TITLE II
RULES OF PROCEDURE IN CIVIL ACTIONS

CHAPTER 1
GENERAL PROVISIONS

Section 2-1-1. Scope of Rules; Definitions.

1. Except when different rules prescribed in this Code specifically apply, these Rules shall govern the procedure in all civil actions and proceedings in the Tribal Court and such other courts and tribunals of the Tribe where provided under the laws of the Tribe.

2. Unless the context requires otherwise or another definition is provided in these Rules, terms used in these Rules and defined in Chapter 1 of Title I of the Code have the meanings set forth in said chapter of the Code.

3. These Rules shall not be construed to extend or limit the jurisdiction of the Trial Court, the Court of Appeals, or any other tribunal under the laws of the Tribe.

4. When these Rules apply in another court or tribunal, references to the Trial Court in these Rules shall refer to such court or tribunal and references to the Court of Appeals in these Rules shall refer to the appellate court with jurisdiction over appeals from such court or tribunal.

5. Substantial compliance with these Rules will be sufficient for all parties not represented by legal counsel and the Trial Court or Court of Appeals, as appropriate, may, on its own motion or on request of any party, waive any requirement or provision of these Rules.

Section 2-1-2. One Form of Action. Except for juvenile proceedings, there shall be one form of action known as the "civil action."

Section 2-1-3. Construction.

1. These Rules shall be liberally construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding with the goal, where appropriate, of resolving the underlying dispute or issue between the parties in a just and equitable manner which maintains the balance and well-being of the Tribe and community.

2. Unless the context requires otherwise, as used in these Rules:

a. "Answer" includes a response to a petition or third-party petition;

b. "Complaint" includes a petition, counterclaim, and third-party complaint;

c. "Defendant" includes a respondent;

d. "Judgment" includes any decision, decree, or order finally and conclusively determining the rights of the parties or from which an appeal otherwise lies or is granted;

e. "Plaintiff" includes a petitioner; and

f. "Rules" means the Rules in this Title.

Section 2-1-4. Collateral References.

1. Except as may be inconsistent with other provisions of this Code or these Rules or otherwise inapplicable because they refer to special United States procedures having no counterpart in the Tribal Court, any procedures or matters not covered herein shall be handled in accordance with, in the case of the Trial Court or other lower court of the Tribe, the United States Federal Rules of Civil Procedure and, in the case of the Court of Appeals or other appellate court of the Tribe, the United States Federal Rules of Appellate Procedure, and with general principles of fairness and justice as prescribed and interpreted by the Tribal Court.

2. When handling matters in accordance with the United States Federal Rules of Civil Procedure or United States Federal Rules of Appellate Procedure pursuant to this Rule, 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 the following:

a. "Attorney General" shall refer to the Tribal Attorney;

b. "Clerk" shall refer to the Tribal Court Administrator;

c. "Court" shall refer to the Trial Court or other lower court or the Court of Appeals or other appellate court, as appropriate;

d. "Judicial District" shall refer to the territory of the Tribe; and

e. "United States" shall refer to the Tribe.

Section 2-1-5. 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.

Section 2-1-6. 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, testimony, 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 under penalty of perjury in accordance with and subject to the provisions governing the same in Title I of the Code.

Section 2-1-7. Citation. These Rules, other than the Rules of Appellate Procedure, shall be known as the Ponca Tribe of Nebraska Rules of Civil Procedure and may be abbreviated "Ponca Tr. of Neb. R. Civ. P." or "P.T.N.R.C.P." Example: This Rule shall be cited as "Ponca Tr. of Neb. R. Civ. P. § 2-1-7" or P.T.N.R.C.P. § 2-1-7."

CHAPTER 2
COMMENCEMENT OF ACTION AND SERVICE OF PROCESS

Section 2-2-1. 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 Trial Court shall have jurisdiction from the time when both the complaint is filed and it is properly served upon the defendant.

Section 2-2-2. Summons.

1. A summons must:

a. Name the court and the parties;

b. Be directed to the defendant;

c. State the name and address of the plaintiff's legal counsel or, if unrepresented, the plaintiff, provided that where the laws of the Tribe provide for the withholding of a plaintiff's address, the address of an unrepresented plaintiff may be substituted with an alternative address for plaintiff, the Tribal Court's address, or such other address as provided in the law of the Tribe which permits withholding the address;

d. State the time within which the defendant must respond to the complaint; and

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

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

Section 2-2-3. Waiver of Service.

1. A person, other than the Tribe, has a duty to avoid unnecessary expenses of serving the summons. Except where the defendant is the Tribe, the plaintiff, or the Tribal Court Administrator on behalf of the plaintiff, may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must be in writing and be addressed:

a. To the individual defendant or, for a defendant that is an entity, an officer, director, manager, partner, agent, owner, member, or functional equivalent with authority to receive and waive service of process by appointment or by law;

b. Name the court where the complaint was filed;

c. Be accompanied by a copy of the complaint and two (2) copies of a waiver form which includes language in substantially the following form:

> To (name the plaintiff's/petitioner's legal counsel or the unrepresented plaintiff/petitioner):
>
> I have received your request to waive service of a summons in this action along with a copy of the [complaint/petition], two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.
>
> I, or the entity I represent, agree to save the expense of serving a summons and [complaint/petition] in this case.
>
> I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit and the court's jurisdiction, but that I waive any objections to the absence of a summons or of service.
>
> I also understand that I, or the entity I represent, must file and serve an [answer/response] or a motion under the Tribal Rules of Civil Procedure within 60 days from the date when this waiver was signed, so long as signed prior to the expiration of 30 says after this request was sent. If I fail to do so, a default judgment will be entered against me or the entity I represent.
>
> Date: _____
>
> _____
> (Signature of legal counsel or party)
>
> _____
> (Printed name)
>
> _____
> (Address)
>
> _____

(E-mail address)

_____

(Telephone number)

d. Include a prepaid means for returning the form;

e. State the date when the request is sent;

f. Give the defendant a reasonable time of at least thirty (30) days after the request was sent to return the waiver; and

g. Be sent by first-class mail or other reliable means.

2. A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until sixty (60) days after the waiver was executed.

3. When the plaintiff files a waiver, proof of service is not required and these Rules apply as if a summons and complaint had been served at the time of filing the waiver.

4. Waiving service of a summons does not waive any objection to personal or subject matter jurisdiction.

5. No plaintiff may request that the Tribe waive service of a summons and any purported waiver of service of a summons on the Tribe shall be invalid and ineffective.

Section 2-2-4. Service of Summons and Complaint.

1. Service of process shall consist of delivering to the party to be served a copy of the complaint along with the summons.

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

3. Personal service shall be as follows:

a. 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 or herself;

ii. Leaving a copy of the required papers with a natural 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 on behalf of the person.

b. 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 natural person of suitable discretion over the age of majority with whom the person resides.

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

d. Upon any form of corporation, partnership, association, cooperative, limited liability company, limited partnership association, trust, organization, or other form of entity that is recognized or exists under the laws of the Tribe or of any foreign jurisdiction, other than a Tribal business entity or Tribal government entity, 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 foreign jurisdiction or that agent's secretary or assistant;

ii. An officer, director, manager, partner, agent, shareholder, owner, 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.

e. Upon the Tribe or any Tribal government entity or Tribal business entity not subject to suit in their own name under the laws of the Tribe, only by delivering a copy of the required papers to the Tribal Council Secretary and providing a copy of the required papers to the Tribal Attorney by mail, facsimile transmission, or electronic mail.

f. Upon a Tribal official acting in an official capacity, only by delivering a copy of the required papers to the Tribal official and providing a copy of the required papers to the Tribal Attorney by mail, facsimile transmission, or electronic mail.

g. Upon a Tribal government entity or Tribal business entity that is subject to suit in its own name, only by delivering a copy of the required papers to the director, principal officer, or other executive employee thereof, and providing a copy to the legal counsel for the Tribal government entity or Tribal business entity or, in the absence thereof, the Tribal Attorney, by mail, facsimile transmission, or electronic mail.

4. 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.

5. Any person or party, other than the Tribe, 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.

6. Service upon a person or party may be made anywhere outside the territory of the Tribe 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.

7. Except in the case of service upon the Tribe, 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 Trial 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 Trial 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.

8. In the case of service upon the Tribe in a proceeding in the Tribal Court, the Court may order substituted service by electronic mail to the official individual government e-mail address of the Tribal official on whom personal service would be made when the proceeding is subject to an expedited time frame under the laws of the Tribe which would make personal service impractical and such substituted service is reasonably calculated to give actual notice to the Tribe, the Tribal official, Tribal government entity, or Tribal business entity, as the case may be with respect to upon whom service is to be effective. Unless service by electronic mail is expressly acknowledged as received, substituted service by electronic mail pursuant to this subsection shall be followed by personal service in accordance with this Rule.

9. Service by publication may be made only upon order of the Trial 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 Trial 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 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. Service by publication shall not be available or ordered for service upon the Tribe.

10. Proof of service shall be filed with the Tribal Court Administrator and made as follows:

a. 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;

b. 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;

c. 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 the newspaper showing the date of publication attached;

d. If served by waiver of service, by the written waiver of service executed by the person served or by their legal counsel;

e. 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.

11. If service of the summons and complaint is not made upon a party to be served within one hundred twenty (120) days after the filing of the complaint, the Trial Court, upon motion or on its own initiative after notice to the plaintiff, 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 shows good cause for the failure, the Trial Court shall extend the time for service for an appropriate period.

12. Service in connection with a proceeding in a foreign court may be made within the territory of the Tribe in accordance with the following:

a. Upon application by any interested person, the Trial Court may order service upon any person who is residing, domiciled, or can be found within the territory of the Tribe of any document issued in connection with a proceeding in a foreign court. The order shall direct the manner of service in accordance with this Rule.

b. Service in connection with a proceeding in a foreign court may be made within the territory of the Tribe without an order of court in the manner provided in this Rule for service in a proceeding before the Trial Court.

c. Service under this subsection does not, of itself, require or have the effect of the recognition or enforcement of an order, judgment, or decree rendered in a foreign court or that the foreign court has personal or subject matter jurisdiction in the proceeding.

Section 2-2-5. Service of Other Papers.

1. This Rule governs service on other parties after service of the summons and complaint, counterclaim, or third-party complaint.

2. Unless these Rules provide otherwise, each of the following papers must be served on every party by a method stated in this Rule:

a. Every order stating that service is required;

b. Every pleading or other paper filed after the original complaint;

c. Every paper relating to discovery required to be served upon a party, unless the Trial Court otherwise orders;

d. Every written motion, except one that may be heard ex parte; and

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

3. 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 these Rules.

4. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

5. If a party is represented by legal counsel, service under this Rule must be made on the legal counsel unless the Trial Court orders service on the party.

6. A document is served under this Rule by:

a. Handing it to the person;

b. Leaving it at the person's office with a clerk or other natural person in charge or, if no one is in charge, in a conspicuous place in the office; or

c. 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;

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

e. Sending it by electronic means, including facsimile and electronic mail, unless the person objects 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;

f. Leaving it with the Tribal Court Administrator if the person has no known address; or

g. 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.

7. The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

A copy of the foregoing has been or will be [mailed/emailed/hand-delivered] on (insert date) to:

(Name of opposing party or legal counsel)

(Address of opposing party or legal counsel)

Section 2-2-6. Filing.

1. 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.

2. 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 Trial Court:

a. A subpoena or subpoena duces tecum, any document used solely for issuance of a subpoena or subpoena duces tecum, and any affidavit of service of a subpoena;

b. 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;

c. Any proposed pleading, except such pleading may be filed after ruling by the Trial Court if necessary to preserve the record on appeal;

d. Any paper which previously has been filed in the case; if a party desires to call the Trial Court's attention to anything contained in a previously filed paper, the party shall do so by citation or incorporation by reference;

e. Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal or if the authority is unpublished or not readily available to the Tribal Court from other sources; and

f. Offers of judgment.

3. The filing of pleadings and other papers with the Trial 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.

Section 2-2-7. Challenge to Tribal Law.

1. If a party files a pleading, written motion, or other paper drawing into question the constitutionality or validity on any ground of a law of the Tribe or of an action of the Tribal Council or the Tribe in a proceeding in which the Tribe itself is not a party, the party must promptly:

a. File a notice of claim of unconstitutionality in accordance with Title VI of the Code, including stating the question and identifying the paper that raises it; and

b. Serve the notice and paper as provided in Title VI of the Code in the manner provided in these Rules for service of a summons upon the Tribe.

2. Unless the Trial Court sets a later time, the Tribe may intervene as of right within sixty (60) days after the notice is filed. Before the time to intervene expires, the Trial Court may reject the challenge, but may not enter a final judgment holding the law or action unconstitutional or invalid.

Section 2-2-8. Time.

