition of several pieces of land to Passamaquoddy and Penobscot Territory and has presented testimony and information concerning a number of Tribal-State issues, including land use regulation, environmental protection, and court jurisdiction.

3. **Wabanaki Video:** In 1995, the Commission completed an educational video about the Wabanaki People of Maine. *Wabanaki: A New Dawn* portrays the quest for cultural survival by the Passamaquoddy, Penobscot, Maliseet, and Micmac People. In addition to support and guidance offered by dozens of Wabanaki People, the video received funding from more than a dozen contributors. To date, 600 videos have been distributed in Maine, including 300 to Maine's schools.

4. **What other projects are they involved in?** The Commission has also:

- ◆ Facilitated meetings to try to resolve differing views about the meaning and impact of various aspects of the Settlement.
- ◆ Prepared a paper entitled *Maine Indian Claims Settlement Concepts, Context, and Perspectives*.
- ◆ Led efforts to secure private foundation funding for a collaborative venture between the Passamaquoddy Tribe and the University of Maine at Machias.
- ◆ Gathered information about public and foundation resources for which the Tribes are eligible.
- ◆ Responded almost daily to questions raised by members of the public, including many Native American People, about the Settlement and the Tribes in Maine.

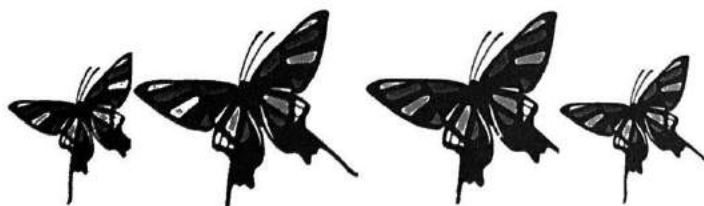
**How can I reach the Commission?** questions about the Commission or Tribal-State relations may be directed to Diana Scully, Executive Director, MITSC, P.O. Box 87, Hallowell, Maine 04347, (207) 622-4815.



(SELF-HELP GUIDE, continued)

It has been the Court's experience that these "Consent Orders", as they are sometimes called, are more effective in achieving a satisfactory solution to what is frequently a difficult emotional as well as legal problem than Orders that issue after contested hearing where old wounds are reopened. The Court would encourage all parties in these highly charged matters, to the extent possible, to work together to come to some common ground. Obviously, divorces will occur and the Court acknowledges that it must on occasion use its power to grant the divorce. However, even in highly charged and bitter disputes, a certain level of cooperation and compromise and a general level of civility on the part of all parties will go a long way towards providing a basis on which to begin a new life after the divorce. This spirit is particularly important in matters involving children.

(Continued on next page)





The Court acknowledges that sometimes it is difficult if not impossible to achieve an acceptable level of cooperation (it does, after all, require two willing parties). In those cases, the Court stands ready and is available, after hearing both parties, to issue a decision.

### VIII. PROBATE

The Penobscot Nation Tribal Court acts as the Probate Court as well. Probate matters include inheritance issues generally (whether or not the deceased left a Will) but also include name changes as well as guardianships/conservatorships.

The Tribal Court has exclusive jurisdiction over the inheritance of lands within the Penobscot Nation (sometimes referred to as "assigned lands"). The inheritance of assigned lands (whether on the reservation or Trust land) is governed by Chapter 12 of the Penobscot Nation Laws and ordinances.

Before we address the rules governing inheritance of Tribal lands, it can be said that probate actions can be initiated by the filing of various forms (available from the Clerk of Court). These forms are designed to be fairly straight forward and can be easily filled out without the necessity of an attorney (although one is, of course, always free to have an attorney represent them, if they so desire; appointed counsel is generally not available in probate matters, except as guardians for incompetent parties).

The Tribal Probate Court generally follows the requirements of the Maine Probate Code. Many Probate matters require notice to interested parties (e.g. heirs, relatives, creditors) and publication. Consequently, there may be some cost to the filing party due to the necessity of publication. These costs are fairly minimal. Although the Court generally requires the party to pay at least 50% of these costs, waiver or a reduction of costs may be obtained upon a request to the Court.

There are essentially two types of probate proceedings: "informal" and "formal".

**Informal Probate** is most appropriate in situations where it is reasonable to assume that no factual or legal dispute will arise (more about the types of disputes in the following section on "formal" probate).

