TITLE 2
RULES OF PROCEDURE

CHAPTER 2-2

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CHAPTER 2-2
RULES OF CIVIL PROCEDURE

SCOPE AND PURPOSE OF RULES--ONE FORM OF ACTION
Rule 1 Scope of Rules

These rules govern the procedure in the Nez Perce Tribal courts in all suits of a civil nature whether cognizable as cases at law or in equity. They shall be construed and administered to secure determination of every action as just, speedy, and inexpensive as possible.

Rule 2 One Form of Action

There shall be one form of action to be known as "civil action."

COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS
Rule 3 Commencement of Action

A civil action is commenced by filing a complaint with the Court.

Rule 3.1 Inability to pay fees – Affidavit

(a) The Tribal Court may authorize the commencement or defense of any civil suit, action or proceeding, or an appeal therein, without prepayment fees, costs or security therefor, by any person who makes affidavit that he is indigent and unable to pay such costs or give security therefor, whenever the Court finds, after informal inquiry, the person to be indigent for the purpose of prepayment of fees, costs or security in a civil action or proceeding. Such affidavit shall state the nature of the action, defense or appeal and the affiant's belief he is entitled to redress.

(b) No fees, costs or security shall be waived for an appeal if the Court certifies in writing that the action is frivolous or malicious or that it is not taken in good faith.

(c) The Court may, upon the filing of a like affidavit and a finding of indigency, direct that the expense of printing the transcript or record on appeal be paid out of the Court fund.

(d) The Court may retroactively require payment for any fees, costs or security which may have been waived in the case if the allegation of poverty is untrue, or if the Court is satisfied that the action is frivolous or malicious, or if the action is not taken in good faith.

Rule 4 Summons

(a) Form. The summons shall be signed by the clerk, bear the seal of the Court, identify the Court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney, or, if unrepresented, of the plaintiff. It shall also state the time period within which the defendant must appear and defend and notify the defendant that failure to do so

will result in a judgment by default against the defendant for the relief demanded in the complaint. The Court may allow a summons to be amended.

(b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) Service With Complaint; By Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subsection (l) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be affected by any person who is not a party and who is at least eighteen (18) years of age. At the request of the plaintiff, however, the Court may direct that service be effected by a tribal police officer, or other person or officer specially appointed by the Court for that purpose.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of summons does not thereby waive any objection to the jurisdiction of the Court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subsection (e), (f), or (h) and that receives notice of an action in the manner provided in this subpart has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request shall:

(A) be in writing and be addressed directly to the defendant, if an individual, or to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subsection (h);

(B) be dispatched through first-class mail or other reliable means;

(C) be accompanied by a copy of the complaint and shall identify the Court in which it has been filed;

(D) inform the defendant of the consequences of compliance and of a failure to comply with the request;

(E) set forth the date on which the request is sent;

(F) allow the defendant a reasonable time to return the waiver, which shall be at least thirty (30) days from the date on which the request is sent, or sixty (60) days from that date if the defendant is addressed outside the United States; and

(G) provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the Court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until sixty (60) days after the date on which the request for waiver of service was sent, or ninety (90) days after that date if the defendant was addressed outside the United States.

(4) When the plaintiff files a waiver of service with the Court, the action shall proceed, except as provided in subpart (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under subpart (2) for failure to comply with a request to waive service under subsection (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service of summons shall include the costs subsequently incurred in effecting service.

(e) Service. Service upon any person from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then 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.

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(B) as directed by the foreign authority in response to a letter rogatory or letter of request;

(C) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the Court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the Court.

(g) Service Upon Minors and Incompetent Persons. Service upon a minor or an incompetent person shall be effected by service on the minor or incompetent person and the parent or legal guardian of the minor or incompetent person.

(h) Service Upon Corporations and Associations. Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in the United States in the manner prescribed for individuals by subsection (e), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process; or

(2) in a place not within the United States in any manner prescribed for individuals by subsection (f) except personal delivery as provided in subpart (2)(C)(i) thereof.

(i) Service Upon Foreign, State or Local Governments

(1) Service upon a foreign state or a political subsection, agency, or instrumentality thereof shall be in accordance with the procedures for federal and state courts as provided in 28 U.S.C. ' 1608.

(2) Service upon a state or municipal corporation or other government organization subject to suit shall be effected by delivering a copy of the summons and the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(j) Territorial Limits of Effective Service. Service of a summons on a person otherwise subject to the jurisdiction of the Nez Perce Tribal Court may be made anywhere in the United States or elsewhere if effected under this rule.

(k) Proof of Service. If service is not waived, the person effecting service shall make proof thereof to the Court. If service is made by a person other than a tribal police officer, the person shall make affidavit thereof. Proof of service in a place not within the United States shall, if effected under subpart (1) of subsection (f), be made pursuant to the applicable treaty or convention, and shall, if effected under subpart (2) or (3) thereof, include a receipt signed by the

addressee or other evidence of delivery to the addressee satisfactory to the Court. Failure to make proof of service does not affect the validity of the service. The Court may allow proof of service to be amended.

(l) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within one hundred and twenty (120) days after the filing of the complaint, the Court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the Court shall extend the time for service for an appropriate period. This subsection does not apply to service in a foreign county pursuant to subsection (f) or (i)(1) of this rule.

(m) Seizure of Property; Service of Summons Not Feasible. The Court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule.

Rule 4.1 Service of Other Process

(a) Generally. Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a tribal police officer within the reservation, or a person specially appointed for that purpose, who may serve anywhere in the United States. Proof of service shall be made as provided in Rule 4(1). The process may be served anywhere within the United States.

(b) Enforcement of Orders; Commitment for Civil Contempt. An order of civil commitment of a person held to be in contempt of a decree or injunction issued by the Court may be served and enforced anywhere in the United States.

Rule 5 Service and Filing of Pleadings and Other Papers

(a) Service; When Required. Every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Same; How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the Court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or one in charge, leaving it in

a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Same; Numerous Defendants. In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) Filing; Certificate of Service. All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the Court within a reasonable time after service, but the court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding.

(e) Filing with the Court Defined. The filing of papers with the Court as required by these rules shall be made by filing them with the clerk of the Court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. The Court may permit papers to be filed by facsimile or other electronic means. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or practices.

Rule 6 Time

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

(1) with or without motion or notice order the period enlarged if the request 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 48(b) and (c)(2), 50 (b), 57(b), (d) and (e), and 58(b), except to the extent and under the conditions stated in them.

(b) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served no later than five (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 except as otherwise provided in Rule 57(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

(c) 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, three (3) days shall be added to the prescribed period.

Rule 7 Pleadings Allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim, denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) 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 therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Rule 8 General Rules of Pleadings

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain:

(1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it;

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

(3) a demand for judgment for the relief the pleader seeks.

Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to

controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or subparts or may generally deny all the averments except such designated averments or subparts as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the Court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 1.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of the statements if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 9 Pleading Special Matters.

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the

circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued, or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

Rule 10 Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party of each side with an appropriate indication of other parties.

(b) Subparts; Separate Statements. All averments of claim or defense shall be made in numbered subparts, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a subpart 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 state in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Rule 11 Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion and other paper of a party shall be signed by at least one attorney of record in the attorney's individual name, or if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by this code, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

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

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

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

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

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the Court determines that subsection (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection (b). It shall be served as provided in Rule 5 but shall not be filed with or presented to the Court unless, within twenty-one (21) days after service of the motion (or such other period as the Court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the Court may enter an order describing the specific conduct that appears to violate subsection (b) and directing an attorney, law firm, or party to show cause why it has not violated subsection (b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparts (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may be awarded against a represented party

for a violation of subsection (b)(2).

(B) Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subsections (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 12 Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on the Pleadings

(a) When Presented.

(1) A defendant shall serve an answer:

(A) within twenty (20) days after being served with the summons and complaint; or

(B) if service of the summons has been timely waived on request under Rule 4(d), within sixty (60) days after the date when the request for waiver was sent, or within ninety (90) days after that date if the defendant was addressed outside the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within twenty (20) days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order, unless the order otherwise directs.

(3) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action; or

(B) if the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the

option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) improper venue;

(4) insufficiency of process;

(5) insufficiency of service of process;

(6) failure to state a claim upon which relief can be granted; or

(7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 53, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 53.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 53, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 53.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subsection (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subsection (c) of this rule shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten (10) days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty (20) days after the service of the pleading upon the party or upon the Court's own initiative at

any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived:

(A) if omitted from a motion in the circumstances described in subsection (g); or

(B) if it is neither made by motion under this rule nor included in the responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and the objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

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

Rule 13 Counterclaim and Cross-Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, 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 adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if:

(1) at the time the action was commenced the claim was the subject of another pending action; or

(2) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive Counterclaims. A pleading may state as a counter claim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(e) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(f) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(g) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(h) Separate Trials; Separate Judgments. If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 51(b) when the Court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14 Third Party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, 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. 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 ten (10) days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counter-claims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also 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. 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 as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Rule 15 Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty (20) days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

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

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action;

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading; or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(l) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental Pleadings. Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is

defective in its statement of claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 16 Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives. 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 for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

(b) Scheduling and Planning. Except in categories of actions exempted by court rule as inappropriate, the judge shall after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time:

(1) to join other parties and to amend the pleadings;

(2) to file motions; and

(3) to complete discovery.

The scheduling order also may include:

(4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;

(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within ninety (90) days after the appearance of a defendant and within one hundred and twenty (120) days after the complaint has been served on a defendant. A schedule shall not be modified except upon a showing of good cause and by leave of the judge.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the Court may take appropriate action, with respect to:

(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, and limitation or restrictions on the use of testimony under the Rules of Evidence;

(5) the appropriateness and timing of summary adjudication under Rule 53;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) 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;

(8) settlement and the use of special procedures to assist in resolving the dispute when authorized by this code;

(9) the form and substance of the pretrial order;

(10) the disposition of pending motions;

(11) 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;

(12) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(13) an order directing a party in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 48(a) or a judgment on partial findings under Rule 50(c);

(14) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(15) such other matters as may facilitate the just, speedy, and inexpensive 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 participants may reasonably anticipate may be discussed. If appropriate, the Court may require that a party or its representative be present or reasonably available by telephone in order to

consider possible settlement of the dispute.

(d) 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 a 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.

(e) Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This 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.

(f) 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 or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

PARTIES

Rule 17 Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another may sue in that person's own name without joining the party for whose benefit the action is brought and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Rule 18 Joinder of Claims and Remedies

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

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

Rule 19 Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

(1) in the person's absence complete relief cannot be accorded among those already parties; or

(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

(A) as a practical matter impair or impede the person's ability to protect that interest; or

(B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subsection (a)(1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include:

(1) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(2) the extent to which, by protective provision in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

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

(4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall

state the names, if known to the pleader, of any persons as described in subsection (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

Rule 20 Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

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

Rule 21 Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22 Interpleader

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

Rule 23 Class Actions

(a) Prerequisite to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the

claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subsection (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class;

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subsection (b)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

(A) the Court will exclude the member from the class if the member so requests by a specified date;

(B) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.

(4) When appropriate:

(A) an action may be brought or maintained as a class action with respect to particular issues; or

(B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the Court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations

to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16 and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all the members of the class in such manner as the Court directs.

Rule 23.1 Derivative Actions by Shareholders

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

(a) that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law; and

(b) that the action is not a collusive one to confer jurisdiction on the Nez Perce Tribal Court which it would not otherwise have.

The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors of comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs.

Rule 23.2 Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the Court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

Rule 24 Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:

(1) when this code confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) when this code confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any law or executive order administered by a federal, state or tribal governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the law or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when this code gives a right to intervene. When the legality of an act of the tribe is drawn in question in any action in which the tribe or an officer, agency, or employee thereof is not a party, the Court shall notify the tribal office of legal counsel. A party challenging the legality of legislation should call the attention of the Court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

Rule 25 Substitution of Parties

(a) Death

(1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving

parties.

(b) Incompetency. If a party becomes incompetent, the Court upon motion served as provided in subsection (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (a) of this rule.

(d) Tribal Officers; Death or Separation from Office.

(1) When a tribal officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate, and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A tribal officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the Court may require the officer's name to be added.

DEPOSITIONS AND DISCOVERY

Rule 26 General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures. Except to the extent otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Unless otherwise stipulated or directed by the Court, these disclosures shall be made at or within ten (10) days after the meeting of the parties under subsection (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by subpart (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 45, 46 or 48 of the Rules of Evidence.

(B) Except as otherwise stipulated or directed by the Court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

(C) These disclosures shall be made at the times and in the sequence directed by the Court. In the absence of other directions from the Court or stipulation by the parties, the disclosures shall be made at least ninety (90) days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under subpart (2)(B), within thirty (30) days after disclosure made by the other party. The parties shall supplement these disclosures when required under subsection (e)(1).

(3) Pretrial Disclosures. In addition to the disclosures required in the preceding subparts, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each of those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the Court, these disclosures shall be made at least thirty (30) days before trial. Within fourteen (14) days thereafter, unless a different time is specified by the Court, a party may serve and file a list disclosing:

(i) any objections to the use under Rule 32(a) of a deposition designated by another party under subpart (B); and

(ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subpart (C).

Objections not so disclosed, other than objections under Rules 10 and 11 of the Rules of Evidence, shall be deemed waived unless excused by the Court for good cause shown.

(4) Form of Disclosures; Filing. Unless otherwise directed by order, all disclosures under subparts (1) through (3) shall be made in writing, signed, served, and promptly filed with the Court.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, 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. The information

sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. By order, the Court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Court if it determines that:

(A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

The Court may act upon its own initiative after reasonable notice or pursuant to a motion under subsection (c).

(3) Trial Preparation; Materials. Subject to the provisions of subsection (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion. For purposes of this subpart, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subsection (a)(2)(B), the deposition shall not be conducted until report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result:

(i) the Court shall require that the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery under this subsection; and

(ii) with respect to discovery obtained under subsection (b)(4)(B) of this rule the Court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the Court;

(6) that a deposition after being sealed be opened only by order of the Court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery. Except when authorized under these rules or by order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subsection (f). Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice orders otherwise, 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.