1. Any period of time set forth herein shall be calculated as provided in Chapter 1 of Title I of the Code. Unless the Trial 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.

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

3. Any notice of hearing or oral argument on a motion shall be served not later than five (5) days prior to the time specified for a hearing, except:

a. When the motion may be heard ex parte;

b. When these Rules set a different time; or

c. When a court order sets a different time.

4. 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.

Section 2-2-9. Proceeding Without Prepaying Fees or Costs.

1. The Court may authorize the commencement, prosecution, or defense of any suit, action, or proceeding without prepayment of fees or costs or security therefor, by a person who submits a motion to proceed without prepaying fees or costs and an affidavit that:

a. Shows in explicit detail, the party's inability to pay or to give security for fees and costs;

b. Claims an entitlement to redress; and

c. States the nature of the action or defense.

2. If the Trial Court grants the motion, the party may proceed 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. The Tribal Court Administrator shall issue and serve all process and perform all duties in cases where an individual is proceeding without prepaying fees or costs. 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.

4. Notwithstanding any filing fee, or any portion thereof, that may have been paid, the Trial Court shall dismiss an action where prepaying fees or costs has been excused if the Trial Court determines at any time that the allegation of poverty is untrue.

5. 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 Tribal Court as the fees excused under this Rule. If the Tribe or the Tribal Court has paid any costs for the prevailing party, the same shall be taxed in favor of the Tribe or the Tribal Court, as appropriate.

6. 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 or other tribunal 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.

Section 2-2-10. Appearance of Counsel. Legal counsel representing a party before the Trial Court or otherwise appearing before the Trial Court shall enter their appearance by signing and filing a pleading or motion or by filing a notice of appearance.

Section 2-2-11. No Filing Fees for Tribe. Unless expressly provided otherwise in the laws of the Tribe, the Tribal Court shall not charge any filing fees to the Tribe.

CHAPTER 3
PLEADINGS AND MOTIONS

Section 2-3-1. Pleadings Allowed.

1. Only these pleadings are allowed:

a. A complaint;

b. An answer to a complaint;

c. An answer to a counterclaim designated as a counterclaim;

d. An answer to a crossclaim;

e. A third-party complaint;

f. An answer to a third-party complaint; and

g. If the Trial Court orders one, a reply to an answer.

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

Section 2-3-2. Motions and Orders.

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

a. Be in writing, unless made during a hearing or trial;

b. State with particularity the grounds for seeking the order; and

c. State the relief sought.

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

3. No court order shall be issued unless a civil action has been commenced as provided in these Rules.

4. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. Any affidavit, memorandum of points and authorities, or other paper necessary to support a motion must be served and filed with the motion. An affidavit must contain only factual information, not legal argument.

5. Any party may file a response to a motion. Except as otherwise provided for particular motions in these Rules, such response shall be filed within fourteen (14) days after service of the motion unless the Trial Court shortens or extends the time. Any affidavit, memorandum of points and authorities, or other paper necessary to support a response must be served and filed with the response.

6. Unless otherwise ordered by the Trial Court, the moving party may file a reply to a response within seven (7) days after service of the response. Any affidavit, memorandum of points and authorities, or other paper necessary to support a reply must be served and filed with the reply. A reply must not present matters that do not relate to the response.

7. If one or more of the grounds asserted in a motion to dismiss is a lack of personal or subject matter jurisdiction, the time schedule for filing and service of a response and reply will be the same as for motions for summary judgment as set forth in these Rules. The Trial Court may order a different briefing schedule.

8. Unless otherwise directed by the Trial Court, a party desiring oral argument must request it by placing "Oral Argument

Requested" immediately below the title of a motion or the response to a motion. The Trial Court may decide motions without oral argument. If oral argument is granted, notice will be given in a manner directed by the Trial Court. No witnesses may testify or evidence be presented or taken at oral argument.

9. If a party does not serve and file a response to a motion or fails to appear at the time and place assigned for oral argument, it may be deemed a consent to the denial or granting of the motion and the Trial Court may dispose of the motion summarily.

10. The Trial 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 Trial 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.

11. 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.

12. An order includes every direction of the Tribal 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. An order issued ex parte is one that is issued without waiting for a response from the other side. Ex parte orders may be issued by the Trial Court only where permitted in the laws of the Tribe and only under the circumstances and in the manner provided in the laws of the Tribe for ex parte orders requested or issued.

Section 2-3-3. General Rules of Pleading.

1. A pleading which sets forth a claim for relief must contain:

a. A short and plain statement of the grounds for the Trial Court's jurisdiction, unless the Trial Court already has jurisdiction and the claim needs no new jurisdictional support;

b. A short, plain statement of the claim showing that the pleader is entitled to relief; and

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

2. The following apply to defenses, admissions, and denials in a pleading:

a. 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.

b. A denial must fairly respond to the substance of the allegation.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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 Trial Court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

3. Each allegation in a pleading must be simple, concise, and direct. No technical form is required.

4. A party may set out two (2) or more statements of a claim or defense in a pleading 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.

5. A party may state as many separate claims or defenses in a pleading as it has, regardless of consistency.

6. Pleadings must be construed so as to do justice.

7. Nothing in this Rule removes, affects, or modifies the requirement of a plaintiff to state a claim upon which relief can be granted.

Section 2-3-4. Form of Pleadings.

1. Every pleading must have a caption with the Trial 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.

2. 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.

3. 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.

4. Pleadings and other papers filed with the Trial Court shall comply with the following:

a. 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 one (1) inch.

b. 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.

c. All pleadings and other papers filed shall have the pages numbered and shall state the number of the action; the name of the Trial Court; the title of the 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.

d. 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.

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

Section 2-3-5. Signing of Pleadings.

1. 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 Trial Court must strike an unsigned paper unless the omission is promptly corrected after being called to the legal counsel's or party's attention.

2. A person may electronically sign a filed document by placing the symbol "/s/" on the signature line above the person's name or using a facsimile image of the person's signature. An electronic signature has the same force and effect as a physical signature on a document.

3. A person filing a document containing more than one place for a signature, such as a stipulation, may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission" as any non-filing party's signature.

4. By presenting to the Tribal 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 reasonable inquiry:

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

b. 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;

c. 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

d. 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.

5. If a pleading, motion, or other paper is signed in violation of this Rule, the Trial 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.

6. 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.

Section 2-3-6. Defenses and Objections.

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

2. Unless the Trial Court sets a different time, filing a motion under this Rule alters these periods as follows:

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

b. If the Trial Court grants a motion for a more definite statement, the responsive pleading must be served within ten (10) days after the more definite statement is served.

3. 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 matters by motion:

a. Lack of subject matter jurisdiction;

b. Lack of personal jurisdiction;

c. Insufficient service of process;

d. Failure to state a claim upon which relief can be granted; and

e. Failure to join a party.

A motion asserting any of these matters 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.

4. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

5. The defenses enumerated in subsection 3 of this Rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings in subsection 4 of this Rule shall be heard and determined before trial on application of any party.

6. On a motion under subsection 3(d) of this Rule or subsection 4 of this Rule, if the movant presents matters outside the pleadings and such matters are not excluded by the Trial Court, the motion must be treated as one for summary judgment. If a party responding to such a motion presents matters outside the pleadings, it may not be treated as a motion for summary judgment even if such matters are not excluded by the Tribal Court. However, all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. Notwithstanding the foregoing, the Trial Court may consider the following without the motion being treated as one for summary judgment:

a. Exhibits attached to the complaint whose authenticity is unquestioned;

b. Matters incorporated by reference, integral to the claim, or contemplated by or expressly mentioned in the complaint;

c. Items and matters appearing in the record of the proceedings;

d. Items and matters subject to judicial notice;

e. Items and matters of public record;

f. Official documents and official laws, records, or copies thereof; and

g. Orders of Tribal government entities and foreign jurisdictions.

7. 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 Trial Court orders a more definite statement and the order is not obeyed within fourteen (14) days

after notice of the order or within the time the Trial Court sets, the Trial Court may strike the pleading or issue any other appropriate order.

8. The Trial Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Trial Court may act:

a. On its own; or

b. On motion made by a party either before responding to the pleading or, if a response is not allowed, within twenty (20) days after being served with the pleading.

9. 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.

10. A party waives any defense of lack of jurisdiction over the person or insufficiency of service of process by:

a. Omitting it from a motion in the circumstances described in subsection 9 of this Rule; or

b. Failing to either raise it by motion under this Rule or include it in a responsive pleading or an amendment allowed by these Rules.

11. The Trial Court has an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party. Whenever it appears by suggestion of the parties or otherwise that the Trial Court lacks jurisdiction of the subject matter, the Trial Court shall, and is obligated to, determine whether it has subject matter jurisdiction and, if it finds it does not, dismiss the action with prejudice.

12. If a motion which is required or allowed to be made prior to the filing of a responsive pleading is filed, the time for filing a responsive pleading shall not commence to run until after the motion is determined by the Trial Court, including any

allowed appeal, to the extent a responsive pleading is required after determining the motion.

Section 2-3-7. Counterclaim or Crossclaim.

1. 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:

a. Arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

b. Does not require adding another party over whom the Trial Court cannot acquire jurisdiction.

2. 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.

3. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

4. These Rules do not permit any party to assert a counterclaim against the Tribe unless another law of the Tribe expressly permits such counterclaim.

5. The Trial 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.

6. 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.

Section 2-3-8. Third Party Practice.

1. When a Defending Party May Bring in a Third Party.

a. 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.

b. 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 fourteen (14) days after serving the original answer. Otherwise, the third-party plaintiff must, by motion, obtain the Trial Court's leave.

c. 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.

d. 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.

e. 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.

2. 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.

Section 2-3-9. Amendment of Pleadings.

1. A party may amend the party's pleadings once as a matter of course before the opposing party has responded, including by substantive motion, or, if no response is required, no later than twenty (20) days after 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 Trial Court's leave.

2. 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.

3. An amendment to a pleading relates back to the date of the original pleading when:

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

b. 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.

Section 2-3-10. Sealing and Unsealing Court Records.

1. Unless restricted by a provision in the Code, these Rules, or court order issued in accordance with this Rule, the public shall have access to all documents filed with the Tribal Court and all court proceedings. No document may be filed under seal or redacted except pursuant to a court order under this Rule.

2. Any person may request that the Trial Court seal a case or seal or redact a court record for a case by filing a

written motion, or the Trial Court may, upon its own motion, initiate proceedings to seal a case or seal or redact a court record. A motion to seal a case or seal or redact a court record shall be open to public inspection and shall:

a. Disclose in its title that sealing or redaction is being sought;

b. Identify the document or the proceeding for which sealing or redaction is sought;

c. Set forth any legal authority justifying or allowing the sealing or redaction; and

d. Except where a law applicable to the proceeding provides a different standard for sealing or redaction:

i. Address the interest to be protected by sealing or redaction and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restriction);

ii. Identify a clearly defined and serious injury that would result if sealing or redaction is not allowed; and

iii. Explain how sealing or redaction is the least restrictive means to adequately protect the interest in question, including, if sealing is requested, why no alternative to sealing is practicable or why only sealing will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits is insufficient).

3. The Trial Court may conduct a hearing on a motion to seal or on a motion to allow the filing of redacted court records.

4. Unless a provision of the Code, these Rules, or prior court order authorizes court files and records, or any part thereof, to be sealed or redacted, the Trial Court may order that files and records, or any part thereof, be sealed or redacted only if it makes written findings in an order that:

a. An overriding interest exists that supports sealing the case or sealing or redacting a court record and overcomes the right of public access to it;

b. A substantial probability exists that the person seeking to seal the case or seal or redact a court record (or another person) would be prejudiced if the case or record is not sealed or redacted;

c. The proposed restriction on public access to the document is no greater than necessary to preserve the confidentiality of the information subject to the overriding interest; and

d. No reasonable, less restrictive alternative exists to preserve the confidentiality of the information subject to the overriding interest.

5. An order sealing the case or sealing or redacting a court record shall designate any individuals or officials authorized to access or inspect the sealed or redacted files or records.

6. An order sealing a case or sealing or redacting a court record shall be open to public inspection.

7. If a document is permitted to be filed under seal or redacted pursuant to this Rule, a cover sheet must be affixed to the document prominently displaying the notation "DOCUMENT(S) FOR FILING [UNDER SEAL/REDACTED]" and clearly identify:

a. The case number and title of the action in which the document or documents are to be filed;

b. The underlying pleading or motion to which the document or documents pertain; and

c. Each document being filed with sufficient detail so the Trial Court can readily identify it and the number of pages in each document.

8. Any document filed under seal or subject to redaction shall be complete without any redactions except as may be present in the original document.

9. If a person files a document under seal pursuant to an order authorizing the person to do so and if only part of the document falls within the category or type protected from

disclosure under the order or the order only permits redaction, the submitting person must file a publicly accessible version of the document that redacts only the protected portions of the document or the portions authorized to be redacted.

