COURT RULES

OF THE

GRAND TRAVERSE BAND

OF OTTAWA AND CHIPPEWA INDIANS

TRIBAL COURT

RULES OF EVIDENCE

ADMINISTRATIVE ORDERS

COURT RULES

OF THE

GRAND TRAVERSE BAND

OF OTTAWA AND CHIPPEWA INDIANS

TRIBAL COURT

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CHAPTER 1
RULES OF ETHICS FOR TRIBAL COURT JUDGES

Subchapter 1.000 Purpose and Definitions

Rule 1.001 Purpose. The purpose of this chapter is to provide for and guide the professional conduct of judges and court clerks, magistrates and administrators of this Court, as well as, lawyers and lay advocates who practice before this Court.

Rule 1.002 Definitions. When used in this chapter, unless the context otherwise indicates:
(A) "Court" means the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court.
(B) "Court Personnel" include any employee or volunteer involved in Court records or proceedings.

Subchapter 1.100 Judicial Conduct

Rule 1.101 Applicability of these Rules of Judicial Conduct. These rules apply to anyone, whether or not a lawyer, who is an officer of a tribal judicial system and is performing judicial functions. Also, these Rules apply to both trial and appellate tribal judges, who serve the Court on a full-time, part-time, or pro tempore basis.

Rule 1.102 Integrity and Independence of Tribal Judiciary. A Tribal Court judge should uphold the integrity and independence of the Tribal Judiciary in that an independent and honorable Tribal judiciary is indispensable to justice in the Tribal community. A judge should participate in establishing, maintaining, and enforcing, and should him/herself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant(s) and the public, not the Judiciary. The provisions of the Rules 2.101 through 2.110, inclusive, should be construed and applied to further these objectives.

Rule 1.103 Impropriety and the Appearance of Impropriety. A Tribal Court judge should avoid all impropriety and the appearance of impropriety in all his/her activities.
(A) Respect and Comply. A Tribal judge should respect and comply with the law of the Tribe and at all times should act in the manner that promotes confidence in the integrity and impartiality of the Tribal Judiciary.
(B) No Influence. A Tribal judge should not allow family, social, or other relationships to influence his/her judicial conduct. A judge should not attempt to use prestige of his/her office to advance the private interests of him/herself or others, nor should a judge convey the impression that anyone has special influence on him/herself
(C) Witness. A judge should not appear as a witness in a court proceeding unless subpoenaed.

Rule 1.104 Performance of Duties Impartially and Diligently. A Tribal Court judge should perform the duties of the office impartially and diligently. The judicial activities of a Tribal judge should take precedence over all other activities. The judicial duties of a judge include all the duties of the office as prescribed by Tribal law. In the performance of these duties, the following standards apply.
(A) Adjudicative Responsibilities.

(1) A Tribal Court judge should adhere to the laws of the Tribe. He/she should not be swayed by partisan interests, public clamor, political pressure, or fear of criticism. He/she should resist influences on the Court by other Tribal officials, governmental officials or any others attempting to improperly influence the Court.

(2) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, advocates and others with whom he/she deals with in his/her official capacity. He/she should require similar conduct of other persons in court proceedings and those Court personnel who are subject to the judge's direction and control.

(3) A Tribal Court judge should accord to every person who is legally interested in any proceeding, or his/her lawyer or other representative, full right to be heard according to Tribal law and except as authorized by law, neither consider nor permit one-sided or other communication with a litigant, his/her attorney, or lay advocate concerning a pending or impending proceeding unless all parties to the proceeding are present.

(4) A Tribal Court judge should maintain order in the court. He/she should not interfere in the right of the parties.

(5) A Tribal Court judge should dispose promptly of the business of the Court.

(6) A Tribal Court judge should not comment publicly on any proceeding pending in court and should also prohibit other Court personnel from making such public comment. However, this subsection does not prohibit a judge from making public statements in the course of his/her official duties or from explaining for public information the procedures of the Court.

(B) Administrative Responsibilities.

(1) A judge should diligently perform his/her administrative responsibilities with a high degree of integrity and diligence.

(2) A judge should require his/her staff and Court officials to observe high standards of integrity and diligence. As such, a judge should direct his/her staff and Court officials subject to his/her control to observe high standards of fidelity, diligence, and courtesy to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity.

