TITLE II
RULES OF PROCEDURE IN CIVIL ACTIONS

CHAPTER 1
GENERAL PROVISIONS

Rule 1. Scope of Rules; Definitions.

(a) Scope. Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in all civil actions and proceedings in the Trial Court of the Ponca Tribe of Nebraska.

(b) Definitions. Unless the context requires otherwise or another definition is provided in these rules, terms used in these rules and defined in Section 1-1-11 of the Code have the meanings set forth in said section of the Code.

Rule 2. One Form of Action. Except for juvenile proceedings, there shall be one form of action known as the "civil action."

Rule 3. Construction. These rules shall be liberally construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 4. Collateral References.

(a) Except as may be inconsistent with other provisions of this Code or these rules or otherwise inapplicable because they refer to special federal procedures having no counterpart in the Tribal Court, any procedures or matters not specifically set forth herein shall be handled in accordance with, in the case of the trial court, the Federal Rules of Civil Procedure and, in the case of the court of appeals, the Federal Rules of Appellate Procedure, and with general principles of fairness and justice as prescribed and interpreted by the Court.

(b) When handling matters in accordance with the Federal Rules of Civil Procedure or Federal Rules of Appellate Procedure, terms particular to the United States and its federal courts shall be read as referring to their counterparts under the laws of the Tribe, including, but not limited to the following:

(1) "Attorney General" shall refer to the Attorney for the Tribe;

(2) "Clerk" shall refer to the Tribal Court Administrator;

(3) "Court" shall refer to the trial court or court of appeals, as appropriate;

(4) "Judicial District" shall refer to the territory of the Tribe; and

(5) "United States" shall refer to the Tribe.

Rule 5. Authority of Tribal Court Administrator. The Tribal Court Administrator may delegate any of the Tribal Court Administrator's functions or duties under these rules to the Tribal Court Clerk or other subordinate staff member of the Tribal Court.

Rule 6. Unsworn Declarations under Penalty of Perjury. Wherever, under any of these rules, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn written declaration, verification, certificate, statement, oath, or affidavit of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn written declaration, certificate, verification, or statement, subscribed by such person as true under penalty of perjury, and dated, in substantially the following form:

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

Rule 7. Citation. These Rules shall be known as the Ponca Tribe of Nebraska Rules of Civil Procedure and may be abbreviated "P.T.N.R.C.P."

CHAPTER 2
COMMENCEMENT OF ACTION AND SERVICE OF PROCESS

Rule 8. Commencement of Action. A civil action is commenced by filing a written complaint with the Tribal Court Administrator and the payment of all required fees. The Court shall have jurisdiction from the time when both the complaint is filed and it is properly served upon the defendant or respondent.

Rule 9. Summons.

(a) Contents. A summons must:

(1) Name the court and the parties;

(2) Be directed to the defendant or respondent;

(3) State the name and address of the plaintiff's or petitioner's legal counsel or, if unrepresented, the plaintiff or petitioner;

(4) State the time within which the defendant or respondent must respond to the complaint; and

(5) Notify the defendant or respondent that a failure to respond to the complaint or to otherwise appear and defend will result in a default judgment against the defendant or respondent for the relief demanded in the complaint.

(b) Issuance. The summons may be signed and issued by the Tribal Court Administrator with the seal of the court or it may be signed and issued by the legal counsel for the plaintiff or petitioner. A summons or a copy of a summons addressed to multiple defendants or respondents must be issued for each defendant or respondent to be served. Separate additional or amended summons may issue against any defendant or respondent at any time. All other process shall be issued by the Tribal Court Administrator, except as otherwise provided in these rules.

Rule 10. Service of Summons and Complaint.

(a) In General. Service of process shall consist of delivering to the party to be served a copy of the complaint along with the summons.

(b) By Whom Served. Any person who is at least the age of majority and not a party may serve a summons and complaint. At the plaintiff's or petitioner's request, the court may order that service be made by a Tribal law enforcement officer or by a person specially appointed by the court. The court must so order if the plaintiff or petitioner has been authorized to proceed as an indigent.

(c) Personal Service. Personal services shall be as follows:

(1) Upon a natural person whose is the age of majority or older, by:

(i) delivering a copy of the required papers to the person himself;

(ii) leaving a copy of the required papers with a person of suitable discretion over the age of majority at the person's house, principal place of business, or usual workplace; or

(iii) by delivering a copy to a person authorized by appointment or by law to receive service of process.

(2) Upon a natural person who is a minor, by delivering a copy of the required papers to:

(i) the person's parent or guardian;

(ii) any person in whose care or control the person may be; or

(iii) any person with whom the person resides.

(3) Upon a person for whom a guardian or conservator has been appointed, by delivering a copy of the required papers to such guardian or conservator.

(4) Upon any form of corporation, partnership, association, cooperative, limited liability company, limited partnership association, trust, organization, or other form of entity that is recognized under the laws of the Tribe or of any other jurisdiction, by delivering a copy of the required papers to:

(i) the registered agent for service as set forth in the records of the Secretary of the Tribal Council or of any other jurisdiction or that agent's secretary or assistant;

(ii) An officer, director, manager, partner, agent, shareholder, member, person having an ownership or similar interest in the entity, principal employee, or functional equivalent of any of the foregoing, or their secretary or assistant; or

(iii) A trustee of a trust, or that trustee's secretary or assistant.

(5) Upon the Tribe or any of its departments, agencies, boards, commissions, subdivisions or economic enterprises not subject to suit in their own name under the laws of the Tribe, by delivering a copy of the required papers to the Tribal Council

Secretary and mailing a copy of the required papers to the Attorney for the Tribe;

(6) Upon an officer, agent, or employee of the Tribe acting in an official capacity, by delivering a copy of the required papers to the officer, agent, or employee and mailing a copy of the required papers to the Attorney for the Tribe.

(7) Upon a department, agency, board, commission, subdivision or economic enterprise of the Tribe that is subject to suit in its own name, by delivering a copy of the required papers to the director, principal officer or other executive employee thereof, and mailing a copy to the legal counsel for the department, agency, board, commission or subdivision or, in the absence thereof, the Attorney for the Tribe.

(d) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

(e) Registered Mail. Any person or party who cannot be located within the territory of the Tribe but whose whereabouts outside the territory of the Tribe is known may be served by depositing a copy of the required papers in the United States Mail, addressed to the person or party to be served, by registered or certified mail with request for a return receipt which shall be filed with the return of service. Service shall be complete on the date of delivery to the person.

(f) Personal Service Outside Territory of Tribe. Service upon a person or party may be made anywhere in the United States and shall be made on the person or party in the same manner as service is made within the territory of the Tribe by any person who is authorized to serve process pursuant to the laws of the jurisdiction wherein such person is found.

(g) Substituted Service. If a party attempting personal service is unable to accomplish service, the party may file a motion, supported by an affidavit of the person attempting service, requesting an order for substituted service. The motion shall state the efforts made to obtain personal service, the reason personal service could not be obtained, and the proposed method of substituted service, including the identity of any alternative person to whom the party wishes to deliver the required papers. If the court is satisfied that due diligence has been used to attempt personal service, that further attempts to obtain personal service would be to no avail, and any alternative person proposed for delivery of the required papers is appropriate under the

circumstances, the court may order substituted service if the proposed method of substituted service is reasonably calculated to give actual notice to the person or party upon whom service is to be effective.

(h) Service by Publication. Service by publication may be made only upon order of the Court. A party may file a motion, supported by an affidavit of the person attempting service, requesting an order of service by publication. The motion shall state the facts authorizing such service, the efforts, if any, made to obtain personal service, and the address, or last known address, of each person to be served or that the address and last known address are unknown. If the court is satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, it may order service by publication. Service by publication may be accomplished by publishing the contents of the summons in a local newspaper of general circulation and by public electronic means, such as the Tribe's website, at least once per week for four (4) consecutive weeks and by leaving an extra copy of the required papers with the Tribal Court Administrator for the party. Service shall be complete on the day of the last publication.

(i) Proof of Service. Proof of service shall be filed with the Tribal Court Administrator and made as follows:

(1) If served personally, by a statement duly acknowledged under oath or affirmation by the person completing the service providing the date, place, and manner of service;

(2) If served by mail, by a statement under oath or affirmation providing the date of the mailing and the address where mailed with the return receipt attached, where required;

(3) If served by publication, by a statement under oath or affirmation providing the dates, newspapers and electronic means of publication with a copy of the last notice published in newspaper showing the date of publication attached;

(4) If served by waiver of service, by the written waiver of service executed by the person served or by their legal counsel;

(5) If served by substituted service, by a statement under oath or affirmation providing the date, place, and manner of service, including any address(es) where service was mailed or provided.

(j) Time Limit for Service. If service of the summons and complaint is not made upon a party to be served within 120 days after the filing of the complaint, the Court, upon motion or on its own initiative after notice to the plaintiff or petitioner, shall dismiss the action without prejudice as to that party or direct that service be effected within a specified time; provided that if the plaintiff or petitioner shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Rule 11. Service of Other Papers.

(a) When Required. Unless these rules provide otherwise, each of the following papers must be served on every party:

(1) Every order stating that service is required;

(2) Every pleading filed after the original complaint;

(3) Every paper relating to discovery required to be served upon a party, unless the court otherwise orders;

(4) Every written motion, except one that may be heard ex parte; and

(5) Every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper.

(b) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 10.

(c) Serving Legal Counsel. If a party is represented by legal counsel, service under this rule must be made on the legal counsel unless the court orders service on the party.

(d) A paper is served under this rule by:

(1) Handing it to the person;

(2) Leaving it at the person’s office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(3) If the person has no office or the office is closed, leaving it at the person’s dwelling or usual place of abode with

a person of suitable discretion over the age of majority who resides there;

(4) Mailing it to the person's last known address, in which case service is complete upon mailing;

(5) Leaving it with the Tribal Court Administrator if the person has no known address;

(6) Sending it by electronic means, including facsimile and electronic mail, if the person does not object thereto, in which case service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(7) Delivering it by any other means that the person does not object to, in which event service is complete when the person receives the papers.

Rule 12. Filing.

(a) Required Filings. Any paper after the complaint that is required to be served must be filed with a certificate of service within a reasonable time after service.

(b) Papers Not to Be Filed. The following papers shall not be filed separately and may be filed as attachments or exhibits to other documents only when relevant to the determination of an issue before the Court:

(1) Any document used solely for issuance of a subpoena or subpoena duces tecum, a subpoena or subpoena duces tecum, and any affidavit of service of a subpoena;

(2) Notices of deposition; depositions, interrogatories and answers; requests for production, inspection or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

(3) Any proposed pleading, except such pleading may be filed after ruling by the Court if necessary to preserve the record on appeal;

(4) Any paper which previously has been filed in the case. If a party desires to call the Court's attention to anything contained in a previously filed paper, the party shall do so by incorporation by reference;

(5) Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal; and

(6) Offers of judgment.

(c) How Filing Is Made. The filing of pleadings and other papers with the court shall be made by filing them with the Tribal Court Administrator, including by electronic means, except that the judge may permit the papers to be filed with the judge and in that event the judge shall note thereon the filing date and forthwith transmit them to the office of the Tribal Court Administrator.

