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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In the Matter of:)

██████████)

4/16/2019)

A Minor Child)

Case No. 4FA-21-0332PR

Tribal Court Case Number: NVS-J-21-001

**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED
CONSIDERATION AND ENFORCMENT OF TRIBAL COURT ORDER**

In accord with this Court's December 22, 2022 Order, the Native Village of Selawik files this reply memorandum in support of its request that this Court enforce its December 16 Tribal Court Order. As set forth below, Nikki Richman and her counsel are effectively defying this Court's prior rulings; engaging in bad-faith conduct; and lying to this Court about basic indisputable facts. Sanctions are appropriate as is a referral to Bar Counsel.

RELEVANT BACKGROUND

On May 25, 2022, this Court, after *exhaustive* briefing by the parties, entered an order recognizing that the Selawik Tribal Court had jurisdiction over this custody dispute. This Court's Order was explicit: "The court hereby recognizes

tribal jurisdiction [and] **directs the parties to handle this matter in the court whose jurisdiction is primary ...**".¹

After *exhaustive* briefing by the parties, this Court also recognized that the Selawik Tribal Court had determined that [REDACTED] was a tribal member and that this Court could not and would not overrule that determination.²

On November 27, 2022, the Selawik Tribal Court served a notice on all parties (including Nikki Richman and her counsel) informing all parties that it would be holding a hearing to decide placement of [REDACTED] on December 16, 2022.³

The Tribal Court's Notice explicitly stated that the **purpose** of the hearing was to decide placement of [REDACTED].⁴

The Notice also explicitly stated that all parties could call any witnesses that they desired and could offer the Tribal Court any exhibits that they thought relevant.⁵

On November 18, Nikki Richman's counsel emailed the Tribe's attorneys and stated that the December 16 date was "acceptable."⁶

On December 16 all parties (including Nikki Richman and her counsel) appeared before the Selawik Tribal Court.⁷ All parties (including Nikki Richman

¹ *May 25 Order* at 1. (emphasis added)

² November 9, 2022 Order Granting Motion for Attorney's Fees at 5.

³ *See Exhibit 1* hereto.

⁴ *Id.*

⁵ *Id.*

⁶ *See Exhibit 2* hereto, at page 2.

⁷ *See Certificate of Counsel*, filed and served herewith.

and her counsel) offered testimony to the Selawik Tribal Court. All parties offered witnesses to the Tribal Court.⁸

After a hearing that lasted for a number of hours, the Tribal Court announced to all the parties that it would adjourn and take the matter under advisement.⁹

After an adjournment, the Tribal Court reconvened and all parties (including Nikki Richman and her counsel) appeared before the Tribal Court.¹⁰ The Court announced that, after considering all of the evidence, it had concluded that ██████'s long-run best interests would be best served if she were raised by her grandmother, Arlene Ballot, and amongst her extended relatives and her Native culture.¹¹

After the Tribal Court announced its decision, Nikki Richman thanked the Tribal Court for offering her the opportunity to be heard.¹²

On December 16, the Tribal Court served all parties (including Nikki Richman and her counsel) with a written copy of its Order.¹³

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See Exhibit 3 hereto.

On December 18, Nikki Richman and her counsel were notified that Arlene Ballot would be traveling to Fairbanks the week of December 19 in order to retrieve

██████████¹⁴

Nikki Richman and her counsel have now refused to comply with the Tribal Court order and have refused to convey ██████████ to her grandmother, Arlene Ballot, in accord with the Tribal Court's order.

The Tribe has now been forced to seek relief from this Court under CINA Rules 24 and 25.

THIS COURT'S PRIOR RULINGS

As noted above, this Court has already held that there is a Selawik Tribal Court and that it has jurisdiction over this custody matter.¹⁵

This Court has already held that the Village of Selawik is a sovereign nation and is entitled to its own laws and the right to interpret its own laws.¹⁶

This Court has already held that Nikki Richman's arguments that the Tribal Court does not have jurisdiction over this custody dispute is "suspect at best."¹⁷

This Court has already held that Nikki Richman's prior due process arguments were "empty allegations" and that she "lacked good faith by making a due process argument for which she had no justification."¹⁸

¹⁴ *Id.*

¹⁵ *May 25 Order* at 1. (emphasis added)

¹⁶ November 9, 2022 Order Granting Motion for Attorney's Fees at 5.

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 5.

NIKKI RICHMAN'S NEW, DISINGENUOUS, ARGUMENTS

Nikki Richman and her counsel now argue to this Court that the "Tribal Court does not exist." *Opp. to Registration of Tribal Court Order at 2*. This, despite this Court already holding that the Tribal Court *does* exist.