(3) A judge should initiate appropriate disciplinary measures against a judge or lawyer for nonprofessional conduct of which the judge may become aware.

(C) Disqualification

(1) A Tribal Court judge should disqualify him/herself in a proceeding in which his/her impartiality might reasonably be questioned, including instances where:

(a) the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;

(b) the judge served as a lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the judge has been associated in a professional capacity served as a lawyer, advocate, or personal representative concerning the matter;

(c) the judge knows that he/she individually (or a member of the judge's family residing in his/her household) has a financial interest in the subject matter of the controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or

(d) the judge or his/her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:

(1) is a party to the proceeding, or an officer, director, or trustee of a party;

(2) is acting as a lawyer or advocate in the proceeding;

(3) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(4) is to the Tribal judge's knowledge likely to be a material witness in the proceeding.

(D) Alternative to Disqualification. A judge disqualified pursuant to Rule 1.104(C)(1) hereunder may, instead of withdrawing from the proceeding, disclose on the record the basis of his/her disqualification. If based on such disclosure, the parties and lawyers or lay advocates, independent of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding.

Rule 1.105 Improvement of the Legal System and the Administration of Justice. A Tribal Court judge may engage in activities to improve the law, the legal system and the administration of justice. In fact, to the extent that his/her time permits, he/she is encouraged to do so, either independently or through a legal/judicial association, judicial conference, or other organization dedicated to the improvement of the law. Therefore, a judge subject to the proper performance of his/her judicial duties may engage in the following activities:

(A) a judge may speak, write, lecture, teach, and participate in other activities concerning Tribal law and custom, the legal system of the Tribe, the administration of justice, and the law in general;

(B) the judge may appear at a public hearing before a Tribal executive or legislative body or on official matters concerning the Tribal legal system and the administration of justice of general concern to Tribal members, or of personal concern. When speaking to the public, press, or others on matters other than the administration of Tribal justice, the judge shall identify him/herself as the Tribal judge and shall make it clear that he/she is not speaking in his/her capacity as a Tribal judge; and

(C) the judge may serve as a member, officer, or director of an organization or Tribal governmental agency devoted to the improvement of Tribal law, its legal system, or an organization of justice. The judge may assist such an organization in raising funds and may participate in the management and investments of such funds. He/she may make recommendations to public and private fund-granting agencies on projects and programs concerning Tribal law, its legal system, and the administration of justice.

Rule 1.106 Extra-Judicial Activities.

(A) Avocational Activities. A Tribal judge may write, lecture, teach, speak, and consult on non-legal subjects, appear before public non-legal bodies, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his/her office or interfere with the performance of his/her judicial duties.

(B) Civic and Charitable Activities. A Tribal judge may participate in civic and charitable activities that do not reflect adversely upon his/her impartiality or interfere with the performance of his/her judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization, whether Tribal or otherwise, provided that a Tribal judge does not participate if it is likely that the organization will be involved in proceedings which would ordinarily come before him/her or would be involved in adversarial proceedings in any Tribal court.

(C) Financial Activities.

(1) A Tribal judge should avoid financial and business dealings that tend to reflect adversely on his/her judicial duties, exploit his/her judicial position, or involve him/her in frequent business transactions with lawyers or others likely to come before the Court on which he/she serves.

(2) Because it is recognized that the position of Tribal judge may be a part-time position, such a Tribal judge may accept other employment and participate in the operation of a business, legal or otherwise in nature, subject to the following:

(a) a part-time Tribal judge should not practice law either as a lawyer or an advocate:

(1) in a Tribal Court in which he/she serves; or

(2) in any court subject to the appellate jurisdiction of the Tribal Court or council on which he/she serves; and

(b) a part-time Tribal judge should not act as a lawyer or advocate in any proceeding in which he/she has served or in any related proceeding.

(3) Neither a judge nor a member of his/her family residing in the household should accept a gift, bequest, favor, or loan from anyone if the same would affect or appear to affect his/her impartiality.

(D) Extra-Judicial Appointments. A Tribal judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A Tribal judge may represent the Tribe on ceremonial occasion or in connection with historical, educational, and cultural activities.