Informal proceedings are begun by the filing of an "Application for Informal Appointment of Personal Representative". The Personal Representative is the person (usually the surviving spouse or other heir) who is authorized to carry out the terms of the decedent's Will or otherwise make distribution of the decedent's property if there is no Will. The Personal Representative is also responsible for the payment of any debts owed by the decedent's estate (payment is made from the assets of the Estate, to the extent possible).

Once this Application is completed, the Court Clerk (it is not necessary to appear before the Judge) will make the appointment of the Personal Representative and issue Letters of Authority, which demonstrate the power of the Personal Representative to act. Once appointed, following the administration of the estate by distributing assets and paying or otherwise settling any claims against the Estate, the personal Representative may close the Estate (again, without the necessity of a Court appearance) by filing what is known as the "Sworn Statement of Personal Representative Closing Estate Under 18-A MRSA 3-1003". This Statement, which is far less complicated than its name, is filed no earlier than six months after the appointment of the Personal Representative.

**"Formal Probate"** proceedings are all probate proceedings which are not informal. For example, an estate that was opened "informally" becomes "formal" once some dispute arises and the court is called upon to resolve that dispute.

Typically, the following examples call for a formal rather than informal opening of an estate:

1. When there is a concern that a will may have been improperly executed;
2. when there is some question about the testator's (the person who made the will, the decedent) capacity to have executed the will;
3. when there are questions as to the appropriateness or ability of the Personal Representative who would otherwise be appointed informally;
4. when there may be a dispute about who is a rightful heir;
5. when the applicant believes there may be some challenge (even if the nature of that challenge is uncertain) and wishes to anticipate such a challenge.

All of these examples are meant to demonstrate the common factor which makes a formal proceeding the best choice: the existence or anticipation of a factual or legal dispute which will need to be resolved by the Court as soon as possible.

As mentioned earlier, Probate matters are governed by the Maine Probate Code and generally by the Rules of Civil Procedure. However, in matters involving the determination of rights in assigned land, those Rules are specifically suspended by Subsection 6 of Chapter 12 of the Penobscot Nation Laws and ordinances except to the extent necessary to insure that all interested parties are given an opportunity to present their case.





No one (even lawyers and Judges) particularly enjoy filling out long and sometimes confusing forms. The Probate process is filled with such forms. Each form, however, serves a specific and important purpose. Primarily they serve to explain the nature of the request to the Court and also serve as a record of the actions of the Personal Representative and protect him or her from complaints of disgruntled parties later on.

It may be illustrative and of some comfort to those about to embark on the probate process to examine Rule 1 of the Probate Code. That rule states, in part: "The rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding." What this means in practical terms is the Court will do its best to accommodate any reasonable request and parties need not worry excessively about being denied access to the Court because they present the wrong form.

Finally, Tribal Courts exist for the benefit of Tribal members, not for the benefit of Judges or lawyers. Pro se litigants will be treated with respect. When used, the Tribal Courts can provide efficient, inexpensive solutions to the problems of Tribal members. I trust this guide will be of some assistance to those who choose to use this Tribal asset. ❖

## DISCRIMINATION

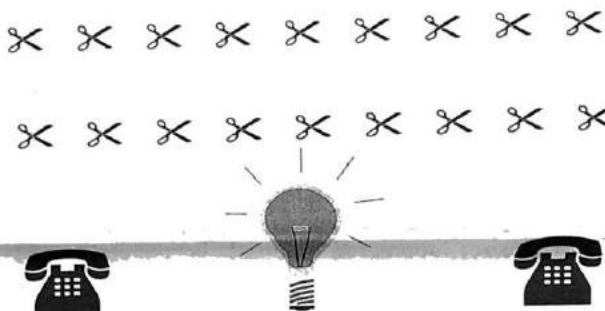
Housing Discrimination..... (800) 669-9777  
Human Rights Commission.....624-6050  
ME Civil Liberties Union.....Ptld 774-5444

## SOCIAL SECURITY:

(800) 322-9401.....Bangor area..947-6717  
SSI (800) 772-1213.....Bangor area....990-4530

## LEGAL SERVICES in addition to Pine Tree:

**Lawyer Referral Service:** refers callers to local private attorneys who will provide 30 minutes of advice for \$20.00.....(800) 860-1460  
**Legal Services for the Elderly:** provides free help to people age 60 and over.....(800) 750-5353  
**Volunteer Lawyers Project:** provides free help for people who meet Pine Tree eligibility criteria.....(800) 442-4293



## CONSUMER RESOURCES

The following is a list of consumer assistance resources that are available to Maine consumers. As winter approaches, it may be a good idea to keep this list handy.