Rule 13. Constitutional Challenge to Law.

(a) Notice to Tribe. If the parties do not include the Tribe, a party that files a pleading, written motion, or other paper drawing into question the constitutionality of a code, ordinance, rule, regulation or other law of the Tribe must promptly:

(1) File a notice of constitutional question stating the question and identifying the paper that raises it; and

(2) Serve the notice and paper on the Attorney for the Tribe either by certified or registered mail or by sending it to an electronic address designated by the Attorney for the Tribe for this purpose.

(b) Intervention of Tribe. Unless the court sets a later time, the Attorney for the Tribe may intervene within sixty (60) days after the notice is filed. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the law unconstitutional.

Rule 14. Time.

(a) Computation. In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday. Unless the court orders

otherwise, if the Tribal Court Administrator's office is inaccessible on the last day for filing, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.

(b) Enlargement. The Court, for good cause shown, may enlarge the prescribed period of time within which any required act may be done.

(c) Motions. Written motions and any notices of hearing thereon, other than one which may be heard ex parte, shall be served not later than five (5) days prior to the time specified for a hearing.

(d) Service by Mail. Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such additional time shall not cause Saturdays, Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

Rule 15. Proceeding in Forma Pauperis.

(a) Motion to Proceed in Forma Pauperis. The Court may authorize the commencement, prosecution or defense of any suit, action or proceeding without prepayment of fees or security therefor, by a person who submits a motion to proceed in forma pauperis and an affidavit that:

(1) shows in explicit detail, the party's inability to pay or to give security for fees and costs;

(2) claims an entitlement to redress; and

(3) states the nature of the action or defense.

(b) Action on Motion. If the Court grants the motion, the party may proceed without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the Court denies the motion, it must state its reasons in writing.

(c) Service by Court. The Tribal Court Administrator shall issue and serve all process and perform all duties in cases where an individual is proceeding in forma pauperis. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by the laws of the Tribe in other cases.

(d) Dismissal of Proceedings. Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss an action in forma pauperis at any time if the court determines that:

(1) the allegation of poverty is untrue; or

(2) the action:

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(e) Award of Costs. Judgment may be rendered for costs at the conclusion of the action as in other proceedings, but the Tribe shall not be liable for any of the costs thus incurred. Such costs shall be taxed in favor of the Court as the fees excused under this Rule. If the Tribe or the Court has paid any costs for the prevailing party, the same shall be taxed in favor of the Tribe or the Court, as appropriate.

(f) In no event shall a person bring a civil action or appeal a judgment in a civil action or proceeding under this Rule if the person has, on three (3) or more prior occasions, brought an action or appeal in a court of the Tribe that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the person is under imminent danger of serious physical injury.

Rule 16. REPEALED – RESOLUTION 16-36

CHAPTER 3
PLEADINGS AND MOTIONS

Rule 17. Pleadings Allowed.

(a) Only these pleadings are allowed:

(1) A complaint or petition;

(2) An answer to a complaint or response to a petition;

(3) An answer to a counterclaim designated as a counterclaim;

(4) An answer to a crossclaim;

(5) A third-party complaint;

(6) An answer to a third-party complaint; and

(7) If the court orders one, a reply to an answer or response.

(b) The Court may grant additional leave to file pleadings in the interest of narrowing and defining issues or as justice may require.

Rule 18. Motions and Orders.

(a) A request for a court order must be made by motion. The motion must:

(1) Be in writing, unless made during a hearing or trial;

(2) State with particularity the grounds for seeking the order; and

(3) State the relief sought.

(b) The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(c) No court order shall be issued unless a civil action has been commenced as provided in Rule 8.

(d) A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

(e) An order includes every direction of the Court whether included in a judgment or not, and may not be made without notice to adverse parties nor vacated or modified without notice, except as provided in the laws of the Tribe.

Rule 19. General Rules of Pleading.

(a) Claims for relief. A pleading which sets forth a claim for relief must contain:

(1) A short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) A short, plain statement of the claim showing that the pleader is entitled to relief; and

(3) A demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses, Admissions and Denials.

(1) In responding to a pleading, a party must:

(i) State in short and plain terms its defenses to each claim asserted against it; and

(ii) Admit or deny the allegations asserted against it by an opposing party.

(2) A denial must fairly respond to the substance of the allegation.

(3) A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must state so, and the statement has the effect of a denial.

(6) An allegation, other than one relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied.

(c) Affirmative Defenses. In responding to a pleading, a party must affirmatively state any avoidance or affirmative

defense. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleadings to Be Concise and Direct; Consistency.

(1) Each allegation must be simple, concise, and direct. No technical form is required.

(2) A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

Rule 20. Form of Pleadings.

(a) Caption. Every pleading must have a caption with the court's name, a title, a file number, and a designation as to what kind of pleading it is. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence, and each defense other than a denial, must be stated in a separate count or defense.

(c) Exhibits, Adoption by Reference. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) Preparation of Pleadings.

(1) All pleadings and other papers filed in any action or proceeding shall be on white, opaque, unglazed paper measuring 8-1/2 inches x 11 inches, with margins not less than 1 inch.

(2) Notwithstanding the foregoing, exhibits, attachments to pleadings, or pleadings from jurisdictions other than the Tribe which are larger than the specified size shall be folded to the specified size or folded and fastened to pages of the specified size. Exhibits or attachments to pleadings which are smaller than the specified size shall be fastened to pages of the specified size.

(3) All pleadings and other papers filed shall have the pages numbered and shall state the number of the action, the title of the court and action, the nature of the paper filed and the name, address, e-mail address, and telephone number of the legal counsel or the party, if the party is unrepresented, filing the paper.

(4) All pleadings and other papers filed, other than printed forms, shall be clearly handwritten or typewritten on one side of the page only. The body of all documents shall be double spaced, except for headings, quotations and footnotes which may be single spaced.

(5) Substantial compliance with the foregoing requirements will be sufficient for all parties not represented by legal counsel and the court may, on its own motion or on request of any party, waive any of the foregoing requirements or provision.

Rule 21. Signing of Pleadings.

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one legal counsel of record in the legal counsel's name or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or other law of the Tribe specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the legal counsel's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, legal counsel or an unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable legal counsel's fee.

(d) Assistance to Unrepresented Parties. Legal counsel may help to draft a pleading, motion or document filed by an otherwise self-represented person, and legal counsel need not sign that pleading, motion, or document. In providing such drafting assistance, legal counsel may rely on the otherwise self-represented person's representation of facts, unless legal counsel has reason to believe that such representations are false or materially insufficient, in which instance legal counsel shall make an independent reasonable inquiry into the facts.

Rule 22. Defenses and Objections.

(a) When Presented. Unless another time is specified by this rule or a provision of the Code, a defendant, respondent or other party against whom a claim has been made for affirmative relief shall have thirty (30) days from the date of service upon him to answer or respond to the claim.

(b) Effect of Motion. Unless the court sets a different time, filing a motion under this rule alters these periods as follows:

(1) If the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action; or

(2) If the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(c) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But, a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) insufficient service of process;

(4) failure to state a claim upon which relief can be granted; and

(5) failure to join a party.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(d) Motion for Judgment on the Pleadings. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

(e) Preliminary Hearings. The defenses enumerated in subsection (c) of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings in subsection (d) of this rule shall be heard and determined before trial on application of any party.

(f) Result of Presenting Matters Outside the Pleadings. If, on a motion under subsection (c)(4) of this rule or subsection (d) of this rule, matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for

summary judgment. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(g) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(h) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after service of the pleading upon the party or upon the court's own initiative at any time, the court may strike from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(i) Joining Motions. A motion under this rule may be joined with any other motion allowed by this rule. Except for lack of subject-matter jurisdiction, failure to state a claim upon which relief can be granted, failure to join a person, and failure to state a legal defense to a claim, a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(j) Waiver or Preservation of Certain Defenses.

(1) A party waives any defense of lack of jurisdiction over the person or insufficiency of service of process by:

(i) Omitting it from a motion in the circumstances described in subdivision (10) of this rule; or

(ii) Failing to either raise it by motion under this rule or include it in a responsive pleading or an amendment allowed by these rules.

(2) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 23. Counterclaim or Crossclaim.

(a) Compulsory Counterclaim. A pleading must state as a counterclaim any claim that, at the time of its service, the pleader has against an opposing party if the claim:

(1) Arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(2) Does not require adding another party over whom the court cannot acquire jurisdiction.

(b) The pleader need not state the claim if, when the action was commenced, the claim was the subject of another pending action, or the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(c) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(d) Counterclaim Against the Tribe. These rules do not permit any party to assert a counterclaim against the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such unless another law of the Tribe expressly permits such counterclaim.

(e) Counterclaim Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Crossclaim. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

Rule 24. Third Party Practice.

(a) When a Defending Party May Bring in a Third Party.

(1) At any time after commencement of the action, a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. A copy of all previous pleadings that have been filed in the action shall be served together with the third-party complaint or be provided by the third-party plaintiff to the person served promptly after service.

(2) The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 14 days after serving the original answer. Otherwise, the third-party plaintiff must, by motion, obtain the court's leave.

(3) The person served with the summons and third-party complaint, hereinafter called the third-party defendant:

(i) Must assert any defenses to the third-party plaintiff's claim as provided in these rules;

(ii) Must assert any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants;

(iii) May assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim; and

(iv) May assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(4) The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses and any counterclaims and cross-claims as provided in these rules.

(5) A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

Rule 25. Amendment of Pleadings.

(a) Amendment Before Trial. A party may amend his pleadings once as a matter of course before the opposing party has responded or, if no response is required, within 20 days of serving it. The opposing party may respond, if appropriate, and any trial date rescheduled if necessary. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave.

(b) Amendment During Trial. When issues or evidence not raised in the pleadings are heard at trial, they shall be treated in all respects as if they had been raised in the pleadings and the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

(c) Relation Back of Amendments. An amendment to a pleading relates back to the date of the original pleading when:

(1) The amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out in the original pleading; or

(2) The amendment changes the party or the naming of the party against whom a claim is asserted and if, within the period provided for serving the summons and complaint, the party to be brought in by amendment received such notice of the action that it will not be prejudiced in defending on the merits and knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

CHAPTER 4
PARTIES

Rule 26. Parties.

(a) Real Party in Interest. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(1) An executor or administrator of an estate;

(2) A guardian;

(3) A trustee of an express trust;

(4) A party with whom or in whose name a contract has been made for another's benefit; and

(5) A party authorized by statute.

(b) Minor or Incompetent. Whenever a minor or incompetent person has a representative, such as a general guardian or similar fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem or issue another appropriate order to protect a minor or incompetent person who is unrepresented in an action.

(c) Tribal Officer's Title and Name. A Tribal officer or employee who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's or employee's name be added.

Rule 27. Joinder of Claims.

(a) A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

(b) A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights.

Rule 28. Required Joinder of Parties.

(a) A person who is subject to the court's jurisdiction and whose joinder will not deprive the court of subject-matter jurisdiction shall be joined in the action if:

(1) The person claims an interest relating to the subject of the action; or

(2) In that person's absence, the court cannot accord complete relief among existing parties.