Rule 1.107 Political Activities.
(A) Political Activity. A Tribal Court judge should refrain from political activity inappropriate to his/her judicial office. However, a judge or candidate for judicial office may attend political gatherings, speak to such gatherings on his/her own behalf or on behalf of other judicial candidates, and/or contribute to a political party.
(B) Tribal Council. A Tribal judge shall not be a candidate for or serve on the Tribal Council, nor shall a Tribal judge be actively involved in the campaign of another for Tribal Council.
(C) Political Support. A Tribal Court judge should refrain from all political activities or actions which could be interpreted in the Tribal community as supporting any political position except that the community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard. This prohibition does not mean a judge cannot, if he/she chooses, engage in activities of electoral politics at the local, state, or national level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the Tribal community.
(D) Conduct of a Candidate. A candidate, including an incumbent judge, for a Tribal Judicial office that is filled by Tribal election or appointment:

(1) should maintain the dignity appropriate to the judicial office and should refrain from any political activity which might interfere with the performance of his/her judicial duties. Furthermore, a Tribal Court judge should encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her; and/or

(2) should not make pledges or promises of conduct in judicial office other than the faithful and impartial performance of the duties of the office, nor announce his/her views on disputed legal or political issues.

(E) Continuing Educational Activities. A judge, regardless of his/her education and experiences prior to being appointed or elected a judge, should seek further legal and pertinent non-legal education designed to improve their performance as a judge.

Subchapter 1.200 Enforcement Of Ethical Rules

Rule 1.201 Definitions. When used in this chapter, unless context otherwise indicates:
(A) "Commission" means the Judicial Commission.
(B) "Complainant" means the person who files the request for investigation.
(C) "Investigation" means fact-finding on alleged misconduct under the Judicial Commission Chairperson's direction.
(D) "Judicial Commission" means the Chief Justice and those persons appointed by the Chief Justice.
(E) "Judicial Commission Chairperson" means the person so appointed by the GTB Tribal Court.
(F) "Respondent" means an attorney, lay advocate, judge, or other Court personnel named in the request for investigation or complaint.
(G) "Request for Investigation" means the first step in bringing alleged misconduct to the Judicial Commission' s attention.
(H) "Tribal Council" means the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council.

Rule 1.202 Enforcement Responsibility/Procedure/Relationship to Tribal Personnel Policies.
(A) Enforcement Responsibility. The Judicial Commission shall have the responsibility for enforcing the provisions of this chapter, including the Rules of Judicial Conduct, the Rules of Court Personnel, and the Rules of Ethics for Lawyer and Lay Advocates as set forth in this chapter. Complaints shall not be received by or acted on by the Tribal Council.
(B) Time Requirement for Rules. Within ninety (90) days of their appointment, the Judicial Commission must develop and publish written rules and policies as to how it will operate and function.

(C) Respondent. Where a respondent is an employee of the Tribe, any hearing procedures will apply rather than any hearing procedures set forth within Rule 1.400. Similarly, these Rules are supplemental to Tribal Personnel Policies or relevant Tribal Constitutional provisions shall control where there is any inconsistency between these Rules of Ethics and the Tribal Personnel Policies or relevant Tribal Constitutional Provisions.

Rule 1.203 Investigation.
(A) Receiving of a Complaint**.** Whenever the Judicial Commission shall receive from a complainant information in writing indicating a provision has been violated, the Commission shall conduct an investigation of the circumstances of the alleged violation. Such a request for investigation by a complainant of alleged misconduct, including the approximate time and place of it, is to be signed and dated by the complainant, and to be filed with the Judicial Commission.
(B) Conducting an Investigation. Upon the filing of a request for investigation, a member of the Judicial Commission shall be appointed by said Commission to conduct and oversee the investigation and such person shall be known as the Judicial Commission Chairperson.
(C) Notification. During the course of the investigation, the Judicial Commission Chairperson may notify the respondent of the subject being investigated.
(D) Misconduct by Respondent. The Judicial Chairperson may compel the respondent to answer questions, furnish documents and present any information deemed relevant to the investigation. Failure to do so on the part of the respondent is misconduct and grounds for discipline.

Rule 1.204 Review and Action Committee.
(A) Reporting Results. The Judicial Commission Chairperson shall report the results of each investigation to the Judicial Commission and make a recommendation for disposition of the matter.
(B) Review. The Judicial Commission shall review the recommendation and determine whether to dismiss the matter or initiate a disciplinary action.
(C) Dismissal of Complaint. If a complaint is dismissed, the complainant shall be notified.