Nikki Richman and her counsel now argue to this Court that the "child was not a tribal member under the laws of the Tribe." *Opp. to Registration of Tribal Court Order at 18*. This, despite this Court already holding that the child is a tribal member and that Tribal Court's ruling to that effect must be respected.

Nikki Richman and her counsel now argue to this Court that they were not notified of the December 16 hearing and due process was thereby violated. This, despite the fact that written notice was provided to both and they *both appeared* before the Tribal Court.

Nikki Richman and her counsel now argue to this Court that they were not informed of the purpose of the December 16 hearing. This, despite the fact that the written notice served on them stated that the purpose of the hearing was to decide placement of ██████████ and a follow-up email was sent stating that the purpose of the hearing was to decide "whether ██████████ should be moved from [Nikki Richman's] home."¹⁹

Nikki Richman and her counsel now argue to this Court that this case is really a custody between the biological father and the grandmother. This, despite the fact that the biological father has not had custody of the child for years and

¹⁹ See Exhibit 2 at page 1.

will likely never have custody of the child since he is in prison for murdering the child's mother.

ARGUMENT AND AUTHORITIES

The Supreme Court has been crystal clear that, when a trial court receives a tribal court order such as the one *sub judice*, the trial court is supposed to ask only two questions:

- (1) did the tribal court lack jurisdiction when it entered its judgment?;
- (2) did the tribal court render its judgment in accordance with minimum due process?

Peidlow v. Williams, 459 P.3d 1136, 1142 (Alaska 2020).

Here, this Court has already ruled on the first point: this Court has already held that the tribal court *does* have jurisdiction over this dispute.

The second point is also beyond debate: the exhibits attached hereto prove that Nikki Richman *was* provided with due process.

This means one simple thing: this Court must give full-faith and credit to the Tribal Court's December 16 custody order.

CINA Rules 24 and 25 were supposed to be the simple vehicles that Alaska's tribal courts could use to obtain full-faith and credit for their orders. As the Supreme Court explained, these two rules were promulgated "to make the rules simpler, more user-friendly, and better attuned to tribal court's needs."

Peidlow v. Williams, 459 P.3d at 1142.

What is supposed to happen when a tribe files for relief under CINA Rules 24 and 25? The process is straightforward: the trial court sets on an immediate

hearing, with the child.²⁰ And, unless the opposing party can prove one of three points, a writ is supposed to issue so as to effectuate the tribal court's order.

What are the only three issues that may be considered under CINA Rules 24 and 25? First, whether the tribal court had jurisdiction. Second, whether the tribal court order has been vacated, stayed, or modified by a court having jurisdiction to do so. Third, whether due process was afforded to the responding party. *Peidlow* 459 P.3d at 1143.²¹

Again, none of these three issues can legitimately be disputed. This Court has already held that the Selawik Tribal Court has jurisdiction over this matter. Second, there is no suggestion that the Tribal Court's order has been stayed or vacated by any court. Third, the exhibits attached hereto prove that Nikki Richman was given notice and an opportunity to be heard and in fact, testified and was heard.

This means one simple thing: this Court should grant the Tribe the requested relief under CINA Rules 24 and 25 and issue the requested writ. Alternatively, this Court should set on an immediate hearing and order Nikki Richman to appear in court with the child.

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²⁰ CINA Rule 25(d) provides that a hearing must be scheduled on the "next judicial day" and that the child should accompany the respondent to court.

²¹ This means that the various other baseless arguments that Nikki Richman is now making to this Court, e.g., the federal ICPA statute invalidates the Tribal Court order, cannot even be considered by this Court.

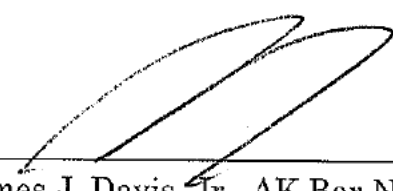
CONCLUSION

This Court attempted to be Solomonic and open-minded in its order on attorney's fees, finding that no one party was at fault for this voluminous litigation. This Court's forgiving attitude seems to have only emboldened Nikki Richman and her counsel to persist in their litigation misconduct. Some of the arguments that Nikki Richman and her counsel are now making to this Court have already been *explicitly* rejected by this Court. Others of them are simply at odds with the uncontradicted written record before this Court.

The only reason that Nikki Richman and her counsel continue in these bad-faith antics, is because they can. This Court should issue the requested writ; set on a hearing to consider Rule 11 sanctions; refer the matter to Bar Counsel; and award the Tribe their fees for having to engage in this needless motion practice.

DATED this 3rd day of January 2023

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CERTIFICATE OF SERVICE

I certify that this document was served on the following parties: By Mail

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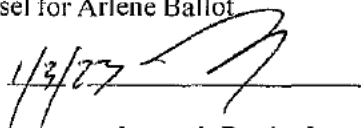
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Dated: 1/3/23 
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