(b) Failure to join a party over whom the court has no jurisdiction does not require dismissal of the action unless it would be impossible to reach a just result without such party. The factors for the court to consider include:

(1) The extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) The extent to which any prejudice could be lessened or avoided by protective provisions in the judgment, shaping the relief, or other measures;

(3) Whether a judgment rendered in the person's absence would be adequate; and

(4) Whether the plaintiff or petitioner would have an adequate remedy if the action were dismissed for nonjoinder.

Rule 29. Permissive Joinder of Parties.

(a) Plaintiffs and Petitioners. Persons may join in one action as plaintiffs or petitioners if:

(1) They assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(2) Any question of law or fact common to all plaintiffs or petitioners will arise in the action.

(b) Defendants and Respondents. Persons may be joined in one action as defendants or respondents if:

(1) Any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(2) Any question of law or fact common to all defendants or respondents will arise in the action.

(c) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 30. Intervention.

(a) Intervention as of Right. On timely motion, the court must permit anyone to intervene who:

(1) Is given an unconditional right to intervene by a provision in the Code; or

(2) Claims an interest relating to the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention. On timely motion, the court may permit anyone to intervene who:

(1) Is given a conditional right to intervene by a provision in the Code; or

(2) Has a claim or defense that shares with the main action a common question of law or fact.

(c) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(d) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 11. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Rule 31. Substitution of Parties.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

CHAPTER 5
DISCLOSURE AND DISCOVERY

Rule 32. Prompt Disclosure.

(a) Duty to Disclose, Scope. Within the times set forth in subdivision (b), each party shall disclose in writing to every other party:

(1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a fair description of the substance of each witness' expected testimony.

(4) The names and addresses of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.

(5) The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6) The name and address of each person whom the disclosing party expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert.

(7) A computation and the measure of damage alleged by the disclosing party and the documents or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.

(8) The existence, location, custodian, and general description of any tangible evidence, relevant documents, or electronically stored information that the disclosing party plans to use at trial and relevant insurance agreements.

(9) A list of the documents or electronically stored information, or in the case of voluminous documentary information or electronically stored information, a list of the categories of documents or electronically stored information, known by a party

to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents or electronically stored information will be made, or have been made, available for inspection, copying, testing or sampling. Unless good cause is stated for not doing so, a copy of the documents and electronically stored information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the documents and electronically stored information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

(b) Time for Disclosure; a Continuing Duty.

(1) The parties shall make the initial disclosure required by subsection (a) as fully as then possible within forty (40) days after the filing of a responsive pleading to the complaint, counterclaim, crossclaim or third-party complaint unless the parties otherwise agree, or the Court shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the disclosures shall be served as provided by Rule 11.

(2) The duty prescribed in subdivision (a) shall be a continuing duty, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures shall be made seasonably, but in no event more than thirty (30) days after the information is revealed to or discovered by the disclosing party. A party seeking to use information which that party first disclosed later than sixty (60) days before trial shall seek leave of court to extend the time for disclosure.

(3) All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(c) Signed Disclosure. Each disclosure shall be made in writing under oath, signed by the party making the disclosure.

(d) Claims of Privilege or Protection of Trial Preparation Materials.

(1) When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

(2) If a party contends that information subject to a claim of privilege or of protection as trial-preparation material has been inadvertently disclosed or produced in discovery, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has made and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

Rule 33. Discovery Generally.

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes;

(4) Physical and mental examinations; and

(5) Requests for admission.

(b) Discovery Scope and Limits. Parties may obtain discovery regarding any matter, not privileged or the work product of a party's legal counsel, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other

tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Protective Order. A party against whom discovery is sought may move the court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the court may order that the discovery cease or proceed only upon specified conditions.

(d) Sequence and Timing of Discovery. Unless the court orders otherwise for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. A party may not seek discovery from any source before the parties have exchanged disclosure statements as required by Rule 32.

(e) Discovery Requests, Responses, Objections and Sanctions. The court shall assess an appropriate sanction against any party or legal counsel who has engaged in unreasonable, groundless, abusive, or obstructionist conduct.

(f) Discovery Motions. No discovery motion will be considered unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

(g) Use of Discovery. An answer to interrogatories or a deposition may be used in a motion, hearing or at trial to the extent it would otherwise be admissible in accordance with the laws of the Tribe, to impeach or contradict the testimony of the person discovered, or when the person discovered cannot be made available at the hearing or trial.

Rule 34. Oral Depositions.

(a) When Deposition May be Taken. A party may take the oral deposition, under oath or affirmation, of any other party or any expert witness expected to be called upon not less than ten (10) days notice, specifying the time and place where such will occur. No other depositions shall be taken except upon agreement of all

parties or an order of the court following a motion demonstrating good cause.

(b) Length of Deposition. Depositions shall be of reasonable length. The oral deposition of any party or witness, including expert witnesses, whenever taken, shall not exceed four (4) hours in length, except pursuant to stipulation of the parties or by order of the court upon motion and a showing of good cause. The court shall impose sanctions for unreasonable, groundless, abusive or obstructionist conduct.

(c) Manner of Taking Deposition. Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness.

(d) Objections. All objections made at the time of the deposition to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

Rule 35. Written Depositions.

(a) Serving Questions. A party may take the testimony of any other party or any expert witness expected to be called by deposition upon written questions by serving them on the individual to be deposed and every other party with a notice stating the name and address of the person who is to answer them. Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time. No other depositions shall be taken except upon agreement of all parties or an order of the court following a motion demonstrating good cause.

(b) Length of Deposition. Depositions shall be of reasonable length. The court shall impose sanctions for unreasonable, groundless, abusive or obstructionist conduct.

(c) Manner of Taking Deposition. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated to take the deposition, who shall proceed promptly to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(d) Objections. Objections shall be the same as with oral depositions.

Rule 36. Interrogatories.

(a) Availability and Use. Unless otherwise stipulated or ordered by the court, a party may submit no more than 25 written interrogatories, including all discrete subparts, to be answered by any other party served who shall furnish such information in response as is available to the party. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by legal counsel making them.

(b) Time for Response. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories. The court may allow a shorter or longer time.

(c) Option to Produce Records. Where the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Rule 37. Production, Entry, or Inspection.

(a) Scope. A party may serve on any other party a request within the scope of Rule 33(b):

(1) To produce and permit the requesting party or its representative to inspect, copy, test, or sample any designated documents or electronically stored information or any designated tangible things; or

(2) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure and Limitations. The request:

(1) Must describe with reasonable particularity each item or category of items to be inspected, not to include more than ten (10) distinct items or categories of items without leave of court;

(2) Must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(3) May specify the form or forms in which electronically stored information is to be produced.

(c) Response to Request. The party upon whom a request is served shall serve a written response within thirty (30) days after the service of the request. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be allowed as requested or identify the reasons for any objection.

Rule 38. Physical and Mental Examinations.

(a) The court may order a party whose mental or physical condition is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The order may be made only on motion for good cause and on notice to all parties and the person to be examined and must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) The person to be examined shall have the right to have a representative present during the examination, unless the presence of that representative may adversely affect the outcome of the examination. The person to be examined shall have the right to record by audiotape any physical examination. A mental examination may be recorded by audiotape, unless such recording may adversely affect the outcome of the examination. Upon good

cause shown, a physical or mental examination may be video-recorded. A copy of any record made of a physical or mental examination shall be provided to any party upon request.

(c) The examiner shall issue a report to the requestor which must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests. The requestor shall serve copies of the report upon all other parties. If the report is not provided, the court may exclude the examiner's testimony at trial.

Rule 39. Requests for Admission.

(a) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 33(b) relating to:

(1) Facts, the application of law to fact, or opinions about either; and

(2) The genuineness of any described documents.

(b) Form. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying. Each party shall be entitled to submit no more than twenty-five (25) requests in any case except upon agreement of all parties or an order of the court following a motion demonstrating good cause. Any interrogatories accompanying requests shall be deemed interrogatories under Rule 36.

(c) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its legal counsel. If objection is made, the reasons therefor shall be stated. A shorter or longer time for responding may be stipulated to or ordered by the court.

(d) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as

a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(e) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(f) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Rule 40. Failure to Make Disclosures or Discovery.

(a) Motion. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery. No motion brought under this rule will be considered unless a separate statement of moving counsel is attached certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter. For purposes of this rule, an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(b) Expenses.

(1) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or legal counsel advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including legal counsel’s fees, unless:

(i) The court finds that the motion was filed without the movant’s first making a good faith effort to obtain the disclosure or discovery without court action;

(ii) That the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) That other circumstances make an award of expenses unjust.

(2) If the motion is denied, the court may enter a protective order under Rule 33(c) and shall, after affording an opportunity to be heard, require the moving party or legal counsel filing the motion or both of them to pay to the party who opposed the motion the reasonable expenses incurred in opposing the motion, including legal counsel's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(3) If the motion is granted in part and denied in part, the court may enter a protective order under Rule 33(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(c) Sanctions. If a party fails to obey an order to provide or permit discovery, the court may make such orders in regard to the failure as are just, including:

(1) An order that matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the legal counsel advising that party or both to pay the reasonable

expenses, including legal counsel's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(d) Failure to Disclose.

(1) A party who fails to timely disclose information required by Rule 32 shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on a motion, the information or witness not disclosed, except by leave of court for good cause shown. In addition to or in lieu of these sanctions, the court on motion of a party or on the court's own motion, and after affording an opportunity to be heard, may impose other appropriate sanctions, including informing the trier of fact of the failure to make the disclosure.

(2) A party seeking to use information which that party first disclosed later than sixty (60) days before trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

(i) That the information would be allowed under the standards of subsection (d)(1); and

(ii) That the information was disclosed as soon as practicable after its discovery.

(3) A party seeking to use information which that party first disclosed during trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

(i) That the information could not have been discovered and disclosed earlier even with due diligence; and

(ii) That the information was disclosed immediately upon its discovery.

(e) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 39, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable legal

counsel's fees. The court shall make the order unless it finds that:

(1) The request was held objectionable;

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had reasonable ground to believe that the party might prevail on the matter; or

(4) There was other good reason for the failure to admit.

CHAPTER 6
TRIALS

Rule 41. Assigning Case for Trial.

(a) Assignment of Judge and Date. The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the Court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

(b) Postponement. Upon motion of a party, the Court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

Rule 42. Dismissal of Actions.

(a) Voluntary Dismissal.

(1) Without Court Order.

(i) Subject to any applicable law of the Tribe, a plaintiff or petitioner may dismiss an action without a court order by filing:

(A) A notice of dismissal before the opposing party serves a responsive pleading, a motion under Rule 22 or a motion for summary judgment, or, if there is no responsive pleading, before evidence is introduced at a hearing or trial; or

(B) A stipulation of dismissal signed by all parties who have appeared.

(ii) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff or petitioner previously dismissed any court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order. Except as provided in subsection (a)(1), an action may be dismissed at the plaintiff's or petitioner's request only by court order, on terms that the court considers proper. If a defendant or respondent has pleaded a counterclaim before being served with the plaintiff's or petitioner's motion to dismiss, the action may be dismissed over the defendant's or respondent's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal.