(e) Supplementation of Disclosures and Responses. A party who has made disclosure under subsection (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the Court in the following circumstances:

(1) A party is under duty to supplement at appropriate intervals its disclosures under subsection (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subsection (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party

learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of Parties; Planning for Discovery. Except in actions exempted by law or when otherwise ordered, the parties shall, as soon as practicable and in any event at least fourteen (14) days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subsection (a)(1), and to develop a proposed discovery plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under subsection (a) or law, including a statement as to when disclosures under subsection (a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules or by law, and what other limitations should be imposed; and

(4) any other orders that should be entered by the Court under subsection (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the Court within ten (10) days after the meeting a written report outlining the plan.

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure made pursuant to subsection (a)(1) or subsection (a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the Court upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 27 Depositions Before Action or Pending Appeal

(a) Before Action

(1) Petition. A person who desires to perpetuate testimony regarding any claim for relief that may be brought in the Court may file a verified petition with the Court. The petition shall be entitled in the name of the petitioner and shall show:

(A) that the petitioner expects to be a party to an action brought in the Court but is presently unable to bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest therein;

(C) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(D) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and

(E) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the

petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served in the manner provided in Rule 4(d) for service or summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise.

(3) Order and Examination. If the Court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the Court may make orders of the character provided for by Rules 34 and 35.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules it may be used in any action involving the same subject matter subsequently brought in the Tribal Court in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of the Court or before the taking of an appeal if the time therefor has not expired, the Court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Court. In such case the party who desires to perpetuate the testimony may make a motion in the Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Court. The motion shall show:

(1) the names and address of the persons to be examined and the substance of the testimony which the party expects to elicit from each; and

(2) the reasons for perpetuating their testimony.

If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions.

(c) Perpetuation by Action. This rule does not limit the power of the Court to entertain an action to perpetuate testimony.

Rule 28 Persons Before Whom Depositions May Be Taken

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an

officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31, and 32 includes a person appointed by the Court or designated by the parties under Rule 29.

(b) In Foreign Countries. Depositions may be taken in a foreign country:

(1) pursuant to any applicable treaty or convention;

(2) pursuant to a letter of request (whether or not captioned a letter rogatory);

(3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States; or

(4) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate.

It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29 Stipulations Regarding Discovery Procedure

Unless otherwise directed by the Court, the parties may by written stipulation:

(a) provide the depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

(b) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the Court.

Rule 30 Depositions Upon Oral Examination

(a) When Depositions May Be Taken; When Leave Required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in subpart (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined, is confined in prison or if, without the written stipulation of parties:

(A) a proposed deposition would result in more than ten (10) depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.

(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the Court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means and the party taking the deposition shall bear the cost of the recording. Any party may arrange for transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the Court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes:

(A) the officer's name and business address;

(B) the date, time, and place of the deposition;

(C) the name of the deponent;

(D) the administration of the oath or affirmation to the deponent; and

(E) an identification of all persons present.

If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing, or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a) and 37(b)(1) a deposition taken by such means is taken at the place where the deponent is to answer questions.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Rules of Evidence except Rules 3 and 43. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subsection (b)(4) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed,

with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under subpart (3).

(2) By order, the Court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the Court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon order of the Court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subsection (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Court, the officer shall securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Court or send it to the attorney

who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may:

(A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals; or

(B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Court, pending final disposition of the case.

(2) Unless otherwise ordered by the Court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

Rule 31 Depositions Upon Written Questions

(a) Serving Questions; Notice.

(1) A party may take the testimony of any person, including a party, by

deposition upon written questions without leave of court except as provided in subpart (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) a proposed deposition would result in more than ten (10) depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined has already been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(A) the name and address of the person who is to answer, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and

(B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within fourteen (14) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within seven (7) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within seven (7) days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), 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.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Rule 32 Use of Depositions in Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions.

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under the Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds:

(A) that the witness is dead;

(B) that the witness is at a greater distance than 100 miles from the Tribal Court, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than eleven (11) days' notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and when an action has been brought and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subsection (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Form of Presentation. Except as otherwise directed by court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the Court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the Court for good cause orders otherwise.

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five (5) days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 33 Interrogatories to Parties

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding twenty-five (25) in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d).

(b) Answers and Objections

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objections and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) 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. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specifity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or

other later time.

(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof 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 to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within thirty (30) days after the service of the request. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified, and inspection permitted for the remaining parts. The party submitting the request may move for any order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons and parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

Rule 35 Physical and Mental Examinations of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.

(1) If requested the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

Rule 36 Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request

for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions for fact or of the application of law to fact including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation requests for admission may not be served before the time specified in Rule 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the Court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which the admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provision of Rule 16 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Rule 37 Failure to Make or Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Motion.

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(2) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subsection an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(3) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the Court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the Court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or

that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the Court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) If a deponent fails to be sworn or to answer a question after being directed to do so by the Court, the failure may be considered a contempt of court.

(2) If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the Court may make such orders in regard to the failure as are just, and among others the following:

(A) an order that the 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, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) in lieu of any of the foregoing orders or an 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;

(E) where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in subparts (A), (B), and (C) of this subsection, unless the party failing to comply shows that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1) shall not, unless such failure is harmless, be permitted to use as evidence at a trial, at a hearing or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the Court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under subparts (A), (B), and (C) of subsection (b)(2) of this rule and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that:

(A) the request was held objectionable pursuant to Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had reasonable grounds to believe that the party might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails:

(1) to appear before the officer who is to take the deposition, after being served with a proper notice; or

(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories; or

(3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the Court in which the action is pending on motion may make such orders in regard to the failure as are just, and under subparts (A), (B), and (C) of subsection (b)(2) of this rule.

Any motion specifying a failure under clause (2) or (3) of this subsection shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as is required by Rule 26(f), the Court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by failure.

TRIALS

Rule 38 Jury Trial of Right

(a) Right Preserved. The right of trial by jury shall be preserved to the parties for any claim in which a legal remedy is sought, but excluding a claim in which an equitable remedy is sought.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by:

(1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue; and

(2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within ten (10) days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues or fact in the action.

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Rule 39 Trial by Jury or by the Court

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open court and entered in the record, consent to trial by the Court sitting without a jury or (2) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Indian Civil Rights Act of 1968.

(b) By Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion upon motion

may order a trial by a jury of any or all issues.

Rule 40 Assignment of Cases for Trial

The Court shall provide by rule for the placing of actions upon the trial calendar (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 courts deem expedient. Precedence shall be given to actions entitled thereto by tribal law.

Rule 41 Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 64, and of any tribal law, an action may be dismissed by the plaintiff without order of court:

(A) by filing notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, 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 an action based on or including the same claim.

(2) By Order of Court. Except as provided in subpart (1) of this subsection 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. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this subpart is without prejudice.

(b) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subpart (1) of subsection (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(c) Costs of Previously Dismissed Actions. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until plaintiff has complied with the order.

Rule 42 Consolidation; Separate Trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claim, cross-claim, counterclaims, third-party claims, or issues, always preserving the right of trial by jury as declared Rule 38.

Rule 43 Taking of Testimony

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by tribal law, these rules or the Rules of Evidence.

(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 on Motions. When a motion is based on facts not appearing of 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 the interpreter's 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 taxed ultimately as costs, in the discretion of the Court.

Rule 44 Proof of Official Record

(a) Authentication.

(1) Domestic. An official record kept by the tribe or within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of the Tribal Court or a court of record of the district or political subsection in which the record is kept, authenticated by the seal of the Court, or may be made by any tribal officer or public officer having a seal of office and having official duties in the district or political subsection in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign

official whose certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subsection (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subsection (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44.1 Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law.

Rule 45 Subpoena

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state that it is issued from the Nez Perce Tribal Court;

(B) state the title of the action, that it is pending in the Nez Perce Tribal Court, and its civil action number;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subsections (c) and (d) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition or may be issued separately.

(2) The clerk of the Court shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service.

(b) Service.

(1) A subpoena may 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 person and, if the person's attendance is commanded, by tendering to that person a $10.00 fee for one day's attendance plus mileage. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) A subpoena directed to a witness in a foreign country who is a national or resident of the United States shall issue under the circumstances and in the manner and be served pursuant to the procedures used by federal courts as provided in Title 28 U.S.C. §1783.

(3) Proof of service when necessary, shall be made by filing with the clerk of the Court a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty as appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subpart (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel

the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)

(A) On timely motion, the Court shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information;

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party;

(iii) requires a person who is not a party or an officer of a party to travel more than 100 miles to attend trial, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

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

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena

served upon that person may be deemed a contempt of the Court.

Rule 46 Exception Unnecessary

Formal exceptions to rulings or orders of the Court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which the party desires the Court to take or the party's objection to the action of the Court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47 Special Verdicts and Interrogatories

(a) Special Verdicts. The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 55. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 55 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Rule 48 Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim, or defense that cannot under the controlling

law be maintained or defeated without a favorable finding on that issue.

(2) Renewal of Motion of Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than ten (10) days after entry of judgment. A motion for a new trial under Rule 57 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the Court may in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the Court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than ten (10) days after entry of judgment. A motion for new trial under Rule 57 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the Court may in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the Court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.

(1) If the renewed motion for judgment as a matter of law is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against who judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 57 not later than ten (10) days after entry of the judgment.

(d) Same: Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the

trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in these rules precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

Rule 49 Instructions to Jury: Objection

At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The Court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 50 Findings by the Court; Judgment on Partial Findings

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 55; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. 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. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 53, or any other motion except as provided in subsection (c) of this rule.

(b) Amendment. Upon motion of a party made not later than ten (10) days after entry of judgment the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 57. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Judgment on Partial Findings. If during a trial without a jury a party has been fully heard on an issue and the Court finds against the party on that issue, the Court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the Court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subsection (a) of this rule.

JUDGMENT

Rule 51 Judgments; Costs

(a) Definition; Forms. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report

of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is not just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; Attorneys' Fees.

(1) Costs Other than Attorneys' Fees. Except when express provision therefor is made either in this code or these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the Court otherwise directs. Such costs may be taxed by the clerk on one day's notice. On motion served within five (5) days thereafter, the action of the clerk may be reviewed by the Court.

(2) Attorneys' Fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by this code or order of the Court, the motion must be filed and served no later than fourteen (14) days after entry of judgment; must specify the judgment and the law, rule or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the Court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the Court shall afford an opportunity for adversary submission with respect to the motion in accordance with Rule 43(c). The Court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the Court. The Court shall find the facts and state its conclusions of law as provided in Rule 50(a), and a judgment shall be set

forth in a separate document as provided in Rule 55.

(D) The provisions of subparts (A) through (C) do not apply to claims for fees and expenses as sanctions for violations of these rules.

Rule 52 Default

(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 the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim 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 the defendant has been defaulted for failure to appear and if he 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 therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing 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 averment by evidence or to make the truth of any averment 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 and shall accord a right of trial by jury to the parties when and as required by this code.

(c) Setting Aside Default. For good cause shown 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 Rule 58(b).

(d) Plaintiffs, Counterclaims, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 51(c).

Rule 53 Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of twenty (20)

days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. 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) Case Not Fully Adjudicated on Motion. If on 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 on 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 the 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.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney

may be adjudged guilty of contempt.

Rule 54 Declaratory Judgments

(a) In a case of actual controversy within its jurisdiction, the Tribal Court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought.

(b) The procedure for obtaining a declaratory judgment shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 55 Entry of Judgment

(a) Subject to the provisions of Rule 51(b):

(1) upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court;

(2) upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.

Every judgment shall be set forth on a separate document. Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees. Attorneys shall not submit forms of judgment except upon direction of the Court, and these directions shall not be given as a matter of course.

Rule 56 Recognition and Enforcement of Foreign Judgments

(a) "Foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court.

(b) A copy of any foreign judgment authenticated in accordance with the laws of the jurisdiction in which it was issued may be filed in with the clerk of the Court. The clerk shall treat the foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the Tribal Court and may be enforced or satisfied in like manner, with the following exception:

(1) The terms of a judgment providing for the custody of a minor child may not be modified, vacated, reopened nor stayed unless the Court has assumed jurisdiction of the case.

(c)

(1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall make and file with the clerk of the court an affidavit setting forth the name and last known post-office address of the judgment debtor, and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until five (5) days after the date the judgment is filed.

(d)

(1) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or until the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished security for the satisfaction of the judgment required by the law of the jurisdiction in which it was rendered, if the Court determines such security is necessary.

(2) If the judgment debtor shows the Court any ground upon which enforcement of the judgment would be stayed in the issuing jurisdiction, the Court shall stay enforcement of the foreign judgment for an appropriate period, and may require security for satisfaction of the judgment during the stay.

(e) Any person filing a foreign judgment shall pay to the clerk of the Court a fee established by the Tribal Court.

(f) The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this rule remains unimpaired.

(g) This act may be cited as the “Enforcement of Judgments Act.”

Rule 57 New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues:

(1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the Courts of the United States; and

(2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment.

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

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

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

Rule 58 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, 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 57(b);

(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 subsection (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 set aside a judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita querela and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 59 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 ground 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 60 Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exceptions--Injunctions, Receiverships, and Patent Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. Unless otherwise ordered by the Court an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, 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 (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 57, or of a motion for relief from a judgment or order made pursuant to Rule 58, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 48, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 50(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersede as bond may obtain a stay subject to the exceptions contained in subsection (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order

allowing the appeal, as the case may be. The stay is effective when the supersede as bond is approved by the Court.

(e) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(f) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 51(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 61 Inability of a Judge to Proceed

If a trial or 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.

PROVISIONAL AND FINAL REMEDIES

Rule 62 Seizure of Person or Property

At 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 tribe, existing at the time the remedy is sought.

Rule 63 Injunctions (revised 6/22/99)

(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 subsection (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) There shall exist an action known as a "petition for a domestic protection order" in cases of domestic violence.

(1) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the Nez Perce Tribal Court, alleging that they are a victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter.

(2) A person's right to petition for relief under this chapter shall not be affected by that person having left the residence or household to avoid abuse.

(3) The petition shall disclose the existence of any custody or any marital annulment, dissolution, or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection, or adoption proceedings affecting the children of any of the parties.

(4) When the petitioner requests custody of any child, the petition shall disclose:

(A) The county and state where the child has resided for six months immediately prior to filing of the petition;

(B) The party or other responsible person with whom the child is presently residing; and

(C) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(5) A petition shall be filed:

(A) Where the petitioner currently or temporarily resides;

(B) Where the respondent resides; or

(C) Where the act of domestic violence occurred.