### • CONSUMER COMPLAINTS:

The Consumer Assistance Division (CAD) of the Maine Public Utilities Commission has specially trained staff to assist customers in resolving their complaints with utility companies call..... (800) 452-4699

### • CONSUMER Mediation Service:

The Attorney General's Office operates a consumer mediation service, free of charge. If you want to file a consumer complaint against a business contact this office between 9:00 a.m. to 12:00 p.m. weekdays. Or write this office at State House Station 6, Augusta, ME 04333.....626-8849

### • EMERGENCY FUEL ASSISTANCE:

The following community action programs offer emergency fuel assistance (HEAP) in your areas:

- \* Aroostook County.....768-3053 or (800) 585-3053
- \* Washington/Hancock County .....(800) 432-1766
- \* Penquis /Bangor.....941-2830



## INDEX of COMMUNITY RESOURCES

This is a list of some key resources which will offer you service or direct you to the most appropriate local resource.

### CRISIS

(available 24 hours a day)

- ♦ Adolescent Crisis Stabilization.....(800) 499-9130
- ♦ Adult & Child Abuse/Neglect.....(800) 452-1999
- ♦ Domestic Violence: Penobscot.....947-0496
- ♦ Aroostk: (800) 439-2323 Washgton:... (800) 432-7303
- ♦ Mental Health:.....(800) 245-8889
- ♦ Poison Control Center:.....(800) 442-6305
- ♦ Rape Crisis:.....(800) 310-0000
- ♦ Youth Crisis Stabilization:.....(800) 499-9130





### • **LOW INCOME HELP:**

If you are a low income customer and need assistance paying your utility bills, please call the Division of Community Services Citizens Assistance Line and they will refer you to the agency in your community that can help you. **Call 1-800-452-4617.** Also, if you qualify for Food Stamps, Medicaid, AFDC, SSI, or Fuel Assistance (HEAP), the telephone company might offer a special reduction of your monthly bills.

### • **EMPLOYMENT/Labor Information:**

ME Job Service/Aroostook.....754-2150 or 493-4121  
ME Job Service/Penobscot.....561-4600  
ME Job Service/Washington.....255-8641 or 532-9416  
State Bureau of Labor (wage or child labor complaints)  
.....624-6410  
or U.S. Dept. of Labor.....945-0330

### • **HOUSING:**

Maine State Housing Authority.....(800) 452-4668  
Farmers Home Admin.....947-0335

### • **INSURANCE:**

Bureau of Insurance.....582-9707

• **LEMON LAW Arbitration:** If you purchase a car that has serious defects, the Attorney General's Office Lemon Law Arbitration program can help with these disputes. Please call.....626-8848

### • **LEAD POISONING:**

DHS Health Engineering.....287-4311  
EPA (drinking water).....(800) 426-4791

### • **MOBILE HOMES:**

Manufactured Housing Board.....582-8723  
Manufactured Housing Assn. (they offer mediation for mobile home residents)..623-2204 or.....(800) 698-3335  
Maine State Housing Authority.....(800) 452-4668



## **TO REACH the TRIBAL** **Government and Agencies:**

Aroostook Band of Micmac Indians.....764-1972  
Houlton Band of Maliseet Indians.....532-4273  
Penobscot Indian Nation.....827-7776  
Passamaquoddy Tribe.....796-2301 and 853-2600

### **PENOBSCOT TRIBAL COURT SYSTEM**

**Court Administrator:**.....George Tomer: 827-7776  
**Clerk of Courts:**.....Clara E. Mitchell: 827-5639  
**Tribal Prosecutor:**.....C. Peter Bos: 827-5639  
**Juvenile Intake/Probation Officer:**.....Neana Neptune

*Regular Sessions: First Wednesday of the month.  
Special sessions as needed.*

### **PASSAMAQUODDY TRIBAL COURT SYSTEM**

#### **Indian Township Division:**

**Clerk of Courts:**.....Wanda Doten: 796-2301  
**Juvenile Intake/Probation Officer:**.....John Dana

#### **Pleasant Point Division:**

**Clerk of Courts/Administrator:**Vera Francis: 853-2600  
**Assistant Clerk of Courts:**.....Lynn Smith  
**Juvenile Intake/Probation Officer:**.....Martin Francis