Rule 1.205 Disciplinary Action; Procedure.
(A) If the Judicial Commission determines to proceed with a disciplinary action, said Commission shall prepare a written notice of the allegation and serve the notice upon respondent.
(B) The respondent shall be given fifteen (15) days within which to answer the charges in writing and request a hearing.
(C) The hearing shall be held by the Commission within twenty (20) days of receipt of respondent' s request.
(D) The hearing shall be conducted by the Judicial Commission under rules applicable to a trial of a civil action in Tribal Court. The hearing shall be recorded and shall be open to the public.
(E) The Commission shall, at the conclusion of the hearing, determine based on the evidence presented whether a provision has been violated by respondent.

Rule 1.206 Disciplinary Action; Disposition. If the Judicial Commission finds that a provision has been violated, it shall make one of the following dispositions, taking into account the severity of the offense and other factors the Judicial Commission deems relevant:
(A) issue a reprimand;
(B) suspend the respondent from his/her office or duties for a period of time;
(C) revoke respondent's license to practice or terminate respondent from his/her office;
(D) place respondent on probation for a specific period of time;
(E) require respondent to make restitution in an appropriate amount (where applicable); or
(F) admonish respondent, only by consent of said respondent.
Further, the Commission shall have the discretion to impose other disposition not referenced above where the respondent is incompetent or incapacitated.

Rule 1.207 Appeal. [Deleted effective 3/20/2009.]

Rule 1.208 Confidentiality.

(A) Investigation. All papers, files, and communications in an investigation and proceedings before the Judicial Commission prior to the decision to proceed with a disciplinary action are confidential.

(B) After Service of a Notice. After service of a written notice on respondent under subrule 1.205(A), the proceedings and all papers filed are public.

CHAPTER 2
RULES OF ETHICS FOR ATTORNEYS AND LAY ADVOCATES

Subchapter 2.000 Attorney and Lay Advocate Conduct

Rule 2.001 Applicability of Rules. These Rules apply to all persons, whether licensed attorneys or lay advocates, who are admitted to practice before the Tribal Court. It is recognized that attorneys who are admitted to practice before the Court are also members of the State Bar of Michigan or some other state and are subject to discipline under the appropriate state ethical rules. These Rules are not intended to preempt or supersede and state authority to discipline attorneys for any conduct prohibited by these Rules.

Rule 2.002 Purpose of Rules. These Rules are adopted both as an inspirational guide to the persons practicing before the Tribal Court and as a basis for disciplinary action when the conduct of a person falls below the required minimum standards stated in the Rules set forth in this chapter.

Rule 2.003 Definitions. When used in this chapter, unless the context otherwise indicates:
(A) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances, traditions and customs.
(B) "Consult" or consultation denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.
(C) "Firm" or "law firm" denotes a lawyer(s) in a private firm, lawyers employed in the legal department of a corporation or other organization, and lawyers employed in a legal services organization.
(D) "Fraud" or "Fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.
(E) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question; a person's knowledge of the fact in question; a person's knowledge may be inferred from circumstances.
(F) "Lawyer" includes a lay advocate admitted to practice before Tribal Court.
(G) "Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.
(H) "Person" includes a corporation, association, a trust, a partnership, or any other organization or legal entity.
(I) "Reasonable" or "reasonably believes," when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
(J) "Reasonably should know," when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
(K) "Substantial," when used in reference to degree or extent, denotes a material matter of clear and weighty importance.
(L) "Tribal Court," means the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court.

Rule 2.004 Client-Lawyer Relationship.
(A) Competence. A lawyer shall provide competent representation to a client. A lawyer shall not:
(1) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;
(2) handle a legal matter without preparation adequate in the circumstances; or
(3) neglect a legal matter entrusted to the lawyer.
(B) Scope of Representation.

(1) A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and these Rules. A lawyer does not violate this Rule by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial, and whether the client will testify .In representing a client, a lawyer may where permissible, exercise professional judgment to waive or fail to assert a right position of the client.

(2) A lawyer may limit the objectives of the representation if the client consents after consultation.

(3) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counselor assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.

(4) When a lawyer knows that a client expects assistance not permitted by these Rules or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(C) Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

(D) Communication.

(1) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains.

(2) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(E) Fees.