10. A document filed under seal or the unredacted version of a redacted document shall be held confidential and shall not be provided or open to inspection until further order of the Trial Court to any but the following:

a. Personnel of the Tribal Court;

b. Parties to the proceeding and their legal counsel;

c. Legal counsel requesting discovery as permissible under the laws of the Tribe;

d. Any other person authorized under the law providing for the sealing or redaction of the case or record; and

e. Any other person designated in a court order authorizing the sealing or redaction.

11. A court order under this Rule is not required in an action or proceeding where this Code provides for such actions or proceedings to be sealed, confidential, or otherwise not accessible to the public, but all records and documents in such proceedings shall be treated the same as records sealed pursuant to court order under this Rule.

12. Unless the Court of Appeals orders otherwise, the unredacted version of a document filed under seal or redacted shall be transmitted to the Court of Appeals as part of the record on appeal, but remains sealed or subject to redaction as part of the record on appeal.

13. In addition to imposing any civil fine or other sanction or consequence authorized under the law providing for the sealing, confidentiality, or restricting of access against any person who discloses any document, or portion thereof, in violation of such law, the Trial Court may hold in contempt or issue monetary sanctions against any person who discloses any document, or any protected portion of a document, the person knows or should know is sealed under this Rule. The Trial Court may also hold in contempt or issue monetary sanctions against any person who knowingly violates any provision of this Rule.

14. On motion by any person or on its own after providing reasonable notice to the parties, the Trial Court may order that a record or document be unsealed or released unredacted based on the standards of this Rule or, in the case of the Tribe, a legitimate governmental interest in obtaining the unsealed or unredacted record or document, including an investigation. The Trial Court's order must state the reasons for unsealing the document or, if the order denies a motion to unseal the document, the reasons for denying it.

CHAPTER 4
PARTIES

Section 2-4-1. Parties.

1. 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:

a. A personal representative, executor, or administrator of an estate;

b. A conservator;

c. A guardian;

d. A trustee of an express trust;

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

f. A party authorized by statute.

2. Whenever a minor or incapacitated person has a representative, such as a general guardian or similar fiduciary, the representative may sue or defend on behalf of the minor or incapacitated person. A minor or an incapacitated person who does not have a duly appointed representative may sue by a parent with decision-making authority, by a next friend, or by a guardian ad litem. The Trial Court must appoint a guardian ad litem or issue another appropriate order to protect a party who is a minor or incapacitated person and is unrepresented in an action.

3. When a law of the Tribe provides an action for the use or benefit of another to be brought in the name of the Tribe, the action must be brought in the name of the Tribe.

4. The following apply to actions against Tribal officials:

a. A Tribal official who sues or is sued in an official capacity may be designated by official title rather than by name, but the Trial Court may order that the Tribal official's name be added.

b. A Tribal official sued in an individual capacity for actions taken as a Tribal official or otherwise seeking to impose personal liability on the Tribal official for action taken as a part of the official's work for or on behalf of the Tribe must be designated by name and title and the pleading initiating the proceeding or action against the Tribal official must expressly state the official is sued in the official's individual capacity.

c. If a pleading does not expressly state a Tribal official is sued in the official's individual capacity, the action shall be deemed only against the Tribal official in an official capacity and no amendment of the pleading or other action to name the Tribal official in an individual capacity shall be permitted after service of the pleading except with the Tribal official's written consent.

5. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

Section 2-4-2. Joinder of Claims.

1. 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.

2. A party may join two claims even though one of them is contingent on the disposition of the other; but the Trial Court

may grant relief only in accordance with the parties' relative substantive rights.

3. A party shall join all claims the party may have against an opposing party arising from the same transaction or occurrence and failure to join all such claims shall bar any subsequent action arising from the same transaction or occurrence unless the failure to join the claim is the result of the opposing party concealing the existence of the claim from the party.

Section 2-4-3. Required Joinder of Parties.

1. A person who is subject to the Trial Court's jurisdiction and whose joinder will not deprive the Trial Court of subject matter jurisdiction shall be joined in the action if:

a. The person claims an interest relating to the subject of the action; or

b. In that person's absence, the Trial Court cannot accord complete relief among existing parties.

2. Failure to join a party over whom the Trial 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 Trial Court to consider include:

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

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

c. Whether a judgment rendered in the person's absence would be adequate; and

d. Except in the case of failure to join the Tribe or a Tribal official, whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Section 2-4-4. Permissive Joinder of Parties.

1. Persons may join in one action as plaintiffs if:

a. 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

b. Any question of law or fact common to all plaintiffs will arise in the action.

2. Persons may be joined in one action as defendants if:

a. 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

b. Any question of law or fact common to all defendants will arise in the action.

3. The Trial 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.

Section 2-4-5. Intervention.

1. On timely motion, the Trial Court must permit anyone to intervene who:

a. Is given an unconditional right to intervene by a provision in the Code; or

b. 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, provided that no party that is not the Tribe will be considered to adequately represent any interest of the Tribe unless the Tribe expressly states otherwise in writing.

2. On timely motion, the Trial Court may permit anyone to intervene who:

a. Is given a conditional right to intervene by a provision in the Code; or

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

3. In exercising its discretion, the Trial Court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

4. A motion to intervene must be served on the parties as provided in Section 2-2-5. The motion must state the grounds for intervention and, if the intervention involves a claim or defense for which intervention is sought, be accompanied by a pleading that sets out such claim or defense.

Section 2-4-6. Substitution of Parties. If a party dies or becomes incapacitated or transfers the party's interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

CHAPTER 5
DISCLOSURE AND DISCOVERY

Section 2-5-1. Prompt Disclosure.

1. Within the times set forth in subsection 2 of this Rule, each party shall disclose in writing to every other party:

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

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

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

i. A list of the documents or electronic information, or in the case of voluminous documentary information or electronic information, a list of the categories of documents or electronic information, known by a party to exist, whether or not in the party's possession, custody, or control, 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 electronic 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 electronic information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the documents and electronic information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

2. Disclosures shall be made in accordance with and subject to the following:

a. The parties shall make the initial disclosure required by subsection 1 of this Rule 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 Trial Court shortens or extends the time for good cause. The disclosures shall be served as

provided by Section 2-2-5, but legal counsel may instead meet to exchange disclosures.

b. The duty prescribed in subsection 1 of this Rule 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.

c. 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.

d. If a motion to dismiss the action is the responsive pleading to a complaint, counterclaim, crossclaim, or third-party complaint, the obligation to disclose, the duty prescribed in subsection 1 of this Rule, and discovery shall not commence unless and until the motion is denied unless the parties agree otherwise.

3. Each disclosure shall be made in writing under oath or affirmation, signed by the party making the disclosure.

4. When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as work product of legal counsel or 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.

5. If a party contends that information subject to a claim of privilege or of protection as work product of legal counsel or 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 Trial 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.

Section 2-5-2. Discovery Generally.

1. Parties may obtain discovery by one or more of the following methods:

a. Depositions upon oral examination or written questions;

b. Written interrogatories;

c. Production of documents or things or permission to enter upon land or other property for inspection and other purposes;

d. Physical and mental examinations; and

e. Requests for admission.

2. Parties may obtain discovery regarding any matter, not privileged or the work product of a party's legal counsel or trial preparation material, 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.

3. A party against whom discovery is sought may move the Trial Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Trial Court may order that the discovery cease or proceed only upon specified conditions.

4. Unless the Trial 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 Section 2-5-1.

5. The Trial Court shall assess an appropriate sanction against any party or legal counsel who has engaged in unreasonable, groundless, abusive, or obstructionist conduct.

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

7. 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.

Section 2-5-3. Oral Depositions.

1. 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 twenty (20) 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 Trial Court following a motion demonstrating good cause.

2. If a subpoena for documents, electronic information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Section 2-5-6 to produce documents, electronic information, or tangible things at the deposition. The procedures under Section 2-5-6 apply to any such request.

3. 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 and must be completed in a single day, except pursuant to stipulation of the parties or by order of the Trial Court upon motion and a showing of good cause. The Trial Court shall impose sanctions for unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition including

an unreasonable refusal to agree to extend a deposition beyond four (4) hours.

4. 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.

5. The parties may agree or the Trial Court may order that a deposition be taken by telephone or other remote means. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

6. 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. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Legal counsel may instruct a deponent not to answer, or a deponent may refuse to answer, only when necessary to preserve a privilege, to enforce a limit ordered by the Trial Court, or to present a motion to enforce subsection 3 of this Rule. Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

7. The deponent and the deponent's legal counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and the deponent's legal counsel may not confer off the record while a question is pending.

8. Review of and changes to a deposition shall be performed as follows:

a. If requested by the deponent or a party before the deposition is completed, the deponent must be allowed thirty (30) days after being notified by the officer that the transcript or recording is available in which:

i. To review the transcript or recording; and

ii. If there are changes in form or substance, to sign and deliver to the officer a statement listing the changes and the reasons for making them.

b. The officer must note in the certificate of the record of deposition whether a review was requested and, if so, must attach any changes the deponent made during the thirty (30) day period.

9. The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent's testimony. The certificate must accompany the record of the deposition. Unless the Trial Court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness name]" and must promptly deliver it to the legal counsel who arranged for the transcript or recording. The legal counsel must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Section 2-5-4. Written Depositions.

1. 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 thirty (30) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten (10) days after being served with redirect questions, a party may serve recross questions upon all other parties. The Trial 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 Trial Court following a motion demonstrating good cause.

2. Depositions shall be of reasonable length. The Trial Court shall impose sanctions for unreasonable, groundless, abusive, or obstructionist conduct.

3. 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 prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

4. Objections shall be the same as with oral depositions.

Section 2-5-5. Interrogatories.

1. Unless otherwise stipulated or ordered by the Trial Court, a party may submit no more than twenty-five (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.

2. 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 Trial Court may allow a shorter or longer time.

3. 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.

Section 2-5-6. Production, Entry, or Inspection.

1. A party may serve on any other party a request within the scope of Section 2-5-2(2):

a. To produce and permit the requesting party or its representative to inspect, copy, test, or sample any designated documents or electronic information or any designated tangible things; or

b. 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.

2. The request:

a. 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;

b. Must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

c. May specify the form or forms in which electronic information is to be produced.

3. The party upon whom a request is served shall serve a written response within thirty (30) days after the service of the request. The Trial 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.

Section 2-5-7. Physical and Mental Examinations.

1. The Trial 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.

2. 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 audio and/or video of any physical examination. A mental examination may be recorded by audio and/or video, unless such recording may adversely affect the outcome of the examination. Upon good cause shown, a physical or mental examination may be prohibited from audio and/or video recording. A copy of any record made of a physical or mental examination shall be provided to any party upon request.

3. 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 Trial Court may exclude the examiner's testimony at trial.

Section 2-5-8. Requests for Admission.

1. 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 Section 2-5-2(2) relating to:

a. Facts, the application of law to fact, or opinions about either; and

b. The genuineness of any described documents.

2. 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 Trial Court following a motion demonstrating good cause. Any interrogatories accompanying requests shall be deemed interrogatories under Section 2-5-5.

3. A matter is admitted unless, within thirty (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 Trial Court.

4. 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.

5. 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.

6. Any matter admitted under this Rule is conclusively established unless the Trial Court on motion permits withdrawal or amendment of the admission. The Trial 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 Trial 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.

Section 2-5-9. Failure to Make Disclosures or Discovery.

1. 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 legal counsel is attached certifying that, after personal consultation and good faith efforts to do so, legal 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.

2. Expenses and legal counsel fees related to a motion under this Rule shall be awarded in accordance with the following:

a. If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the Trial 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 fees, unless:

i. The Trial Court finds that the motion was filed without the movant 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.

b. If the motion is denied, the Trial Court may enter a protective order under Section 2-5-2(3) 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 fees, unless the Trial Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

c. If the motion is granted in part and denied in part, the Trial Court may enter a protective order under Section 2-5-2(3) 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.

3. If a party fails to obey an order to provide or permit discovery, the Trial Court may make such orders in regard to the failure as are just, including:

a. 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;

b. 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;

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

d. 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 Trial 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 fees, caused by the failure, unless the Trial Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

4. A party who fails to timely disclose information required by Section 2-5-1 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 Trial Court on motion of a party or on the Trial Court's own motion, and after affording an opportunity to be heard, may impose other appropriate sanctions, including stating the failure to make the disclosure on the record.

5. 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 Trial Court finds:

a. That the information would be allowed under the standards of subsection 4(a) of this Rule; and

b. That the information was disclosed as soon as practicable after its discovery.

6. 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 Trial Court finds:

a. That the information could not have been discovered and disclosed earlier even with due diligence; and

b. That the information was disclosed immediately upon its discovery.

7. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 2-5-8, 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 Trial Court for an order requiring the other party to pay the reasonable expenses

incurred in making that proof, including reasonable legal counsel fees. The Trial Court shall make the order unless it finds that:

a. The request was held objectionable;

b. The admission sought was of no substantial importance;

c. The party reasonably failed to admit due to lack of knowledge or information after reasonable inquiry;

d. The party failing to admit had reasonable ground to believe that the party might prevail on the matter; or

e. There was other good reason for the failure to admit.

CHAPTER 6
TRIALS

Section 2-6-1. Assigning Case for Trial.

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

2. Upon motion of a party, the Trial 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.

Section 2-6-2. Dismissal of Actions.

1. Dismissal may be accomplished without a court order in accordance with the following:

a. Subject to any applicable law of the Tribe, a plaintiff may dismiss an action without a court order by filing:

i. A notice of dismissal before the opposing party serves a responsive pleading, a motion under Section 2-3-6 or for summary judgment, or, if there is no responsive pleading, before evidence is introduced at a hearing or trial; or

ii. A stipulation of dismissal signed by all parties who have appeared.

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

2. Except as provided in subsection 1 of this Rule, an action may be dismissed at the plaintiff's request only by court order, on terms that the Trial Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant'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.

3. A defendant may move to dismiss the action or any claim against the defendant based upon any of the following grounds:

a. Failure of the plaintiff to prosecute plaintiff's claim;

b. Failure of the plaintiff to comply with these Rules or an order of the Trial Court;

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

d. Whenever dismissal appears proper based upon a failure to prove a claim.

4. The Trial Court may dismiss an action at any time if the Trial Court determines that the action:

a. Is frivolous or malicious;

b. Fails to state a claim on which relief may be granted; or

c. Seeks relief against a defendant who is immune from such relief.

5. Unless the dismissal order states otherwise, a dismissal under subsection 3 or 4 of this Rule 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.

6. This Rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim.

7. If a plaintiff moves to dismiss plaintiff's own claim and the action has progressed beyond the pleading stage, the Trial Court may order the plaintiff to pay all or part of the costs of the defendant and the Tribal Court. The Trial Court may also order the payment of costs in other circumstances where such is deemed appropriate.

8. If any action is dismissed on motion of the defendant prior to trial under Section 2-3-6(3), such defendant shall have judgment for the defendant's reasonable legal counsel fees in defending the action. This subsection does not apply if:

a. The motion under Section 2-3-6(3) is treated as a motion for summary judgment and disposed of as provided in Section 2-7-3; or

b. All of the following are true:

i. The dismissed claim was a good faith, non-frivolous claim filed for the express purpose of either extending, limiting, modifying, or reversing existing precedent of the Tribal Court or establishing the meaning, lawfulness, or constitutionality of a law of the Tribe where the meaning, lawfulness, or constitutionality has not been determined by the Tribal Court;

ii. The party that brought the dismissed claim pleaded in its complaint, counterclaim, or cross claim, that the dismissed claim was made for one of the foregoing express purposes and identified the precedent the party sought to extend, limit, modify, or reverse or that the issue was a matter of first impression, or the law of the Tribe the party sought to establish the meaning, lawfulness, or constitutionality of; and

iii. The claim was dismissed solely for failure to state the dismissed claim upon which relief can be granted.

Section 2-6-3. Consolidation; Separate Trials.

1. If actions before the Trial Court involve a common question of law or fact, the Trial Court may:

a. Join for hearing or trial any or all matters at issue in the actions;

b. Consolidate the actions; or

c. Issue any other orders to avoid unnecessary cost or delay.

2. For convenience, to avoid prejudice, or to expedite and economize, the Trial Court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

Section 2-6-4. Evidence and Testimony.

1. 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 Trial Court provide otherwise. For good cause and with appropriate safeguards, the Trial Court may permit testimony in open court by contemporaneous transmission from a different location.

2. The testimony of witnesses shall be taken orally under oath, unless otherwise provided in these Rules. All relevant evidence and evidence as specified in the Code is admissible. Hearsay evidence will not be excluded as long as it is reasonably reliable. The Trial 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.

3. When these Rules require an oath, a solemn affirmation suffices.

4. The Trial Court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness. The Trial Court may examine a witness on any matter

relevant to the action regardless of who calls the witness. A party may object to the Trial Court's calling or examining a witness at that time.

5. 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 a party's own witness.

6. 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.

7. Cross examination should be limited to the general scope of direct examination; but full examination of all witnesses shall be allowed to assure complete development of all relevant facts.

8. Written documents and other physical evidence shall be received upon being identified, authenticated, and shown to be relevant to the action.

9. 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.

10. Excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony may be received into the record.

11. When a motion relies on facts outside the record, the Trial Court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

12. If the Tribal Court has not developed rules of evidence or to the extent the Tribal Court's rules of evidence are insufficient, the Trial Court may utilize the United States Federal Rules of Evidence as guidance in any action or proceeding to the extent consistent with the Code and these Rules, including not preventing the policy of assuring complete development of all relevant facts, and where such utilization would not result in the exclusion of evidence otherwise admissible under the Code and these Rules. Any rules of evidence

may be waived at the discretion of the Trial Court, where the parties are unrepresented by legal counsel.

Section 2-6-5. Subpoenas.

1. Every subpoena must:

a. State the court, Tribal government entity, or other tribunal 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, 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 9 through 14 of this Rule.

2. A command to produce documents, electronic 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.

3. The Tribal Court Administrator must issue a subpoena, signed but otherwise in blank, to a party, Tribal government entity, or tribunal who requests it. That party, Tribal government entity, or tribunal must complete it before service. Legal counsel, as an officer of the Tribal Court, may also issue and sign a subpoena if the legal counsel is authorized to practice in the Tribal Court and has entered an appearance in the action. Nothing in this Rule limits a Tribal government

entity from issuing a subpoena itself where permitted under the Code.

4. 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.

5. Unless otherwise ordered by the Trial Court for good cause:

a. Service of a subpoena only for testimony in a trial or hearing shall be made no later than ten (10) days before the time for appearance set out in the subpoena.

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

c. 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.

6. Subpoenas shall be served as provided in Section 2-2-4, provided that subpoenas issued to a party who has made an appearance in an action may be served as provided in Section 2-2-5.

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

8. A subpoena may command:

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

b. Inspection of premises at the premises to be inspected.

9. 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 Trial Court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable legal counsel fees, on a party or legal counsel who fails to comply.

10. 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.

11. 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 Trial Court or the Tribal government entity or tribunal 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, Tribal government entity, or tribunal for an order compelling production.

12. On timely motion, the Trial 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.

13. To protect a person subject to or affected by a subpoena, the Trial Court may, on motion, quash or modify the subpoena if it requires disclosing a trade secret or other confidential or privileged information.

14. The following apply to responding to a subpoena:

a. 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.

b. 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.

c. 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.

d. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work product of legal counsel or trial preparation material must:

i. Expressly make the claim; and

ii. 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.

e. If information produced in response to a subpoena is subject to a claim of privilege or of protection as work product of legal counsel or 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 Trial Court, Tribal government entity, or other tribunal hearing the matter for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

15. The Trial 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.

16. If a subpoena requires a person's attendance, the payment for one (1) day's mileage at the then-current rate established by the United States Internal Revenue Service 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. Mileage shall be paid by the person who issued or requested the

subpoena. Payment for mileage need not be tendered when the subpoena issues on behalf of the Tribe.

17. A person present in court, or before a judicial officer, may be required to testify in the same manner as if the person were in attendance upon a subpoena.

18. Nothing in this Rule authorizes the issuance of subpoenas against the Tribe where not otherwise expressly authorized by another provision of the Code or waives the sovereign immunity of the Tribe against any subpoena or otherwise makes a subpoena issued to the Tribe valid except where expressly provided in the laws of the Tribe.

Section 2-6-6. Judgment as a Matter of Law; Motion for New Trial; Conditional Ruling.

1. If a party has been fully heard on an issue and the Trial 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 Trial Court may:

a. Resolve the issue against the party; and

b. 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. A motion for judgment as a matter of law may be made at any time before the case is submitted to the Trial Court for determination. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

3. If the Trial Court does not grant a motion for judgment as a matter of law made under this Rule, the action is considered to have been submitted subject to the Trial Court 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 Trial Court may:

a. Allow judgment as originally decided;

b. Order a new trial; or

c. Direct the entry of judgment as a matter of law.

Section 2-6-7. Burdens of Proof; Standards of Review.

1. When the laws of the Tribe require that an issue of fact be established by clear and convincing evidence, the evidence must produce a firm belief or conviction as to the truth of the matter sought to be established. Evidence may be uncontroverted, but not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact that it has been contradicted.

2. Unless another standard of establishing an issue of fact is required by the laws of the Tribe, the Trial Court shall determine facts based on the balance of probabilities, also referred to as the preponderance of the evidence. An issue of fact is established by the balance of probabilities so long as there is just enough evidence to make it more likely than not that the matter sought to be established is true. The probability is based on the more convincing evidence and its probable truth or accuracy, not on the amount of evidence.

3. Where a specific standard of review is not provided in the Code for the matter, judicial review of any action or decision of a Tribal government entity or Tribal official shall be in accordance with the following:

a. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Tribal government entity or Tribal official;

b. No new or additional issues may be raised and only issues raised before the Tribal government entity or Tribal official may be heard regardless of the Tribal government entity's or Tribal official's authority to hear the issue;

c. The Trial Court shall uphold a factual finding of the Tribal government entity or Tribal official unless the plaintiff shows that such finding:

i. Is clearly erroneous in that, although there is evidence to support it, on the entire evidence in the record established before the Tribal government entity or Tribal official, the Trial Court is left with the definite and firm conviction that a mistake was committed;

ii. Is a palpable and overriding error;

iii. Has no basis in the evidence in the record established before the Tribal government entity or Tribal official;

iv. Is based on a demonstrable misunderstanding of, or a demonstrable failure to consider, relevant evidence in the record established before the Tribal government entity or Tribal official;

v. Could not have been made by a reasonable person based on the evidence in the record established before the Tribal government entity or Tribal official; or

vi. Otherwise cannot be reasonably explained or justified;

d. Legal conclusions reached by the Tribal government entity or Tribal official shall be given proper weight and deference with respect to laws of the Tribe administered or enforced by the Tribal government entity or Tribal official;

e. The Trial Court shall uphold all discretionary actions, findings, and decisions of the Tribal government entity or Tribal official unless the plaintiff shows the particular action, finding, or decision was made with bad faith, unreasonableness, irrationality, or lack of proportionality;

f. The Trial Court shall affirm or uphold the action or decision of the Tribal government entity or Tribal official unless the plaintiff shows that the action or decision is not supported by the evidence, arbitrary or capricious, an abuse of discretion, beyond the Tribal government entity's or Tribal official's authority, or contrary to the laws of the Tribe.

Section 2-6-8. Findings and Conclusions by the Court.

1. In an action tried on the facts, the Trial 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 Trial Court. Judgment must be entered in accordance with these Rules. In

granting or refusing a preliminary or interlocutory injunction, the Trial Court must similarly state the findings and conclusions that support its action.

2. The Trial Court is not required to state findings or conclusions when ruling on a motion unless these Rules provide otherwise, provided that if finding particular facts is necessary to or required for the Trial Court's determination of the motion, the Trial Court shall include such necessary facts in its decision to the extent necessary to explain the determination of the motion.

3. On a party's motion filed no later than ten (10) days after the entry of judgment, the Trial 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

Section 2-7-1. Judgments; Costs.

1. 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 Trial Court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the Trial 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.

2. 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.

3. The Trial Court will award costs other than legal counsel fees in accordance with the following:

a. Unless a law of the Tribe, these Rules, or a court order provides otherwise, costs should be imposed against the non-prevailing party and allowed to the prevailing party and the Tribal Court, according to whom incurred the cost. But, costs against the Tribe shall not be allowed or imposed in any case.

b. The following costs are taxable for the benefit of the Tribal Court or the party entitled to costs, according to whom incurred the cost:

i. Costs and fees of the Tribal Court Administrator, Tribal Court Clerk, and other support staff of the Tribal Court;

ii. Costs and fees for service of the summons and complaint;

iii. Costs for service of other papers;

iv. Fees of officers and witnesses;

v. Cost of taking depositions;

vi. Costs for printing and making copies of any materials where the copies are necessarily obtained for use in the case;

vii. Filing and docket fees;

viii. Compensation of court appointed experts; and

ix. Such other costs incurred by the prevailing party or the Tribal Court necessary for the case.

c. The Tribal Court Administrator may tax costs incurred by or payable to the Tribal Court on five (5) days' notice. On motion served within the next ten (10) days, the Trial Court may review the Tribal Court Administrator's action.

d. Any request for costs incurred by or payable to the prevailing party must be filed no later than fourteen (14) days after the entry of judgment or by such other date as the court may order.