(6) There is no minimum requirement of residency to petition for a domestic protection order.

(7) The petition shall not be a matter of public record.

(c) Ex Parte Protection Order.

(1) The Court may grant an ex parte temporary protection order pending a full hearing, granting such relief as the Court deems proper, where a petition under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent. The temporary order may include an order:

(A) Restraining the respondent from contacting the petitioner, either

directly or indirectly;

(B) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(C) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner until further ordered by the Court;

(D) Awarding temporary custody and/or establishing temporary visitation rights with regard to the minor children;

(E) Restraining any party from interfering with the other's custody of the children or from removing the children from the jurisdiction of the Court;

(F) Ordering other relief as the Court deems necessary for the protection of a domestic partner, including orders or directives to peace officers as allowed under this code;

(G) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(H) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(2) An ex parte temporary domestic protection order shall remain in effect for 10 days from the date of issuance.

(3) A full hearing shall be held no more than 10 days from the date of issuance of an ex parte temporary domestic protection order. The respondent shall be personally served with a copy of the temporary order and notice of hearing, in accordance with the Rules of Civil Procedure of the Nez Perce Tribal Code.

(4) If the respondent is not personally served with a copy of the temporary order and notice of hearing, the existing temporary order may be extended for 10 days from the date originally set for hearing, and a new hearing date set. The respondent must be personally served with the new notice of hearing.

(d) Domestic protection order.

(1) A court may grant the following relief, if requested, in a domestic protection order after notice and hearing, whether or not the respondent appears:

(A) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if the exercise of such jurisdiction is consistent with the provisions of this code, or consistent with prior custody orders entered by a court of competent jurisdiction.

(B) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(C) Restraining the respondent from contacting, harassing, telephoning, or otherwise communicating with the petitioner, either directly or indirectly;

(D) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner;

(E) Other relief as the Court deems necessary for the protection of the petitioner, including orders or directives to peace officers as allowed under this code;

(F) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(G) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(H) Prohibiting the respondent from having in their possession any firearm and/or ammunition whether working or not; or

(I) Suspending or revoking the respondent's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

(2) No protection order under this section shall in any manner affect title to real property.

(3) Relief shall not be denied because the petitioner used reasonable force in self-defense against the respondent, or because the petitioner or respondent was a minor at the time of the incident of domestic violence.

(4) Any relief granted by the domestic protection order shall be for a fixed period not to exceed 90 days; provided that an order obtained pursuant to this chapter may, upon written motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may

be granted without a hearing, if not timely objected to by the party against whom the order is entered.

(5) In providing relief under this chapter, the Court may realign the designation of the parties as "petitioner" and "respondent" where the Court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

(6) A court shall not grant a mutual domestic protection order to opposing parties.

(e) Full Faith and Credit.

(1) Any domestic protection order issued that is consistent with subsection (b) of this section by one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the Nez Perce Tribe and enforced as if it were the order of the Nez Perce Tribe.

(2) A domestic protection order issued by a State or Tribal court is consistent with this subsection if:

(A) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(B) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or Tribal law, and in any event within a reasonable time after the order is issued.

(3) A domestic protection order issued by a State or Tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a domestic household member is not entitled to full faith and credit if:

(A) no cross or counter petition, complaint or other written pleading was filed seeking such a protection order; or

(B) a cross or counter petition has been filed and the Court did not make specific findings that each party was entitled to such an order.

(f) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's 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 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 indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; 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 ten (10) 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 a party against whom the order is directed consents that it may be extended or a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining or protection order is granted without notice, the motion for a preliminary injunction or protection order 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 motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction or protection order and, if the party does not do so, the Court shall dissolve the temporary restraining order. On two (2) days' 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.

(g) Security. No restraining order, preliminary injunction or protection order 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.

The provisions of Rule 63.1 apply to a surety upon a bond or undertaking under this rule.

(h) Form and Scope of Injunction, Restraining Order or Protection Order. Every order granting an injunction and every restraining or protection order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained; and is 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 63.1 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 64 Receivers Appointed by 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 followed in the courts of the United States or as provided in rules promulgated by such courts. 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 65 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.

Rule 66 Offer of Judgment

At any time more than ten (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 ten (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 or judgment, but 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 ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

Rule 67 Execution

In General 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 this code. 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.

Rule 68 Process in Behalf of and Against Persons Not Parties

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

SPECIAL PROCEEDING
Rule 69 Condemnation of Property

(a) Applicability of Other Rules. The Rules of Civil Procedure for the United States District Court for the District of Idaho govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) Joinder of Properties. The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) Complaint.

(1) Caption. The complaint shall contain a caption as provided in Rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) Contents. The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonable diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in subsection (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in subsection (e) of this rule. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(3) Filing. In addition to filing the complaint with the Court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

(d) Process.

(1) Notice: Delivery. Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.

(2) Same; Form. Each notice shall state the Court, the title of the action, the

name of the defendant to whom it is directed, that the action is to condemn property, a description of the defendant's property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address where the attorney may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(3) Service of Notice.

(A) Personal Service. Personal service of the notice (but without copies of the complaint) shall be made in accordance with Rule 4 upon a defendant whose residence is known and who resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States.

(B) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that the attorney believes a defendant cannot be personally served, because after diligent inquiry the defendant's place of residence cannot be ascertained by the plaintiff, or, if ascertained, that it is beyond the territorial limits of personal service as provided in this rule, service of the notice shall be made on the defendant by publication in a newspaper published in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to "Unknown Owners."

Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(4) Return; Amendment. Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons under Rule 4.

(e) Appearance or Answer. If a defendant has no objection or defense to the taking of the defendant's property, the defendant may serve a notice of appearance designating the property in which the defendant claims to be interested. Thereafter, the defendant shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of the property, the defendant shall serve an answer within twenty (20) days after the service of notice upon the defendant. The answer shall identify the property in which the defendant claims to have an interest, state the nature, and extent of the interest claimed, and state all the

defendant's objections and defenses to the taking of the property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not the defendant has previously appeared or answered, the defendant may present evidence as to the amount of the compensation to be paid for the property, and the defendant may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

(f) Amendment of Pleadings. Without leave of court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subsection (i) of this rule. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b), upon any party affected thereby who has appeared and, in the manner provided in subsection (d) of this rule, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the Court for the use of the defendants at least one copy of each amendment and shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by subsection (e) of this rule a defendant may serve an answer to the amended pleading, in the form and manner and with the same effect as there provided.

(g) Substitution of Parties. If a defendant dies or becomes incompetent or transfers an interest after the defendant's joinder, the Court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subsection (d)(3) of this rule.

(h) Trial. If the action involves the exercise of the power of eminent domain under the law of the tribe, any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the Court may fix, unless the Court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by commission of three persons appointed by it.

In the event that a commission is appointed the Court may direct that not more than two (2) additional persons serve as alternate commissioners to hear the case and replace commissioners who, prior to the time when a decision is filed, are found by the Court to be unable or disqualified to perform their duties. An alternate who does not replace a regular commissioner shall be discharged after the commission renders its final decision. Before appointing the member of the commission and alternates the Court shall advise the parties of the identity and qualifications of each prospective commissioner and alternate and may permit the parties to examine each such designee. The parties shall not be permitted or required by the Court to suggest nominees. Each party shall have the right to object for valid cause to the appointment of any person as a commissioner or alternate. Trial of all issues shall otherwise be by court.

(i) Dismissal of Action.

(1) As of Right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property without an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the

action is dismissed.

(2) By Stipulation. Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and if the parties so stipulate, the Court may vacate any judgment that has been entered.

(3) By Order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any party of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The Court at any time may drop a defendant unnecessarily or improperly joined.

(4) Effect. Except as otherwise provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

(j) Deposit and Its Distribution. The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the Court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the Court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

Rule 70 Stenographer; Stenographic Report or Transcript as Evidence

Stenographic Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

Rule 71 Jurisdiction Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the Nez Perce Tribe.

Rule 72 Rules by Court

The Court may from time to time, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice not inconsistent with these rules. The rules shall take effect upon the date specified by the Court and shall remain in effect unless amended by the Court. In all cases not provided for by rule, the Court may regulate its practice in any manner not inconsistent with these rules.

Rule 73 Name Change

(a) Jurisdiction of Tribal Court

(1) petitioner must be subject to Tribal jurisdiction

(2) application for change of name will be heard and determined in Tribal Court

(3) petitioner will be required to pay the designated filing fee upon initial application

(b) Application must be made to Tribal Court by petition and must include:

(1) signature of petitioner seeking a name change

(2) if petitioner is under eighteen (18) years of age, petition must include the signature of not less than one (1) parent if one or both are living, or

(3) if both parents are deceased, then the signature of the guardian; or

(4) if no appointed guardian then the signature of a near relative or friend must be included.

In addition, petition must also include:

(5) name and current address of petitioner

(6) date of birth and place of birth of petitioner

(7) present name of petitioner

(8) new name proposed by petitioner

(9) reason for requested name change

(10) name and current address(es) of parents of petitioner, or if both parents deceased, the name(s) and address(es) of petitioner's immediate relatives

(c) Publication of petition

(1) petition, after receiving the signature of the Court clerk and seal of the Court, must be published for four (4) successive weeks in the Nez Perce Tribal newspaper, or not less than four (4) successive publications if not published weekly.

(2) if no Tribal newspaper is being printed, then a copy of the petition must be posted at not less than three (3) of the most public places within the reservation boundary for a period of not less than four (4) successive weeks.

(d) Proof of publication or posting must be presented at the hearing for such name

change. Notice of hearing to be published or posted may read as follows:

In Nez Perce Tribal Court in the State of Idaho, County of Nez Perce, city of Lapwai. In the matter of petition by (name) for a change in name. A petition by (name), born (date) at (place), currently residing at (address) is seeking a change of name to (new name). Petition has been filed in the Nez Perce Tribal Court. Name of petitioner's father is , currently residing at (address); name of petitioner's mother is , currently residing at (address). [If both parents deceased, names & addresses of nearest living relatives should be placed here] Petition will be heard by the Court at the appointed time of . [or, if no hearing date yet set, print as >at such time as the Court may appoint]. Objections may be filed by any person who can show to the Court good reason for the Court to consider denying the proposed name change.
Signature of Court Clerk
Name of petitioner's attorney if applicable.

(e) The Court may examine petitioner or any persons filing objections to the sought name change, under oath, as the Court deems necessary to decide whether to deny or order the sought name change.

CHAPTER 2-3
CIVIL INFRACTION PROCEDURES

GENERAL PROVISIONS

§2-3-1 Definitions

(a) "Business day" means any day in which the business of the Nez Perce Tribe is normally conducted and excluding weekends and holidays.

(b) "Contraband" means any item which is unlawful to possess or produce

(c) "Defendant" means the person against whom an action is filed under this chapter.

(d) "Infraction" means a civil offense in which the remedy involved shall be a civil fine. An infraction is not a crime and the punishment imposed therefor shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

(e) "Instrumentality" means any item used in connection with an infraction.

(f) "Probable cause" exists under this chapter when an officer has substantial objective basis for believing that a person has committed an infraction. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that an infraction has been committed and that the person to be cited has committed it.

(g) "Personal delivery" means the physical presentation of a citation to a person accused of an infraction violation.

(h) "Notice" means to hand deliver notice to a party or mail such notice to the party's most recently known address.

(i) "Tribal Police Officer" means BIA law enforcement officers, tribal police officers, or other peace officers authorized by the Nez Perce Tribe to enforce the laws of the Tribe.

(j) "Tribe" means the Nez Perce Tribe.

§2-3-2 Application

The procedures in this chapter shall apply to any general or traffic infraction listed in this code. Unless otherwise provided, the sole remedy for a violation of a general or traffic infraction under this code shall be those which are provided herein.

§2-3-3 Rights of Defendant

A defendant charged with a general or traffic infraction, shall have the right to:

(a) present evidence and examine witnesses;

(b) compulsory process for obtaining witnesses in his favor and at his own expense; and

(c) have the assistance of counsel for his defense at his own expense.

INFRACTION PROCEDURE

§2-3-4 Citations

(a) Issuance of a Nez Perce Tribal infraction citation will initiate prosecution of an action under this chapter. An infraction citation may be issued by:

(1) a tribal police officer once the officer has probable cause to believe an infraction under this code has been committed;

(2) service by the Court clerk upon the filing of a complaint by the tribal prosecutor.

(b) A tribal police officer shall serve a copy of a tribal citation on the defendant by personal delivery to him when the defendant is present, or when the citation is for a traffic infraction and the defendant is not present, by issuing the citation to the registered owner of the vehicle involved and affixing it in plain view on the vehicle. Certification of service of a citation shall be indicated on the face of the citation by the issuing officer. The original citation shall be filed with the Tribal Court and a copy delivered to the tribal prosecutor within one (1) business day of serving.

(c) The filing of a complaint by the tribal prosecutor and service of a citation by the Court clerk shall be in accordance with the Rules of Civil Procedures except that a citation shall be served in lieu of a summons.

(d) The Tribal Court may permit the amendment of any process or pleading at any time so long as the substantial rights of the defendant are not prejudiced. If an amendment of a citation complaint is made, the Court may grant a continuance of the trial for good cause.

(e) Only one person and one violation may be charged by a complaint on a single citation. A citation shall require that the defendant appear in Tribal Court not less than five (5) nor more than fifteen (15) business days after the date of the citation.

(f) Any person charged with a violation of this chapter may pay the fine prior to the date set for trial by returning the citation and fine to the Tribal Court by mail or in person. Payment of the fine in such a manner shall constitute an admission of the charge. The payment must be received by the Court on or before the appearance date set forth in the citation.

§2-3-5 Preliminary Hearing/Trial (revised 6/22/99)

A. <u>Preliminary Hearing</u>

(a) Unless the defendant pays an infraction fine prior to a preliminary hearing, he shall appear before the tribal judge on the date listed in the citation. At the preliminary hearing the defendant shall admit or deny the allegations in the civil infraction citation. If the defendant admits the allegations the tribal judge may consider any evidence presented by the defendant in imposing an appropriate fine.

(b) If the defendant denies the allegations in the civil infraction citation the tribal judge shall schedule a trial date.

