



## RULES OF PLEADING, PRACTICE AND PROCEDURE FOR THE BLUE LAKE RANCHERIA TRIBAL COURT

---

Section 11.1.1030 of the Tribal Court Ordinance of the Blue Lake Rancheria authorizes the Chief Judge of the Tribal Court of the Blue Lake Rancheria (“Tribe”), in consultation with the Business Council of the Tribe (“Tribal Council”), to “promulgate rules of pleading, practice and procedure applicable to any and all proceedings of the Tribal Court.” The following rules are adopted to govern civil proceedings initiated in the Tribal Court of the Tribe.

The rules shall govern all proceedings or actions filed in the Tribal Court of the Tribe, except to the extent these rules are inconsistent with any rules promulgated by Chief Judge of the Tribe to govern special proceedings before the Tribal Court, including but not limited to juvenile proceedings, family law matters, the issuance of restraining orders to enjoin domestic violence and/or civil harassment and small claims proceedings.

### CHAPTERS:

- 01 Court and Clerk**
- 02 Commencement of Action; Service of Process; Pleadings; Motions and Orders**
- 03 Temporary Restraining Orders and Preliminary Injunctions**
- 04 Depositions and Discovery**
- 05 Pretrial and Trials**
- 06 Jurors and Juries**

### Chapter 1 Court and Clerk

#### Rule:

- 01 Name of Court**
- 02 Citation of Rules and Cases**
- 03 Court Hours**
- 04 Judicial Power**
- 05 Assignment of Cases**
- 06 Trials and Hearings**
- 07 Clerk’s Office**
- 08 Fee Schedule**
- 09 Scheduling Courtrooms**
- 10 Case Management**
- 11 Books and Records Kept by the Clerk**
- 12 Form, Size and Duplication of all Papers**

#### **Rule 1. Name of Court.**

The name of the Court for bringing all civil actions arising under the Constitution, laws or ordinances of the Tribe or brought by or against any members of the Tribe shall be the Tribal Court of the Tribe (“Court”).

#### **Rule 2. Citation of Rules and Cases.**

These rules shall be cited as the “Civil Rules of Procedures for the Tribal Court of the Tribe” (“C.R.P.T.C.T”). Decisions of the Court which have been certified for publication by the Chief Judge of the Court may be cited as statements of substantive law applicable to all subsequent civil actions brought in the Court.

**Rule 3. Court Hours.**

The Court shall always be open for the purpose of filing any pleading or other proper paper. The office of the Clerk of the Court shall be open on such days and at such times as shall be established by the Chief Judge of the Court by Court order. A night box shall be established by the Office of the Clerk for the receiving of all filings on those days and those times when the Clerks' office is closed. The night box shall be established at the Tribal Courthouse dedicated by the Tribal Council for that purpose. Papers filed in the night box shall be considered filed on the next business day of the Court. Counsel may telephone the Clerks office by 9:30 a.m. of the next business day to verify the receipt of any pleadings filed in the night box of the office of the Clerk.

**Rule 4. Judicial Power.**

The judicial power of the Court with respect to any civil action shall be exercised by the Chief Judge and such Associate Judges as the Chief Judge may appoint to hear cases before the Court. The Chief Judge or Associate Judge may preside alone and hold a regular or special session of the Court, as the Chief Judge or Assigned Judge, in consultation with the Clerk of the Court ("Clerk"), shall from time to time set. In all cases not provided for by rule, the Chief Judge or any Assigned Judge may regulate the applicable practice before the Court in any manner not inconsistent with these rules.

**Rule 5. Assignment of Cases.**

- (A) After the complaint has been filed, the Clerk shall assign the case to the Chief Judge, who shall determine whether the case shall be assigned to an Associate Judge, except that related cases shall be assigned to the Judge who has been assigned the earlier filed case.
- (B) At the time an action is filed, the party or attorney filing the action shall file with the Court and serve on all the parties to the action a "Notice of Related Cases". The Notice shall state whether any pending action and the action being filed:
  - (1) arise from the same or substantially identical transactions, happenings or events;
  - (2) call for a determination of the same or substantially identical questions or
  - (3) for some other reason involves substantial duplication of labor if heard by a different judge.

**Rule 6. Trials and Hearings.**

Except as provided elsewhere in the rules, or such other rules promulgated by the Chief Judge governing special proceedings, all trials and hearings shall be conducted in open court. All other acts or proceedings may be done or conducted by a judge in chambers.

**Rule 7. Clerks Office.**

All papers presented for filing with the Court, shall be filed with the Clerk. The Clerk shall file all papers presented for filing upon payment of the appropriate fee, if any. All pleadings presented for filing with the Court that do not conform to these rules shall be returned by the Clerk to the party requesting the filing, bringing the non-compliance to his/her attention. All files of the Court shall remain in the custody of the Clerk. The Clerk shall, upon the payment of all appropriate fees, provide endorsed or certified copies of all pleadings filed with the Court to any party requesting the same.

**Rule 8. Fee Schedule.**

Fees for services rendered by the Clerk of the Court are payable in advance; all checks are to be made payable to the "Clerk of the Tribal Court of the Tribe". Fees shall be established by resolution of the Tribal Council for the Tribe for all services provided by the Court including but not limited to the following;

- (1) Admission to practice and issuance of a certificate thereof;
- (2) Certificate of Good Standing;
- (3) Filing of Complaint;
- (4) Filing of Answer;
- (5) Certifying any document of paper;
- (6) Reproducing any record, entry or other paper;
- (7) Filing a Notice of Appeal and
- (8) Such other fees authorized by the Court.