(1) A lawyer shall not enter into an agreement for charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

(a) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisites to perform the legal service properly;

(b) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(c) the fee customarily charged in the locality for similar legal services;

(d) the amount involved and the results obtained;

(e) the time limitations imposed by the client or by the circumstances;

(f) the nature and length of the professional relationship with the client;

(g) the experience, reputation, and ability of the lawyer(s) performing the services; and whether the fee is fixed or contingent.

(2) When the lawyer has not regularly represents the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(3) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subrule 2.004(B)(4) below or by other law. A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined. Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show remittance to the client and the method of its determination.

(4) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter or in a criminal matter.

(5) A division of a fee between lawyers who are not in the same firm may be made only if:

(a) the client is advised of and does not object to the participation of all lawyers involved; and

(b) the total fee is reasonable.

(F) Confidentiality of Information.

(1) "Confidence" refers to information protected by the client-lawyer privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(2) Except when permitted under subrule 2.004(F)(3) below, a lawyer shall not knowingly:

(a) reveal a confidence or secret of a client;

(b) use a confidence or secret of a client to the disadvantage of the client; or

(c) use a confidence or secret of a client to the disadvantage of the lawyer or a third person, unless the client consents after full disclosure.

(3) A lawyer may reveal:

(a) confidence or secrets with the consent of the client(s) affected, but only after full disclosure to them;

(b) confidences or secrets when permitted or required by these Rules, or when required by law or by court order;

(c) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been use;

(d) the intention of a client to commit a crime and the information necessary to prevent the crime; and

(e) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer(s) employees or associates against an accusation of wrongful conduct.

(4) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by subrule 2.004(F)(3) through an employee.

(G) Conflict of Interest; General Rule.

(1) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(a) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(b) each client consents after consultation.

(2) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest unless:

(a) the lawyer reasonably believes the representation will not be adversely affected; and

(b) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(H) Conflict of Interest; Prohibited Transactions.

(1) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

(a) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(b) the client is given reasonable opportunity to seek the advice of independent counsel in the transaction; and

(c) the client consents in writing thereto.

(2) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation except as permitted or required by subrule 2.004(F) or 2.006(C).

(3) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(4) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(5) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(a) a lawyer may advance court costs and expenses of litigation, the repayment of which shall ultimately be the responsibility of the client; and

(b) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(6) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(a) the client consents after consultation;

(b) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(c) information relating to representation of a client is protected as required by subrule 2.004(F).

(7) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case, an aggregated agreement as to guilty or no contest pleas, unless each client consents after consultation, including disclosure of the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.

(8) A lawyer shall not:

(a) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement; or

(b) settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(9) A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon consent by the other consultation regarding the relationship.

(10) A lawyer shall not acquire a propriety interest in the cause action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(a) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(b) contract with a client for a reasonable contingent fee in a civil case, as permitted by subrule 2.004(E).

(I) Conflict of Interest; Former Client.

(1) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

(2) Unless the former client consents after consultation, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated has previously represented a client:

(a) whose interests are materially adverse to that person; and

(b) about whom the lawyer has acquired information protected by subrules 2.004(F)(1)-(3).

(3) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(a) use information relating to the representation to the disadvantage of the former client except as subrules 2.004(F) or 2.006(C) would permit or require with respect to a client, or when the information has become generally known; or

(b) reveal information relating to the representation except as subrules 2.004(F) or 2.006(C) would permit or require with respect to a client.

(J) Imputed Disqualification; General Rule.

(1) While lawyers are associated in a firm, none of them shall knowingly represent a client when anyone of them practicing alone would be prohibited from doing so by subrules 2.004(G), (H)(3), (I)(1) and (I)(3) or 2.005(B).

(2) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or substantially related matter in which that lawyer, or firm with which the lawyer was associated, is disqualified under subrule 2.004(I)(2), unless:

(a) the disqualified lawyer is screening from any participation in the matter and is apportioned no part of the fee therefrom; and

(b) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this Rule.

(3) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represents by the formerly associated lawyer, and not currently represented by the firm, unless:

(a) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(b) any lawyer remaining in the firm has information protected by subrules 2.004(F) and (I)(3) that is material to the matter.

(4) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in subrule 2.004(G).

(K) Client Under a Disability.

(1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(2) A lawyer may seek the appointment of a guardian or take other protective action with respect to client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

(L) Safekeeping Property.

(1) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds of the client paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in an interest bearing account in one or more identifiable banks, savings and loan associations, or credit unions maintained in the state in which the law office is situated, and no funds belonging to the lawyer or the law firm shall be deposited therein except as provided in this Rule. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(2) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(3) When in the course of representation, a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(M) Declining or Terminating Representation.