(1) Grounds. A defendant or respondent may move to dismiss the action or any claim against him based upon any of the following grounds:

(i) Failure of the plaintiff or petitioner to prosecute his claim;

(ii) Failure of the plaintiff or petitioner to comply with these rules or an order of the court;

(iii) At the close of the presentation of the plaintiff's or petitioner's evidence and without prejudicing the defendant's or respondent's own right to present evidence, failure of the plaintiff or petitioner to establish a right to relief based on the facts and law presented; or

(iv) Whenever dismissal appears proper based upon a failure to prove a claim.

(2) Effect. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule, except one for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim.

(d) Costs of a Dismissed Action. If a plaintiff or petitioner moves to dismiss his own claim and the action has progressed beyond the pleading stage, the court may order the plaintiff or petitioner to pay all or part of the costs of the defendant or respondent. The court may also order the payment of costs in other circumstances where such is deemed appropriate.

Rule 43. Consolidation; Separate Trials.

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) Join for hearing or trial any or all matters at issue in the actions;

(2) Consolidate the actions; or

(3) Issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

Rule 44. Evidence and Testimony.

(a) Testimony in Open Court. At trial or hearing, the witnesses' testimony must be taken in open court unless a law of the Tribe, these rules, or other rules adopted by the court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Form of Testimony and Admissibility. The testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All relevant evidence and evidence as specified in this Code is admissible, but the court may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The competency of witnesses to testify shall be similarly determined.

(c) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(d) Examination and Cross Examination.

(1) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(2) A party may use leading questions against the witnesses of an opposing party or a hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses.

(3) Cross examination shall be limited to the general scope of direct examination; provided, however, that full examination of all witnesses shall be allowed to assure complete development of all relevant facts.

(e) Physical Evidence. Written documents and other physical evidence shall be received upon being identified, authenticated, and shown to be relevant to the action.

(f) Official Documents. Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

(g) Record of Excluded Evidence. Excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony may be received into the record.

(h) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(i) Supplemental Rules. If the court has not developed rules of evidence or to the extent the court's rules of evidence are insufficient, the court may follow the Federal Rules of Evidence in any action or proceeding so long as they are consistent with the Code. The rules of evidence may be waived at the discretion of the Court, where the parties are unrepresented by counsel.

Rule 45. Subpoenas.

(a) In General.

(1) Form and Contents.

(i) Requirements. Every subpoena must:

(A) State the court from which it issued;

(B) State the title of the action and its case number;

(C) Command each person to whom it is directed to do the following at a specified time and place: attend and testify at a deposition, hearing or trial; produce designated documents or things in that person's possession, custody, or control; or permit the inspection of premises;

(D) Identify the party and the party's legal counsel, if any, who is serving the subpoena;

(E) Identify the names, addresses and phone numbers and email addresses, where known, of legal counsel for each of the parties and of each party who has appeared in the action without legal counsel;

(F) State the method for recording the testimony if the subpoena commands attendance at a deposition; and

(G) Set out the text of subsections (d) and (e) of this rule.

(ii) Combining or Separating a Command to Produce or to Permit Inspection. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena.

(2) Issued by Whom. The Tribal Court Administrator must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. Legal counsel, as an officer of the court, may also issue and sign a subpoena if the legal counsel is authorized to practice in the court and has entered an appearance in the action.

(3) Notice to Other Parties Before Service. If a subpoena commands the production of documents or things or the inspection of premises, a notice and a copy of the subpoena must be served on each party before it is served on the person to whom it is directed.

(b) Service.

(1) Time for Service. Unless otherwise ordered by the court for good cause:

(i) Service of a subpoena only for testimony in a trial or hearing shall be made no later than five (5) days before the time for appearance set out in the subpoena.

(ii) Service of a subpoena only for testimony in a deposition shall be made not later than fourteen (14) days before compliance is required.

(iii) Service of a subpoena commanding a person to produce documents or things shall be made not later than fourteen (14) days before compliance is required.

(2) How Served. Subpoenas shall be served as provided in Rule 10.

(c) Place of Compliance.

(1) For a Deposition. A subpoena may command a person to attend a deposition only within 100 miles of where the person resides, is employed, or regularly transacts business in person.

(2) For Other Discovery. A subpoena may command:

(i) Production of documents or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(ii) Inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or legal counsel responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable legal counsel’s fees, on a party or legal counsel who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(i) Appearance Not Required. A person commanded to produce documents or things or to permit the inspection of premises need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(ii) Objections. A person commanded to produce documents or things or to permit inspection may serve on the party or legal counsel designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises. The objection must be served before the earlier of the time specified for compliance or fourteen (14) days after the subpoena is served. If an objection is made, the party issuing the subpoena is not entitled to receive testimony or to inspect, copy, test or sample materials except pursuant to an order of the court from which the subpoena was issued. If an objection is made, at any time on notice to the subpoenaed person and the other parties, the party issuing the subpoena may move the issuing court for an order compelling production.

(3) Quashing or Modifying a Subpoena.

(i) When Required. On timely motion, the court must quash or modify a subpoena that:

(A) Fails to allow a reasonable time to comply;

(B) Requires a person to comply beyond the geographical limits specified in this rule;

(C) Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(D) Subjects a person to undue burden.

(ii) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires disclosing a trade secret or other confidential information.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents.

(i) Unless agreed in writing by all parties and the person subpoenaed, production shall not be made until at least fourteen (14) days after service of the subpoena.

(ii) A person responding to a subpoena to produce documents or things need not attend in person at the place of production unless also commanded to attend for a deposition, hearing, or trial.

(iii) A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(2) Claiming Privilege or Protection.

(i) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(A) Expressly make the claim; and

(B) Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(ii) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(g) Tender of Payment for Mileage. If a subpoena requires a person's attendance, the payment for one (1) day's mileage allowed

by law must be tendered to the subpoenaed person at the time of service of the subpoena or within a reasonable time after service of the subpoena, but in any event prior to the appearance date. Payment for mileage need not be tendered when the subpoena issues on behalf of the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such.

(h) Subpoena Unnecessary. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

Rule 46. Judgment as a Matter of Law; Motion for New Trial; Conditional Ruling.

(a) Judgment as a Matter of Law.

(1) In General. If a party has been fully heard on an issue and the court finds that a reasonable trier of fact would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(i) Resolve the issue against the party; and

(ii) Grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the trier of fact. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under subsection (a) of this rule, the action is considered to have been submitted subject to the court's later deciding the legal questions raised by the motion. No later than thirty (30) days after the entry of judgment, the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under these rules. In ruling on the renewed motion, the court may:

(1) Allow judgment as originally decided;

(2) Order a new trial; or

(3) Direct the entry of judgment as a matter of law.

Rule 47. Findings and Conclusions by the Court.

(a) Findings and Conclusions.

(1) In General. In an action tried on the facts, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered in accordance with these rules.

(2) For a Preliminary or Interlocutory Injunction. In granting or refusing a preliminary or interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) For a Motion. The court is not required to state findings or conclusions when ruling on a motion unless these rules provide otherwise.

(b) Amended or Additional Findings. On a party's motion filed no later than ten (10) days after the entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly. The motion may accompany a motion for a new trial under these rules.

CHAPTER 7
JUDGMENT

Rule 48. Judgments; Costs.

(a) Definition; Form. "Judgment" as used in these rules includes any decree or order finally and conclusively determining the rights of the parties or from which an appeal otherwise lies.

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties

does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. For purposes of this subsection, a claim for legal counsels' fees may be considered a separate claim from the related judgment regarding the merits of a cause.

(c) Demand for Judgment. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs. Unless a law of the Tribe, these rules, or a court order provides otherwise, costs other than legal counsel's fees should be allowed to the prevailing party. But costs against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such may be imposed only to the extent allowed by the laws of the Tribe. The Tribal Court Administrator may tax costs on five (5) days' notice. On motion served within the next ten (10) days, the court may review the Tribal Court Administrator's action.

(e) Legal counsel's Fees.

(1) When Allowed. The court shall not award legal counsel's fees in a case unless an award of legal counsel's fees:

(i) Is expressly permitted under the laws of the Tribe;

(ii) Has been specifically provided for in a contract or agreement of the parties subject of the case; or

(iii) Is warranted on the grounds that the case was brought for purposes of harassment only or there was no reasonable expectation of success on the part of the plaintiff or petitioner.

(2) Claim to Be by Motion. A claim for legal counsel's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(3) Timing and Contents of the Motion. Unless a law of the Tribe or a court order provides otherwise, the motion must:

(i) Be filed no later than fourteen (14) days after the entry of judgment;

(ii) Specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) State the amount sought or provide a fair estimate of it; and

(iv) Disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(4) Proceedings. The court must, on a party's request, give an opportunity for adversary submissions on the motion. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 47(a).

(5) Exceptions. Subsections (1)-(3) do not apply to claims for fees and expenses as sanctions for violating these rules.

Rule 49. Default.

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the Tribal Court Administrator must enter the party's default.

(b) Entering a Default Judgment.

(1) By the Tribal Court Administrator. If the plaintiff's or petitioner's claim is for a sum certain or a sum that can be made certain by computation, the Tribal Court Administrator, on the plaintiff's or petitioner's request with an affidavit showing the amount due, must enter judgment for that amount and costs against a defendant or respondent who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least ten (10) days before the hearing. The court may conduct hearings when, to enter or effectuate judgment, it needs to:

(i) Conduct an accounting;

(ii) Determine the amount of damages;

(iii) Establish the truth of any allegation by evidence; or

(iv) Investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause and may set aside a default judgment under Rule 55(b).

(d) Judgment Against the Tribe. A default judgment may be entered against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

Rule 50. Summary Judgment.

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless the court orders otherwise, a party may file a motion for summary judgment at any time thirty (30) days after from the service of process upon the adverse party, but no sooner than the date on which the answer is due and no later than ninety (90) days prior to the date set for trial.

(c) Motion and Proceedings.

(1) Time for Hearing. Upon timely request by any party, the court shall set a time for hearing on the motion, provided, however, that the court need not conduct a hearing if it determines that the motion should be denied or if the motion is uncontested. If no request for a hearing is made, the court may, in its discretion, set a time for such hearing.

(2) Response and Reply. A party opposing the motion must file its response and any supporting materials within thirty (30)

days after service of the motion. The moving party shall have fifteen (15) days after service of the response in which to serve a reply memorandum and any supporting materials. These time periods may be shortened or enlarged by a filed stipulation of the parties or by court order; provided, however, that court approval is required for any stipulated extensions to a briefing schedule that would purport to make a reply or other memorandum due less than five days before a hearing date previously set by the court, or would require postponement of a scheduled hearing date.

(3) Statement of Facts. Any party filing a motion for summary judgment shall set forth, in a statement separate from the memorandum of law, the specific facts relied upon in support of the motion. The facts shall be stated in concise, numbered paragraphs. As to each fact, the statement shall refer to the specific portion of the record where the fact may be found. Any party opposing a motion for summary judgment shall file a statement in the form prescribed by this rule, specifying those paragraphs in the moving party's statement of facts which are disputed, and also setting forth those facts which establish a genuine issue of material fact or otherwise preclude summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall file a joint statement in the form prescribed by this rule, setting forth those material facts as to which there is no genuine dispute. The joint statement may provide that any stipulation of fact is not intended to be binding for any purpose other than the motion for summary judgment.