**Rule 9. Scheduling Courtrooms.**

The Clerk shall be responsible for scheduling the use of courtrooms and shall be responsible for all arrangements for courtrooms and other facilities for the Court's business.

**Rule 10. Case Management.**

- (a) Case management shall be the responsibility of the Chief Judge or the judge to whom the case is assigned, with the assistance of the Clerk, where appropriate. The Chief Judge or assigned judge shall manage assigned cases so as to provide for the prompt dispatch of business. The Judge may determine motions and cases on the merits without oral argument upon written statements of reasons in support and opposition. In the absence of the Judge to whom a case is assigned, a delegate of the assigned judge, selected by the Clerk and approved by the Chief Judge, may act on behalf of the assigned Judge.
- (b) Scheduling.
- (1) All conferences, oral argument, trials, and other appearances shall be scheduled by the Chief Judge or assigned judge by order filled with the Clerk. In an emergency, the Chief Judge may schedule conferences with counsel for the parties by such informal directions as may be appropriate.
  - (2) Each Judge may establish regular times and places at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but each Judge at any time or place and on such notice, if any, as any Judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

**Rule 11. Books and Records Kept by the Clerk.**

The Clerk shall keep a book known as a "docket" in such form and style as the Clerk shall determine and shall enter therein each action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, order, and judgments shall be entered chronologically in the docket on the folio assigned to the action and shall be marked with its file number. The entries shall be brief but shall show the nature of each paper or writ issued and the substance of each order or judgment of the court and of the returns showing execution for process. The entry of an order or judgment shall show the date the entry is made. The Clerk shall also keep, in such form and manner as the Clerk shall determine, a correct copy of every order, and judgment, whether appealable or not, issued or entered by the Court. The Clerk shall also keep such other books and records as may be required from time to time by the Court or as by the Chief Judge and upon the payment of the appropriate fees therefore, will arrange for reporting services for all trial proceedings, and any other proceedings that require a verbatim transcript, held by the Court. The parties may obtain copies of the transcript from the reporter at prices fixed by the Court in conformity with any contract between the reporter and the Court.

**Rule 12. Form, Size and Duplication of All Papers.**

- (a) General.  
All papers to be filed with the Clerk shall be duplicated and filed in conformity with these rules as to methods of duplication, form, size, and number of copies. The Clerk shall refuse to file any paper which is not in substantial conformity with this rule or not in clear type.
- (b) Duplication.  
All requirements of duplication may be satisfied by the use of any photocopy method capable of producing a clear black image on white paper, but not including ordinary carbon copy, provided, that in each instance the duplication shall conform to the requirements of subdivision (c) of this rule as to paper, size, form and pagination.
- (c) Form and Size.  
All papers pursuant to the provisions of this rule shall be duplicated on pages not exceeding 8 ½ x 11 inches, with type matter not exceeding 6 ½ x 8 ½ inches. Papers duplicated shall be double spaced (except that quoted and indented material and footnotes may be single spaced), and, if covering both sides of the sheet, shall be duplicated on paper of sufficient quality that the duplication process does not bleed through the sheet; shall be bound or attached on the left margin and unfolded, in book form; and shall

have legible margins when bound or attached. Such pages need not be justified on the right margin. The first page of each separate document shall be numbered 1. Page numbers shall be in large, distinct type and shall appear in the bottom center margin of the page.

(d) Caption and Title.

The first page of each separate document shall contain:

- (1) the title of the Court,
- (2) the title of the action or proceeding,
- (3) the file number of the action or proceeding followed by the initials of the judge to whom it is currently assigned and
- (4) the title of the document (e.g. "Complaint", "Defendants Motion for Summary Judgment", etc.)

(e) Date.

Each paper shall bear the date it is signed on the signature page.

(f) Paragraphs; Separate Statements.

All allegations of a claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(g) Adoption by Reference; Exhibits.

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes unless otherwise indicated, but the adverse party shall not be deemed to have admitted the truth of the allegations in such exhibit merely because he/she has filed to deny them explicitly.

(h) Address and Telephone Number.

The address and telephone number of the attorney of record or if the party is not represented by an attorney, the address and telephone number or the person signing the pleading must appear beneath the signature line of every pleading or other paper.

(i) Copies.

An original and two (2) copies of all pleadings shall be filed with the Clerk. All copies shall be identical, or otherwise conformed to the original.

## **Chapter 2** **Commencement of Action; Service of Process,** **Pleadings, Motions and Orders**

**Rule:**

<b>13</b>	<b>Commencement of Action</b>
<b>14</b>	<b>Process</b>
<b>15</b>	<b>Answer</b>
<b>16</b>	<b>Counterclaims</b>
<b>17</b>	<b>Amendments to Pleadings</b>
<b>18</b>	<b>Motion Practice</b>

**Rule 13. Commencement of Action**

A civil action in the Court shall be commenced by filing a complaint with the Clerk of the Court. The complaint or any other pleading which sets forth a claim for relief, whether an original complaint,

counterclaim or third-party complaint, shall contain a short and plain statement of the claim supported by sufficient facts showing that the pleader is entitled to relief, and a demand for judgment in which the pleader states the relief he/she wants from the Court.

**Rule 14. Process**

(a) Summons Issuance.

Upon the filing of the complaint the clerk shall forthwith issue a summons and mail the summons to the plaintiff or plaintiff's attorney, who shall be responsible for prompt service of the summons and complaint upon each defendant.

(b) Form of Summons.