B. Trial

(a) If the defendant is not represented by counsel, the citing officer may present evidence on behalf of the Tribe. If the defendant is represented by counsel, the Court shall notify the tribal prosecutor who shall appear on the Tribe's behalf.

(b) The burden of proof shall be on the tribe to establish the commission of the violation by a preponderance of the evidence. If the trier of fact does not find by a preponderance of the evidence that the defendant committed the infraction offense, the Court shall enter judgment for the defendant. If the trier of fact finds by a preponderance of the evidence, that the defendant committed the infraction, the Court shall enter judgment against the defendant.

(c) The Rules of Evidence shall apply to trial proceedings under this chapter.

§2-3-6 Remedies

(a) Unless otherwise provided, fines for individual infractions shall be fixed as determined by NPTEC and shall reflect the severity of the offense and the tribe's interest in protecting individuals and property. A list of such fines, which shall be updated periodically as the Court shall determine is necessary, shall be provided to the tribal police for use in issuing citations.

(b) A fixed fine shall be the primary remedy for a traffic infraction under this code. Fines for traffic infractions shall be in an amount equal to the total amount charged by the State of Idaho for the same offense as provided by the "Idaho Court Rules" as of the date of adoption of this chapter and as amended, less $5.00; provided, that no fine shall be reduced below the amount of $5.00. In addition to a fine, violators of the Nez Perce traffic laws may also be subject to the assessment of points, suspension or revocation of driving privileges and assessment of costs or fees related to revocation or suspension in accordance with the applicable law of the jurisdiction where the violator resides.

(c) For civil infractions other than traffic violations, the Nez Perce Tribal Court may apply any of the following remedies singularly or in combination:

(1) issue an injunction, by ordering the defendant to temporarily or permanently refrain from conducting the acts or actions that gave rise to the complaint;

(2) order the defendant to pay compensation or restitution to the tribe, an individual or any other entity injured by the actions of the defendant. In the event that evidence of damage or loss to an individual or entity other than the tribe arises in the course of an infraction proceeding, the victim shall be so notified by the citing officer. Compensation or restitution shall reflect the actual documented damages or loss suffered as determined by the Tribal Court at a separate hearing and shall not include compensation for emotional distress or other special damages. The victim shall bear the burden of proving damages in damage hearings and mitigating circumstances shall be taken into account. Once a damage determination is made the victim shall bear the burden of collecting any and all judgments;

(3) assess a fine; or

(4) order community service.

(d) In any proceedings in which the defendant is found to have committed an infraction, the Tribal Court may assess court costs against the defendant to be added to any fine, restitution or other remedy prescribed. The Court may also allow the assessment of attorney's fees against the defendant if the tribe is required to pursue the collection of a judgment under this chapter. Where the infraction involves a controlled substance or alcohol either as an element of the offense or as a factor contributing to the commission of the offense, the Court may impose a period of probation and order drug and/or alcohol evaluation, counseling and random testing as a condition of probation, the violation of which probation shall itself be an offense under § 4-1-33 of the Nez Perce Tribal Code punishable by up to sixty days in detention/jail and a fine up to $500. In the event of a repeated offense by a minor, the Court may require the family of the offender residing with the offender to participate in counseling.

(e) When in the judgment of the Prosecutor it would be appropriate, the Prosecution may also commence an action for forfeiture under Chapter 2-6 of the Nez Perce Tribal Code.

§2-3-7 Failure to Appear

(a) If the defendant fails to appear before the Court at or before the time stated in the infraction citation or to otherwise pay the fine in accordance with this chapter, the Court shall enter default judgment against the defendant.

(b) If a default judgment is entered against a defendant, the Court clerk shall issue notice of judgment to the defendant advising him that he must pay the judgment by a date certain which shall not be less than ten (10) business days after the date of the notice. The notice shall state that failure to pay the judgment will result in suspension of his driver's license and/or proceedings for contempt.

(c) If a defendant fails to pay a civil infraction fine or other penalty within the time allowed by a notice of default judgment under this section, then the Court shall:

(1) for traffic infractions, sign a notice of nonpayment of traffic fine and send it to the Idaho Department of Transportation for suspension of defendant's driver's license; and

(2) find the defendant in contempt of court in accordance with this code.

§2-3-8 Method of Payment of Penalty and Costs

The judgment and court costs for an infraction offense shall be paid by cash, money order, cashier's check or other certified funds payable to the Nez Perce Tribe.

§2-3-9 Appeals

(a) Any party may appeal a final decision of the Tribal Court on an infraction violation. In addition, the victim of such violation may appeal the final judgment in a damages hearing.

(b) Upon review, the Appeals Court shall reverse the judgment of the Trial Court if it finds there are no facts to support the Trial Court's determination or the law was misinterpreted or misapplied.

CHAPTER 2-4
JUVENILE JUSTICE
(Chapter revised 8/24/99)

§2-4-0 Purpose

The purpose of this Chapter is to secure for each child coming before the Tribal Court, such care, guidance, and control preferably in his/her own home or with an extended family member, that will serve his/her welfare and the best interests of the Nez Perce Tribe; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity whenever possible; to improve any home conditions or home environment which may be contributing to his/her delinquency; and, at the same time, to protect the peace and security of the Nez Perce Reservation and its individual residents from juvenile violence. To this end, this Chapter shall be liberally construed.

INTRODUCTORY PROVISIONS

§2-4-1 Definitions

(a) "Adult" means an individual who is eighteen (18) years of age or older or who is sixteen (16) years of age or older and has been married or who is sixteen (16) years of age or older and is the custodial parent of a child or who has been otherwise emancipated by the Court.

(b) "Child" or "minor" means an individual who is less than eighteen (18) years old who does not fall within the meaning of "Adult" as set out in §2-4-1(a).

(c) "Custodian" means a person, other than a parent or guardian, to whom custody of a child has been given.

(d) "Delinquent act" means an act which would be a crime if committed by an adult.

(e) "Detention" means exercising authority over a child by physically placing him in any juvenile facility designated by the Court and restricting the child's movement in that facility.

(f) "Domicile" means a person's residence in which they intend to remain indefinitely.

(g) "Emergency foster home" means a foster home which has been licensed to accept emergency placements of children at any hour of the day or night.

(h) "Foster home" means a home licensed by the tribe as provided in the Minor in need of Care chapter.

(i) "Guardian" means a person, other than a parent, assigned by a court of law, having the duty and authority to provide care and control of a child.

(j) "Habitual status offender" means any minor who has been found to have committed three (3) status offenses within twelve months.

(k) "Home Detention" means a dispositional alternative available to the Court whereby a juvenile offender may be released to the parent or legal guardian provided that the juvenile offender may not be out between the hours of 6:00 P.M. and 6:00 A.M. nor go beyond fifty (50) yards of the residence in which the Court ordered them to be detained without twenty-four (24) hour prior approval of the Court.

(l) "Juvenile delinquent" means a child who commits a delinquent act.

(m) "Juvenile shelter care facility" means any juvenile facility (other than a school) that cares for juveniles, including alcohol or substance abuse programs, emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, shelter homes and medical facilities.

(n) "Parent" includes a natural or adoptive parent but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father who has not been acknowledged or established as the child's biological father.

(o) "Probable cause" exists under this chapter when a tribal police officer has substantial objective basis for believing that a minor has committed or will commit a delinquent act. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that an act has or will be committed and that the juvenile involved has committed or will commit such act.

(p) "Probation" means a legal status created by court order whereby a juvenile delinquent is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the court. A juvenile delinquent on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.

(q) "Secure juvenile facility" means a facility which (1) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (2) restricts the movement of those placed in the locked cells or rooms, and (3) complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.

(r) "Status offense" means truancy, running away from or being beyond the control of parents, guardian or custodian and curfew violations.

§2-4-2 Personal Jurisdiction

(a) Except as otherwise specifically provided, the Nez Perce Tribal Court shall have jurisdiction over any child who is a member or eligible to become a member of the Nez Perce Tribe no matter where domiciled, residing, or found and any other Indian child domiciled or found within the territorial boundaries of the Nez Perce Tribe. The Court may decline jurisdiction where a forum with concurrent jurisdiction is exercising its authority or in cases where neither the child nor either parent is a Reservation resident in cases where justice may require declination.

(b) To the extent necessary to make a proper disposition of the case, the Nez Perce Tribal Court shall have authority to exercise jurisdiction over all persons having the care, custody or control of a child over whom the Court exercises jurisdiction. This authority shall include the power to punish for contempt whether or not such contempt is committed in its presence.

§2-4-3 Extension of Jurisdiction

Under this Chapter, the Court has exclusive jurisdiction to try a child under eighteen (18) limited jurisdiction between eighteen (18) and twenty-one (21), and none thereafter. If the child

turns eighteen (18) before a Petition is filed but after offense is committed, the child shall be tried as a juvenile, subject to §2-4-6.

Jurisdiction can be extended to twenty-one (21) if done before the juvenile is eighteen (18) in order to retain jurisdiction to impose sentence or to have time to execute full sentence.

§2-4-4 Capacity

A child under the age of six (6) is deemed incapable of committing a crime. A child of six (6) and under ten (10) is presumed incapable of committing a crime, but the presumption is rebuttable. A child ten (10) or over is deemed to be capable of committing a crime for capacity purposes.

§2-4-5 Nature of Juvenile Cases

Adjudication of a juvenile matter by the court shall not under any circumstances be deemed a criminal conviction unless the minor is tried as an adult for the alleged act.

§2-4-6 Trial as Adult

(a) The Tribal Prosecutor or the child may file a petition requesting the court to try a child as an adult if the child is fourteen (14) years of age or older and is alleged to have committed an act which would have been considered a crime if committed by an adult. Once the petition is filed, the court shall conduct a hearing on the matter.

(1) The court may try the minor as an adult only if it:

(A) finds clear and convincing evidence that:

(i) there are no reasonable prospects for rehabilitating the child through resources available to the court; and

(ii) the act(s) allegedly committed by the child demonstrate conduct which constitutes a substantial danger to the public.

(B) issues a written order that the child shall be tried as an adult with respect to the delinquent acts alleged in the petition after the conclusion of the hearing.

(b) If the child is between the ages of sixteen (16) and eighteen (18) and is accused of a violent offense: Aggravated Assault §4-1-39, Aggravated Battery §4-1-40, Aggravated Stalking §4-1-42, Murder §4-1-43, Manslaughter §4-1-44, Kidnaping §4-1-45, False Imprisonment §4-1-46, Rape §4-1-48, Forcible Sexual Penetration with a Foreign Object §4-1-49, Unlawful Sexual Intercourse §4-1-50, Sexual Assault §4-1-51, Sexual Molestation of a Minor under Sixteen §4-1-52, Aggravated Arson §4-1-55, Extortion §4-1-68, Domestic Violence §4-1-88, Abuse of Vulnerable Adults §4-1-89, Child Abuse §4-1-90, Riot §4-1-121, Setting a Dangerous Device §4-1-125, Weapons Offense §4-1-126, or Committing an Offense While Armed §4-1-127, the child will automatically be tried as an adult.

(c) Once a juvenile is transferred to Adult Court, he/she no longer meets the definition of a child or minor and all subsequent charges will be brought in Adult Court.

§2-4-7 Comity

State, federal or other Tribal Court orders involving children over whom the court has jurisdiction may be recognized by the court only after an independent review of such state proceedings has determined:

(a) the court has jurisdiction over the child;

(b) due process was provided to all participants; and

(c) the proceeding did not violate the public policies or law of the tribe.

§2-4-8 Juvenile Probation Officers

(a) Such Juvenile Probation Officers as may be required to carry out the purposes of this Chapter shall be appointed by the Tribe. Juvenile Probation Officers shall be chosen for their ability and special aptitude for working with children. In addition, any members of Tribal Law Enforcement assigned duties similar to those of Juvenile Probation officers shall be deemed "Juvenile Probation Officers" for all purposes under this Chapter.

(b) Juvenile Probation Officers shall have the power and duty to carry out the objectives and provisions of this Chapter with regard to juvenile offender cases and shall:

(1) make preliminary inquiries, social studies, and such other investigations as the Court may direct;

(2) keep written records of such inquiries, social studies, and such other investigations and shall make written reports to the Court;

(3) supervise and assist each child placed on probation or under his/her supervision;

(4) keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the Court as the Judge may direct;

(5) use all suitable methods to aid children on probation or under protective supervision to bring about improvements in their conduct or conditions;

(6) take children into custody when there is reasonable cause to believe that they have violated conditions of their probation; and

(7) perform such other duties in connection with the care, custody, or transportation of children as the Court may require.

(c) Juvenile Probation officers shall have the powers of Tribal Police Officers for purposes of this Chapter, but shall, whenever possible, refrain from exercising such powers except in urgent situations in which an on-duty Tribal Police Officer is not immediately available.

CUSTODY

§2-4-9 When Juvenile may be Taken into Custody

A Tribal police officer may take a child into custody when:

(a) the child commits a delinquent act in the presence of the officer;

(b) the officer has probable cause to believe the child has committed a delinquent act;

(c) a custody order or warrant for child has been issued by the court;

(d) when the officer has reasonable grounds to believe the child has committed a status offense; or

(e) when the juvenile probation officer has reasonable cause to believe that the child has violated conditions of their probation.

§2-4-10 Notification of Rights

A Tribal police officer taking a child into custody shall inform the child that:

(a) he has a right to remain silent;

(b) anything he says can be used against him in court;

(c) he has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning; and

(d) he has a right to an attorney at his own expense.

§2-4-11 Custody Procedures

(a) While in custody, a child shall not be fingerprinted or photographed except by order of the court.

(b) After taking a child into custody the officer shall:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;

(2) release the child to a relative or other responsible adult if the child's parent, guardian or custodian consents to the release; or

(3) deliver the child to a juvenile shelter care facility or a secure juvenile facility. Status offenders shall not be placed in any secure juvenile facility, but instead, may be placed in a juvenile shelter care facility.

COURT PROCEDURES IN JUVENILE MATTERS

§2-4-12 Petition

An advisory hearing shall be initiated by a petition filed by the tribal prosecutor on behalf of the tribe. The petition shall set forth with specificity:

(a) the name, birth date, residence, and tribal affiliation of the child;

(b) the names and residences of the child's parent, guardian or custodian;

(c) a citation to the section containing the offense which the child is alleged to have committed;

(d) a plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred; and

(e) whether the child is in custody and, if so, the place of detention, date and time he was taken into custody.