(d) Form of Affidavits and Depositions; Further testimony.

(1) An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a properly authenticated copy shall be attached to or served with the affidavit.

(2) Affidavits may be supplemented or opposed by depositions, answers to interrogatories, additional affidavits or other materials that would be admissible in evidence.

(3) If all or part of a deposition is submitted in support of or in opposition to a motion for summary judgment, the offering party must submit a written transcript of the testimony.

(4) When a motion for summary judgment is made and supported as provided in this rule, an opposing party may not rely merely on

allegations or denials of its own pleading; rather, its response must, by affidavits or as otherwise provided in this rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party.

(e) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) Defer considering the motion or deny it;

(2) Allow time to obtain affidavits or declarations or to take discovery; or

(3) Issue any other appropriate order.

Unless otherwise ordered by the court, the filing of a request for relief and affidavit under this subsection does not by itself extend the date by which the party opposing summary judgment must file a memorandum and separate statement of facts as prescribed in section (c) of this rule.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) Grant summary judgment for a nonmovant;

(2) Grant the motion on grounds not raised by a party;or

(3) Consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Declining to Grant All Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court, after notice and a reasonable time to respond, may order the submitting party to pay the other party the reasonable expenses, including legal counsel’s fees, it incurred as a result. An offending party or

legal counsel may also be held in contempt or subjected to other appropriate sanctions.

Rule 51. Declaratory Judgments. The procedure for obtaining a declaratory judgment shall be in accordance with these rules and the laws of the Tribe applicable to declaratory judgments. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

Rule 52. Entry of Judgment.

(a) Separate Document. Every judgment and amended judgment must be set out in a separate document.

(b) Entering Judgment. All judgments shall be in writing and signed by a judge. The filing with the Tribal Court Administrator of the judgment constitutes entry of such judgment, and the judgment is not effective before such entry, except that in such circumstances and on such notice as justice may require, the court may direct the entry of a judgment nunc pro tunc, and the reasons for such direction shall be entered of record. The Tribal Court Administrator shall immediately make a notation of the judgment in the docket. The entry of the judgment shall not be delayed for taxing costs.

(c) Notice of Entry.

(1) Orders. The Tribal Court Administrator shall distribute, either by U.S. mail, electronic mail, or hand delivery, copies of all orders to all parties.

(2) Judgment. Immediately upon the entry of a judgment as defined in Rule 52(b), the Tribal Court Administrator shall distribute, either by U.S. mail, electronic mail, or hand delivery, a notice of the entry of judgment stating the date of entry, in the manner provided for in Rule 11, to every party who is not in default for failure to appear, and shall make a record of the distribution.

(3) Date of Entry. In the absence of a date of entry stated in a notice of entry, the date of entry shall be the date on which the Tribal Court Administrator affixes a file stamp on the written judgment or order.

(4) Failure of Notice. Lack of notice of the entry by the Tribal Court Administrator does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to

appeal within the time allowed, except as provided in the rules governing appellate procedure.

(5) Form of Notice. Notice of the entry of judgment shall be accomplished by any of the following:

(i) A specifically designated notice form; or

(ii) A conformed copy of the file stamped judgment or order.

(d) Death of a Party. If a party dies after a decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

Rule 53. Satisfaction of Judgment.

(a) Satisfaction by Acknowledgment. When any judgment or decree is satisfied otherwise than by execution, the judgment creditor shall immediately file an acknowledgment of satisfaction. If the satisfaction is for part of the judgment or for fewer than all of the judgment debtors, it shall state the amount paid or name the debtors who are released. Satisfaction may be entered by the judgment creditor, his legal counsel of record, or an agent; if entered by an agent who is not the legal counsel of record, his authority shall be filed.

(b) Satisfaction by Order of Court. The court may, upon motion and satisfactory proof, enter an order declaring the judgment satisfied.

(c) Entry of Satisfaction. The Tribal Court Administrator shall file all satisfactions of judgment and note the amount thereof in the docket.

(d) Effect of Satisfaction. Satisfaction of a judgment, whether by acknowledgement or order, shall discharge the judgment, and the judgment shall cease to be a lien as to the debtors named and to the extent of the amount paid. A writ of execution or a writ of garnishment issued after partial satisfaction shall include the partial satisfaction and shall direct the officer to collect only the balance of the judgment, or to collect only from the judgment debtors remaining liable.

(e) Period of Limitation. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of

eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter extended once more by the same procedure.

Rule 54. New Trials; Altering or Amending Judgment.

(a) Grounds; Procedure. A decision or judgment may be vacated and a new trial granted on motion of the aggrieved party for any of the following causes materially affecting that party's rights:

(1) Irregularity in the proceedings of the court or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;

(2) Misconduct of the prevailing party;

(3) Accident or surprise which could not have been prevented by ordinary prudence;

(4) Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the trial;

(5) Excessive or insufficient damages;

(6) Error in the admission or rejection of evidence or other errors of law occurring at the trial or during the progress of the action;

(7) That the decision, findings of fact, or judgment is the result of passion or prejudice;

(8) That the decision, findings of fact, or judgment is not justified by the evidence or is contrary to law.

(b) Scope. A new trial may be granted to all or any of the parties and on all or part of the issues in an action, for any of the reasons for which new trials are authorized by law or rule of court. On a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(c) Contents of motion; Amendment; Rulings Reviewable.

(1) The motion for new trial shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the court.

(2) Upon the general ground that the court erred in admitting or rejecting evidence, the court shall review all rulings during the trial upon objections to evidence.

(3) Upon the general ground that the decision, findings of fact, or judgment is not justified by the evidence, the court shall review the sufficiency of the evidence.

(d) Time. A motion for new trial shall be filed not later than ten (10) days after entry of the judgment.

(e) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(f) On Initiative of Court. Not later than ten (10) days after entry of judgment, the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(g) Questions to be Considered in New Trial. A new trial, if granted, shall be only a new trial of the question or questions with respect to which the decision is found erroneous, if separable. If a new trial is ordered because the damages are excessive or inadequate and granted solely for that reason, the decision shall be set aside only in respect of the damages, and shall stand in all other respects.

(h) Motion to Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than ten (10) days after entry of judgment.

(i) Number of New Trials. Not more than two (2) new trials shall be granted to either party in the same action, except when

the trier of fact has been guilty of some misconduct or has erred in matters of law.

(j) Specification of Grounds of New Trial. No order granting a new trial shall be made and entered unless the order specifies with particularity the ground or grounds on which the new trial is granted.

Rule 55. Relief From Judgment or Order.

(a) Clerical Mistakes. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

(2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 54;

(3) Fraud (whether intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) When the summons in an action has not been personally served upon the defendant or respondent and the defendant or respondent has failed to appear in said action;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(7) Any other reason that justifies relief.

(c) Reversed Foreign Judgment. When a judgment has been rendered upon the judgment of another jurisdiction, and the foreign

judgment is thereafter reversed or set aside by a court of such other jurisdiction, the court shall set aside, vacate and annul its judgment.

(d) Timing and Effect of Motion.

(1) Timing. A motion under subsection (b) must be made within a reasonable time and for reasons (1), (2), (3) and (4), no more than three (3) months after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(e) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) Entertain an independent action to relieve a party from a judgment, order, or proceeding; or

(2) Set aside a judgment for fraud on the court.

Rule 56. Harmless Error. Unless justice requires otherwise, no error in admitting or excluding evidence or any other error by the court or a party is ground for granting a new trial, for setting aside a decision, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 57. Stay of Proceedings To Enforce Judgment.

(a) Automatic Stay; Exceptions for Injunctions. Except as stated in this rule or elsewhere in the laws of the Tribe, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until thirty (30) days have passed after its entry. But, unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the

execution of a judgment or any proceedings to enforce it pending disposition of any of the following motions:

(1) For judgment as a matter of law;

(2) To amend the findings or for additional findings;

(3) For a new trial or to alter or amend a judgment;

(4) For relief from a judgment or order; or

(5) When justice so requires in other cases until such time as the court may fix.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) Stay Upon Appeal. If an appeal is taken, the appellant may obtain a stay by giving a bond, except where such a stay is otherwise prohibited by law or these rules. The bond may be given upon or within ten (10) days after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay in Favor of the Tribe. Judgments against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such are automatically stayed when an appeal is filed. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such.

(f) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its justices:

(1) To stay proceedings or suspend, modify, restore, or grant an injunction while an appeal is pending; or

(2) To issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(g) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment until it enters a later

judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(h) Waiver of Undertaking. In all cases the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking, or the amount of such undertaking.

(i) Other Relief. No stay, injunction, waiver of undertaking may be granted by the court without actual notice and opportunity to be heard on the part of the prevailing party to the action.

Rule 58. Disability or Disqualification of a Judge.

(a) Disability. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Court under these rules after a decision is made or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Court may perform those duties, but if such other judge determines that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) Disqualification. Grounds for disqualification of a judge are those set forth in Section 1-2-8 of the Code or any other reason under the laws of the Tribe allowing or requiring disqualification of a judge. Proceedings to disqualify a judge before whom any action or proceeding, civil or criminal, is pending shall be handled as follows:

(1) A party or his legal counsel shall file and serve an affidavit alleging the grounds for disqualification in the same manner as other documents and pleadings are filed in actions before the Court.

(2) The affidavit must be filed and served within twenty days after discovery that grounds exist for disqualification of the judge. No event occurring before such discovery shall constitute waiver of rights to seek disqualification of a judge.

(3) The affidavit shall state the facts and the reasons for the belief that the judge is disqualified with sufficient specificity to allow the matter to be properly determined and shall include a certificate of legal counsel of record, or by the party personally if the party is unrepresented, that such affidavit is

presented in good faith based upon a reasonable investigation of the facts and the law and is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Unsupported or general allegations shall not be considered sufficient to disqualify a judge. No party shall be permitted to file more than one affidavit in any action.

(4) The judge against whom the affidavit is directed may summarily deny the request for disqualification if the affidavit does not include any facts or reasons to support the basis for disqualification. Otherwise, if the judge determines that cause exists to disqualify him, the judge shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge.

(5) If the judge against whom the affidavit is directed does not find that cause exists to disqualify him or otherwise does not find the affidavit sufficient, the judge shall certify the affidavit for assignment to another judge for determination. The Tribal Court Administrator shall then refer the affidavit to another judge for decision. The assigned judge shall decide the issues by the preponderance of the evidence. The sufficiency of any "cause to believe" shall be determined by an objective standard, not by reference to any party's or legal counsel's subjective belief. The assigned judge may conduct or provide for a hearing to determine the issues connected with the affidavit if necessary for proper determination, but shall attempt to decide the matter without hearing so as to preserve the dignity of the Court and avoid the hint or appearance of impropriety. Following determination of the disqualification, the assigned judge shall expeditiously reassign the action to the original judge or make a new assignment, depending on the findings of the assigned judge.

(6) A denial of disqualification may be appealed to the Court of Appeals after final order or judgment in the action.