The summons shall contain the name of the Court, the names of the parties, and shall be signed by the Clerk. The summons shall direct the defendant or defendants to answer the complaint within the time provided for in these rules and shall notify the defendant(s) that if the defendant(s) fails to answer the complaint, judgment by default will be entered by the Court against the defendant(s) for the relief demanded in the complaint.

(c) Service.

The summons and complaint shall be served by any person 18 years of age or older and not a party to the suit. The summons and complaint shall be served together. Service shall be made by delivering a copy of the summons and complaint to the defendant personally or by leaving copies thereof at the individuals dwelling house or usual place of residency with a person 18 years of age or older residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. If service must be made off of tribal trust land, and service cannot be accomplished as provided for herein, service shall be made in accordance with the laws of the State in which the defendant to be served resides.

(d) Proof of Service.

Whenever any pleading or other paper presented for filing is required or permitted by any rule to be served upon any party or person, it shall bear or have attached to it either acknowledgment of service by the person served, or proof of service and the names of the persons served, certified by the person who made service. The proof of service shall also contain the day and the manner of service, and the method of service employed. Failure to comply with this rule shall not be a ground for a refusal to file a paper or pleading but shall be cured promptly after filing. Every pleading subsequent to the original complaint and answer, unless the Court orders otherwise, shall be served by first class mail upon each party by mailing it to the attorney of record or party at the attorney's or party's last known address.

(e) Computation of Time.

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day on which weather or other conditions have made the office of the Clerk of the Court in accessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's Day, President's Day, Martin Luther King's Birthday, Memorial Day, Fourth of July, Labor Day, Veteran's Day, California Indian Day, American Indian Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day and any other day appointed as a holiday by the Tribal Council.

(1) Enlargement of Time

When by these rules or by a notice given thereunder or by order of the Court an act is required or allowed to be done at or within a specified time, the court, for cause shown, may, at anytime, in its discretion:

(1) with or without motion or notice, order the period enlarged, if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 38(b) and 49, except to the extent and under the conditions stated in them.

(2) For Motions-Affidavits.

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than 1 day before the hearing, unless the Court permits them to be served at some other time.

(3) Additional Time After Service by Mail.

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.

**Rule 15. Answer**

Any party served with a complaint, cross-claim or counterclaim shall have the right within thirty (30) days from the date of service of the complaint or other pleading to file a written answer thereto. The Answer shall admit or deny the allegations or facts set forth in the complaint or other pleading and shall state in short plain terms the party's defenses to each claim asserted. If a party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of denial. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of the allegation as is true and material and shall only deny the remainder. All allegations in a pleading which are not denied in the Answer or other responsive pleading within the time provided in these rules shall be deemed admitted and true by the court in all subsequent proceedings in the case.

**Rule 16. Counterclaim**

At the time of serving the Answer, the defendant shall state as a counterclaim any claim that the defendant has against any plaintiff, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its determination the presence of the third parties over whom the court cannot acquire jurisdiction. A claim which either arose or was acquired by the defendant after serving its pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading. After service of an Answer containing a counterclaim, plaintiff shall have 20 days within which to file a reply or Answer to the counterclaim.

**Rule 17. Amendment to Pleadings**

A party may without leave of court amend its pleadings once as a matter of course at any time prior to a response being served. Otherwise a party may amend his/her pleading only by leave of court or by written consent of the adverse party. Whenever the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

**Rule 18. Motion Practice**

(a) To Whom Made

An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds thereof, shall set forth the relief or order sought. All motions will be determined by the Chief Judge or the judge to whom the action or case is assigned, except as may be otherwise ordered by the judge. A motion may be determined, in the judge’s discretion, or upon request by counsel and with the judge’s approval, without oral argument, or by conference telephone call. In the event of an emergency requiring prompt action, if the Chief Judge is unavailable, the motion may be heard by another judge assigned to hear the motion by the Clerk from a list of Associate Judges approved by the Chief Judge for that purpose.

(b) Notice and Supporting Papers

Except as otherwise ordered by a judge, all motions, except those made in the course of a trial or hearing, shall be noticed in writing on the motion calendar of the assigned judge for hearing not less than 28 days after service. The noticed hearing date and time shall appear on the cover page of each motion, and of any opposition and reply, in the space opposite the caption below the file number. Each notice of motion shall be accompanied by affidavits or declarations under penalty of perjury sufficient to support any material factual contentions, by an appropriate memorandum or brief and by a copy of a proposed form of order. Affidavits, declarations, and forms of orders shall not be physically attached to the notice, brief, or memorandum and shall be separately captioned.

(c) Opposition and Reply

Any opposition to the motion shall be served and filed not less than 14 days prior to the noticed date of the hearing, and shall consist of affidavits or declarations where appropriate, a memorandum of brief, and a copy of a proposed form of order, separately captioned and not physically attached. A party not opposing a motion shall instead file a statement of no opposition within the time provided herein. Any reply to the opposition shall be served and filed by the moving party not less than 7 days prior to the noticed date of hearing.

(d) Briefs and Memorandum

Briefs and memorandum shall contain an accurate statement of the questions to be decided, set forth concisely the relevant facts and the argument of the party with citation to relevant legal authorities, and not exceed 25 pages in length. Any brief or memorandum exceeding 10 pages shall have a table of contents, legal authorities cited and a brief statement of the issues to be decided.

(e) Affidavits and Declarations

Factual contentions in support of or in opposition to any motion shall be supported by affidavits or declarations and appropriate references to the record. Affidavits and declarations not in compliance with these rules shall be subject to being stricken in whole or in part.