4. The Trial Court will award legal counsel fees in accordance with the following:

a. The Trial Court shall not award legal counsel fees against the Tribe in any case. In all other matters, the Trial Court shall not award legal counsel fees in a case unless an award of legal counsel fees:

i. Is expressly permitted under the laws of the Tribe or other law applicable to the proceedings;

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 or for other improper purpose, or there was no reasonable expectation of success on the part of the plaintiff.

b. A claim for legal counsel 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.

c. 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 or by such other date as the court may order;

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 Trial Court so orders, the terms of any agreement about fees for the services for which the claim is made.

d. The Trial Court must, on a party's request, give an opportunity for adversary submissions on the motion. The Trial Court may decide issues of liability for fees before receiving submissions on the value of services. The Trial Court must find the facts and state its conclusions of law as provided in Section 2-6-8(1).

e. Paragraphs a-c do not apply to claims for fees and expenses as sanctions for violating these Rules.

5. Interest shall be allowed on any money judgment recovered in the Trial Court in accordance with and subject to the following:

a. Interest prior to entry of judgment shall be calculated from the date the loss covered by the money judgment occurred through the date of entry of judgment at the rate of ten percent (10%) per annum, computed daily and not compounded, unless an agreement between the parties provides a different rate not in excess of the maximum permitted by law.

b. Interest after entry of judgment shall be calculated from the date of the entry of the judgment at a rate of twelve percent (12%) per annum. Such interest shall be computed daily to the date of payment and shall be compounded annually.

c. Appeal of a judgment shall not toll any accrual of interest under this subsection 5.

d. This subsection 5 shall not apply to any judgment where the laws of the Tribe prohibit or provide a different amount or method for interest on a judgment or award.

e. Interest shall not be allowed on any judgment against the Tribe unless otherwise permitted under the laws of the Tribe.

Section 2-7-2. Default.

1. 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.

2. Default judgment shall be entered in accordance with the following:

a. If the plaintiff'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 request with an affidavit showing the amount due, must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incapacitated person.

b. In all other cases, the party must apply to the Trial Court for a default judgment. A default judgment may be entered against a minor or incapacitated person only if represented by a a parent with decision-making authority, 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 Trial 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.

3. The Trial Court may set aside an entry of default for good cause and may set aside a default judgment under Section 2-7-8(2).

4. A default judgment may not be entered against the Tribe unless the claimant establishes by clear and convincing evidence:

a. The Trial Court has personal jurisdiction over the Tribe;

b. The Trial Court has subject matter jurisdiction over the claim against the Tribe;

c. The Tribe has expressly waived sovereign immunity for the claim in favor of the claimant; and

d. A claim or right to relief against the Tribe is provided expressly in the laws of the Tribe.

Section 2-7-3. Summary Judgment.

1. 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 Trial 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 Trial Court should state on the record the reasons for granting or denying the motion.

2. Unless the Trial Court orders otherwise, a party may file a motion for summary judgment at any time thirty (30) days after service of process upon the adverse party, but no sooner than the date on which the answer is due and no later than sixty (60) days prior to the date set for trial.

3. Upon timely request by any party, the Trial Court shall set a time for hearing on the motion, provided, however, that the Trial 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 Trial Court may, in its discretion, set a time for such hearing.

4. 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 Trial 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 (5) days before a hearing date previously set by the Trial Court, or would require postponement of a scheduled hearing date.

5. 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.

6. 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.

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

8. 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.

9. 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.

10. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the Trial Court may:

a. Defer considering the motion or deny it;

b. Allow time to obtain affidavits or declarations or to take discovery; or

c. Issue any other appropriate order.

11. Unless otherwise ordered by the Trial 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 subsection 4 of this Rule.

12. After giving notice and a reasonable time to respond, the Trial Court may:

a. Grant summary judgment for a nonmovant;

b. Grant the motion on grounds not raised by a party; or

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

13. If the Trial 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.

14. If satisfied that an affidavit or declaration under this Rule is submitted in bad faith or solely for delay, the Trial 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 fees, it incurred as a result. An offending party or legal counsel may also be held in contempt or subjected to other appropriate sanctions.

Section 2-7-4. Declaratory Judgments. The procedure for obtaining a declaratory judgment shall be in accordance with these Rules and the provisions of Title VI of the Code and other 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.

Section 2-7-5. Entry of Judgment.

1. Every judgment and amended judgment must be set out in a separate document.

2. 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 Trial Court may direct the entry of a judgment with retroactive effect, known as 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.

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

4. Immediately upon the entry of a judgment as defined in subsection 2 of this Rule, the Tribal Court Administrator shall distribute a notice of the entry of judgment stating the date of entry in the manner provided for in Section 2-2-5 to every party who is not in default for failure to appear and shall make a record of the distribution.

5. 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.

6. Lack of notice of the entry by the Tribal Court Administrator does not affect the time to appeal or relieve or authorize the Trial Court to relieve a party for failure to appeal within the time allowed, except as provided in the Rules of Appellate Procedure.

7. Notice of the entry of judgment shall be accomplished by any of the following:

a. A specifically designated notice form; or

b. A conformed copy of the file stamped judgment or order.

8. If a party dies after a decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

Section 2-7-6. Satisfaction of Judgment.

1. When any judgment 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, the judgment creditor's legal counsel of record, or an agent; if entered by an agent who is not the legal counsel of record, the agent's authority shall be filed.

2. The Trial Court may, upon motion and satisfactory proof, enter an order declaring the judgment satisfied.

3. The Tribal Court Administrator shall file all satisfactions of judgment and note the amount thereof in the docket.

4. Satisfaction of a judgment, whether by acknowledgment 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.

5. 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.

6. The Tribe shall not be barred by the period of limitation prescribed in this Rule with respect to a judgment in favor of the Tribe and shall not be required to renew or extend any judgment.

7. A judgment against the Tribe may only be enforced for the period of limitations provided for actions against the Tribe in the laws of the Tribe governing the underlying action calculated from the date of entry of the judgment. A judgment against the Tribe may not be extended.

Section 2-7-7. New Trials; Altering or Amending Judgment.

1. 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:

a. Any irregularity in the proceedings by the Trial Court or the prevailing party or abuse of discretion depriving the party of a fair trial;

b. Misconduct of the Trial Court or prevailing party;

c. Accident or surprise which could not reasonably have been prevented;

d. Newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;

e. Excessive or insufficient damages;

f. Error in the admission or rejection of evidence or other errors of law occurring at the trial or during the progress of the action;

g. That the decision, findings of fact, or judgment is the result of passion or prejudice;

h. That the decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.

2. A party may request that the motion for new trial be heard and determined by a judge other than the judge who made the judgment subject of the motion and the Tribal Court shall grant such request if the motion is based on any of the grounds in subsections 1(a) or 1(e)-(h) of this Rule or if the grounds otherwise are based on the conduct of the Trial Court. If a different judge is to be assigned to hear the motion, the Tribal Court Administrator shall refer the motion to another judge for decision. If a different judge is assigned to hear the motion, that judge shall also conduct any new trial granted under this Rule.

3. 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 Trial 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.

4. 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 Trial Court.

5. Upon the general ground that the Trial Court erred in admitting or rejecting evidence, the Trial Court shall review all rulings during the trial upon objections to evidence.

6. Upon the general ground that the decision, findings of fact, or judgment is not justified by the evidence, the Trial Court shall review the sufficiency of the evidence.

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

8. 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 Trial Court for good cause shown or by the parties by written stipulation. The Trial Court may permit reply affidavits.

9. Not later than ten (10) days after entry of judgment, the Trial 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 Trial Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Trial Court shall specify in the order the grounds therefor.

10. 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.

11. A motion to alter or amend the judgment shall be filed not later than ten (10) days after entry of judgment.

12. Not more than two (2) new trials shall be granted to either party in the same action, except when the judge, as trier of fact, has been guilty of some misconduct or has erred in matters of law.

13. 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.

Section 2-7-8. Relief From Judgment or Order.

1. The Trial 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 Trial

Court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Court of Appeals and while it is pending, such a mistake may be corrected only with the Court of Appeals' leave.

2. On motion and just terms, the Trial Court may relieve a party or its legal representative from a final judgment or proceeding for the following reasons:

a. Mistake, inadvertence, surprise, or excusable neglect;

b. Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Section 2-7-7;

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

d. When the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;

e. The judgment is void;

f. 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

g. Any other reason that justifies relief.

3. When a judgment has been rendered upon the judgment of a foreign jurisdiction, and the foreign judgment is thereafter reversed or set aside by a court of such foreign jurisdiction, the Trial Court shall set aside, vacate, and annul its judgment.

4. A motion under subsection 2 of this Rule, other than for the reason in paragraph e of that subsection, must be made within a reasonable time and, for reasons in paragraphs a, b, c, and d of that subsection, no more than three (3) months after the entry of the judgment or the date of the proceeding.

5. A motion under this Rule does not affect the judgment's finality or suspend its operation.

6. This Rule does not limit the Trial Court's power to:

a. Entertain an independent action to relieve a party from a judgment, order, or proceeding; or

b. Set aside a judgment for fraud on the court.

Section 2-7-9. Harmless Error. Unless justice requires otherwise, no error in admitting or excluding evidence or any other error by the Trial 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 Trial Court must disregard all errors and defects that do not affect any party's substantial rights.

Section 2-7-10. Stay of Proceedings To Enforce Judgment.

1. 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 Trial 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 subsection 3 of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

2. On appropriate terms for the opposing party's security, the Trial Court may stay the execution of a judgment or any proceedings to enforce it pending disposition of any of the following motions:

a. For judgment as a matter of law;

b. To amend the findings or for additional findings;

c. For a new trial or to alter or amend a judgment;

d. For relief from a judgment or order; or

e. When justice so requires in other cases until such time as the Trial Court may fix.

3. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the Trial Court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

4. 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 Trial Court approves the bond.

5. Judgments against the Tribe are automatically stayed when an appeal is filed. Proceedings in the Trial Court where the Tribe is a party are automatically stayed when an interlocutory appeal is filed by the Tribe or upon request of the Tribe when another party appeals, unless the Tribe files notice waiving the automatic stay. The Trial Court must not require a bond, obligation, or other security from the Tribe when granting a stay on an appeal by the Tribe.

6. This Rule does not limit the power of the Court of Appeals or one of its justices:

a. To stay proceedings or suspend, modify, restore, or grant an injunction while an appeal is pending; or

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

7. The Trial 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.

8. 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.

9. No stay, injunction, or waiver of undertaking may be granted by the Trial Court without actual notice and opportunity to be heard on the part of the prevailing party to the action.

Section 2-7-11. Disability or Disqualification of a Judge.

1. 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 Trial 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 Tribal Court may perform those duties, but if such other judge determines that such judge cannot perform those duties because the judge did not preside at

the trial or for any other reason, the judge may, in the judge's discretion, grant a new trial.

2. Grounds for disqualification of a judge are those set forth in Title I 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 is pending shall be handled as follows:

a. A party or the party's 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 Trial Court.

b. The affidavit must be filed and served within twenty (20) 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.

c. 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 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.

d. 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 the judge, 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.

e. If the judge against whom the affidavit is directed does not find that cause exists to disqualify the judge 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 balance of probabilities. 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 Tribal 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.

f. A denial of disqualification may be appealed to the Court of Appeals after final judgment in the action.

CHAPTER 8
PROVISIONAL AND FINAL REMEDIES

Section 2-8-1. Injunctions and Restraining Orders.

1. The Trial Court may issue, dissolve, or modify a preliminary injunction in accordance with the provisions of, and subject to the limitations in, Title VI of the Code and other laws of the Tribe governing preliminary injunctions. Before or after beginning the hearing on a motion for a preliminary injunction, the Trial 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.

2. The Trial Court may issue, dissolve, or modify a temporary restraining order in accordance with the provisions of, and subject to the limitations in, Title VI of the Code and other laws of the Tribe governing temporary restraining orders, provided the temporary restraining order is not sought against the Tribe. 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 Trial Court must dissolve the order.

3. Security shall be required for the issuance of any temporary restraining order or preliminary injunction in accordance with Title VI of the Code governing temporary restraining orders and preliminary injunctions.A surety upon a bond or undertaking under this Rule submits itself to the jurisdiction of the Trial 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.

4. Every order granting an injunction and every restraining order must:

a. State the reasons why it issued;

b. State its terms specifically; and

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

5. An order granting an injunction or restraining order binds only the following who receive actual notice of it by personal service or otherwise:

a. The parties;

b. The parties' officers, agents, servants, employees, and legal counsel; and

c. Other persons who are in active concert or participation with anyone described in subparagraph 4(b)(i) or (ii) of this Rule.

6. An injunction or restraining order may be granted upon the grounds provided, and subject to the limitations, in Title VI of the Code and the other laws of the Tribe governing injunctions and restraining orders generally or specific to the injunction or restraining order sought.