§2-4-13 Juvenile Proceedings (amendment authorized 10/9/01)

(a) During proceedings in juvenile matters:

(1) unless otherwise provided by this chapter, the rules of procedure shall be the same as that for adult criminal proceedings;

(2) the child and his parent, guardian or custodian present in court shall be informed by the court of the rights provided to the child by the arresting officer and the:

(A) allegations against the child;

(B) right to cross-examine witnesses;

(C) right of the child to subpoena witnesses and to introduce evidence on his own behalf;

(D) privilege against self-incrimination;

(E) there is no right to a jury trial; and

(F) possible consequences if the allegations in the petition are found to be true.

(3) the child has a right to an attorney at his own expense;

(4) the child has no right to a jury trial; and

(5) the general public shall be excluded.

(b) Discovery

(1) At the expense of the defendant and upon his request, the prosecutor shall permit the defendant to inspect and copy or photograph the following items which are within the possession, custody or control of the prosecutor and/or tribal police:

(A) relevant written or recorded statements made by the defendant or copies thereof;

(B) copies of the defendant's prior criminal record;

(C) books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case;

(D) results or reports of physical or mental examinations, scientific tests or experiments, or copies thereof made in connection with the defendant's case.

(2) Regardless of a request by the defendant, the prosecution and/or tribal police shall at least fifteen (15) business days before the Adjudicatory Hearing if the defendant is not in custody and five (5) business days if defendant is in custody, provide the defendant with:

(A) any evidence of an exculpatory nature in their possession or of which they may be aware;

(B) written notice staling names and addresses of the witnesses the prosecution intends to call at trial.

(3) Upon the request of the prosecutor and at the expense of the tribe, the defendant shall permit the prosecutor to inspect and copy or photograph:

(A) results or reports of physical or mental examinations, scientific tests or experiments made in connection with the defendant's case;

(B) books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case.

(4) Regardless of a request by the prosecutor, the defendant shall at least seven (7) business days before the Adjudicatory Hearing if defendant is not in custody and three (3) business days if the defendant is in custody, provide the prosecution with written notice of names and addresses of the witnesses it intends to call at the Adjudicatory Hearing.

(5) If, prior to or during trial, a party discovers additional evidence or material which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or the court of the existence of the additional evidence or material.

(6) Except to the extent such material is otherwise subject to discovery, this rule shall not authorize the discovery or inspection of:

(A) reports, memoranda, or other internal documents made by the defendant, an attorney for either party or agents of the either party in connection with the investigation, prosecution or defense in the case;

(B) statements made by the defendant, witnesses or prospective witnesses in connection with the case.

(7) Upon motion by a party, the court may deny or restrict discovery or issue such other order as is appropriate. If the court enters an order granting relief all items or documents reviewed in camera shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal.

(8) Once the court determines that a party has failed to comply with this rule, it may grant a motion to compel submitted by the opposing party, grant a continuance, prohibit the party from introducing evidence not disclosed or it may enter such other order as it deems just. In addition to any other action taken by the court upon a finding that a party has failed to comply with this rule, the court may award attorney's fees and costs to the prevailing party resulting from procedures to compel discovery.

§2-4-14 Detention Hearing

(a) When a child is placed into secured confinement upon being taken into custody, the court shall hold a detention hearing within one (1) business day of the initial detention. At such hearing, the court shall determine:

(1) whether probable cause exists to believe the child committed the alleged delinquent act; and

(2) whether continued detention is necessary pending further proceedings.

(b) If the court determines that there is a need for continued detention, it shall specify where the child is to be placed until the adjudicatory hearing.

INFORMAL ADJUSTMENT/ADVISORY HEARING

§2-4-15 Informal Adjustment (section amended effective 3/12/02)

(a) In the case of a minor who commits a status offense or is a first time offender, the Prosecutor may hold an informal conference with the child and the child's parent, guardian or custodian, and/or other persons whose presence is considered appropriate to discuss alternatives to the filing of a petition for an adjudicatory hearing if:

(1) The admitted facts bring the case within the jurisdiction of the Court;

(2) An informal adjustment conference of the matter would be in the best interest of the child and the Tribe;

(3) The child and his parent, guardian or custodian consent to an informal adjustment conference; and

(4) An informal adjustment is not in conflict with §2-4-6.

(b) Notice of the informal adjustment conference shall be given to the child and his parent, guardian or custodian and their counsel as soon as the time for the conference has been established.

(c) Any statement made during the informal adjustment conference may be admitted into evidence at any adjudicatory hearing or any other proceeding under this Code. The child and his parent, guardian or custodian shall be informed of this provision.

(d) At the conclusion of the informal adjustment conference the Prosecutor will:

(1) refer the child and the parent, guardian or custodian to a community agency for needed assistance;

(2) order, by agreement of the child and his/her parent(s,) terms of supervision calculated to assist and benefit the child which regulate the child's activities and which are within the ability of the child to perform, such an order must be approved by the Court;

(3) recommend restitution to be made by the child; or

(4) make a decision to file a petition with the Court.

(e) Upon the successful completion of the informal adjustment, the case shall be closed, and no further action taken. If the child fails to attend the informal adjustment conference, the Prosecutor shall file a petition for an adjudicatory hearing. If the child fails to successfully complete the terms of the agreement, the Prosecutor shall file a petition for an adjudicatory hearing.

§2-4-16 Advisory Hearing

(a) After receipt of the petition, the Court shall schedule an advisory hearing and inform the parties of the date and time of the hearing in the summons. If a child is in custody the advisory hearing must be held within ten (10) business days after receipt of the petition or the petition shall be dismissed unless:

(1) The hearing is continued upon motion of the child;

(2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Court finds the Prosecutor has exercised due diligence to obtain the evidence or witnesses and reasonable grounds exist to believe that the evidence or witnesses will become available;

(3) The hearing is continued upon motion of the Prosecutor by reason of difficulty of serving the summons and upon a showing of due diligence in attempting to discover the address or whereabouts of the person(s) to be served; or

(4) The hearing is continued upon the Court's determination that a continuance is in the best interest of the child.

(b) At the Advisory Hearing the Court shall:

(1) Read the Petition to the child and explain the allegation(s) in the petition;

(2) Explain the consequences of the Petition to the child;

(3) Give an explanation to the child of his rights in the proceedings, including the right to request a continuance to obtain counsel; and

(4) Offer the child the opportunity to admit or deny the allegation(s) in the petition.

(c) If the child admits to the allegation(s) in the petition, the Court shall schedule a Dispositional Hearing within ten (10) business days if the child is in custody. If the child is released from custody or was not taken into custody, then the dispositional hearing shall be held within twenty (20) business days thereafter, if the Court finds:

(1) The child fully understands his/her rights and the potential consequences of his/her admission.

(2) The child voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for the action; and

(3) The child has not, in his/her purported admission to the allegation(s), set forth facts which, if found to be true, constitute a defense to the allegation(s).

(d) If the child denies the allegation(s) in the petition, the Court shall schedule an Adjudicatory hearing.

ADJUDICATORY HEARING/DISPOSITIONAL HEARING

§2-4-17 Adjudicatory Hearing

(a) The court shall conduct the adjudicatory hearing to determine whether the child has committed a delinquent act or status offense. If the child remains in custody, the adjudicatory hearing shall be held within ten (10) business days after the advisory hearing. If the child is released from custody or was not taken into custody, the hearing shall be held within thirty (30) business days after the advisory hearing. If the Adjudicatory Hearing is not held within ten (10) business days after the advisory hearing when the child is in custody, the Petition shall be dismissed and cannot be filed again unless:

(1) The hearing is continued upon motion of the child;

(2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Court finds the Prosecutor has exercised due diligence to obtain the evidence or witnesses and reasonable grounds exist to believe that the evidence or witnesses will become available; or

(3) The hearing is continued upon the Court's determination that a continuance is in the best interest of the child.

(b) The Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the child. The hearing shall be private and closed.

(c) The Court shall hear testimony concerning the circumstances which gave rise to the Petition. If the court finds beyond a reasonable doubt that the allegations contained in the

juvenile delinquent petition are true it shall schedule a disposition hearing and specify whether the child is to be placed or continued in out-of-home placement pending the hearing. If the court finds that the allegations in the petition have not been established beyond a reasonable doubt it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

§2-4-18 Consolidation of Proceedings

When more than one child is alleged to be involved in the same delinquent act, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

§2-4-19 Predisposition Report

(a) Once a juvenile is found to have committed a delinquent act or status offense, the Juvenile Probation Officer shall prepare a written report describing reasonable and appropriate alternative dispositions. The report shall contain specific recommendations for the care of and assistance to the child calculated to resolve the problems presented in the Petition. The Juvenile Probation Officer shall present the predispositional report to the Court, the child or his/her representative, and the Prosecutor at least two (2) days before the dispositional hearing.

(b) By motion of a party or by its own authority, the Court shall continue the dispositional hearing pending the receipt of a predispositional study and report.

(c) The Court may order a psychiatric examination of the child, parent, guardian or custodian. The parent, guardian or custodian may refuse to be examined but such refusal can be considered by the Court in making its determination on disposition.

§2-4-20 Dispositional Hearing

(a) A date for a dispositional hearing shall be set by the Court at the conclusion of the advisory hearing or the adjudicatory hearing as appropriate. The court shall conduct dispositional hearings to determine how to resolve a case after a finding that a child has committed a delinquent act or status offense. If the child remains in custody after the advisory hearing or adjudicatory hearing, the dispositional hearing shall be held within ten (10) business days thereafter. If the child is released from custody or was not taken into custody after the advisory hearing or adjudicatory hearing, then the dispositional hearing shall be held within twenty (20) business days thereafter.

(b) If a child has been adjudicated a juvenile offender, a habitual status offender or the child has admitted the allegation(s) in an advisory hearing, the Court may make the following dispositions:

(1) Place the child on probation subject to conditions set by the Court and subject to the probation requirements set by the Probation Officer;

(2) Place the child in an institution or agency designated by the Court for the purpose of treatment and/or rehabilitation;

(3) The Court may order home detention where such disposition is in the best interests of the child and the Tribe;

(4) The Court may order community service where appropriate supervision is available by any individual or organization duly authorized by the Court to supervise such community service;

(5) The child may be committed to a detention facility.

(6) The Court may order the child and/or the parent, guardian or custodian to attend any counseling or treatment that the Court finds is in the best interests of the child and the Tribe;

(7) The Court may order the child and the parent, guardian or custodian to pay any restitution for damages to person or property that has resulted from the actions of the child. Restitution shall include payment of money damages, surrender of property, or performance of any other act for the benefit of any person or party injured personally or in his property by the juvenile offender.

(8) The Court may order the child and the parent, guardian or custodian to pay Court costs not to exceed twenty-five dollars ($25.)

(9) The Court may enter any other order it deems appropriate.

§2-4-21 Jurisdiction Over Parents

Whenever a juvenile is found to come under the purview of this chapter, the court shall have jurisdiction and authority to have the juvenile and the juvenile's parent(s), legal guardian or custodian sign a probationary contract with the court containing terms and conditions that the juvenile and the juvenile's parent(s), legal guardian or custodian must adhere to as a condition of the juvenile's probation. The probationary contract may provide that upon a violation or breach of the terms and conditions of the probationary contract the juvenile's parent(s), legal guardian or custodian shall be liable to the court for a specific monetary sum not to exceed one thousand dollars ($1,000) for the breach of contract. All such monies received by the court pursuant to this section shall be paid to the Nez Perce Tribal Court. In lieu of or in addition to a monetary payment, the court may order that the parent(s), legal guardian or custodian provide community service, attend parenting classes or undergo other treatment or counseling.

§2-4-22 Status Offenses

(a) Truancy. Any minor who violates § 4-3-53(a) may be charged, petitioned and adjudicated with the status offense of being a Truant; **(subsection amended eff. 11/12/02)**

(b) Runaway. Any minor who violates § 4-3-53(c) Runaway may be charged, petitioned and adjudicated with the status offense of being a Runaway; **(subsection amended eff. 11/12/02)**

(c) Beyond Parental Control. Any minor who behaves in such a way as to be deemed by the court's caseworker as beyond the control of his parent(s), guardian or custodian may be charged, petitioned and adjudicated with the status offense of being Beyond Parental Control;

(d) Curfew Violation. Any minor who violates §4-3-52 may be charged, petitioned and adjudicated with the status offense of Curfew Violation;

(e) Habitual Status Offender. Any juvenile who has been adjudicated for commission of two (2) status offenses within twelve (12) months may be charged, petitioned and adjudicated as an habitual status offender for the third status offense committed within that twelve (12) month period. **(previous subsection (e) deleted eff. 11/12/02).**

JUVENILE RECORDS

§2-4-23 Maintenance of Records/Confidentiality **(section amended 4/10/01)**

(a) A record of all hearings under this chapter shall be made and preserved. Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. Other than name, docket number, specific charges and specific convictions, all court records and law enforcement records related to juveniles shall be confidential and shall not be open to inspection to any but the following:

(1) the child;

(2) the child's parent(s), guardian or custodian;

(3) the child's counsel;

(4) law enforcement, juvenile court, and social services personnel directly involved in the handling of the case;

(5) the tribal prosecutor;

(6) other prosecuting attorneys or courts of competent jurisdiction; and/or

(7) any other person by order of the court, upon a showing of extraordinary need.

(b) The victim of misconduct shall always be entitled to the name of the juvenile involved, the name of the juvenile's parents or guardian, and their addresses and telephone numbers, if available in the records of the court;

(c) Records or statistical information may be released for purposes of legitimate research or study upon order of the court as long as such information does not identify or tend to reveal the identity of any individual upon which it is based.

§2-4-24 Destruction of Records

The court may destroy the records of any juvenile once such person reaches the age of twenty-one (21).

CHAPTER 2-5
ADMINISTRATIVE PROCEDURES
(amendments to chapter adopted by NPTEC 5/28-29/02)

§2-5-1 Definitions

(a) "Adjudication" means the process provided by this chapter for the formulation of an order through a hearing before the tribal agency.

(b) "Appellant" means a person who files an appeal under this chapter.