*Regular Sessions: One Friday per month at each division. Special Sessions as needed.*

## **OTHER TRIBAL AGENCIES**

- ♦ **Central Maine Indian Assn. (CMIA):** Operates programs and services, such as job training, adult education, overcoming substance abuse, and small business development, for Maine's off-reservation Native people.....989-5971
- ♦ **Tribal Governors Council:**.....941-6568
- ♦ **Maine Indian Tribal-State Commission:**.....622-4815



## **HEALTH SERVICES**

- ♦ Penobscot Indian Health Center.....827-6101
- ♦ Maliseet Health Center.....532-2240
- ♦ Micmac Health Services.....764-6968
- ♦ Pleasant Point Health Ctr.....853-0711
- ♦ Indian Township Health Ctr.....796-2322

## **CREDITS**

Executive Director of PTLA: Nan Heald, Esq.  
Native American Unit Attorney: Eric Nelson, Esq.

Editor-in-Chief: Aurea E. Vazquez-Duff

Wabanaki Legal News was designed and edited by Aurea Vazquez-Duff, a graduate of Suffolk University Law School in Boston. Recently, Aurea won a Family Law Writing Competition for her paper titled: *The Indian Child Welfare Act of 1978: A Selective Inquiry Into Its Relevance to the Penobscot Indian Nation of Indian Island, Maine.* Aurea joined Pine Tree Legal in June of 1996.



## Pine Tree Chapter of the Red Cross Joins Rural Health Centers of Maine, Inc. in HIV/AIDS Outreach Project

The Migrant and Seasonal Farm Worker HIV/AIDS Outreach Project was designed to bring information and services which help reduce the risk of HIV infection to the thousands of migrant and seasonal farm workers who come to Maine each year. Among this group are many Native people from Atlantic Canada and Maine who come to work the blueberry harvest in eastern Maine. Daniel Crocker of Rural Health Centers of Maine, Inc. (RHCM) and Patrick Walsh of the Pine Tree Chapter of the American Red Cross (PTCARC) brought their resources together to form a unique collaborative initiative in rural health services. The combination of primary medical care and HIV prevention education, testing, and counseling provides a full range of services to this population.

Patrick Walsh, Pine Tree Chapter's coordinator for the Migrant and Seasonal Farm Worker HIV/AIDS Outreach Project, assisted in identifying the unmet needs of this under-served population and designed a program to reach these communities. "I believe it is important to make risk reduction materials relevant to every person they are presented to. People are more likely to relate to information consistent with their culture, language, and traditions" said Walsh. With funding assistance and other support from Maine Community AIDS Partnership (MCAP) and technical support and materials from the Atlantic First Nations AIDS Task Force, Walsh trained members of the Hispanic and Native American communities as Red Cross HIV/AIDS Educators. These educators then developed HIV/AIDS presentations which incorporated material and approaches appropriate for the different cultures they wished to teach.

Tuma Young, a Micmac consultant and outreach educator, along with Hispanic outreach workers provided services in five counties. Young incorporated traditional Penobscot Nation artwork in his presentation materials. Young displayed facts about HIV/AIDS in pamphlets, posters and flyers decorated with the artwork. Prevention education, access to counseling and case management referral were among the services provided.



Only in its second year, the program reached over 1,650 migrant and seasonal farm workers. The Pine Tree Chapter and RHCM are extremely proud and pleased with the outcome of the project and look forward to ongoing collaboration. Project Coordinator Pat Walsh and consultant Tuma Young are presenting the project's work at the Fourth Annual Aboriginal Conference on HIV/AIDS in Halifax, Nova Scotia in November. At the same time Dan Crocker is presenting the project's work at the Eastern Stream Migrant Health Conference in Tampa, Florida.