(1) Except as stated in subrule 3.004(M)(3) below, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(a) the representation will result in violation of these Rules of Ethics or other law;

(b) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(c) the lawyer is discharged.

(2) Except as stated in subrule 3.004(M)(3) below, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(a) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(b) the client has used the lawyer's services to perpetrate a crime or fraud;

(c) the client insists upon pursing an objective that the lawyer considers repugnant or imprudent;

(d) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(e) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(f) other good cause for withdrawal exists.

(3) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(4) Upon termination of representation, a lawyer should take reasonable steps to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by law.

Rule 2.005 Counselor. The following provisions shall apply when a lawyer serves in the role of counselor.

(A) Advisor. In representing a client, a lawyer shall exercise independent professional judgment and shall render candid advice. In rendering advice, a lawyer may refer not only to law but to other consideration such as morel, economic, social, and political factors that may be relevant to the client's situation.

(B) Intermediary.

(1) A lawyer may act as intermediary between clients if:

(a) the lawyer consults with each client concerning the implication of the common representation, including the advantages and risks involved and the effect on the client- lawyer privileges, and obtains each client's consent to the common representation;

(b) the lawyer reasonably believes that the matter can be resolved on terms compatible with the client's best interests, that each client will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution in unsuccessful; and

(c) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(2) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(3) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in subrule 3.005(B)(2) above is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was subject of the intermediation.

(C) Evaluation for Use by Third Persons.

(1) A lawyer may, for the use of someone other than the client, undertake an evaluation of a matter affecting a client if:

(a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship \with the client; and

(b) the client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is protected be subrule 3.004(F).

Rule 2.006 Advocate. The following provisions shall apply when a lawyer serves in the role of advocate.

(A) Meritorious Claims and Contentions. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. A lawyer may offer a good-faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may so defend the proceeding as to require that every element of the case be established.

(B) Expediting Litigation. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

(C) Candor Toward the Tribunal.

(1) A lawyer shall not knowingly:

(a) make a false statement of material fact or law to the Tribunal;

(b) fail to disclose a material fact to the Tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(c) fail to disclose to the Tribunal controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(d) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(2) The duties stated in subrule 2.006(C)(1) above continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by subrule 2.004(F).

(3) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(4) In an ex parte proceeding, a lawyer shall inform the Tribunal of all material facts that are known to the lawyer and that will enable the Tribunal to make an informed decision, whether or not the facts are adverse.

(D) Fairness to Opposing Party and Counsel. A lawyer shall not:

(1) unlawfully obstruct another party's access to evidence, unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value, or counselor assist another person to do any such act;

(2) falsify evidence, counselor assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) knowingly disobey an obligation under the rules of Tribunal except for an open refusal based on an assertion that no valid obligation exists;

(4) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party;

(5) during trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(6) request a person other than a client to refrain from voluntarily giving relevant information to another party, unless:

(a) the person is a relative or an employee or other agent of a client; and

(b) the lawyer reasonably believes that the person's interest will not be adversely affected by refraining from giving such information.

(E) Impartiality and Decorum of the Tribunal. A lawyer shall not:

(1) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law; or

(2) communicate ex parte with such a person concerning a pending matter, except as permitted by law.

(3) engage in undignified or discourteous conduct toward the Tribunal.

(F) Trial Publicity. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have substantial likelihood of materially prejudicing an adjudicative proceeding.

(G) Lawyer as Witness.

(1) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(a) the testimony relates to an uncontested issue;

(b) the testimony related to the nature and value of legal services rendered in the case; or

(2) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by subrules 2.004(G) and (I).

Rule 2.007 Special Responsibilities of a Prosecutor. The prosecutor in a criminal case shall:

(A) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(B) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(C) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to preliminary hearing;

(D) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense, and in connection with sentencing, disclose to the defense and to the Tribunal all underprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the Tribunal; and

(E) exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under subrule 2.007(F) and (I)(1).