(c) "Commission" means any Nez Perce Tribal entity of appointed or elected members empowered with specific authority and duties in relation to particular subject matter such as the adoption of rules or regulations and conducting hearings on disputed matters.

(d) "Department" means a unit of Nez Perce tribal staff members established to implement the goals and objectives of the Nez Perce Tribe in a specific area and operating under the supervision and direction of NPTEC.

(e) "Ex Parte communication" means a communication between one party to a proceeding and the hearing officer, tribal agency staff or any other decision maker without notice to or participation by any other party to the proceeding.

(f) "Manager" means the highest-ranking staff person in a department.

(g) "Order" means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of a tribal agency in a matter other than rulemaking but including licensing.

(h) "Rule" means the whole or part of a tribal agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a tribal agency.

(i) "Tribal agency" or "agency" for purposes of this chapter includes a program, department, board, commission or other tribal entity authorized or mandated by this code or NPTEC to issue rules or hold hearings and issue orders.

§2-5-2 Procedural Rules/Policies

A tribal agency may adopt procedural rules or policies such as deadlines, hearing procedures and commenting criteria to assist in implementation of the provisions of this chapter. To the extent that either a tribal agency or NPTEC through ordinance or resolution has enacted procedures for rulemaking or adjudications which specifically address hearing procedures and other such matters in a manner more detailed than that of this Code, those procedures control to the extent that such rules or policies do not conflict with the provisions of this chapter.

RULE MAKING
§2-5-3 Rule Making Procedure

(a) At least fifteen (15) business days prior to tribal agency action on a proposed rule, such agency shall post in a conspicuous place in Lapwai, Kamiah, and Orofino and if possible, publish in the NPTEC minutes to be mailed to tribal members:

(1) a statement of the purpose and effect of the proposed rule;

(2) the reason for proposing adoption of the rule;

(3) reference to the legal authority under which the rule is adopted;

(4) that written comments may be submitted over the next fifteen (15) business days to a designated representative of the tribal agency; and

(5) that any comments submitted after the close of the fifteen (15) day comment period will not be considered in tribal agency action on the proposed rule.

(b) Following completion of the written comment period, the tribal agency may hold a public hearing. A decision to hold a public hearing may be based upon the written public comment received on the proposed rule, the potential controversy related to the proposal or whenever the tribal agency otherwise determines that additional public input would be useful and constructive. If such a hearing is held, the tribal agency shall post in a conspicuous place in Lapwai, Kamiah and Orofino and publish in the local newspapers:

(1) a statement of the purpose and effect of the proposed rule;

(2) references to the legal authority under which the rule is proposed;

(3) notice that on a specified date not less than five (5) but no more than ten (10) business days from the time of posting, a hearing will take place at a specified location for the purpose of taking public comment; and

(4) notice that the comment period on the proposed rule will be extended until the end of the hearing.

(c) This section shall not apply so long as the rule does not substantially affect the legal rights of, or procedures available to, the public and when the tribal agency finds and determines that:

(1) a proposed amendment is an interpretive rule, general statement of policy, or rule which addresses the internal management of the tribal agency; or

(2) for good cause, notice and public procedures are impracticable, unnecessary, or contrary to the public interest.

(d) The notice and comment provisions of this section shall not apply when the agency determines that prompt action is necessary for the preservation of life, health, property, order or natural resources.

(e) Following a tribal agency's final action on a rule it shall submit the rule to the NPTEC for review. Within five (5) business days of NPTEC approval, if any, the agency shall post a copy of the final rule in a conspicuous place in Lapwai, Orofino and Kamiah. The rule shall also be included with the NPTEC minutes mailed to tribal members.

(f) Posting of emergency rule shall clearly provide that such rule is an emergency and include the rational for the emergency. An emergency rule shall be effective immediately

upon approval by the NPTEC and for a period of not longer than ninety (90) business days thereafter unless, during that time, the agency provides for regular notice and comment under this chapter.

(g) The notice and comment provisions of this section do not apply to agency rulemaking necessary for the exercise, protection, and enhancement of treaty reserved rights and resources.

ADJUDICATIONS

§2-5-4 Timing

Each tribal agency shall conduct an adjudication whenever this Code or NPTEC requires that such agency issue an order after opportunity for hearing on the record, or when a tribal employee is aggrieved by an employment action or a denial of license and seeks a hearing before the Board or hearings officer of a tribal agency. Immediately thereafter, the tribal agency shall designate a Board or hearings officer to schedule a hearing and resolve the dispute in the manner prescribed by this Chapter.

§2-5-5 Exhaustion of Other Remedies

Before seeking a hearing before the Board or hearings officer of a tribal agency, the party seeking a hearing must have exhausted all other available administrative remedies established by the tribal agency.

§2-5-6 Notice

Within ten (10) business days after the Code requires a hearing on the record or an employee has sought a hearing before the tribal agency, the Board or hearings officer of a tribal agency assigned to hear the dispute shall inform all persons known to have an interest in the hearing of:

(a) the time, place, and nature of the hearing;

(b) the legal authority under which the hearing is to be held; and

(c) the matters of fact and law asserted by the party seeking a hearing.

§2-5-7 Appearance by Parties

A party may appear in person or by or with counsel in a tribal agency adjudicatory proceeding.

§2-5-8 Submission of Evidence

Prior to the hearing, each party may submit such relevant documentary evidence in support of their position as necessary to assist the Board or hearing officer in making their decision. This documentary evidence shall serve as the basis of the Board or hearings officer's decision.

§2-5-9 Hearings (amended by NPTEC 8/12/03)

(a) Each tribal agency may adopt their own hearing procedures provided that they conform with due process and applicable tribal or federal law. To the extent that a tribal agency fails to adopt specific hearing procedures, or those procedures are in conflict with this Code, the procedures of this Chapter shall apply.

(b) The Board or hearings officer presiding at the hearing may:

(1) administer oaths and affirmations;

(2) upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas authorized by law and when requested by a party;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conference for the settlement or simplification of issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) directly question the parties to a hearing; and

(9) take other action consistent with this chapter.

(c) The party seeking the hearing has the burden of proof.

(d) The parties may present any additional oral or documentary evidence, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. The parties may also submit rebuttal evidence and conduct cross examination where the hearings officer determines such actions will produce evidence material to the resolution of the case.

(e) The Board or hearings officer shall issue a written opinion and order within ten (10) days of the hearing. The decision shall:

(1) be based solely on those issues properly raised to the hearings officer and on all oral and documentary evidence submitted by the parties that is supported by substantial evidence; and

(2) be in writing and include the findings and conclusions of law of the Board or hearings officer and the reason or basis for such conclusions on all material issues of fact, law or discretion as presented by the parties, and the appropriate rule, order, sanction, relief, or denial thereof.

(f) The decision of the Board or hearings officer shall be the final agency decision.

§2-5-10 The Record

(a) The exclusive record for hearings shall be compiled by the tribal agency and shall include:

(1) complete audio or written recorded transcripts of testimony provided at the hearing;

(2) all documents, papers, requests, and exhibits filed prior to and during hearing; and

(3) the written decision of the Board or hearings officer.

(b) The record shall provide the basis for any subsequent appeal of the Board or hearing officer's decision to Tribal Court.

(c) The record shall be provided to a party upon request and payment of costs by such party.

§2-5-11 Ex Parte Contacts and Conflict of Interests

(a) No interested person outside a tribal agency involved in an adjudication shall make or knowingly cause to be made to any person in such tribal agency, a hearing officer or other tribal employee who is or may reasonably be expected to be involved in the decision making process of the proceedings an ex parte communication relevant to the merits of the proceeding.

(b) No member of the tribal agency, the hearing officer or tribal employee who is or may reasonably be expected to be involved in the decisional process related to an adjudication, shall make or knowingly cause to be made to any interested person outside the tribal agency an ex parte communication relevant to the merits of the proceeding;

(c) A member of the tribal agency, a hearing officer or other tribal employee who is or may reasonably be expected to be involved in the decisional process related to an adjudication who receives or who makes or knowingly causes to be made a communication prohibited by this subsection shall place on the record of the proceedings:

(1) all such written communications or memoranda stating the substance of such communications; and

(2) all written responses or memoranda stating the substance of responses, to the materials described above.

(d) Upon a violation of this section by a party and absent good cause shown to the contrary, the hearing officer may dismiss, deny, disregard or make other appropriate determinations in relation to such parties claim.

(e) Any member of the Board or a hearings officer who has an actual or potential personal, financial, or propriety interest in the outcome of a hearing or has a personal, financial, or propriety relationship with the employee seeking a hearing must disclose such interests and, if unable to act in a non-biased manner, must recuse himself from the hearing.

(f) The prohibitions of this section apply to any Nez Perce Tribal Executive Committee member who may sit on the Board or Commission of a tribal agency.

§2-5-12 Exclusion of Certain Employees From Decision

An employee or agent engaged in investigative or prosecuting functions for a tribal agency in a case may not, in that or a factually related case, participate or advise in the decision except as witness or counsel at the hearing unless the case involves the determination of an application for initial licenses.

JUDICIAL REVIEW

§2-5-13 Petition for Review

(a) Any party to a hearing before a Board or hearings officer may petition for review from the Nez Perce Tribal Court of a final decision by an agency for which there is no other adequate remedy by filing a written petition with the Court within thirty (30) business days after such final decision. A written notice of appeal must provide the Court with sufficient information and argument to show why the order or rule should be changed or reversed. At a minimum, a Petition for Review must:

(1) state that the document is an appeal;

(2) list the name, address and telephone number of the appellant;

(3) identify the decision or portion of a decision being appealed;

(4) identify by title and date, the written notice or posting in which the decision is found;

(5) state the reason for appeal including issues of fact, law, regulation, or policy;

(6) identify the authority for the Tribal Court to modify or set aside the decision; and

(7) identify the specific substantive or procedural errors of law or fact in the decision of the Board or hearings officer and the remedy sought.

(b) Within ten (10) business days after the filing of a Petition for Review, the Board or hearings officer shall submit to the Tribal Court the Record as described in §2-5-9. Should the Board or hearings officer fail to do so, the Tribal Court may order the Board or Hearings Officer to comply.

(c) Tribal Court may grant or deny the Petition for Review. The failure to include any of the items described in § 2-5-12(a) may be grounds for denying the Petition for Review. Should the Tribal Court grant the Petition, the Court shall establish a briefing schedule and set a date for a hearing.

§2-5-14 Appeal Record

(a) The appeal record shall provide the sole evidentiary record for the Tribal Court to review the decision of the Board or hearings officer. The record on appeal shall include:

(1) the Record as described in §2-5-9; and

(2) all appeal related documents filed with Tribal Court and any additional information requests by the Tribal Court.

(b) If an appeal of an adjudication, the record established in conducting the adjudication. Should the record from the hearing fail to include a recorded transcript, the Tribal Court may refuse to hear the petition for lack of evidence or decide, based on other evidence in the record, to hear the petition without the transcript.

§2-5-15 Scope and Standard of Review

(a) In reviewing the decision of the Board or hearings officer, the Tribal Court shall decide only those issues raised in the Petition for Review and developed within the Record, including all relevant questions of law and fact.

(b) The Tribal Court shall have exclusive jurisdiction to affirm, modify or set aside the decision of the Board of hearings officer; issue prohibitory or mandatory injunctions; issue declaratory judgments; or remand the matter to the tribal agency.

(c) If the Petition seeks review of a tribal agency rulemaking the Tribal Court shall review the action and compel tribal agency action unlawfully withheld or unreasonably delayed or hold unlawful and set aside agency action, findings, and conclusions found to be contrary to tribal or federal law or issued without observance of procedure required by law.

(d) If the Petition seeks review of a decision of a Board or hearings officer reached after a hearing on the record, the Tribal Court shall review the decision and hold unlawful and set aside agency action, findings, and conclusions found to be:

(1) arbitrary, capricious and an abuse of discretion, unsupported by substantial evidence or otherwise not in accordance with Tribal or federal law;

(2) contrary to constitutional right, power, privilege or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law.

(e) The Tribal Court shall render a decision on a petition for review no later than twenty (20) business days after the appeal is filed and shall set a date and time for hearing on the petition for review within the twenty (20) day time limit. The decision of the Tribal Court shall be based solely on those issues properly raised to the Court in the Petition for Review and on the appeal record as a whole.

(f) The decision of the Tribal Court shall be final, subject only to review by the Nez Perce Tribal Court of Appeals.

§2-5-16 Request for Stay

(a) Where a project or activity would be implemented before an appeal decision could be reached, the Court shall consider a written request to stay implementation of the order

or rule pending such decision. The party requesting the stay shall send a copy of the request to any other party to the proceeding. Such request must:

(1) provide a description of the specific project(s), activity(s), or action(s) to be stopped;

(2) include specific reasons why the stay should be granted in sufficient detail to permit the Court to evaluate and rule upon the stay request.

(b) Within ten (10) business days of receipt of the request, the Tribal Court shall issue a written decision on a stay to the party requesting the stay and any other appellants or intervenors party involved in the appeal. The decision shall state:

(1) if the stay is granted, the specific activity(s) to be stopped, duration of the stay and reasons for granting the stay; or

(2) if the stay is denied, in whole or in party, the reasons for the denial.

(c) Should the Court grant the stay, the Court may require the prevailing party to post a bond, the amount of which shall be established at the Court's discretion.

(d) This section shall not apply to employment related disputes.

CHAPTER 2-6
FORFEITURE

§2-6-1 Definitions

(a) "Contraband" means any item which is unlawful to possess or produce.

(b) "Probable cause" exists under this chapter when the prosecutor has substantial objective basis for believing that a piece of property was used in association with an infraction or criminal offense as provided in this code. In determining whether probable cause exists, the prosecutor may take into account all information which a prudent prosecutor would deem relevant to the likelihood that the property was used in such a manner.

(c) "Proceeds" means any property obtained through the commission of a criminal offense under this code and includes any appreciation in value of such property or any secondary property obtained, or gain realized by the sale or exchange of the original proceeds of a crime.

(d) "Instrumentality" means any item used in connection with an infraction or criminal offense under this code.

(e) "Real property instrumentality" means an interest in real property used in connection with a criminal offense under this code.