CHAPTER 8
PROVISIONAL AND FINAL REMEDIES

Rule 59. Injunctions and Restraining Orders.

(a) Preliminary Injunction.

(1) Notice. The court may issue a preliminary injunction only on notice to the adverse party.

(2) Consolidating Hearing with Trial on the Merits. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(3) Motion to Dissolve or Modify. Motions to dissolve or modify a preliminary injunction may be heard after an answer is filed, upon notice to the opposite party. If, upon hearing the motion, it appears that there is not sufficient grounds for the injunction, it shall be dissolved, or if it appears that the injunction is too broad, it shall be modified. A denial of the material allegations of the complaint shall not be sufficient ground for dissolution of a preliminary injunction unless the answer denying the allegations is verified.

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its legal counsel only if:

(i) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(ii) The movant's legal counsel certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents. Every temporary restraining order issued without notice must:

(i) State the date and hour it was issued;

(ii) Describe the injury and state why it is irreparable;

(iii) State why the order was issued without notice; and

(iv) Be promptly filed in the Tribal Court Administrator's office and entered in the record.

(3) Expiration. The order expires at the time after entry, not to exceed ten (10) days, that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(4) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(5) Motion to Dissolve. On two (2) days' notice to the party who obtained the order without notice, or on shorter notice set by the court, the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security.

(1) Requirement. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

(2) Security by Tribe. The Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such are not required to give security.

(3) Consent of Surety. A surety upon a bond or undertaking under this rule submits itself to the jurisdiction of the court and irrevocably appoints the Tribal Court Administrator as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The surety's liability may be enforced on motion and such notice of the motion may be served on the Tribal Court Administrator who shall forthwith mail copies to the persons giving the security, if their addresses are known.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

(i) State the reasons why it issued;

(ii) State its terms specifically; and

(iii) Describe in reasonable detail, and not by referring to the complaint or other document, the act or acts restrained or required.

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

(i) The parties;

(ii) The parties' officers, agents, servants, employees, and legal counsel; and

(iii) Other persons who are in active concert or participation with anyone described in subsection (d)(2)(i) or (ii) of this rule.

(e) Grounds for Injunction. An injunction may be granted upon the grounds provided in the laws of the Tribe governing injunctions.

(f) Disobedience of Injunction as Contempt.

(1) Disobedience of an injunction may be punished by the court as a contempt.

(2) When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued is guilty of disobeying the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of the court which issued the injunction.

(3) The order, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable that person to prepare and make return to the order.

(4) If the alleged contemnor is a corporation, an attachment for sequestration of the property of the corporation may be issued upon refusal or failure to appear.

(5) Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the

person enjoined has disobeyed the injunction that person may be held in contempt in accordance with the laws of the Tribe until that person is purged of the contempt as may be directed by the court or until that person is discharged by law.

Rule 60. Extraordinary Writs. Extraordinary writs may be granted by the Court in accordance with the laws of the Tribe.

Rule 61. Offer of Judgment.

(a) Time for Making; Procedure. At any time more than fourteen (14) days before the trial begins, any party may serve upon any other party an offer to allow judgment to be entered in the action.

(b) Contents of Offer. If any portion of an offer made under this rule is for the entry of a monetary judgment, the monetary award to be made shall be set forth in the offer as a specifically stated sum, which shall be inclusive of all damages, taxable court costs, interest, and legal counsel's fees, if any, sought in the case. The offeror may choose to exclude an amount for legal counsel's fees, but must specifically so state in the offer. If the offeror excludes an amount for legal counsel's fees in the offer, and the offeree accepts the offer, then either party may apply to the court for an award of legal counsel's fees, if otherwise allowed by statute, contract or otherwise. The offer need not be apportioned by claim.

(c) Acceptance of Offer; Entry of Judgment. If, while an offer remains effective within the meaning of this rule, the offeree serves written notice that the offer is accepted, then either party may file the offer together with proof of acceptance, and the Tribal Court Administrator shall enter judgment.

(d) Rejection of Offer. An offer that is not accepted while it remains effective within the meaning of this rule shall be deemed rejected. Evidence of the rejected offer shall not be admissible except in a proceeding to determine sanctions under this rule.

(e) Objections to Offer. If the offeree has any objection to the validity of the offer, the offeree must serve upon the offeror, within five (5) days after service of the offer, written notice of any such objections. Unless the offeree notifies the offeror of any objection as provided under this subsection, the offeree waives the right to do so in any proceeding to determine sanctions under this rule.

(f) Subsequent Offers. The fact that an offer has been rejected does not preclude a subsequent offer.

(g) Offers on Damages. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, any party may make an offer of judgment, which shall have the same effect as an offer made before trial. It must be served within a reasonable time, but at least ten (10) days before the date set for a hearing to determine the amount or extent of liability.

(h) Sanctions. If the offeree rejects an offer and does not later obtain a more favorable judgment other than pursuant to this rule, the offeree must pay, as a sanction, reasonable expert witness fees and double the taxable costs incurred by the offeror after making the offer and prejudgment interest to accrue from the date of the offer. If the judgment includes an award of taxable costs or legal counsel's fees, only those taxable costs and legal counsel's fees determined by the court as having been reasonably incurred as of the date the offer was made shall be considered in determining if the judgment is more favorable than the offer.

(i) Effective Period of Offers. An offer of judgment made pursuant to this rule shall remain effective for fourteen (14) days after it is served. If the effective period is enlarged by the court, the offeror may withdraw the offer at any time after expiration of the initial effective period and prior to acceptance of the offer.

Rule 62. Execution.

(a) Grounds. The court may, upon motion, issue a writ of execution against the personal property of a judgment debtor if:

(1) The judgment is for monetary damages, costs, and/or legal counsel's fees;

(2) The judgment debtor has been served notice of entry of judgment; and

(3) The judgment debtor has not paid the judgment amount in full or commenced making installment payments as agreed between the parties, or is not current in such payments.

(b) Time. A party may file a motion under this rule thirty (30) days after entry of final judgment or after the expiration of

the time for appeal has expired, whichever is greater. No motion for a writ of execution may be filed if an appeal or any other motion or action which may affect the judgment has been filed.

(c) Procedure.

(1) The judgment debtor shall be served with the motion and order to appear before the court as provided in Rule 11.

(2) Failure of the judgment debtor to appear may be punished by the court as a contempt.

(3) The judgment debtor shall provide, under oath or affirmation, an accounting of all his personal property, including any exempt property.

(4) In aid of the judgment or execution, the judgment creditor may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or otherwise by law.

(5) The court shall determine which property of the judgment debtor is available for execution and which property, up to the value of the judgment, should be seized to pay the judgment amount.

(6) The court shall issue an order that law enforcement seize the property ordered by the court and sell the same in accordance with this rule.

(d) Sale of Property.

(1) Sale of property seized under this rule shall be at a public auction conducted by law enforcement or others designated by the court.

(2) No auction or sale of the property seized under this rule shall take place until at least ten (10) days public notice has been provided by posting such notice in at least three (3) conspicuous public places near the site of the auction.

(3) The person conducting the auction may postpone the auction and reschedule it upon giving the required notice if there is inadequate response to the auction or the bidding.

(4) Property shall be sold to the highest bidder who shall make payment for property in cash at the time of the sale.

(5) The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the court reciting the details of the sale and the amounts received.

(e) Exempt Property.

(1) The Court shall only order seizure and sale of such property of the judgment debtor necessary to satisfy a money judgment.

(2) Any property ordered seized under this rule shall be of the kind the loss of which will not impose an immediate substantial hardship on the judgment debtor and/or his immediate family and not otherwise exempt from execution under the laws of the Tribe.

(3) Only property of the judgment debtor may be subject to execution. No property of the judgment debtor's family or any other person may be seized or sold, except property conveyed to the debtor's family or other person with the intent of avoiding seizure and execution under this rule.

(f) Redemption From Sale. At any time within six (6) months after sale under this rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight percent (8%) interest and any expenses actually incurred by the purchaser to maintain property, such as taxes and insurance.

(g) Method Not Exclusive. Nothing in this rule shall be construed as prohibiting or precluding other methods of enforcement of monetary judgments as authorized under the laws of the Tribe, including garnishment.

(h) Against Certain Public Officers. Execution shall not be permitted when a judgment has been entered against the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such.

CHAPTER 9
APPELLATE PROCEDURE

Rule 100. Court of Appeals; Scope; Title.

(a) Appellate Court. All appeals from the trial court shall be heard by the Court of Appeals of the Tribal Court of the Ponca Tribe of Nebraska.

(b) Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the court of appeals the laws of the Tribe.

(c) Scope of Rules. The rules in this Chapter govern procedure in the court of appeals. When these rules provide for filing a motion or other document in the trial court, the procedure must comply with the practice of the trial court.

(d) Title. The rules in this Chapter shall be known as the Ponca Tribe of Nebraska Rules of Appellate Procedure and may be abbreviated as "P.T.N.R.A.P."

Rule 101. Suspension of Rules.

(a) In General. On its own or a party's motion, the court of appeals may, to expedite its decision or for other good cause, suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 112.

(b) Unrepresented Parties. Substantial compliance with these rules will be sufficient for all parties not represented by legal counsel and the court may, on its own motion or on request of any party, waive any requirement or provision of these rules.

Rule 102. Appeal as of Right – How Taken.

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from the trial court to the court of appeals may be taken only by filing a notice of appeal with the Tribal Court Administrator within the time allowed by Rule 103.

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a trial court judgment or order, and their interests make joinder

practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(i) State the name of the case as used in the trial court, except that parties may be designated "appellant" and "respondent," as appropriate.

(ii) Specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but legal counsel representing more than one party may describe those parties with such terms as "all plaintiffs," "all petitioners," "the defendants," "the respondents," "the plaintiffs A, B, et al.," or "all defendants except X"; and

(iii) Designate the judgment, order, or part thereof being appealed.

(2) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(d) Serving the Notice of Appeal.

(1) The Tribal Court Administrator must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record, excluding the appellant's, or, if a party is not represented, to the party's last known address. The Tribal Court Administrator must promptly send a copy of the notice of appeal and of the trial court docket entries, and any later trial court docket entries, to the court of appeals. The Tribal Court Administrator must note, on each copy, the date when the notice of appeal was filed.

(2) The Tribal Court Administrator's failure to serve notice does not affect the validity of the appeal. The Tribal Court Administrator must note on the trial court docket the names of the parties to whom the Tribal Court Administrator mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the Tribal Court Administrator all required fees, provided that no fees shall be required of the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such.

Rule 103. Appeal as of Right – When Taken.

(a) Time for Filing a Notice of Appeal. Except as provided in this rule, the notice of appeal required by Rule 102 must be filed with the Tribal Court Administrator within thirty (30) days after entry of the judgment or order appealed from.

(b) Filing Before Entry of Judgment. A notice of appeal filed after the trial court announces a decision or order, but before the entry of the judgment or order, is treated as filed on the date of and after the entry.

(c) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within ten (10) days after the date when the first notice was filed, or within the time otherwise prescribed by this rule, whichever period ends later.

(d) Motion for Extension of Time.

(1) The trial court may extend the time to file a notice of appeal if:

(i) A party so moves no later than thirty (30) days after the time prescribed by subsection (a) of this rule expires; and

(ii) That party shows excusable neglect or good cause.