**Chapter 3**

**Temporary Restraining Orders and Preliminary Injunctions**

<b>19</b>	<b>Rule:</b>
<b>20</b>	<b>Procedure</b>
<b>21</b>	<b>Temporary Restraining Orders and Preliminary Injunctions</b>
	<b>Security</b>

**Rule 19. Procedure**

An application for a temporary restraining order and/or preliminary injunction shall be filed with the Clerk along with the complaint, unless the complaint has been filed previously. The application shall be

accompanied by the proposed order, affidavits, supporting memoranda, and other documents upon which plaintiff intends to reply.

**Rule 20. Temporary Restraining Orders and Preliminary Injunctions.**

A temporary restraining order may be granted without written or oral notice to the adverse party or his/her attorney only if;

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his/her attorney can be heard in opposition, and
- (2) the applicant or his/her attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his/her claim that notice should not be required. Every temporary restraining order granted without notice shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 15 days, as the court fixes unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered in the record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he/she does so, the court shall dissolve the temporary restraining order. On 2 day's notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

No temporary restraining order will be issued except in conjunction with an order to show cause fixing the time for hearing on an application for a preliminary injunction. Orders under this Rule shall fix the time within which the restraining order and all supporting pleadings and papers shall be served upon the adverse party and the time for serving and filing by the adverse party of any opposing papers. Unless relieved by order of a judge for good cause shown, counsel applying for a temporary restraining order shall give reasonable advance notice of such application to opposing counsel or party.

All Rules pertaining to the filing of motions unless otherwise inconsistent with this Rule 20, shall apply to the filing of motions for temporary restraining orders and preliminary injunctions.

**Rule 21. Security.**

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

**Chapter 4**

**Depositions and Discovery**

<b>Rule:</b>	
<b>22</b>	<b>Methods of Discovery</b>
<b>23</b>	<b>Incorporation of the Federal Rules of Civil Procedure Pertaining to Discovery</b>
<b>24</b>	<b>Interrogatories</b>
<b>25</b>	<b>Requests for Production</b>
<b>26</b>	<b>Requests for Admission</b>

**Sanctions for Failure to Comply with Discovery****Rule 22. Methods of Discovery**

Parties shall have the right to engage in discovery for the purpose of preparing for a hearing or trial. The methods of discovery available to a party shall be depositions upon oral examination or written questions; written interrogatories; requests for the production of documents or things; requests for admission; permission to enter upon land or other property for inspection and physical and mental examinations.

**Rule 23. Incorporation of the Federal Rules of Civil Procedure Pertaining to Discovery.**

Unless otherwise limited by order of the Court or these Rules, the Federal Rules of Civil Procedure, Rules 26 through 37 shall apply and govern all discovery conducted or undertaken by any party in any action, proceeding or case before the Court. If there are any inconsistencies between these Rules and the Federal Rules of Civil Procedure, these Rules shall govern.

**Rule 24. Interrogatories.**

Answers and objections to interrogatories shall set forth each question in full before each answer or objection. Each objection shall be followed by a statement of reasons therefore. When objection is made to part of an interrogatory, the remainder of the interrogatory shall be answered at the time the objection is made, or within the period of any extension of time to answer, whichever is later.

**Rule 25. Requests for Production.**

Responses to requests made pursuant to Rule 34(a) of the Federal Rules of Civil Procedure, shall set forth each request in full before each response or objection. Each objection shall be followed by a statement of the reasons therefore.

**Rule 26. Requests for Admission.**

Responses to requests for admission made pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, shall set forth each request in full before each response or objection. Each objection shall be followed by a statement of the reasons therefore.

**Rule 27. Sanctions for Failure to Comply with Discovery.****(a) Conference Required.**

The court will entertain no motions pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, unless counsel shall have previously conferred concerning all disputed issues. If counsel for the moving party seeks to arrange such a conference and counsel for the party against whom the motion will be made willfully refuses or fails to confer, the judge (in the absence of a prior order dispensing for good cause with such a conference) may order the payment of reasonable expenses, including attorney's fees, pursuant to Rule 37(a)(4) of the Federal Rules of Civil Procedure.

**(b) Certificate of Compliance.**

At the time of filing any motion with respect to Rules 26 through 37 of the Federal Rules of Civil Procedure, counsel for the moving party shall serve and file a certificate of compliance with this Rule.

**(c) Protective Order.**

Any party against whom a motion under Rule 37(a) of the Federal Rules of Civil Procedure, is being made may notice for hearing at the same time a motion for protective order under Rule 26(c) of the Federal Rules of Civil Procedure.

**(d) Discovery Disputes.**

Any party or their attorney of record may request the Clerk of the Court to arrange a time and day when the parties can confer with the assigned Judge in chambers or by telephone conference to respond to any discovery disputes in an expeditious and economical manner.

## Chapter 5

### Pretrial and Trials

**Rule:**

<b>28</b>	<b>Pretrial Conferences</b>
<b>29</b>	<b>Assignment of Cases for Trial</b>
<b>30</b>	<b>Dismissal of Actions</b>
<b>31</b>	<b>Separate Trials</b>
<b>32</b>	<b>Taking of Testimony</b>
<b>33</b>	<b>Subpoenas</b>
<b>34</b>	<b>Default Judgment</b>
<b>35</b>	<b>Summary Judgment</b>
<b>36</b>	<b>Entry of Judgment</b>
<b>37</b>	<b>New Trials</b>

**Rule 28. Pretrial Conferences.**

(a) Conferences.