The Pine Tree Chapter of the American Red Cross can provide you with HIV/AIDS presentation materials, information on how to be trained in first aid and CPR, materials on HIV/AIDS, counseling, anonymous HIV testing. For more information about this project, contact: Pat Walsh at (207) 941-2903 or Dan Crocker at (207) 622-9252. You may also call the AIDS Hotline toll free at (800) 851-AIDS (2437). ☒

## Pine Tree Legal Assistance



### Office Hours



39 Green St. **Augusta**, ME  
Phone Intake: 622-4731  
Hours: M-F 8:30-12:30

61 Main St. **Bangor**, ME  
Phone Intake: 942-8241  
Hours: M-F 8:00-3:00

City Hall 3d Fl. Conference Room  
**Lewiston**, ME Mon. 1:00-4:00  
Phone Intake: 784-1558  
Hours: M-F 8:30-12:30

12 Cooper St. **Machias**, ME  
Phone Intake: 255-8656  
Hours: Mon. & Wed. 8:00-4:00

88 Federal Street **Portland**, ME  
Phone Intake: 774-8211  
Hours: M-F 8:30-12:30

373 Main St. **Presque Isle**, ME  
Phone Intake: 764-4349  
Hours: M-F 9:00-12:00

Native American Unit  
 61 Main Street  
 Bangor, ME  
Intake: Tues, Thurs, Fri.  
 (800) 879-7463





## ABOUT PINE TREE LEGAL ASSISTANCE

Pine Tree Legal Assistance is a nonprofit organization which provides free legal help to poor people with civil (non-criminal) legal problems. Pine Tree has field offices in Portland, Augusta, Bangor, and Presque Isle. Pine Tree also has outreach offices in Lewiston and Machias which are open only on a part-time basis. The office hours and phone numbers for these locations are listed separately.

Pine Tree has lost over half of its staff in the last three years, largely as a result of federal funding cutbacks. As a result, Pine Tree can only help a small percentage of all the people who contact our offices. High priorities for help from the basic field offices include the following kinds of cases:

- ◆ eviction from public housing
- ◆ home foreclosures
- ◆ domestic violence
- ◆ loss, reduction or denial of government benefits (food stamps, AFDC, Social Security, SSI, unemployment, etc.)
- ◆ problems with Medicaid or Medicare

Low-income tribal members who have a legal problem involving these types of cases should contact the nearest office of Pine Tree for help. They do not need to contact the Native American Unit for help with these basic problems. Also, if you are doing farmwork and have employment problems, you may contact Pine Tree Legal's Farmworker Unit at 1-800-879-7463.

Many people contact Pine Tree for help with a family law problem. Pine Tree does not have the staff to represent people in divorce, child custody or child support cases. However, Pine Tree field offices can provide information about the court procedures for these different kinds of cases.

Pine Tree also operates a special Native American Unit, which is housed in Bangor and has a toll-free number: 1-800-879-7463. The Unit may be able to help low-income tribal members with problems in the following areas:

- ◆ access to health services
- ◆ border crossing issues
- ◆ discrimination
- ◆ Indian Child Welfare Act problems.

The Native American Unit is staffed by attorney Eric Nelson, who has worked for many years at Pine Tree on behalf of migrant farmworkers and Native Americans. Eric lives in Bangor but travels around the State when necessary to handle a case or meet with clients. Pine Tree's executive director statewide is Nan Heald, who worked in the Native American Unit from 1985-1990, primarily on the Micmac recognition effort. Nan works in Portland and can be reached at 207-774-4753.

If you are a tribal member interested in volunteering for Pine Tree's Native American Unit, please call Eric Nelson at 1-800-879-7463. Tribal members can help us provide community education on important legal issues, as well as help with other projects. ☒



## NEED A LAWYER FOR ANY OF THESE



## MATTERS ?



⇒ ACCESS TO HEALTH SERVICES  
(including mental health and substance abuse)

⇒ BORDER CROSSING ISSUES  
(including religious freedom issues)

⇒ DISCRIMINATION  
(including consumer, housing and employment)

⇒ INDIAN CHILD WELFARE ACT  
(The ICWA applies to custody proceedings involving Indian children. We are able to provide representation in limited circumstances; for example, if you are a Native American parent who is attempting to revoke a guardianship to obtain custody or if you are a grandparent or other relative wanting custody of a child who has spent the majority of his or her life with you).

### IF SO, CALL:

PINE TREE LEGAL ASSISTANCE  
NATIVE AMERICAN UNIT  
at 1-800-879-7463

Tuesday, Thursday & Friday  
9:00-3:00 p.m.

*Pine Tree Legal Provides Free Legal Services To  
Eligible Low-Income Individuals, And We May Be  
Able To Help You*