7. The Trial Court may treat violation of an injunction as contempt in accordance with the provisions of Title I of the

Code and other laws of the Tribe governing contempt of court as follows:

a. A party alleging that any party or person has violated an injunction may file an application for an order to show cause. A supporting affidavit describing the acts that violate the injunction must accompany the application.

b. The Trial Court may issue an order to show cause based on the application and supporting affidavit. The order to show cause:

i. May set a date for any written response to the application;

ii. Before sanctions are ordered, must require the party or person alleged to have violated the injunction to appear and respond at the time and place ordered by the Trial Court; and

iii. Shall be served, with a copy of the affidavit, upon the person alleged to have violated the injunction within sufficient time to enable that person to prepare to respond as ordered by the Trial Court.

c. If the alleged contemnor is a business entity, other than a Tribal business entity, an attachment for sequestration of the property of the business entity may be issued upon refusal or failure to appear.

d. Upon the appearance of the alleged contemnor, or at the trial of the issue, the Trial 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 Trial Court or until that person is discharged by law.

Section 2-8-2. Extraordinary Writs. Extraordinary writs may be granted by the Trial Court where provided for in, and in accordance with, the laws of the Tribe.

Section 2-8-3. Offer of Judgment.

1. 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.

2. 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 costs, interest, and legal counsel fees, if any, sought in the case. The offeror may choose to exclude an amount for legal counsel fees, but must specifically so state in the offer. If the offeror excludes an amount for legal counsel fees in the offer, and the offeree accepts the offer, then either party may apply to the Trial Court for an award of legal counsel fees, if otherwise allowed by applicable law, contract, or otherwise. The offer need not be apportioned by claim.

3. 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.

4. 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 or where otherwise expressly provided in the laws of the Tribe.

5. 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.

6. The fact that an offer has been rejected does not preclude a subsequent offer.

7. 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.

8. Except if the offeree is the Tribe, 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, 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 fees, only those taxable costs and legal counsel fees determined by the Trial 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.

9. 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 Trial Court, the offeror may withdraw the offer at any time after expiration of the initial effective period and prior to acceptance of the offer.

Section 2-8-4. Execution.

1. The Trial Court may, upon motion, issue a writ of execution against the personal property of a judgment debtor if:

a. The judgment is for monetary damages, costs, and/or legal counsel fees;

b. The judgment debtor has been served notice of entry of judgment; and

c. 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.

2. 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.

3. Execution shall proceed in accordance with the following:

a. The judgment debtor shall be served with the motion and order to appear before the Trial Court as provided in Section 2-2-5.

b. Failure of the judgment debtor to appear may be punished by the Trial Court as a contempt.

c. The judgment debtor shall provide, under oath or affirmation, an accounting of all the judgement debtor's personal property, including any exempt property.

d. 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.

e. The Trial 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.

f. The Trial Court shall issue an order that law enforcement seize the property ordered by the Trial Court and sell the same in accordance with this Rule.

4. Property seized under this Rule shall be sold in accordance with the following:

a. Sale of property seized under this Rule shall be at a public auction conducted by law enforcement or others designated by the Trial Court.

b. 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, at each of the Tribe's governmental offices, and on the Tribe's website.

c. 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.

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

e. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Trial Court reciting the details of the sale and the amounts received.

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

6. 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 the judgment debtor's immediate family and not otherwise exempt from execution under the laws of the Tribe.

7. 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.

8. At any time within six (6) months after sale under this Rule, the judgment debtor may redeem the judgment debtor's 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 the property, such as taxes and insurance.

9. 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.

10. Execution shall not be permitted when a judgment has been entered against the Tribe except where expressly authorized under the laws of the Tribe against the specific property which is sought to be executed against.

CHAPTER 9
APPELLATE PROCEDURE

Section 2-9-1. Court of Appeals; Scope; Title.

1. All appeals from the Trial Court shall be heard by the Court of Appeals of the Tribal Court of the Ponca Tribe of Nebraska.

2. Unless the context requires otherwise or another definition is provided in these Rules, terms used in these Rules and defined in Chapter 1 of Title I of the Code or the Rules of Civil Procedure have the meanings set forth in said chapter of the Code or said Rules.

3. These Rules shall not be construed to extend or limit the jurisdiction of the Court of Appeals or any other appellate court or tribunal under the laws of the Tribe.

4. The Rules in this Chapter govern procedure in the Court of Appeals and such other appellate courts and tribunals of the Tribe where provided under the laws of the Tribe. 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.

5. The Rules in this Chapter shall be known as the Ponca Tribe of Nebraska Rules of Appellate Procedure and may be abbreviated as "Ponca Tr. of Neb. R. App. P." or "P.T.N.R.A.P." Example: This Rule shall be cited as "Ponca Tr. of Neb. R. App. P. § 2-9-1" or P.T.N.R.A.P. § 2-9-1."

Section 2-9-2. Suspension of Rules. 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 Section 2-9-13.

Section 2-9-3. Appeal as of Right - How Taken.

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 Section 2-9-4.

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.

3. When two or more parties are entitled to appeal from a Trial Court judgment, and their interests make joinder practicable, they may file a joint notice of appeal. When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court of Appeals. The parties shall then proceed on appeal as a single appellant.

4. The notice of appeal must:

a. State the name of the case as used in the Trial Court, except that parties may be designated "appellant" and "respondent," as appropriate.

b. 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

c. Designate the judgment or part thereof being appealed.

5. 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.

6. The Tribal Court Administrator must serve notice of the filing of a notice of appeal by mailing a copy to each party's legal 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.

7. 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 legal counsel.

8. 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 unless otherwise expressly provided in the laws of the Tribe.

Section 2-9-4. Appeal as of Right - When Taken.

1. Except as provided in this Rule, the notice of appeal required by Section 2-9-3 must be filed with the Tribal Court Administrator within the time specified by the law or rule authorizing the appeal or, if no such time is specified, within thirty (30) days after entry of the judgment appealed from.

2. A notice of appeal filed after the Trial Court announces a judgment, but before the entry of the judgment, is treated as filed on the date of and after the entry.

3. 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.

4. A party may seek an extension of time to file a notice of appeal in accordance with the following:

a. 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 1 of this Rule expires; and

ii. That party shows excusable neglect or good cause.

b. Notice of a motion to extend the time to file a notice of appeal must be given to the other parties.

c. No extension under this subsection may exceed thirty (30) days after the prescribed time to file a notice of appeal or ten (10) days after the date when the order granting the motion is entered, whichever is later.

Section 2-9-5. Appeal by Permission.

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. A petition for permission to appeal 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 Section 2-9-4 for filing a notice of appeal.

3. A petition for permission to appeal must include the following:

a. The facts necessary to understand the question presented;

b. The question itself;

c. The relief sought;

d. The reasons why the appeal should be allowed or why it is authorized by a law of the Tribe; and

e. An attached copy of the judgment complained of and any related opinion or memorandum.

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

5. A petition for permission to appeal and answer will be submitted without oral argument unless the Court of Appeals orders otherwise.

6. A petition for permission to appeal must be granted if the judgment complained of:

a. Conclusively determines the disputed question;

b. Resolves an issue completely separate from the merits of the action; and

c. Is effectively unreviewable on appeal from final judgment.

7. A petition for permission to appeal may be granted if hearing the appeal might materially advance the ultimate resolution of the litigation.

8. All papers must conform to the Rules in this Chapter governing briefs on appeal. Except by the Court of Appeals' permission, a paper must not exceed twenty (20) pages, exclusive of the proof of service and the accompanying documents required by this Rule. Except for filings by electronic means, an original and three (3) copies must be filed unless the Court of Appeals requires a different number by order in a particular case.

9. If permission to appeal is granted:

a. 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 unless otherwise expressly provided in the laws of the Tribe; and

ii. File any bonds required under these Rules.

b. 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.

c. The record must be forwarded and filed in accordance with these Rules.

Section 2-9-6. Bonds on Appeal.

1. Except when the appellant is the Tribe or has obtained leave to proceed without prepaying fees or costs on appeal under the Rules in this Chapter, 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. Any required cost bond shall be filed within the time provided by the Trial Court or, if not so provided, ten (10) days after notice of the Trial Court requiring such bond.

2. Except when the appellant is the Tribe, if the judgment being appealed includes any monetary award in a sum certain or a sum that can be made certain by computation, the appellant shall file a bond to secure the respondent's rights related to the monetary portion of the judgment, regardless of whether a stay is requested.

a. The appeal bond required under this subsection shall be:

i. In an amount equal to one hundred ten percent (110%) of the dollar amount of the judgment being appealed to secure payment of the monetary portion of the judgment plus post-judgment interest thereon, provided the Trial Court may, on motion of any party, set a different amount or allow other appropriate security which will ensure payment of the monetary amount of the judgment; and

ii. Filed no later than ten (10) days after the appellant filed the notice of appeal.

b. An appeal bond may be excused under this subsection only if:

i. The judgment creditor waives the requirement of an appeal bond in writing filed with the Trial Court;

ii. The appellant satisfies the monetary portion of the judgment on the condition it shall be subject to appropriate return in the event of success on appeal; or

iii. The Court of Appeals determines, on motion with appropriate support, that there is no reasonable risk the appellant will not fully and timely pay the monetary portion of the judgment without additional enforcement proceedings in the event the appeal is unsuccessful.

3. Where an appeal bond is not otherwise required under these Rules, a respondent may move for the appellant to be required to post and file an appeal bond or provide other appropriate security of the respondent's rights.

a. A party must ordinarily move first in the Trial Court for relief under this subsection.

b. If the respondent shows that moving first in the Trial Court would be impractical or the Trial Court denied the motion, the respondent may make a motion for an appeal bond under this subsection to the Court of Appeals or, in an exceptional case in which time requirements make that procedure impractical, one of its justices.

c. A motion for appeal bond under this subsection will be granted as justice may require and the amount of bond or other security set at a reasonable amount or form necessary to secure the appellant's compliance with the judgment being appealed and secure the respondent's rights.

d. An appeal bond or security ordered under this subsection shall be filed within the time provided in the order for the appeal bond or, if not so provided, ten (10) days after entry of the order requiring such bond or security.

4. An appeal bond posted pursuant to this Rule stays the portion of the judgment which the bond secures pending appeal and such stay takes effect on filing the bond. Any other portion of the judgment may only be stayed pending appeal as provided in Section 2-9-7.

5. Failure to post a cost bond or an appeal bond required under this Rule shall require dismissal of the appeal, provided that an appeal dismissed for failure to post an appeal bond may be renewed if, within fourteen (14) days of dismissal, the appellant posts any required appeal bond or otherwise is excused from posting and filing an appeal bond for a reason permitted under this Rule.

6. No bond or other security permitted or required under this Rule may be released unless and until the monetary amounts the bond secures are paid or satisfied in full, including from the bond or security, or a final decision of the Court of Appeals negates any such required payment, including after proceedings on any remand.

7. Section 2-9-7(3) applies to a surety on a bond given under this Rule.

Section 2-9-7. Stay or Injunction Pending Appeal.

1. A party must ordinarily move first in the Trial Court for the following relief:

a. A stay of the judgment of the Trial Court pending appeal;

b. Approval of an appeal bond; or

c. An order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

2. A motion for the relief mentioned in subsection 1 of this Rule may be made to the Court of Appeals or to one of its justices.

a. The motion must:

i. Show that moving first in the Trial Court would be impractical or 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;

ii. Include the reasons for granting the relief requested and the facts relied on;

iii. Include originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

iv. Include relevant parts of the record.

b. The moving party must give reasonable notice of the motion to all parties.

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

3. If a party gives security with one or more security providers, each provider submits to the jurisdiction of the Trial Court and irrevocably appoints the Tribal Court Administrator as its agent on whom any papers affecting its liability on the security may be served. On motion, a security provider's liability may be enforced in the Trial Court without the necessity of an independent action. The motion and any notice that the Trial Court prescribes may be served on the Tribal Court Administrator, who must promptly send a copy to each security provider whose address is known.

4. A stay pending appeal under this Rule takes effect when the bond is filed with the Trial Court.

5. The Tribe is not required to file a bond or other security under any circumstances.

Section 2-9-8. The Record of Appeal.

1. The following items constitute the record on appeal:

a. The original papers and exhibits filed in the Trial Court;

b. The transcript or recording of proceedings, if any; and

c. A certified copy of the Trial Court docket entries prepared by the Tribal Court Administrator.

2. In place of the record on appeal as defined in subsection 1 of this Rule, 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 of Appeals' resolution of the issues. If the statement is truthful and includes all matters necessary to the Court of Appeals' resolution of the issues, 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. Notwithstanding any approved statement of the case under this subsection, the Court of Appeals may direct all or any part of the items under subsection 1 it finds necessary or helpful to a proper resolution of the appeal to be sent to the Court of Appeals and added to the record on appeal.