(2) A motion filed before the expiration of the time prescribed in subsection (a) of this rule may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties.

(3) No extension under this subsection may exceed thirty (30) days after the prescribed time or ten (10) days after the date when the order granting the motion is entered, whichever is later.

Rule 104. Appeal by Permission.

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the Tribal Court Administrator with proof of service on all other parties to the trial court action.

(2) The petition must be filed within the time specified by the law or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 103 for filing a notice of appeal.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(i) The facts necessary to understand the question presented;

(ii) The question itself;

(iii) The relief sought;

(iv) The reasons why the appeal should be allowed or why it is authorized by a law of the Tribe; and

(v) An attached copy of the order, decree, or judgment complained of and any related opinion or memorandum.

(2) A party may file an answer in opposition or a cross-petition within ten (10) days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Standard for Granting.

(1) A petition must be granted if the order, decree, or judgment complained of:

(i) Conclusively determines the disputed question;

(ii) Resolves an issue completely separate from the merits of the action; and

(iii) Is effectively unreviewable on appeal from final judgment.

(2) A petition may be granted if hearing the appeal might materially advance the ultimate resolution of the litigation.

(d) Form of Papers; Number of Copies. All papers must conform to the rules governing briefs on appeal. Except by the court's permission, a paper must not exceed twenty (20) pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by this rule. An original and three (3) copies must be filed unless the court requires a different number by order in a particular case.

(e) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within ten (10) days after the entry of the order granting permission to appeal, the appellant must:

(i) pay the Tribal Court Administrator all required fees, provided that no fees shall be required of the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such; and

(ii) file a cost bond if required under these rules.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The record must be forwarded and filed in accordance with these rules.

Rule 105. Bond for Costs on Appeal. The trial court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 106(b) applies to a surety on a bond given under this rule.

Rule 106. Stay or Injunction Pending Appeal.

(a) Initial Motion in the Trial Court. A party must ordinarily move first in the trial court for the following relief:

(1) A stay of the judgment or order of the trial court pending appeal;

(2) Approval of a supersedeas bond; or

(3) An order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(b) Motion in the Court of Appeals; Conditions on Relief. A motion for the relief mentioned in subsection (a)(1) of this rule may be made to the court of appeals or to one of its justices.

(1) The motion must:

(i) Show that moving first in the trial court would be impracticable; or

(ii) State that, a motion having been made, the trial court denied the motion or failed to afford the relief requested and state any reasons given by the trial court for its action.

(iii) Include the reasons for granting the relief requested and the facts relied on;

(iv) Include originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(v) Include relevant parts of the record.

(c) The moving party must give reasonable notice of the motion to all parties.

(d) A motion under this subsection (a)(2) must be filed with the Tribal Court Administrator and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single justice.

(e) The court may condition relief on a party's filing a bond or other appropriate security in the trial court.

(f) The Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such are not required to file a bond or other security.

Rule 107. The Record of Appeal.

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) The original papers and exhibits filed in the trial court;

(2) The transcript or recording of proceedings, if any; and

(3) A certified copy of the trial court docket entries prepared by the Tribal Court Administrator.

(b) Agreed Statement of Record on Appeal. In place of the record on appeal as defined in subsection (a), the parties may prepare, sign, and submit to the trial court a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it, together with any additions that the trial court may consider necessary to a full presentation of the issues on appeal, must be approved by the trial court and must then be certified to the court of appeals as the record on appeal. The Tribal Court Administrator must then send it to the court of appeals within the time provided by this rule.

(c) Forwarding the Record. When the record is complete, but no later than fifteen (15) days after the filing of a notice of appeal, the Tribal Court Administrator must number the documents constituting the record and send them promptly to the court of appeals together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party, the Tribal Court Administrator will not send to the court of appeals documents of unusual bulk or weight, or physical exhibits other than documents.

Rule 108. Docketing the Appeal; Filing the Record; Representation.

(a) Docketing the Appeal. Upon receiving a notice of appeal or petition for appeal or writ, the Tribal Court Administrator must docket the appeal, in a separate docket from the trial court docket, under the title of the trial court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing the Record, Partial Record, or Certificate. Upon forwarding the record or partial record as provided in Rule 107(c), the Tribal Court Administrator must file it and immediately notify all parties of the filing date. Any party may receive a copy of the record as forwarded to the court of appeals by requesting the same from the Tribal Court Administrator and paying any costs of

copying, unless the request is from the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such.

(c) Appearance of Legal Counsel. Legal counsel representing a party before the court of appeals or otherwise appearing before the court of appeals shall enter their appearance by signing and filing a pleading or by filing an entry of appearance.

Rule 109. Writs of Mandamus and Prohibition Against Trial Court.

(a) Mandamus or Prohibition to Trial Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to the trial court must file a petition with the Tribal Court Administrator with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) The petition must be titled "In re [name of petitioner]" and must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition and state:

(i) The relief sought;

(ii) The issues presented;

(iii) The facts necessary to understand the issue presented by the petition; and

(iv) The grounds for issuing the writ under the Code or other law of the Tribe.

(3) Upon receiving the petition, the Tribal Court Administrator must docket the petition and submit it to the court of appeals.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The Tribal Court Administrator must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial court judge to address the petition or may invite an amicus curiae to do so. The trial court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the Tribal Court Administrator must advise the parties, and when appropriate, the trial court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The Tribal Court Administrator must send a copy of the final disposition to the trial court judge.

(c) Form of Papers; Number of Copies. All papers must conform to Rule 118(b). Except by the court's permission, a paper must not exceed thirty (30) pages, exclusive of the proof of service and the accompanying order or opinion or parts of the record required by subsection (a)(2). An original and three (3) copies must be filed unless the court requires the filing of a different number by order in a particular case.

Rule 110. Proceeding in Forma Pauperis.

(a) Leave to Proceed in Forma Pauperis.

(1) Motion in the Trial Court. Except as stated in subsection (a)(3) of this Rule, a party to a trial court action who desires to appeal in forma pauperis must file a motion in the trial court. The party must attach an affidavit that:

(i) shows, in explicit detail, the party's inability to pay or to give security for fees and costs;

(ii) claims an entitlement to redress; and

(iii) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the trial court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the trial court denies the motion, it must state its reasons in writing.

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the trial court action may proceed on appeal in forma pauperis without further authorization, unless:

(i) the trial court, before or after the notice of appeal is filed, certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(ii) a statute provides otherwise.

(4) Notice of Trial Court's Denial. The Tribal Court Administrator must immediately notify the parties and the court of appeals when the trial court does any of the following:

(i) denies a motion to proceed on appeal in forma pauperis;

(ii) certifies that the appeal is not taken in good faith; or

(iii) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) Motion in the Court of Appeals. A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in subsection (a)(4) of this Rule. The motion must include a copy of the affidavit filed in the trial court and the trial court's statement of reasons for its action. If no affidavit was filed in the trial court, the party must include the affidavit prescribed by subsection (a)(1) of this Rule.

(b) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

Rule 111. Filing and Service.

(a) Filing.

(1) Filing with the Tribal Court Administrator. A paper required or permitted to be filed in the court of appeals must be filed with the Tribal Court Administrator.

(2) Method and Timeliness.

(i) In General. Filing may be accomplished by mail, personal delivery or electronic means.

(ii) Time of Filing. Filing is considered to occur when received by the Tribal Court Administrator, except that, in the case of mailing, filing shall be deemed to occur on the date of the postmark.

(3) Filing a Motion with a Justice. If a motion requests relief that may be granted by a single justice, the justice may permit the motion to be filed with the justice; the justice must note the filing date on the motion and give it to the Tribal Court Administrator.

(b) Service of All Papers Required. Unless a rule requires service by the Tribal Court Administrator, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal. Service on a party represented by legal counsel must be made on the party's legal counsel.

(c) Manner of Service. Service shall be made in the manner prescribed under Rule 11 of the Ponca Tribe of Nebraska Rules of Civil Procedure.

(d) Proof of Service.

(1) A paper presented for filing must contain a certificate of service consisting of a statement by the person who made service certifying:

(i) The date and manner of service;

(ii) The names of the persons served; and

(iii) Their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by order in a particular case.

Rule 112. Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file a notice of appeal, except as authorized in these rules, or a petition for permission to appeal.

Rule 113. Motions.

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) Contents of a Motion.

(i) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(ii) Accompanying Documents.

(A) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(B) An affidavit must contain only factual information, not legal argument.

(C) A motion seeking substantive relief must include a copy of the trial court's opinion as a separate exhibit.

(3) Response.

(i) Time to file. Any party may file a response to a motion; subsection (a)(2) governs its contents. The response must be filed within ten (10) days after service of the motion unless the court shortens or extends the time. A motion authorized by rule 106 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(ii) Request for Affirmative Relief. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by subsections (a)(3)(i) and (a)(4). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed within seven (7) days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order, including a motion to extend time, at any time without awaiting a response. A party adversely affected by the court's action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Justice to Entertain a Motion. A justice may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. The court of appeals may review the action of a single justice.

(d) Form of Papers and Number of Copies.

(1) Format.

(i) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(ii) Cover. A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(iii) Binding. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(iv) Paper Size, Line Spacing, and Margins. The document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins

must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(2) Number of Copies. An original and three (3) copies must be filed unless the court requires a different number by order in a particular case.

(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

Rule 114. Briefs.

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) A cover page.

(2) A table of contents, with page references;

(3) A table of authorities, including cases (alphabetically arranged), statutes, codes and other authorities, with references to the pages of the brief where they are cited;

(4) A jurisdictional statement, including:

(i) The basis for the trial court's subject-matter jurisdiction, with citations to applicable provisions of the laws of the Tribe and stating relevant facts establishing jurisdiction;

(ii) The basis for the court of appeals' jurisdiction, with citations to applicable provisions of the laws of the Tribe and stating relevant facts establishing jurisdiction;

(iii) The filing dates establishing the timeliness of the appeal; and

(iv) An assertion that the appeal is from a final order or judgment that disposes of all parties' claims or information establishing the court of appeals' jurisdiction on some other basis;

(5) A statement of the issues presented for review;

(6) A concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;

(7) A request for oral argument, if sought;

(8) A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) The argument, which must contain:

(i) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(ii) For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues); and

(10) A short conclusion stating the precise relief sought.

(b) Respondent's Brief.

(1) The respondent's brief must conform to the requirements of subsections (a)(1)-(9), except that none of the following need appear unless the respondent is dissatisfied with the appellant's statement:

(i) The jurisdictional statement;

(ii) The statement of the issues;

(iii) The statement of the case; and

(iv) The statement of the standard of review.

(2) Argument shall be limited to the argument in appellant's brief.

(c) Reply Brief. The appellant may file a brief in reply to the respondent's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities, including cases (alphabetically arranged), statutes, codes and other authorities, with references to the pages of the reply brief where they are cited. Argument shall be limited to the argument in respondent's response brief.

(d) References to Parties. In briefs and at oral argument, legal counsel should minimize use of the terms "appellant" and "respondent." To make briefs clear, legal counsel should use the parties' actual names or the designations used in the trial court proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer."