(F) The responsibility of a Tribal prosecutor differs from that of the usual advocate, as it is his/her duty to seek justice, not merely to convict. The special duty exists because:

(1) the prosecutor represents the sovereignty of the Tribe and therefore should use restraint in the discretionary exercises of governmental powers, such as in the selection of cases to prosecute;

(2) during trial, the prosecutor is not only an advocate but he/she may also make decisions normally, and by an individual client and those affecting the public interest should be fair to all; and

(3) in the tribunal system of criminal justice, a person charged is to be given the benefit of all reasonable doubts.

(G) Consequently, with respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice.

Rule 2.008 Other Provisions Regarding a Prosecutor. As a result of the special responsibilities of a prosecutor, the following provisions also apply to prosecutors:

(A) Tribal Publicity. A Tribal prosecutor participating in or associated with the investigation of a criminal matter may not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration;

(1) information contained in a public record;

(2) that the investigation is in progress;

(3) the general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim;

(4) a request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance; or

(B) Moral Character and Public Behavior.

(1) Tribal prosecutors shall strive to attain and maintain moral character which is consistent with their Tribal community responsibility.

(2) Tribal prosecutors will have the responsibility in their daily conduct for acting so as to be free as possible from actions which wrongfully harm others or which are motivated by reasons not in the community interest. This is not meant to encourage Tribal prosecutors to be judgmental of the conduct of other members of the community. Rather, it is intended to remind them that their responsibility is for their behavior, for it is by their behavior in court and in the community, that Tribal law enforcement will be judged by the community.

(3) Tribal prosecutors shall conduct themselves in public consistent with the belief that the Court is part of the community. They will respond to all inquires concerning the Court in a friendly manner to ensure the development of knowledge in the community about the Court.

(C) Restrictions.

(1) No Tribal prosecutor may receive any fee or reward from or on behalf of any victim or other individual for services in any prosecution or business which it is the Tribal prosecutor's official duty to attend.

(2) No Tribal prosecutor while in office is eligible for or may hold any judicial office.

(3) No person who acted as Tribal prosecutor at the time of the citation issuance, arrest, or bringing of charges against any person by the Tribe may thereafter appear for or defend that person against the charges

(D) Refraining from Criticism. Tribal prosecutors shall refrain from public and private criticism of other officers of the Court except as set out in these Rules as being their responsibility. Tribal prosecutors shall not engage in discussions whose sole purpose or main thrust shall be criticism of any officers of the Court, for example, judges, advocates, attorneys, or law enforcement officers, in public or in private, except that constructive criticism designed to improve the performance of the individual may be given in a kind manner. Said constructive criticism should only be delivered in a form conducive to the purpose of the constructive criticism.

Rule 2.009 Political Activities.

(A) Political Activity. The political activity of the Tribal prosecutors hall be consistent with the support of the community's jurisdictional rights. Tribal prosecutors will refrain from all political activities or actions which could be interpreted in the community as supporting any political position except that the community has the right and the responsibility to govern its own members and its own territory .All actions should be consistent with this belief and supportive of this community standard.

(B) Electoral Politics. This prohibition does not mean that Tribal prosecutors cannot, if they choose, engage in activities of electoral politics at the local, state, national, or Tribal level. This prohibition is specific as to the politics adversely affecting the jurisdictional rights of the Tribal community.

Rule 2.010 Avocational and Financial Activities.

(A) Avocational. A Tribal prosecutor may write, lecture, teach, and speak on any subject, and engage in the arts, sports, and other social and recreational activities of the Tribe, if those activities do not interfere with the performance of his/her duties. A Tribal prosecutor may participate on Tribal committees and in any Tribal educational, religious, charitable or similar organization.

(B) Financial.

(1) A Tribal prosecutor shall avoid financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the performance of his/her prosecutorial duties, exploit the prosecutor's position, or involve him/her in frequent transactions with lawyers and others likely to be involved in the opposing side in Tribal court cases. The Tribal prosecutor may, however, hold other employment or participate in the operation of a business.

(2) Neither the Tribal prosecutor nor any member of his/her family or household shall accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his/her impartiality in prosecutorial duties, or on the prosecutor's appearance of fairness.

Rule 2.011 Disqualification.

(A) Impartiality. A Tribal prosecutor shall disqualify him/herself from acting as prosecutor in any proceeding in which his/her impartiality might reasonably be questioned, including instances where:

(1) the Tribal prosecutor has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;

(2) the Tribal prosecutor served as a lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the Tribal prosecutor has been associated in a professional capacity served as a lawyer, advocate, or personal representative concerning the matter;

(3) the Tribal prosecutor knows that he/she individually or a member of his/her family or household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or

(4) the Tribal prosecutor, or a member of his/her family or household:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is acting as a lawyer or advocate in the proceeding; or

(c) is to the Tribal prosecutor's knowledge likely to be a material witness in the proceeding.