In any action, the court in its discretion by appropriate order may direct the attorneys for the parties to confer and/or exchange:

- (i) lists containing the names and addresses of all witnesses they respectively expect to call to trial.
- (ii) lists of the documentary exhibits which they respectively intend to offer at trial.
- (iii) written statements of material matters of fact as to which they respectively believe there is no substantial controversy.
- (iv) written statements of issues of fact and law they respectively believe are in dispute, and
- (v) such other matters as may be directed by the court.

(b) Purposes of Conferences.

In any action, the court may in its discretion direct the attorneys for the parties and any Unrepresented parties to appear before it for a conference, or conferences, before trial or arrange a telephone conference, or conferences for such purposes as:

- (i) expediting the disposition of action;
- (ii) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (iii) discouraging wasteful pretrial activities;
- (iv) improving the quality of the trial through more thorough preparation;
- (v) facilitating the settlement of the case; and
- (vi) such other matters as may aid in the disposition of the action.

(c) Scheduling and Planning.

After the initial status report or conference, the court shall enter a scheduling order that limits the time:

- (1) to join other parties and to amend the pleading

- (2) to file and hear motions; and
- (3) to complete discovery

The scheduling order may also include:

- (4) the date or dates for conferences before trial, a final pretrial conference, and trial;  
and
- (5) any other matters appropriate in the circumstances of the case.

(d) Subjects to be Discussed at Pretrial Conferences.

- (1) the formulation and simplification of the issues, including the elimination of Frivolous claims or defenses;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
- (4) the avoidance of unnecessary proof and of cumulative evidence;
- (5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
- (6) the advisability of referring matters to a master;
- (7) the possibility of settlement or the use of extra judicial procedures to resolve the dispute;
- (8) the form and substance of the pretrial order;
- (9) the disposition of pending motions;
- (10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and
- (11) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participant may reasonably anticipate may be discussed.

(e) Final Pretrial Conference.

Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including the program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(f) Pretrial Orders.

After any conference held pursuant to this rule, an order shall be entered reciting the action taken, except that after the final pretrial conference the court may recite the contents of its order, other

than scheduling matters, on the record. The pretrial order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(g) Sanctions.

If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party's attorney fails to participate in good faith, the court, upon motion or its own initiative, may make such orders with regard thereto as are just including the imposition of sanctions.

**Rule 29. Assignment of Cases for Trial.**

Assignment of cases for trial is the responsibility of the Chief Judge or the judge to whom the case is assigned, and may be made (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient. All trials shall be scheduled by the judge by order filed with the clerk.

**Rule 30. Dismissal of Actions.**

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. An action may be dismissed by the plaintiff without order of court

(A) by filing a notice of dismissal at any time before service of the answer or a response, whichever first occurs, or

(B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in this court or in any court of the United States an action based on or including the same claim. (2) By Order of court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper.

(b) Involuntary Dismissal: Effect Thereof.

For failure of the plaintiff to prosecute or to comply with these rules or any Order of the Court, the Court may dismiss on its own motion or defendant may move for dismissal of an action or any claim. After the plaintiff has completed the presentation of his/her evidence, defendant, without waiving its right to offer evidence in the event the motions not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

**Rule 31. Separate Trials.**

The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedite the trial of a case, may order a separate trial on any claim, counterclaim, or of any separate issue or of any number of claims, counterclaims, third-party claims or issues.

**Rule 32. Taking Testimony.**

(a) Form.

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Order of the Court.

(b) Affirmation in Lieu of Oath.

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence of Motions.

When a motion is based on facts not appearing in the record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(d) Interpreters.

The Court may appoint an interpreter of its own selection and may fix his/her reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct and may be awarded ultimately as costs, in the discretion of the Court.

**Rule 33. Subpoenas.**

(a) For Attendance of Witnesses: Form; Issuance.

Every subpoena shall be issued by the clerk under the seal of the Court, and shall state the name of the Court and the title of action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may

(1) quash or modify the subpoena if it is unreasonable and oppressive, or

(2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service.

A subpoena shall be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person and by tendering to him/her the fees for one day's attendance and the mileage as established by the Tribal Council by resolution.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) of the Federal Rules of Civil Procedure constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein. Proof of service may be made by filing with the clerk a copy of the notice together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b) of the Federal Rules of Civil Procedure, but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of that rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall be entitled to inspect and copy the materials except pursuant to an order of the court.

The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A Witness may be required to attend an examination only in the county wherein he/she resides or is employed or transacts his/her business in person or at such other convenient place as is fixed by an order of the Court.

(e) Subpoena for a Hearing or Trial

(1) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place that is within 100 miles of the place of the hearing or trial specified in the subpoena or a place within the state where a state statute or rule of court permits service of a subpoena issued by a state court of general jurisdiction sitting in the place where the court is held; but the court upon proper application and good cause shown may authorize the service of a subpoena at any other place.

(f) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon him/her may be deemed a contempt of court.

**Rule 34. Default Judgment.**

(a) Entry.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his/her default.

(b) Judgment.

Judgment by default may be entered as follows;

(1) By the Clerk. When the plaintiff's claims against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he/she has been defaulted for failure to appear and if he/she is not an infant or incompetent person.

(2) By the Court. In all other cases, the party entitled to a judgment by default shall apply to the court thereof; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he/she (or if appearing by representative, his/her representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing, if any, on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any allegation by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting Aside Default.

For good cause shown by any party the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with these rules.

**Rule 35. Summary Judgment.**

(a) For Claimant.

A party seeking to recover upon a claim or counterclaim, or to obtain a declaratory judgment may, at anytime after the expiration of 45 days from the commencement of the action in this court or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for summary judgment in his/her favor upon all or any part thereof.

(b) For Defending Party.

A party against whom a claim or counterclaim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his/her favor to all or any part thereof.