(e) References to the Record. References to the parts of the record must be to the page of the original document. For example:

(1) Answer at 7;

(2) Motion for Judgment at 2;

(3) Transcript at 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Briefs in a Case Involving Multiple Appellants or Respondents. In a case involving more than one appellant or respondent, including consolidated cases, any number of appellants or respondents may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(g) Intervention by Tribe. If the Tribe intervenes in an appeal raising a constitutional issue as provided in these rules, the Tribe shall be considered a respondent to the appellant raising the constitutional issue for the purposes of filing briefs and presenting oral argument.

(h) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the Tribal Court Administrator by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 115. Cross-Appeals.

(a) Applicability. This rule applies to a case in which a cross-appeal is filed.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rule 120. If notices are filed on the same day, the plaintiff or petitioner in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 114(a).

(2) Respondent's Principal and Response Brief. The respondent must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That respondent's brief must comply with Rule 114(a), except that the brief need not include a statement of the case unless the respondent is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 114(a)(1)-(9), except that none of the following need appear unless the appellant is dissatisfied with the respondent's statement in the cross-appeal:

(i) The jurisdictional statement;

(ii) The statement of the issues;

(iii) The statement of the case; and

(iv) The statement of the standard of review.

(4) Respondent's Reply Brief. The respondent may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 114(a)(1)-(2) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Length. The appellant's principal brief must not exceed thirty (30) pages; the respondent's principal and response brief, thirty-five (35) pages; the appellant's response and reply brief, thirty (30) pages; and the respondent's reply brief, fifteen (15) pages.

(e) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) The appellant's principal brief, within thirty (30) days after the record is filed;

(2) The respondent's principal and response brief, within thirty (30) days after the appellant's principal brief is served;

(3) The appellant's response and reply brief, within thirty (30) days after the respondent's principal and response brief is served; and

(4) The respondent's reply brief, within fourteen (14) days after the appellant's response and reply brief is served, but at least seven (7) days before argument unless the court, for good cause, allows a later filing.

Rule 116. Brief of Amicus Curiae.

(a) When Permitted. The Tribe may file an amicus curiae brief without the consent of the parties or leave of court. Any other person who is not a party may file an amicus curiae brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) The movant's interest; and

(2) The reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 118. In addition to the requirements of Rule 118, the cover must identify the party or parties supported and indicate whether the

brief supports affirmance or reversal. An amicus brief need not comply with Rule 114, but must include the following:

(1) A table of contents, with page references;

(2) A table of authorities, including cases (alphabetically arranged), statutes, codes and other authorities, with references to the pages of the brief where they are cited;

(3) A concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; and

(4) An argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review.

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than seven (7) days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than seven (7) days after the appellant's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument.

(1) By the Tribe. The Tribe may present oral argument as amicus curiae by filing a notice to present oral argument. If a party objects to such oral argument, the court may reject the notice if the party shows that such participation will be prejudicial to a party or otherwise impede the court's consideration of the appeal.

(2) Other Amicus Curiae. Any other amicus curiae may participate in oral argument only with the court's permission.

Rule 117. Serving and Filing Briefs.

(a) Time to Serve and File a Brief. The appellant must serve and file a brief within thirty (30) days after the record is filed. The respondent must serve and file a brief within thirty (30) days after the appellant's brief is served. The appellant may serve and file a reply brief within fourteen (14) days after service of the respondent's brief but a reply brief must be filed at least seven (7) days before argument, unless the court, for good cause, allows a later filing.

(b) Number of Copies to be Filed and Served. One (1) original and three (3) copies of each brief must be filed with the Tribal Court Administrator and one (1) copy must be served on each party or its legal counsel. The court may by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, a respondent may move to dismiss the appeal. A respondent who fails to file a brief will not be heard at oral argument unless the court grants permission.

Rule 118. Form of Briefs and Other Papers.

(a) Form of a Brief.

(1) Reproduction.

(i) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(ii) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the respondent's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(i) The number of the case centered at the top;

(ii) The name of the court;

(iii) The title of the case;

(iv) The nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court below;

(v) The title of the brief, identifying the party or parties for whom the brief is filed; and

(vi) The name, office address, and telephone number of legal counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Length. Appellant's principal brief and respondent's response brief shall not exceed thirty (30) pages. Reply briefs shall not exceed fifteen (15) pages. The page limitations do not include the table of contents, table of authorities and any attachments or exhibits thereto. The page limits may be increased upon motion by any party or on the court's own motion.

(b) Form of Other Papers. Any other paper, excluding a motion governed by Rule 113, including a petition for rehearing, and any response to such a petition, must be reproduced in the manner prescribed by subsection (a), with the following exceptions:

(1) A cover is not necessary if the caption and signature page of the paper together contain the information required by subsection (a)(2). If a cover is used, it must be white.

(2) Subsection (a)(5) does not apply.

(c) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's legal counsel.

(d) Defective Briefs. When a brief fails to comply with the requirements of these rules, the court, on motion of any party or on its own initiative, and with or without notice may:

(1) Order the brief to be returned for correction and re-filed within a time specified in the order;

(2) Order the brief stricken with leave to file a new brief within a specified time; or

(3) Disregard the defects and consider the brief as if it were properly prepared.

Rule 119. Appeal Conferences. The court may direct legal counsel and, when appropriate, the parties to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A justice or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, legal counsel must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

Rule 120. Oral Argument.

(a) In General.

(1) Party's Statement. Any party may file a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument will be allowed only when requested or ordered by the court of appeals on its own motion. Oral argument must be allowed in every case where requested unless the court, after examining the briefs and record, unanimously agrees that oral argument is unnecessary for any of the following reasons:

(i) The appeal is frivolous;

(ii) The dispositive issue or issues have been authoritatively decided; or

(iii) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The Tribal Court Administrator must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and

the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed no less than five (5) days in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Legal counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 115(b) determines which party is the appellant and which is the respondent for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the respondent fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the respondent's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Legal counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, legal counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The Tribal Court Administrator may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the Tribal Court Administrator gives notice to remove them.

Rule 121. Decision of the Appellate Court.

(a) The court of appeals may not hold any trial, take testimony or receive evidence. The decision shall be based entirely on the record and if any testimony or evidence is required or a new trial needed, the court shall remand the case to the trial court for the same.

(b) The court of appeals decision may:

(1) Affirm, modify, vacate, set aside or reverse any judgment, decree or order of the trial court; or

(2) Remand the case and direct entry of an appropriate judgment, decree or order, or require such further proceedings as may be just and equitable under the circumstances.

(c) The court shall issue its decision within ninety (90) days of the last of the following events:

(1) Oral argument;

(2) Filing of any supplemental brief after oral argument, if the court requests such briefing;

(3) Filing of supplemental authorities and responses pursuant to 111(g); or

(4) Filing of the last reply brief, if the matter is submitted on the briefs without argument.

(d) If the court will not be able to submit a decision within ninety (90) days, the court shall notify the parties of such delay and state the time when it will issue a decision.

(e) The decision of the court of appeals shall be final and not subject to further review or appeal, except for rehearing permitted under these rules.

Rule 122. Entry of Judgment; Notice.

(a) Entry. A judgment is entered when it is noted on the docket. The Tribal Court Administrator must prepare, sign, and enter the judgment:

(1) After receiving the court's opinion, but if settlement of the judgment's form is required, after final settlement; or

(2) If a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the Tribal Court Administrator must serve on all parties a copy of the opinion, or the judgment if no opinion was written, and a notice of the date when the judgment was entered.

Rule 123. Interest on Judgment.

(a) When the Court Affirms. Unless the laws of the Tribe provide otherwise, if a money judgment is affirmed, whatever interest is allowed by the laws of the Tribe is payable from the date when the trial court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the trial court, the mandate must contain instructions about the allowance of interest.

Rule 124. Frivolous Appeal. If a court of appeals determines that an appeal is frivolous or that it has been taken for improper purpose, including delay, harassment or causing undue expense to a non-appealing party, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, sanction the appellant and award just damages, legal counsel's fees, and single or double costs to the respondent.

Rule 125. Costs.

(a) Against Whom Assessed. The following rules apply unless the laws of the Tribe provide, or the court orders, otherwise:

(1) If an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) If a judgment is affirmed, costs are taxed against the appellant;

(3) If a judgment is reversed, costs are taxed against the respondent;

(4) If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs Against the Tribe. Costs against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such will be assessed under subsection (a) only if expressly authorized by the laws of the Tribe.

(c) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must, within ten (10) days after entry of judgment, file with the Tribal Court Administrator, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within ten (10) days after service of the bill of costs, unless the court extends the time.

(3) The Tribal Court Administrator must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the Tribal Court Administrator must add the statement of costs, or any amendment of it, to the mandate.

(d) Costs on Appeal Taxable in the Trial Court. The following costs on appeal are taxable in the trial court for the benefit of the party entitled to costs under this rule:

(1) The preparation and transmission of the record;

(2) The reporter's transcript, if needed to determine the appeal;

(3) Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) Any fee for filing the notice of appeal.

Rule 126. Petition for Rehearing.

(a) Time to File; Contents; Answer; Action by the Court if Granted.

(1) Time. Unless the time is shortened or extended by order or local rule, a petition for rehearing may be filed within ten (10) days after entry of judgment. But, the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such may file a petition within thirty (30) days after entry of judgment.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapplied and must argue in support of the petition. Oral argument is not permitted.

(3) Answer. Unless the court requests, no answer to a petition for panel rehearing is permitted.

(4) Action by the Court. If a petition for panel rehearing is granted, the court may do any of the following:

(i) Make a final disposition of the case without re-argument;

(ii) Restore the case to the calendar for re-argument or resubmission; or

(iii) Issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 118. Copies must be served and filed as Rule 111 prescribes. Unless the court permits otherwise, a petition for panel rehearing must not exceed fifteen (15) pages.

(c) Court's Inherent Power to Correct Orders. If the court at any time determines that there has been a change of law or an error in consideration of existing law or facts that warrants reconsideration of a prior order, it may do so on its own motion and enter a new or different order.

Rule 127. Mandate.

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue seven (7) days after the time to file a petition for rehearing expires, or seven (7) days after entry of an order denying a timely petition for rehearing or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate. The timely filing of a petition for rehearing or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

Rule 128. Voluntary Dismissal of Appeal.

(a) Dismissal in the Trial Court. Before an appeal has been docketed by the Tribal Court Administrator, the trial court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals. The Tribal Court Administrator may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

Rule 129. Case Involving a Constitutional Question When the Tribe is Not a Party.

(a) Constitutional Challenge to Tribal Law. If a party questions the constitutionality, or validity under the Indian Civil Rights Act, of a law of the Tribe or of an action of the Tribal Council or the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such in a proceeding in which the Tribe or one its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such is not a party, the questioning party must give written notice to the Tribal Court Administrator immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The Tribal Court Administrator must then notify the Attorney for the Tribe.

(b) Intervention of Tribe. Unless the court sets a later time, the Attorney for the Tribe may intervene in the appeal within thirty (30) days after the notice is received. The Tribe shall file a brief as intervenor no later than (30) days after intervening.

Approved 5/15/16
Resolution 16-36