3. 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.

Section 2-9-9. Docketing the Appeal; Filing the Record; Representation.

1. 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.

2. Upon forwarding the record or partial record as provided in Section 2-9-8(3), 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, unless the request is from the Tribe, paying any costs of copying.

3. 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 a notice of appearance.

Section 2-9-10. Writs of Mandamus and Prohibition Against Trial Court.

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. A petition for a writ of mandamus or prohibition must be titled "In re: [name of petitioner]" and must include a copy of any order, opinion, or parts of the record that may be essential to understand the matters set forth in the petition and state:

a. The relief sought;

b. The issues presented;

c. The facts necessary to understand the issue presented by the petition; and

d. The grounds for issuing the writ under the Code or other law of the Tribe.

3. Upon receiving a petition for a writ of mandamus or prohibition, the Tribal Court Administrator must docket the petition and submit it to the Court of Appeals.

4. The Court of Appeals may deny a petition for a writ of mandamus or prohibition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

5. The Tribal Court Administrator must serve the order to respond on all persons directed to respond.

6. Two or more respondents may answer jointly.

7. 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 address the petition unless invited or ordered to do so by the Court of Appeals.

8. 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.

9. A proceeding for a writ of mandamus or prohibition must be given preference over ordinary civil cases.

10. The Tribal Court Administrator must send a copy of the final disposition to the Trial Court judge.

11. All papers must conform to Section 2-9-19(2). Except by the Court of Appeals' permission, a paper must not exceed thirty (30) pages, exclusive of the proof of service and the accompanying order, opinion, or parts of the record required by subsection 2 of this Rule. An original and three (3) copies must be filed unless the Court of Appeals requires the filing of a different number by order in a particular case.

12. The provisions of Title VI of the Code and other laws of the Tribe governing writs of mandamus and prohibition shall apply to a determination of a petition under this Rule.

Section 2-9-11. Proceeding Without Prepaying Fees or Costs.

1. Except as stated in subsection 3 of this Rule, a party to a Trial Court action who desires to appeal without prepaying fees or costs must file a motion in the Trial Court. The party must attach an affidavit that:

a. Shows, in explicit detail, the party's inability to pay or to give security for fees and costs;

b. Claims an entitlement to redress; and

c. States the issues that the party intends to present on appeal.

2. 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. A party who was permitted to proceed without prepaying fees or costs in the Trial Court action may proceed on appeal without prepaying fees or costs without further authorization, unless:

a. 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 without prepaying fees or costs and states in writing its reasons for the certification or finding; or

b. A statute provides otherwise.

4. The Tribal Court Administrator must immediately notify the parties and the Court of Appeals when the Trial Court does any of the following:

a. Denies a motion to proceed on appeal without prepaying fees or costs;

b. Certifies that the appeal is not taken in good faith; or

c. Finds that the party is not otherwise entitled to proceed without prepaying fees or costs.

5. A party may file a motion to proceed on appeal without prepaying fees or costs in the Court of Appeals within thirty (30) days after service of the notice prescribed in subsection 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 1 of this Rule.

6. A party allowed to proceed on appeal without prepaying fees or costs may request that the appeal be heard on the original record without reproducing any part.

Section 2-9-12. Filing and Service.

1. A paper required or permitted to be filed in the Court of Appeals must be filed with the Tribal Court Administrator.

2. Filing may be accomplished by mail, personal delivery, or electronic means.

3. 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.

4. 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.

5. 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.

6. Service shall be made in the manner prescribed under Section 2-2-5 of the Rules of Civil Procedure.

7. A paper presented for filing must contain the date and manner of service noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

> A copy of the foregoing has been or will be [mailed/emailed/hand-delivered] on (insert date) to:
>
> (Name of opposing party or legal counsel)
>
> (Address of opposing party or legal counsel)

8. When these Rules require the filing or furnishing of a number of copies, the Court of Appeals may require a different number by order in a particular case.

Section 2-9-13. Extending Time. For good cause, the Court of Appeals 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 of Appeals may not extend the time to file a notice of appeal, except as authorized in these Rules, or a petition for permission to appeal.

Section 2-9-14. Motions.

1. 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 of Appeals permits otherwise.

2. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

3. A motion seeking substantive relief must include a copy of the Trial Court's opinion as a separate exhibit.

4. Any party may file a response to a motion; subsection 2 governs its contents. The response must be filed within ten (10) days after service of the motion unless the Court of Appeals shortens or extends the time. A motion for a stay authorized by Sections 2-9-7 or 2-9-29 may be granted before the 10-day period runs only if the Court of Appeals gives reasonable notice to the parties that it intends to act sooner.

5. 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 4 and 6 of this Rule. The title of the response must alert the Court of Appeals to the request for relief.

6. 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.

7. Any affidavit or other paper necessary to support a motion, response, or reply must be served and filed with the motion. An affidavit must contain only factual information, not legal argument.

8. The Court of Appeals 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 of Appeals' 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.

9. 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.

10. Motions, responses, and replies under this Rule shall comply with the following:

a. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper or, if electronic, light background. Except when filed electronically, the paper must be opaque and unglazed. Only one side of the paper or electronic page may be used.

b. A cover is not required, but there must be a caption that includes the case number, the name of the Court of Appeals, 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.

c. 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. Electronically filed documents must be contained in a single electronic file.

d. 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.

e. Unless filed electronically, an original and three (3) copies must be filed unless the Court of Appeals requires a different number by order in a particular case.

11. A motion will be decided without oral argument unless the Court of Appeals orders otherwise.

Section 2-9-15. Briefs.

1. Except for paragraph d which is optional, the appellant's brief must contain under appropriate headings and in the order indicated:

a. A cover page.

b. A table of contents, with page references;

c. 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;

d. A short introduction;

e. 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 judgment that disposes of all parties' claims or information establishing the Court of Appeals' jurisdiction on some other basis;

f. A concise statement of the case setting out the nature of the case, describing the relevant procedural history, and identifying the rulings presented for review, all with appropriate references to the record;

g. A statement of facts relevant to the issues submitted for review;

h. A statement of the issues presented for review;

i. A request for oral argument, if sought;

j. 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

k. A short conclusion stating the precise relief sought.

2. The respondent's brief is subject to the following:

a. The respondent's brief must conform to the requirements of subsection 1, 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 case;

iii. The statement of the issues;

iv. The statement of facts; and

v. The statement of the standard of review.

b. Argument shall be limited to the argument in appellant's brief.

3. The appellant may file a brief in reply to the respondent's brief. Unless the Court of Appeals 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.

4. 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."

5. References to the parts of the record must be to the page of the original document. For example:

a. Answer at 7;

b. Motion for Judgment at 2;

c. Transcript at 231.

6. 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.

7. 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.

8. 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.

9. 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 three hundred fifty (350)

words. Any response must be made promptly and must be similarly limited.

Section 2-9-16. Cross-Appeals.

1. This Rule applies to a case in which a cross-appeal is filed.

2. The party who files a notice of appeal first is the appellant for the purposes of this Rule and Section 2-9-21. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

3. In a case involving a cross-appeal:

a. The appellant must file a principal brief in the appeal. That brief must comply with Section 2-9-15(1).

b. 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 Section 2-9-15(1), except that the brief need not include a statement of the case unless the respondent is dissatisfied with the appellant's statement.

c. The appellant must file a brief that responds to the principal brief in the cross-appeal and shall, in the same brief, reply to the response in the appeal unless no reply is desired. That brief must comply with Section 2-9-15(1)(a)-(i), 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 case;

iii. The statement of the issues; and

iv. The statement of the standard of review.

d. The respondent may file a brief in reply to the response in the cross-appeal. That brief must comply with

Section 2-9-15(1)(a)-(b) and must be limited to the issues presented by the cross-appeal.

e. Unless the Court of Appeals permits, no further briefs may be filed in a case involving a cross-appeal.

4. The length of briefs in a cross-appeal shall be as provided in Section 2-9-19(1)(f)(ii).

5. Briefs must be served and filed as follows:

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

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

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

d. 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 of Appeals, for good cause, allows a later filing.

Section 2-9-17. Brief of Amicus Curiae.

1. 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.

2. The motion must be accompanied by the proposed brief and state:

a. The movant's interest; and

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

3. An amicus brief must comply with Section 2-9-19. In addition to the requirements of Section 2-9-19, 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 Section 2-9-15, but must include the following:

a. A table of contents, with page references;

b. 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;

c. A concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; and

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

4. Except by the Court of Appeals' permission, an amicus brief may be no more than one-half the maximum length authorized by the Rules in this Chapter for a party's principal brief.

5. 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. The Court of Appeals may grant leave for later filing, specifying the time within which an opposing party may answer.

6. Except by the Court of Appeals' permission, an amicus curiae may not file a reply brief.

7. 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 of Appeals may reject the notice if the party shows that such participation will be prejudicial to a party or otherwise impede the Court of Appeals' consideration of the appeal. Any other amicus curiae may

participate in oral argument only with the Court of Appeals' permission.

Section 2-9-18. Serving and Filing Briefs.

1. 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 of Appeals, for good cause, allows a later filing.

2. Unless filed electronically, 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 of Appeals may by order in a particular case require the filing or service of a different number.

3. 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 of Appeals grants permission.

Section 2-9-19. Form of Briefs and Other Papers.

1. Briefs shall comply with the following:

a. A brief may be reproduced by any process that yields a clear black image on light paper or, if electronic, light background. Except when filed electronically, the paper must be opaque and unglazed. Only one side of the paper or electronic page may be used.

b. 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.

c. 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 of Appeals;

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.

d. 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. Electronically filed documents must be contained in a single electronic file.

e. 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 (1) inch on all four (4) sides. Page numbers may be placed in the margins, but no text may appear there.

f. The length of briefs shall be as follows:

i. Appellant's principal brief and respondent's response brief shall not exceed thirty (30) pages. Reply briefs shall not exceed fifteen (15) pages.

ii. The length of each separate portion in combined briefs involving a cross-appeal or consolidated appeals must not exceed the number of pages that each of the separate briefs may contain.

iii. The page limits may be increased upon motion by any party or on the Court of Appeals' own motion.

2. Any other paper, excluding a motion governed by Section 2-9-14, including a petition for rehearing, and any response to such a petition, must be reproduced in the manner prescribed by subsection 1 of this Rule, with the following exceptions:

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

b. Subsection 1(f) of this Rule does not apply.

3. Every brief, motion, or other paper filed with the Court of Appeals must be signed by the party filing the paper or, if the party is represented, by one of the party's legal counsel. Section 2-3-5 of the Rules of Civil Procedure applies to the signing of all papers filed with the Court of Appeals.

4. In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

a. Cover page;

b. Table of contents;

c. Table of authorities;

d. Statement regarding oral argument;

e. Addendum containing exhibits, statutes, rules, or regulations;

f. Signature block;

g. Proof of service; and

h. Any item specifically excluded by these Rules.

5. When a brief fails to comply with the requirements of these Rules, the Court of Appeals, on motion of any party or on its own initiative, and with or without notice may:

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

b. Order the brief stricken with leave to file a new brief within a specified time; or

c. Disregard the defects and consider the brief as if it were properly prepared.

Section 2-9-20. Appeal Conferences. The Court of Appeals 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 of Appeals may preside over the conference, which may be conducted in person or by electronic means. Before a settlement conference, legal counsel must consult with their clients and obtain as much authority as feasible to settle the case. The Court of Appeals may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

Section 2-9-21. Oral Argument.

1. Any party may file a statement explaining why oral argument should, or need not, be permitted.

2. 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 of Appeals, after examining the briefs and record, unanimously agrees that oral argument is unnecessary for any of the following reasons:

a. The appeal is frivolous;

b. The dispositive issue or issues have been authoritatively decided; or

c. 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.

3. 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.

4. The appellant opens and concludes the argument. Legal counsel must not read at length from briefs, records, or authorities.

5. If there is a cross-appeal, Section 2-9-16(2) determines which party is the appellant and which is the respondent for purposes of oral argument. Unless the Court of Appeals directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

6. If the respondent fails to appear for argument, the Court of Appeals must hear appellant's argument. If the appellant fails to appear for argument, the Court of Appeals may hear the respondent's argument. If neither party appears, the case will be decided on the briefs, unless the Court of Appeals orders otherwise.

7. The parties may agree to submit a case for decision on the briefs, but the Court of Appeals may direct that the case be argued.

8. 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 of Appeals convenes. After the argument, legal counsel must remove the exhibits from the courtroom, unless the Court of Appeals directs otherwise. The Tribal Court Administrator may destroy or dispose of the exhibits if legal counsel does not reclaim them within a reasonable time after the Tribal Court Administrator gives notice to remove them.