(c) Motion and Proceedings Thereon.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Procedures.

The following procedures shall be followed with respect to motions for summary judgment:

- (1) The moving (or cross-moving) party shall file, together with its motion, a separate document titled Proposed Findings of Uncontroverted Fact. This document shall contain concise, separately numbered paragraphs setting forth all of the material facts upon which the party bases its motion and as to which the party believes there is no genuine dispute. Each paragraph shall contain citations to the opposing party's pleadings or to documentary evidence (such as affidavits or exhibits) filed with the motion or otherwise part of the record in the case.
- (2) The opposing party shall file, together with its opposition (or cross-motion), a separate document titled Statement of Genuine Issues. This document shall respond (by reference to specific paragraph numbers) to those Proposed Findings of Uncontroverted Fact as to which it claims there is a genuine dispute. The party shall state the precise nature of its disagreement and give its version of the events, supported by record citations. The opposing party may also file Proposed Findings of Uncontroverted Fact as to any relevant matters not covered by the moving party's statement.
- (3) The parties may dispense with the documents called for in subdivision (d) (1)-(2) of this rule if They file, no later than the time of the initial motion, a comprehensive stipulation of all of the Material facts upon which they intend to rely.

In determining any motion for summary judgment, the court will, absent persuasive reason to the contrary, deem the material facts claimed and adequately supported by the moving party to be established, except to the extent that such material facts are included in the Statement of Genuine Issues and are controverted by affidavit or other written or oral evidence.

(e) Case Not Fully Adjudicated on Motion.

If no motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**Rule 36. Entry of Judgment.**

In every action or proceeding terminating in a judgment, there shall be filed, separate from any findings of fact, conclusions of law, memorandum, opinion or order, a judgment which shall state concisely the judgment of the court and shall be signed by the judge assigned to the case. In all actions tried upon the

facts, the court shall state the facts it finds to be true specially and separately and any conclusions of law it reached in deciding the case and rendering judgment thereon. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.

**Rule 37. New Trial.**

A motion for a new trial or rehearing shall be filed not later than 10 days after the entry of judgment. The motion shall set forth the grounds or bases for granting the motion. If the motion is granted, the court shall have the authority to 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. Not later than 10 days after entry of judgment the court on its own may order a new trial or rehearing for any reason it determines is just.

**Chapter 6**

**Jurors and Juries**

**Rule:**

- 38 Six-Person Juries**
- 39 Examination of Jurors**
- 40 Filing, Service and Form of Proposed Instructions**
- 41 Orders, Judgments, Findings of Fact and Conclusions of Law**
- 42 Relief From Judgment or Order**
- 43 Harmless Error**
- 44 Inability of a Judge to Proceed**
- 45 Seizure of Person or Property**
- 46 Injunctions**
- 47 Receivers. Appointed by the Court**
- 48 Deposit in Court**
- 49 Offer of Judgment**
- 50 Execution**
- 51 Judgment for Specific Acts; Vesting Title**
- 52 Seizure of Persons and Property: Civil Cases**
- 53 Filing or Faxed and Emailed Pleadings**

**Rule 38. Six-Person Juries.**

In all civil actions in which a party has requested a jury trial, the jury shall consist of six members and such alternatives as the judge may determine. All plaintiff's shall make their demand for a jury trial at the demand has been made for a jury trial, the matter shall be tried before the Chief Judge or the judge assigned the case. Any party requesting a jury trial shall at the time of making such request deposit with the Clerk such fees as have been established by the Tribal Council by resolution.

**Rule 39. Examination of Jurors.**

The examination of trial jurors to determine bias or prejudice shall be conducted by the judge. Each party shall be entitled to 6 automatic or peremptory challenges.

Except where the judge has directed prior to commencement of examination of trial jurors that a different procedure shall be followed, peremptory challenges to which each party may be entitled shall be exercised in the following manner; the first by plaintiff(s), the second by defendant(s), and continuing in alternating fashion until exhausted.

**Rule 40. Filing, Service and Form of Proposed Instructions.**

Unless otherwise ordered, each party shall serve, and file proposed jury instructions and forms of verdict. The judge may, in his/her discretion, receive additional requests for instructions at any time prior to the

commencement of argument to the jury. Each proposed instruction shall be written in plain language comprehensible to jurors, concise and free from argument, cover only one subject which shall be indicated in the caption, indicate the identity of the party submitting it, be written out in full on a separate page, be consecutively numbered, and set forth citations to the authorities supporting it. The proposed form of verdict shall not indicate the identity of the submitting party.

The judge shall fix the time, place and procedure for making objections to the judge's charge to the jury. Objections shall be made outside the presence of the jury and shall be reported by the court reporter in the transcript or, in the absence of the transcript, by the clerk in the minutes of the trial.

**Rule 41. Orders, Judgments, Findings of Fact and Conclusions of Law.**

(a) Orders

All orders shall be prepared by the attorney directed to do so by the court. Such orders shall be served and lodged with the Clerk within five (5) court days of the granting thereof.

(b) Findings of Fact and Conclusions of Law

In all cases where findings of fact and conclusions of law are required under these rules, the attorney directed to do so by the court shall within five (5) court days of the decision lodge proposed findings of fact which:

(1) Are in separately numbered paragraphs;

(2) Are in chronological order; and

(3) Do not make reference to allegations contained in the pleadings. Conclusions of law shall follow the findings of fact and;

(i) Shall be in separately numbered paragraphs, and

(ii) May include brief citations of appropriate authority.

(c) Judgment

The judgment shall be set forth on a separate document as required by Rule 36.