§2-6-2 Forfeiture Actions

(a) In addition to any remedy or penalty imposed against any person found to have committed a criminal offense or a civil infraction other than a traffic infraction under this code, the Nez Perce Tribe may bring a forfeiture action against any:

(1) property which constitutes contraband, the proceeds, instrumentalities, or real property instrumentalities associated with a criminal offense; or

(2) contraband or instrumentality used in connection with a civil infraction, other than a traffic infraction.

(b) Any action under this chapter shall be civil, remedial and in rem in nature and shall not be deemed to be a penalty for any purpose.

§2-6-3 Seizure

(a) If a tribal police officer finds or is made aware of evidence that a particular item other than a real property instrumentality or proceeds held in a checking, savings, or other account is subject to forfeiture under this chapter, he shall seize the item. Once seized, the tribal police shall notify the tribal prosecutor of the seizure and hold the item as evidence until forfeiture is declared or a release ordered.

(b) If a tribal police officer finds or is made aware of evidence that a real property instrumentality or proceeds held in a checking, savings, or other account are subject to forfeiture under this chapter, he shall notify the tribal prosecutor who shall determine whether probable cause exists to seize the item in question.

(c) The tribal prosecutor may file a notice of intention to institute forfeiture proceedings with the clerk of the Court. Within two (2) business days of receipt of the notice, the clerk shall:

(1) publish notice of the seizure and intent to institute forfeiture proceedings in a newspaper of general circulation in the area where the property is located or seized; and

(2) if the item to be seized constitutes real property, file a notice of seizure and intent to institute forfeiture proceedings with the appropriate county recorder's office and post a copy upon the property involved; or

(3) if the item to be seized constitutes proceeds held in a checking, savings or any other account, file a notice of seizure and intent to institute forfeiture proceedings with the bank or any other person having in his possession or control the proceeds to be seized directing such person or bank to freeze the account and requesting copies of the account records.

(d) The notice of seizure and intent to institute forfeiture proceedings shall provide that any interested parties with potential claims to the item in question are required to file a request for hearing within twenty (20) business days of publication of the notice and that failure to do so will be deemed forfeiture by default.

§2-6-4 Forfeiture Determination (revised 6/22/99)

(a) If the Tribal Court determines that an infraction or criminal offense has been committed in relation to an item seized, the prosecutor may file an action for forfeiture. Subject to this section, the proceedings governing forfeiture shall be the same as that prescribed for civil proceedings under this code.

(b) If any interested party with potential claims to the property involved has contacted the Tribal Court within twenty (20) business days after publication of notice of seizure, a forfeiture hearing shall be held before the Court no later than thirty (30) business days after the date of judgment on the underlying infraction or offense. Such party shall have the right at hearing to present evidence and produce witnesses as to why such property should not be forfeited.

(c) There shall be no right to a jury in forfeiture hearings and the burden of proof shall be a preponderance of the evidence. Following the hearing the Tribal Court shall determine whether the property in question shall be forfeited to the Tribal Law Enforcement.

(d) In the event that a forfeiture hearing is not requested by an interested party with potential claims to the property involved, such property shall be forfeited to the Tribal Law Enforcement.

(e) All property forfeited to Tribal Law Enforcement shall be placed into service, destroyed, or sold at auction as per Tribal Law Enforcement guidelines and policies.

CHAPTER 2-7
COLLECTION OF DEBTS

§2-7-1 Definitions

(a) "Garnishee" means an employer, trustee, financial agency or institute, or other person found within the reservation boundaries who has in his possession or control any credits or other personal property belonging to the defendant, or owes any debt to the defendant.

(b) "Homestead" means a dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved; or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as a principal home for the owner. **(added 6/22/99)**

(c) "Owner" means, but is not limited to, a purchaser under a deed of trust, mortgage, or contract.

§2-7-2 Writ of Attachment/Hearing

If within sixty (60) days after entry of a judgment awarding money damages and/or costs against a party or within sixty (60) days after final resolution of an appeal to the appellate court from such a judgment, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments owed to the creditor, the Court shall upon motion of the judgment creditor, issue an order to the debtor to show cause why a writ of attachment should not issue. Such order shall fix the date and time for hearing, which shall be no sooner than five (5) business days from the issuance of the order. The order shall inform the debtor he may file an affidavit on his behalf with the Court and may appear and present testimony on his behalf at the time of such hearing and if he fails to appear, the writ of attachment shall issue. Following the hearing, the Court may have the property of the judgment debtor attached as security for satisfaction of the judgment.

§2-7-3 Intervening Creditors

Within two (2) business days after issuing the writ of attachment, the court clerk shall publish notice in a newspaper of general circulation in the area where the property is located or seized. Any creditor of the debtor, who, within twenty (20) business days after publication of the notice, shall commence and thereafter diligently prosecute to final judgment, his claim against the debtor, shall share with the attaching creditor in an amount as determined by the Court, the proceeds of debtor's property where there are not sufficient funds to pay all judgments in full against him.

§2-7-4 Execution of Writ

(a) Upon issuing a writ of attachment, the Court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the tribal

police to seize as much of such property as reasonably appears necessary to pay any judgment meeting the standards for payment under this chapter.

(b) Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance. Any sale of seized property shall be at public auction conducted by the tribal police after giving at least ten (10) business days public notice posted in at least three conspicuous public places on the reservation. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction such in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

(c) Proceeds of the sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, next to satisfy any portion of a judgment still owing and meeting the standards for payment under this chapter. Any amount remaining after the above has been paid shall be paid over to the debtor.

(d) The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the judgment debtor's immediate family.

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

§2-7-5 Garnishment

(a) Upon receiving information in writing from the creditor or his attorney of the existence of a garnishee, the tribal police shall serve upon the garnishee, a copy of the writ and notice that any credits or debts which the garnishee owes to the debtor or any property of the debtor which the garnishee has in his possession, are attached to the writ. Upon attachment, the garnishee shall pay or deliver to the police all debts he owes to the debtor or any of the debtor's money in his possession, or any portion thereof sufficient to discharge the claim of the creditor. The police shall issue the garnishee a receipt for any funds or property delivered.

(b) A person who is a garnishee at the time of service upon them of a copy of the writ and notices, shall be liable to the creditor for the amount of any credits or debts which the garnishee owes to the debtor or any property of the debtor which the garnishee has in his possession until the attachment is discharged or any judgment recovered by the creditor is satisfied unless such property is delivered or such debts paid to the Court.

§2-7-6 Writ of Recovery

(a) Whenever the Court has issued a judgment ordering the party to deliver possession of real or personal property to another party and such delivery has not taken place within the time limit prescribed in the judgment, the Court shall upon motion of the aggrieved party, issue an order to the debtor to show cause why a writ of attachment should not issue. Such order shall fix the date and time for hearing, which shall be no sooner than five (5) business days from the issuance of the order. The order shall inform the debtor he may file an affidavit on his

behalf with the Court and may appear and present testimony on his behalf at the time of such hearing and if he fails to appear, the writ of attachment shall issue. Following the hearing, the Court may issue a writ of recovery for the property involved.

(b) The writ shall describe the real or personal property involved in enough detail to enable the Tribal Police to locate such property, and shall authorize a Tribal Police Officer to take possession of specified real or personal property from a wrongful holder and deliver possession to the party indicated on the writ. If real or personal property is within the jurisdiction of the Court, it 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.

§2-7-7 Specific Acts

If a judgment directs a party to perform any 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 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.

§2-7-8 Service of Writ

Service of a writ under this chapter shall be in accordance with service of process as provided in the Rules of Civil Procedure.

§2-7-9 Exempt Property

Any property, wages or other assets which are exempt from execution by federal law and any Indian regalia, relics and family heirlooms, as determined by the tribal court judge, are exempt from execution under this chapter.

§2-7-10 Homestead Exemption

A homestead is automatically protected by exemption, in addition to those exemptions set forth in § 2-7-9. If the homestead exemption is made by a married person from the community property, the property, on the death of either of the spouses, vests in the survivor, subject to no other liability; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the Tribal Court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner. **(added 6/22/99)**

CHAPTER 2-8
RULES OF EVIDENCE

GENERAL PROVISIONS

Rule 1 Scope

These rules govern proceedings in the courts of the Nez Perce Tribe to the extent and with the exceptions stated in rule 67.

Rule 2 Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 3 Rulings on Evidence

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the Court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The Court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain Error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the Court.

Rule 4 Preliminary Questions

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of subsection (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the Court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 5 Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the Court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 6 Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

JUDICIAL NOTICE

Rule 7 Judicial Notice of Adjudicative Facts

(a) Scope of Rule. The rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) generally known with the territorial jurisdiction of the Tribal Court or;

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. In a civil action or proceeding, the Court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the Court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 8 Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

RELEVANCY AND ITS LIMITS

Rule 9 Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 10 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by these rules. Evidence which is not relevant is not admissible.

Rule 11 Exclusion of Relevant evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 12 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of Witness. Evidence of the character of a witness, as provided in rules 35, 36, and 37.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in

advance of trial, or during trial if the Court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Rule 13 Methods of Proving Character

(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct.

Rule 14 Habit: Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 15 Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 16 Compromise and Offers to Compromise

Evidence of (a) furnishing or offering or promising to furnish, or (b) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 17 Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 18 Inadmissibility of Pleas, Plea Discussions, and Related Statements

(a) Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) any statement made in the course of any proceedings under rule 11 of the Rules of Criminal Procedure or comparable tribal, state or federal procedure regarding a guilty plea; or

(3) any statement made in the course of plea discussions with the tribal prosecutor which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

(b) However, such a statement is admissible:

(1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record.

Rule 19 Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 20 Sex Offense Cases; Relevance of Victim's Past Behavior

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent exposure, reputation or opinion evidence of the past sexual behavior of an alleged victim of such offense is not admissible.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent exposure, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is:

(1) admitted in accordance with subsections (c)(1) and (c)(2);

(2) admitted in accordance with subsection (c) and is evidence of:

(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which such offense is alleged.

(c)

(1) If the person accused of committing rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent exposure intends to offer under subsection (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the Court may allow the motion to be made at a later date, including during trial, if the Court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this subsection shall be served on all other parties and on the alleged victim.

(2) The motion described in subsection (c)(1) shall be accompanied by a written offer of proof. If the Court determines that the offer of proof contains evidence described in subsection (b), the Court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, if the relevancy of the evidence which the accused seeks to offer in the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the Court determines on the basis of the hearing described in subsection (c)(2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the Court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which an offense of rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent exposure is alleged.

PRIVILEGES

Rule 21 Claim of Privilege

An objection that information is privilege must be made by the person seeking to have such information excluded from being presented as evidence. If both privileged and nonprivileged information is in the same testimony, the Court may exercise the privileged matter and allow presentation of the remaining information.

Rule 22 Waiver of Privilege

Privilege can be waived voluntarily by disclosing information or consenting to disclosure

of any part of privileged information to a nonprivileged source. This rule does not apply if the disclosure itself is a privileged communication.

Rule 23 Self-Incrimination

Every natural person has a privilege to refuse to disclose in court proceedings or to a public official of the tribe or any government agency or division, any matter that will incriminate him.

Rule 24 Advocate-Client Privilege

(a) A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of receiving professional or other legal services.

(b) The privilege provided by this rule is not available:

(1) if the services of the advocate were obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or a fraud;

(2) if the communications are relevant to an issue between parties who claim the same deceased client;

(3) if the communications are relevant to prove breach of duty by an advocate or client;

(4) if the documents at issue were attested to by the advocate; or

(5) when a communication relevant to the matter and of common interest between or among two or more clients is made by any of them to a lawyer retained or consulted in common when offered in an action between or among any of the clients.

Rule 25 Diagnosis or Treatment

(a) A patient has a privilege to refuse to disclose and to prevent other persons from disclosing a confidential communication made for purposes of diagnosis or treatment of his physical, mental or emotional condition including alcohol or drug addiction among himself, his physician or psychotherapist and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist.

(b) No privilege shall be available under this rule:

(1) for proceedings to decide appointments of a guardian or conservator for a patient for mental illness or to hospitalize the patient for mental illness;

(2) if the Court orders an examination of the physical, mental or emotional condition of a patient and the communication is made in the course of such examination with respect to the particular purpose for which the examination is ordered unless the Court orders otherwise;

(3) if the physical, mental or emotional condition of the patient is an element of his claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense; or

(4) in a trial or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

Rule 26 Husband-Wife Privilege

(a) A party has a privilege to prevent testimony as to any confidential communication between the party and his or her spouse made during the marriage.

(b) No privilege shall be available under this rule:

(1) in a trial or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child;

(2) in a criminal action or proceeding in which one spouse is charged with a crime against the person or property of:

(A) the other spouse;

(B) a person residing in the household of either spouse; or

(C) a third person committed in the course of committing a crime against the other spouse or a person residing in the household of either spouse.

Rule 27 Religious Privilege

A person has a privilege to refuse to disclose and prevent others from disclosing a confidential communication made by the person to a recognized religious or spiritual leader, counselor or advisor in the course of his capacity as such leader, counselor or advisor.

Rule 28 Public Officer Privilege

A public officer acting in his capacity as such may claim privilege limited to official information communicated to him in an official confidence.

WITNESSES

Rule 29 General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules.

Rule 30 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 46, relating to opinion testimony by expert witnesses.

Rule 31 Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Rule 32 Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

Rule 33 Competency of Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Rule 34 Competency of Juror as Witness

(a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Rule 35 Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 36 Evidence of Character and Conduct of Witness

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness; and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 37, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

(1) concerning the witness' character for truthfulness or untruthfulness; or

(2) concerning the character for truthfulness or untruthfulness of another witness as to the character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 37 Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of attacking the credibility of a witness:

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to rule 11, if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and evidence that an accused has been convicted of such a crime shall be admitted if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; or

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten (10) years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudication is generally not admissible under this rule. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 38 Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 39 Mode and Order of Interrogation and Presentation

(a) Control by Court. The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the ascertainment of the truth;

(2) avoid needless consumption of time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 40 Writing Used to Refresh Memory

If a witness uses a writing to refresh memory for the purpose of testifying, either:

(a) while testifying; or

(b) before testifying, if the Court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not

related to the subject matter of the testimony the Court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the Court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the Court in its discretion determines that the interests of justice so require, declaring a mistrial.

Rule 41 Prior Statements of Witnesses

(a) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 50(d)(2).