Section 2-9-22. Standard of Review. In deciding an appeal, unless another provision of the laws of the Tribe expressly provides a different standard, the Court of Appeals shall apply the following standards:

1. In a review of official action or decision of a Tribal government entity or Tribal official, the Court of Appeals shall

review the Trial Court for correctness, giving no deference to the Trial Court, but applying the same standard required of the Trial Court in reviewing the underlying action or decision;

2. The Court of Appeals will accept a finding of fact in the Trial Court unless the finding:

a. Is clearly erroneous in that, although there is evidence to support it, on the entire evidence the Court of Appeals is left with the definite and firm conviction that a mistake was committed;

b. Is a palpable and overriding error;

c. Has no basis in the evidence;

d. Is based on a demonstrable misunderstanding of relevant evidence or a demonstrable failure to consider relevant evidence;

e. Could not have been made by a reasonable person based on the evidence; or

f. Otherwise cannot be reasonably explained or justified;

3. If the Trial Court did not specially make findings of fact stated on the record or in an opinion or memorandum of decision filed by the Trial Court, the Court of Appeals will review the entire matter for correctness, giving no deference to the Trial Court;

4. The Court of Appeals will review conclusions or issues of law or determinations applying facts to law for correctness, giving no deference to the Trial Court; and

5. The Court of Appeals will accept a matter committed to the discretion of the Trial Court unless the Trial Court:

a. Acted upon a wrong principle or the wrong law which is relevant to the exercise of the discretion;

b. Gave weight to extraneous or irrelevant matters;

c. Failed to give weight or sufficient weight to relevant considerations;

d. Made a mistake as to the facts upon which the Trial Court exercised its discretion;

e. Made a decision or provided a result that is so unreasonable or plainly unjust that the Court of Appeals can infer that there has been a failure properly to exercise the discretion; or

f. Otherwise made a decision with bad faith, unreasonableness, irrationality, or lack of proportionality.

Section 2-9-23. Decision of the Court of Appeals.

1. 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 of Appeals shall remand the case to the Trial Court for the same.

2. The Court of Appeals has an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party. Whenever it appears by suggestion of the parties or otherwise that the Trial Court or Court of Appeals lacks jurisdiction of the subject matter, the Court of Appeals shall, and is obligated to, determine the issue of subject matter jurisdiction first without regard to the merits of the appeal or issues before the Trial Court and, if it determines a lack of subject matter jurisdiction, dismiss the appeal or remand to the Trial Court with direction to dismiss the action, as appropriate.

3. The Court of Appeals decision may:

a. Affirm, modify, vacate, set aside, or reverse any judgment, decree, or order of the Trial Court; or

b. 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.

4. The Court of Appeals shall issue its decision within ninety (90) days of the last of the following events:

a. Oral argument;

b. Filing of any supplemental brief after oral argument, if the Court of Appeals requests such briefing;

c. Filing of supplemental authorities and responses pursuant to Section 2-9-15(9); or

d. Filing of the last reply brief, if the matter is submitted on the briefs without oral argument.

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

6. The decision of the Court of Appeals shall be final and not subject to further review or appeal, except for rehearing permitted under the Rules in this Chapter.

Section 2-9-24. Entry of Judgment; Notice.

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

a. After receiving the Court of Appeals' opinion, but if settlement of the judgment's form is required, after final settlement; or

b. If a judgment is rendered without an opinion, as the Court of Appeals instructs.

2. 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.

Section 2-9-25. Interest on Judgment.

1. 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.

2. If the Court of Appeals 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.

Section 2-9-26. Frivolous Appeal. Except if the appellant is the Tribe, if the 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 of Appeals and reasonable opportunity to respond, sanction the appellant and award just damages, legal counsel fees, and single or double costs to the respondent.

Section 2-9-27. Costs and Legal Counsel Fees.

1. Costs other than legal counsel fees will be awarded in accordance with the following:

a. The following rules apply unless the laws of the Tribe provide, or the Court of Appeals orders, otherwise:

i. Costs shall never be awarded against the Tribe in any case;

ii. If an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

iii. If a judgment is affirmed, costs are taxed against the appellant;

iv. If a judgment is reversed, costs are taxed against the respondent;

v. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the Court of Appeals orders.

b. The Tribal Court Administrator shall tax costs incurred by or payable to the Tribal Court on five (5) days' notice. On motion served within the next ten (10)

days, the Court of Appeals may review the Tribal Court Administrator's action.

c. 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.

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

e. In addition to taxable costs allowed at the Trial Court which are costs on appeal, the following costs on appeal are taxable for the benefit of the Tribal Court or the party entitled to costs under this Rule:

i. The preparation and transmission of the record;

ii. The reporter's transcript, if needed to determine the appeal;

iii. Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

iv. Any fee for filing the notice of appeal.

2. The Court of Appeals will award legal counsel fees in accordance with the following:

a. The Court of Appeals shall not award legal counsel fees against the Tribe in any case. In all other matters, the Court of Appeals shall not award legal counsel fees in an appeal unless an award of legal counsel 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 appeal; or

iii. Is warranted on the grounds that the appeal was brought for purposes of harassment or for other

improper purpose or there was no reasonable expectation of success on the part of the appellant.

b. An award of legal counsel fees may be made only upon motion no later than ten (10) days after the entry of judgment or by such other date as the Court of Appeals may order and after a reasonable opportunity to respond. The motion shall specify the statute, rule, or other grounds entitling the movant to the award and state the amount sought or provide a fair estimate of it. If the Court of Appeals so orders, the terms of any agreement about fees for the services for which the claim is made shall be disclosed.

3. The Tribal Court Administrator must prepare and certify an itemized statement of costs taxed, legal counsel fees awarded, and to whom payable 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.

Section 2-9-28. Petition for Rehearing.

1. Unless the time is shortened or extended by order or the Code, a petition for rehearing may be filed within ten (10) days after entry of judgment. But, the Tribe may file a petition within thirty (30) days after entry of judgment.

2. A petition for rehearing must state with particularity each point of law or fact that the petitioner believes the Court of Appeals has overlooked or misapplied and must argue in support of the petition. Oral argument is not permitted.

3. Unless the Court of Appeals requests, no answer to a petition for rehearing is permitted.

4. If a petition for rehearing is granted, the Court of Appeals may do any of the following:

a. Make a final disposition of the case without reargument;

b. Restore the case to the calendar for reargument or resubmission; or

c. Issue any other appropriate order.

5. A petition for rehearing must comply in form with Section 2-9-19. Copies must be served and filed as Section 2-9-12 prescribes. Unless the Court of Appeals permits otherwise, a petition for panel rehearing must not exceed fifteen (15) pages.

6. If the Court of Appeals 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.

Section 2-9-29. Mandate.

1. Unless the Court of Appeals directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the Court of Appeals' opinion, if any, and any direction about costs.

2. The Court of Appeals' mandate must issue no later than 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 of Appeals may shorten or extend the time.

3. The mandate is effective when issued.

4. 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 of Appeals orders otherwise.

Section 2-9-30. Dismissal of Appeal.

1. 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.

2. 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 of Appeals.

3. A respondent may move to dismiss the appeal or any portion of an appeal based upon any of the following grounds:

a. Failure of timely filing the notice of appeal;

b. Filing an appeal of an order, judgment, or other matter not subject to appeal;

c. Failure of the appellant to comply with these Rules or an order of the Court of Appeals; or

d. Where dismissal is permitted under these Rules.

4. The Court of Appeals may dismiss an appeal at any time if the Court of Appeals determines that the appeal:

a. Is frivolous or malicious;

b. Fails to raise grounds upon which an appeal may be taken;

c. Is from an order, judgment, or other matter not subject to appeal;

d. Is not subject to the jurisdiction of the Court of Appeals; or

e. Where dismissal is permitted under these Rules.

5. If any appeal is dismissed on motion of the respondent under subsection 3, such respondent shall have judgment for the respondent's reasonable legal counsel fees in responding to the appeal to the same extent a defendant would have judgment for legal counsel fees under Section 2-6-2(7) of the Rules of Civil Procedure.

6. This Rule applies to a dismissal of any cross-appeal.

Section 2-9-31. Certifications of Question of Law.

1. If the Tribal Court Administrator receives a certification order from a foreign court pursuant to Title VI of the Code or other law of the Tribe, the following procedures apply:

a. The Tribal Court Administrator must notify the Tribal Attorney. The Tribal Attorney may file a recommendation with the Court of Appeals whether to accept or reject the certification of the question within fifteen (15) days of notice from the Tribal Court Administrator.

b. If the Court of Appeals accepts a certification of a question of law from a foreign court and the Tribe is not a party to the proceeding in the foreign court which certified the question of law, the Tribal Court Administrator must notify the Tribal Attorney. The Court of Appeals may request the Tribe to file an amicus curiae brief and the Tribal Attorney shall inform the Court of Appeals whether it will so file, but the Tribe may file an amicus curiae brief without the request of the Court of Appeals, the consent of the parties, or leave of court the same as it may file an amicus curiae brief in an appeal.

c. If the Court of Appeals accepts a certification of a question of law from a foreign court, these Rules shall govern briefs, arguments, and all other relevant matters of procedure and the matter shall proceed the same as an appeal from the Trial Court, subject to the following, unless the Court of Appeals orders otherwise:

i. Matters in these Rules applicable to the appellant apply to the plaintiff or appellant in the proceeding in the foreign court;

ii. Matters in these Rules applicable to the respondent apply to the defendant or respondent in the proceeding in the foreign court;

iii. Matters in these Rules applicable to other parties shall apply to such parties in a manner consistent with the their relation to the parties

treated as appellant and respondent in the certification proceeding before the Court of Appeals;

iv. The statement of issues in any brief shall be the question of law certified to the Court of Appeals;

v. A party may move the Court of Appeals to realign the parties in the certification proceeding based on the affect or impact of the question on the parties to the foreign court proceeding; and

vi. For purposes of calculating time in the certification proceeding, the date the record is filed is the later of:

(1) The date the Court of Appeals notifies the foreign court of acceptance of the certification of law; or

(2) If the Court of Appeals requests the foreign court to deliver all or part of its record for purposes of the certification proceeding, the date the Tribal Court Administrator receives the record and notifies the parties.

2. If the Tribal Court Administrator receives a request to answer a question of law certified by the Tribal Council pursuant to Title VI of the Code or other law of the Tribe, the following procedures apply:

a. The Tribal Court Administrator shall publish notice of the request and the full question to be answered in the Tribal Newsletter and on the Tribe's website. The notice shall include a statement that any interested person may request to file an amicus curiae brief in accordance with Section 2-9-17.

b. If the Tribal Council informs the Court of Appeals that its request necessitates an urgent answer, or the Court of Appeals finds that an early answer would be desirable, the Court of Appeals shall take all necessary steps to accelerate the procedure, and it shall convene as

early as possible for the purpose of proceeding to oral argument and deliberation on the request.

c. These Rules shall govern briefs, arguments, and all other relevant matters of procedure in answering a question of law certified by the Tribal Council and the matter shall proceed the same as an appeal from the Trial Court, subject to the following, unless the Court of Appeals orders otherwise:

i. Matters in these Rules applicable to the appellant apply to the Tribe;

ii. There will be no respondent, but the Tribe shall be permitted to file a reply brief to any amicus curiae brief filed in the proceeding;

iii. The statement of issues in any brief shall be the question of law certified to the Court of Appeals;

iv. All briefs filed with the Court of Appeals shall be served on the Tribe and any party permitted to appear as amicus curiae, provided that if a person is permitted to appear as an amicus curiae after one or more briefs have been filed, the Tribal Court Administrator shall provide a copy of all briefs filed to such person; and

v. For purposes of calculating time in the certification proceeding, the date the record is filed is the date the Tribal Court Administrator publishes notice of the certified question.

3. An opinion of the Court of Appeals regarding a question of law certified by a foreign court is binding upon the parties to the proceeding in the foreign court.

4. An opinion of the Court of Appeals regarding a question of law certified by the Tribal Council is non-binding and only advisory in nature.

5. Any opinion of the Court of Appeals regarding a question of law certified to it has affect as law of the Tribe the same as a decision of the Court of Appeals in an appeal.

Section 2-9-32. Case Involving a Constitutional Question When the Tribe is Not a Party.

1. If a party questions or draws into question the constitutionality or validity on any ground of a law of the Tribe or of an action of the Tribal Council or the Tribe in a proceeding in which the Tribe itself 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 Tribal Attorney and the questioning party shall file and serve such notices and documents required in Title VI of the Code.

2. Unless the Court of Appeals sets a later time, the Tribe may intervene as of right in the appeal within thirty (30) days after the notice is received. If the Tribe elects to intervene, the Tribe shall file a brief as intervenor no later than (30) days after the last brief of the questioning party is filed or after intervening, whichever is later.

Approved 5/15/16
Resolution 16-36

Revised 9/8/26
Resolution 26-62