(d) Service of Document

The attorney whose duty it is to prepare any document required by these rules shall serve a copy on opposing counsel on the same day that the document is lodged with the Court. Alternatively, the attorney preparing the document may present it to opposing counsel for approval as to form before the document is lodged.

(e) Separate Objection

Opposing counsel may, within five (5) court days after service of a copy of a document prepared pursuant to these rules, file and serve objections to the form of the document and the grounds thereof. The failure to file timely objects shall be deemed a waiver of any defects in the form of the document.

(f) Endorsement of Counsel

Unless the Court otherwise directs, no document governed by these rules will be signed by the judge unless either opposing counsel shall have endorsed thereon an approval as to form, or the time for objection has expired. If it finds the ends of justice so requires, the Court may conduct a hearing on the proper form of the document, or it may sign the document as prepared or modified.

(g) Order Upon Stipulation

At the end of a stipulation of the parties to the granting of an order and following the signatures of counsel, the order shall be set forth in one of the following ways;

(a) If at least two lines of text of the stipulation, and the signature lines of the attorneys, and the

signature line for the judge, appear on the same page, then the words “IT IS SO ORDERED”, with a space below those words for the date and the signature line for the judge may be used;

or

- (b) In any other instance, the “IT IS SO ORDERED” format shall not be used, and, instead, the Pertinent elements of the order requested in the stipulation shall be set forth immediately above the judge’s signature line and the date, and set at least two lines of the text of the order shall appear on the page that has the judge’s signature line and the date.

(h) Approval of Bonds, Undertakings and Stipulations of Security.

The Clerk is authorized to approve on behalf of the Court all bonds, undertakings and stipulations of security given in the form and amount prescribed by statute, order of court or stipulation of counsel, which comply with the requirements of these rules, except where the approval of a judge is specifically required by law.

(i) Entry of Judgments and Orders

The entry of judgments and orders by the Clerk through notation in the appropriate civil docket pursuant to Rule 36 shall be made at the earliest practicable time.

(j) Entry of Judgments: Costs.

Entry of judgment shall not be delayed pending taxation of costs to be included therein. A blank space shall be left in the form of judgment for insertion of costs by the Clerk after they have been taxed.

(k) Entry of Judgments and Orders Clerk’s Orders and Judgments

Orders and judgments signed by the Clerk pursuant to Rule 34(a) shall be noted in the civil docket. That notation shall constitute entry of the judgment or order as provided by Rule 36.

(l) Entry of Judgments and Orders Settlement of Orders or Judgments

Entry of judgments or orders shall not be made by the Clerk until the Court has settled the form of judgment or order as provided in Rule 37(f).

(m) Judgment by Clerk

Judgments may be entered by the Clerk without further direction from the judge in the following instances;

- (a) Judgments on the verdict of a jury as provided in Rule 36 unless the judge directs otherwise  
(b) Judgments by default provided in Rule 34(b)(1), provided that no judgment shall be entered without a declaration that any natural person against whom it is sought is not an infant, incompetent person, or exempted under the Soldier’s and Sailor’s Civil Relief Act of 1940  
(c) Judgments or offers of judgment provided in Rule 45. The Clerk may require the party obtaining a judgment or order to prepare and present same.

(n) Entry of Judgment: Memorandum of Decision, Opinion, Minute Order

Notation in the civil docket of entry of a memorandum of decision, an opinion of the Court, or a minute order of the Clerk shall not constitute entry of judgment pursuant to Rule 36 unless specifically ordered by the judge.

(o) Entry of Judgment: Settlement of Interest

If interest is accruing or will accrue on any judgment, decree or order, the party preparing the proposed form of judgment, decree or order shall indicate by memorandum attached thereto the applicable interest rate as computed under applicable tribal law, or, if no tribal law exists, the rate computed pursuant to the provisions of 28 U.S.C. Section 1961(a) or 26 U.S.C. Section 6621 and the amount of interest to be added to each day the document remains unsigned.

(p) Entry of Judgment: Award: Tax Cases

In tribal tax cases involving overpayments or deficiencies, and in such other cases as it deems appropriate, the Court may withhold entry of judgment to permit the parties to submit, either separately or jointly by stipulation, the computation of the amount of money to be awarded in accordance with the Court's determination of the issues.

(q) Judgment, Order, Decree: Tribe a Party: Duty of Clerk

When a judgment, order or decree is entered by the Court directing any officer of the Tribe to perform any act, unless such officer is present in Court when the order is made, the Clerk shall forthwith transmit a copy of the judgment, order or decree to the officer ordered to perform the act.

(r) Default Judgments

When application is made to the Court for a default judgment, the application shall be accompanied by a declaration in compliance with Rule 34(b)(1) and/or (2) and include the following;

- (a) when and against what party the default was entered; and
- (b) the identification of the pleading to which default was entered; and
- (c) whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative; and
- (d) that the Soldier's and Sailor's Civil Relief Act of 1940 (50 App. U.S.C. 520) does not apply; and
- (e) that notice has been served on the defaulting party, if required by Rule 34(b)(2)

(s) Default Judgment: unliquidated Damages

If the amount claimed in a judgment by default is unliquidated, the applicant may submit evidence of the amount of damages by declarations. Notice must be given to the defaulting party of the amount requested. The party against whom judgment is sought may submit declarations in opposition.

(t) Default Judgment: Other Proceedings

Other proceedings necessary or appropriate to the entry of a judgment by default will be taken as provided in Rule 34(b)(2).

(u) Signature Line for Signature of Judge

At least two lines of the text of any order or judgment shall appear on the page that has the date and the line provided for the signature of the judge.