Rule 42 Calling and Interrogation of Witnesses by Court

(a) Calling by Court. The Court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The Court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Rule 43 Exclusion of Witnesses

At the request of a party the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of:

(a) a party who is a natural person;

(b) an officer or employee of a party which is not a natural person designated as its representative by its attorney; or

(c) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

OPINIONS AND EXPERT TESTIMONY

Rule 44 Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

(a) rationally based on the perception of the witness; and

(b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 45 Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 46 Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 47 Opinion on Ultimate Issue

(a) Except as provided in subsection (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Rule 48 Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 49 Court Appointed Experts

(a) Appointment. The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the Court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the Court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the Court may allow. The compensation thus fixed may be

payable from any funds available to the Court for this purpose.

(c) Disclosure of Appointment. In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the Court appointed the expert witness.

(d) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

HEARSAY
Rule 50 Definitions

The following definitions apply under this article:

(a) "Statement" is:

(1) an oral or written assertion; or

(2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) "Declarant" is a person who makes a statement.

(c) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) "Statements Which Are Not Hearsay" - statement is not hearsay if:

(1) Prior Statements by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive;

(C) one of identification of a person made after perceiving the person.

(2) Admission by Party-Opponent. The statement is offered against a party and is:

(A) the party's own statement in either an individual or a representative capacity;

(B) a statement of which the party has manifested an adoption or belief in its truth;

(C) a statement by a person authorized by the party to make a statement concerning the subject;

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Rule 51 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

Rule 52 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(b) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(c) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(d) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(e) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(f) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this subsection included business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(g) Absence of Entry in Records Kept in Accordance With the Provisions of subsection (f). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of subsection (f), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(h) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

(1) the activities of the office or agency;

(2) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by tribal police officers and other law enforcement personnel; or

(3) in civil actions and proceedings and against the tribe in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(i) Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(j) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 57, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(k) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(l) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(m) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(n) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(o) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(p) Statements in Ancient Documents. Statements in a document in existence twenty (20) years or more the authenticity of which is established.

(q) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations generally used and relied upon by the public or by persons in particular occupations.

(r) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(s) Reputation Concerning Personal or Family History. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(t) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State, Indian reservation or nation in which located.

(u) Reputation as to Character. Reputation of a person's character among associates or in the community.

(v) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty, adjudging a person guilty of a crime, to prove any fact essential to sustain the judgment, but not including, when offered by the tribe in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(w) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(x) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that:

(1) the statement is offered as evidence of a material fact;

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 53 Hearsay Exceptions; Declarant Unavailable

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the Court to do so;

(3) testifies to a lack of memory of the subject matter of the declarant's statement;

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent,

concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History.

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that:

(A) the statement is offered as evidence of a material fact;

(B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 54 Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 55 Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in rule 50(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

AUTHENTICATION AND IDENTIFICATION

Rule 56 Requirement of Authentication or Identification

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:

(A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient Documents or Data Compilation. Evidence that a document or data compilation, in any form,

(A) is in such condition as to create no suspicion concerning its authenticity;

(B) was in a place where it, if authentic, would likely be; and

(C) has been in existence twenty (20) years or more at the time it is offered.

(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Statute or Rule. Any method of authentication or identification provided by Act of Congress or by tribal law.

Rule 57 Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, of any federally recognized Indian Tribe, or of a political subsection, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in subsection (a) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subsection of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(1) of the executing or attesting person; or

(2) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the Court may for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(d) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (a), (b), or (c) of this rule.

(e) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(f) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(g) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels, purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(h) Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(i) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) Presumption Under Acts of Congress. Any signature, document, or other matter declared by Act of Congress to be presumptively or prima facie genuine or authentic.

Rule 58 Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Rule 59 Definitions

For purposes of this article the following definitions are applicable:

(a) Writings and Recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(c) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(d) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

Rule 60 Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules.

Rule 61 Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless:

(a) a genuine question is raised as to the authenticity of the original; or

(b) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 62 Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(a) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed the in bad faith;

(b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure;

(c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(d) Collateral Matters. The writing, recording or photograph is not closely related to a controlling issue.

Rule 63 Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 57 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 64 Summaries

The contents of voluminous writings, records, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The Court may order that they be produced in court.

Rule 65 Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

Rule 66 Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with the provisions of rule 4. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

MISCELLANEOUS RULES
Rule 67 Applicability of Rules

(a) Courts. These rules apply to the Nez Perce Tribal Courts, in the actions, cases, and proceedings and to the extent hereinafter set forth.

(b) Proceedings Generally. These rules apply generally to civil actions and proceedings, to criminal cases and proceedings, and to contempt proceedings except those in which the Court may act summarily.

(c) Rule of Privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) Rules Inapplicable. The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the Court under rule 4.

(2) Miscellaneous Proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; and in small claims proceedings.

CHAPTER 2-9
APPELLATE PROCEDURES
(amendments to chapter adopted by NPTEC 5/28-29/02)

§2-9-1 Definitions

(a) "Habeas corpus" means the determination by the Court of the legality of a person's detention or imprisonment.

(b) "Injunction" means a court order prohibiting or allowing a particular action.

(c) "Interlocutory" means a court order deciding some point before the end of suit or prosecution that is not a final decision of the controversy.

(d) "Mandamus" means a court order to a lower court or tribal official to perform a particular act as part of his official duties or to restore a party's rights or privileges of which he has been illegally deprived.

(e) "Tribal official" means any officer, member of the Nez Perce Tribal Executive Committee, or employee of the tribe.

§2-9-2 Notice of Appeal

(a) Any party wishing to appeal a decision of the Tribal Court shall within thirty (30) business days of entry of final judgment or final order, file a notice of appeal with the clerk of the Court. The notice of appeal shall specify the party taking the appeal and shall designate the final order, commitment, judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. Failure to properly file a notice of appeal under this section within the designated timelines shall result in a denial of the appeal by the trial court judge. Within five (5) business days of filing a notice of appeal, the appellant shall serve a copy of the notice of appeal on the respondent.

(b) The appellant shall file along with the notice of appeal a fee in an amount established on the fee schedule of the Court of Appeals. Upon motion of the respondent, the trial court may set a bond that will provide adequate assurance of the serving of the sentence or paying of the fine or judgment if the Court of Appeals affirms or modifies the action of the lower court. Such bond in no event shall exceed double the amount of the fine or judgment rendered.

(c) The appellant must certify to the Court of Appeals that a copy of the notice of appeal was served on the opposing party. Upon appointment of an appeals panel, the clerk of the Court will provide copies to the Court of Appeals justices.

§2-9-3 Briefs

(a) Within twenty (20) business days of filing a notice of appeal, or in such other time as ordered by the Appeals Court, the appellant shall submit an original and two copies of his brief to the clerk of the Court. The content of briefs be as provided by rules established by the Court of Appeals shall concisely state the grounds for appeal pursuant to NPTC § 2-9-7(b). If

for good cause, the appellant cannot meet the deadline for filing of briefs, the Appellate Court may grant an extension at its discretion.

(b) Each respondent shall file an original and two copies of his response brief with the clerk of the Court within twenty (20) business days from the date of receipt of the appellant's brief. The respondent shall serve one copy of his brief on the appellant.

(c) Within five (5) business days of receipt of the opposing parties' response, the clerk of the Court shall submit the briefs to the Court of Appeals.

(d) Should the appellant fail to file a brief within the time provided by this section, the appeal shall be dismissed. If the respondent fails to file a brief within the time provided, then the Appellate Court shall consider the case on its merits without the benefit of the respondents' brief. In addition, a respondent who has not filed a brief shall, in the discretion of the Court of **A**ppeals, waive his right to present an oral argument.

§2-9-4 Record

(a) At the time of filing its brief, the appellant shall also file with the clerk of the Court the relevant portion of the record from the Tribal Court and shall serve one copy on each respondent.

(b) At the time the respondent files his response brief he shall also file an original of any proposed amendments or additions to the record and shall serve one copy on each appellant.

(c) The clerk of the Court shall submit a certified copy of the record to the Court of Appeals when it submits the briefs.

§2-9-5 Costs

(a) During the appeal, the parties shall bear their own costs of an appeal.

(b) Costs associated with copying court files, tapes, documents, other evidence, and other portions of the record shall be paid by the party requesting such copies.

§2-9-6 Stay

(a) Any party to an appeal may move the trial court to stay the imposition of its judgment pending the review by the Court of Appeals. The motion must include the reasons for granting the relief requested and the facts relied upon.

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

(c) The trial court may condition such relief on the filing of a bond or other appropriate security.

§2-9-7 Standard of Review; Disposition

(a) Upon written request by either party, the Court may allow oral argument of a duration to be specified by the Court. The Appellate Court will base its determination exclusively on the record of the trial court, briefs and oral argument if allowed. No new evidence or testimony shall be presented or considered by the Court that was not properly raised before the appeal and included in the record.

(b) The Appellate Court may only affirm, modify, reverse or remand the Tribal Court's decision. The Tribal Court's decision is inviolate absent a showing by the Appellant that there are no facts in the record to support the Tribal Courts determination or the law was misinterpreted or misapplied. Unless otherwise authorized by the Code, NPTEC resolution, or tribal ordinance, the Court of Appeals shall not grant equitable relief or monetary damages.

§2-9-8 Opinion

(a) Within three (3) months of the later of the date the last brief was submitted or the last day of oral arguments, the Appellate Court shall deliver its opinion in writing, stating the type of order appealed, the facts, the rules of law applied, all conclusions of law and fact, and the decision to the parties in the case.

(b) If no decision and opinion is issued by the Tribal Court of Appeals within the time designated, the clerk of court shall contact the presiding justice to determine the status of the decision and opinion if requested by any party. The clerk of court shall report the status of the decision and opinion in writing to all parties. If it appears from the clerk of court's report that no written decision and opinion is forthcoming, any party may apply to the chief judge or other designated judge of the Tribal Court to establish a time for a decision to be rendered or for a new panel to hear the appeal.

(c) The clerk of the Court shall keep a permanent record of the Appellate Court opinions which shall be available to the public upon request.

(d) A two-justice majority is required to overturn, reverse, remand, or modify a lower court decision. Two justices may alone render an opinion if the third justice is unable to issue an opinion for any reason. In the event that no majority opinion can be reached, the lower court decision shall be affirmed.

(e) A justice may issue a dissenting opinion to the majority. This dissenting opinion shall be attached to the opinion.

§2-9-9 Judgments

All judgments and orders of the Appellate Court shall be enforceable through and by the Tribal Court. The clerk of the Court will notify the Appellate Court justices of compliance with and satisfaction of the judgment or order.

§2-9-10 Immediate Appeals

(a) A party may file a notice of appeal to the Appellate Court before a final order or decision of the trial court in the case of an immediate appeal which may include injunction,

mandamus, interlocutory appeal or habeas corpus.

(b) The notice for an immediate appeal must be filed with the clerk of the Court. Any one member of the Appellate Court shall hear an immediate appeal. The hearing shall be held as soon as possible, but no later than ten (10) business days from the date of request. The appeals judge hearing the issue will respond, in writing stating the type of order appealed, the facts, the rules of law applied, the reasoning and the decision within three (3) business days of the hearing.

(c) The appealing party shall notify the opposing parties of an immediate appeal at, or prior to the time notice is filed. A violation of this provision shall result in dismissal of the appeal.

(d) Both parties may submit briefs on an immediate appeal. Information not submitted by the parties will not be considered by the judge in reaching a decision.

(e) The judge on an immediate appeal may affirm, modify, reverse, or remand the lower court's order. The order may be modified or reversed only if there was no evidence to support the order or the law was misinterpreted or misapplied.

§2-9-11 Full Appeal

Use of the immediate appeal under the above listed circumstances does not preclude an appeal of the final decision.

§2-9-12 Clerical Mistakes

(a) Any party may move for correction of any clerical mistakes in an order, decision, or opinion of the Appellate Court, provided that the Motion is made within ten (10) days of issuance of the order, decision, or opinion. Such a correction is limited to corrections of party names, descriptions of property, monetary figures, and other such errors resulting from an oversight or omission of the Appellate Court and may not be utilized to address errors of law. The moving party must specifically identify the matter to be corrected by the Court.

(b) Within thirty (30) days after receipt of the motion, the Court may grant or deny the motion for a correction. If granted, the Court shall issue a new or amended order, decision, or opinion correcting the matter identified by the moving party.

§2-9-13 Reconsideration

(a) The Court of Appeals shall entertain Motions for Reconsideration of any final order, decision, or opinion, issued by the Court, provided that the Motion is made within twenty (20) days of issuance of the order, decision, or opinion.

(b) A Motion for Reconsideration is an extraordinary remedy that can only be granted for compelling reasons. A motion for reconsider may be presented on the following grounds and no others: ***(Note: the four subsections below were incorrectly numbered (a), (b), (c), (d) and may have previously been cited as case law using those subsection numbers)***

(1) that some fact, material to the decision, or some question of law decisive of the case submitted by counsel, was overlooked by the Court;

(2) the presence of new and material facts (e.g. juror misconduct, etc.) which were fraudulently withheld or could not have been reasonably known to the aggrieved party during the pendency of the appeal proceedings;

(3) that the decision is in direct conflict with the Code, other tribal ordinances, regulations, resolution, controlling case law, or fundamental principles of Indian law; or

(4) that the Court employed inappropriate procedures, considered facts outside the record on appeal in violation of NPTC § 2-9-7, or failed to issue an opinion in compliance with NPTC § 2-9-8(a).

(c) The grounds for reconsideration must be pled with specificity and be supported by facts or law in the appeal record and a supporting brief as provided in NPTC § 2-9-3.

(d) A party opposing reconsideration may file a brief in opposition within ten (10) days of the receipt of the movant's motion and brief.

(e) Oral argument on the issue of reconsideration is within the discretion of the Court.

(f) The Court of Appeals may hear additional argument and allow supplemental briefing if necessary. Within thirty (30) days of receipt of the motion or additional argument, the Court may grant or deny the motion for reconsideration and issue an opinion pursuant to NPTC § 2-9-8.

§2-9-14 Finality of Decision / Motion to Reinstate Appeal

Unless the Court grants a motion for clarification under NPTC § 2-9-12 or a motion for reconsideration under NPTC § 2-9-13, all decisions of the Tribal Court of Appeals shall be final. The Tribal Court of Appeals shall not entertain any motions to reinstate an appeal.