(v) Default Judgment Separate Document

The proposed default judgment shall be submitted as a separate document in compliance with Rule 34.

(w) Good Faith Settlement and Orders on Applications for Good Faith Settlement Determination

1. Good Faith Settlement.

In an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt, upon application by any party for a determination that a settlement between two or more parties has been made in good faith, this Court shall issue such determination and an order executing the settlement if (A) the amount of the settlement is within the reasonable range of the settling party's proportional share of comparable liability for the plaintiff's injuries and (B) there is no showing of collusion, fraud, or other tortious conduct aimed to injure the interests of non-settling defendants.

Other factors that the Tribal Court may consider in determining whether the settlement is in good faith include the possible uncollectibility of any larger trial judgment that might be entered against the settling defendants; the allocation of settlement proceeds among multiple plaintiffs; the adequacy of the settlement amount in light of any uncertainties surrounding the settling defendant's liability; the adequacy of the settlement amount in light of the comparative culpability of the settling defendants; recognition that a settlor should pay less in settlement than

he would if he were found liable after trial; and the financial conditions and insurance policy limits of settling defendants.

2. Issuance of Determinations and Order.

- A. Any party to an action wherein it is alleged that two or more parties are joint tortfeasors shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligers, upon giving notice in the manner provided in subdivision (b) of Rule 18. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.
- B. In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested. Proof of service shall be filed with the court within 25 days of the mailing of the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of the personal service, the court may approve the settlement. The notice by a nonsettling party shall be given in the manner provided in subdivision (b) of Rule 18. However, this paragraph shall not apply to settlements in which a confidentiality agreement has been entered into regarding the case or the terms of the settlement.
- C. The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.
- D. A determination by the Tribal Court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obliger from any further claims against the settling tortfeasor or co-obliger from any further claims against the settling indemnity, based on comparative negligence or comparative fault.
- E. The party asserting the lack of good faith shall have the burden of proof on the issue.

**Rule 42. Relief From Judgment or Order**

(a) Clerical Mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, should a tribal appellate court be established by the Tribal Council, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes: Inadvertence: Excusable Neglect: Newly Discovered Evidence: Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons;

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 40;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

- (6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided under these rules, or to set aside a judgment for fraud upon the court.

**Rule 43. Harmless Error**

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is grounds for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

**Rule 44. Inability of a Judge to Proceed**

If a trial or a hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

**Rule 45. Seizure of Person or Property**

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the State of California, existing at the time the remedy is sought, subject to the following qualifications;

- (a) any existing statute of the Tribe or the United States governs to the extent to which it is applicable;
- (b) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

**Rule 46. Injunctions**

(a) **Preliminary Injunction**

(1) **Notice**

No preliminary injunction shall be issued without notice to the adverse party

(2) **Consolidation of Hearing with Trial on Merits.**

Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) **Temporary Restraining Order; Notice; Hearing; Duration**

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and

(2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. The provisions of Rule 42 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and its binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

**Rule 46. Security: Proceedings Against Sureties.**

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

**Rule 47. Receivers. Appointed by the Court.**

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the Federal District Courts of the Ninth Circuit, unless the Tribal Council of the Tribe shall provide otherwise by the adoption of an appropriate Ordinance. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

**Rule 48. Deposit in Court.**

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of the Administrative Code of the Tribe

governing the deposit and receipt of tribal funds. The funds shall be deposited in an interest-bearing account approved by the court.

**Rule 49. Offer of Judgment.**

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order of judgment, the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

**Rule 50. Execution.**

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the State of California, existing at the time the remedy is sought, except that any statute of the Tribe or the United States governs to the extent that it is applicable. In aid of the judgment of execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the State of California.

**Rule 51. Judgment for Specific Acts; Vesting Title.**

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the jurisdiction of the court, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to writ of execution or assistance upon application to the clerk.

**Rule 52. Seizure of Persons and Property: Civil Cases**

(a) Seizure: Issuance of Writ.

All writs or other process issued for the seizure of persons or property pursuant to these rules shall be issued, attested, signed and sealed as required for writs issued out of this Court.

(b) Writs or Other Process of Seizure, Civil Cases: Execution and Return.

Any writ or other process for seizure in a civil action shall only be directed to, executed and returned by any federal, state or tribal law enforcement officer authorized by applicable law or a private person specially appointed by the Court for that purpose.

(c) Process Requiring Entry upon Premises.

An order of Court requiring entry upon private premises without notice shall be executed by any federal, state or tribal law enforcement officer, or a private person specially appointed by the Court for that purpose. If process is to be executed by a private person, the private person shall be accompanied by any federal, state or tribal law enforcement officer, who shall be present upon the premises during the execution of the order.

(d) Release of Seizure: Examination upon Seizure.

The examination of any person in a proceeding pursuant to these rules, or proceedings for the release or discharge of an attachment or other provisional remedy, shall be before a judge of this Court.

**Rule 53. Filing or Faxed and Emailed Pleadings.**

The Clerk of the Court shall accept for filing documents, including those requiring signatures, that have been received by the Court by facsimile transmission or electronic mail. Originals of any pleadings received by the Court by facsimile transmission or electronic mail shall be filed with the Court within seven (7) days, the documents shall be stricken from the Court record.

**ORDER**

These Rules shall take effect and govern all proceedings or actions filed in the Tribal Court on or after June 20, 2002.

/s/ Lester J. Marston  
Chief Judge of the Tribal Court

ATTESTED:

/s/ Elizabeth J. Jackson  
Clerk of the Tribal Court