(B) Advocate in Nonadjudicative Proceedings. A lawyer representing a client before a legislative or administrative tribunal in nonajudicative proceedings shall disclose that the appearance is in a representative capacity and shall conform to the provisions of subrules 3.006(C)(1)-(3), (D)(1)-(3) and (E).

Rule 2.012 Transactions with Persons other than Clients.

(A) Truthfulness in Statements to Others. In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

(B) Communication with a Person Represented by a Lawyer. In representing a client, a lawyer shall not communicate about the subject of the recommendation with a party whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has consent of the other lawyer or is authorized by to do so.

(C) Dealing with an Unrepresented Person. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

(D) Respect for Rights of Third Person. In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 2.013 Law Firms and Associations. These provisions apply to law firms and associations and all law partners or lawyers employed by said firms or associations.

(A) Responsibilities of a Partner or Supervisory Lawyer.

(1) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to these Rules of Ethics.

(2) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure the other lawyer conforms to these Rules of Ethics.

(3) A lawyer shall be responsible for another lawyer's violation of these Rules of Ethics if:

(a) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(b) the lawyer is a partner in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(B) Responsibilities of a Subordinate Lawyer.

(1) A lawyer is bound by these Rules of Ethics notwithstanding that the lawyer acted at the direction of another person.

(2) A subordinate lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

(C) Responsibilities Regarding Non-lawyer Assistants. With respect to a non-lawyer employed by, retained by, or associated with a lawyer:

(1) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measured giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) a lawyer shall be responsible for conduct of such a person that would be a violation of these Rules if engaged in by a lawyer if:

(a) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(b) the lawyer is a partner in a law firm in which the person is employed or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(D) Professional Independence of a Lawyer.

(1) A lawyer or law firm shall not share legal fees with a non-lawyer , except that:

(a) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate, or to one or more specified persons;

(b) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may pay to the estate the agreed upon purchase price; and

(c) a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is bases in whole or in part on a profit-sharing arrangement.

(2) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

(3) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(4) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

(a) a non-lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(b) a non-lawyer is a corporate director or officer thereof; or

(c) a non-lawyer has the right to direct or control the professional judgment of a lawyer.

(E) Unauthorized Practice of Law. A lawyer shall not:

(1) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person which is not a member of the bar in the performances of activity that constitutes the unauthorized practice of law, except lay advocates or those acting in pro per .

(F) Restrictions on Right to Practice. A lawyer shall not participate in offering or making:

(1) a partnership or employment agreement that restrict the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(2) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

Rule 2.014 Public Service. The following provisions shall apply to lawyers with regard to public service.

(A) Pro Bono Public Service. A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or to charitable groups or organizations. A lawyer may also discharge this responsibility by service in activities for improving Tribal law, the Tribal judicial system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

(B) Accepting Appointments. A lawyer shall not seek to avoid appointments by the Court to represent a person except for good cause, such as:

(1) representing the client is likely to result in violation of these Rules of Ethics or other Tribal law;

(2) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(3) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

(C) Legal Services Organizations. A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to client of the lawyer. The lawyer shall not knowingly participate in a decision or action that could have a material adverse effect in the representation of a client of the organization whose interests are adverse to a client of the lawyer.

(D) Law Reform Activities Affecting Client Interest. A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or administration of the law notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Rule 2.015 Information About Legal Services.

(A) Communications Concerning a Lawyer's Services. A lawyer may, on the lawyer's own behalf, on behalf of a partner or associate, or on behalf of any other lawyer affiliated with the lawyer or the lawyer's firm, use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. A communication shall not:

(1) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading;

(2) be likely to create an unjustified expectation about results the lawyer can achieve by means that violate these Rules of Ethics or other Tribal law; or

(3) compare the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

(B) Advertising.

(1) Subject to the provision of these Rules, a lawyer may advertise.

(2) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(3) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or communication permitted by these Rules.

(C) Direct Contact with Prospective Clients.

(1) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, nor does the term "solicit" include "sending truthful and non-deceptive letters to potential clients known to face particular legal problems" as elucidated in *Shapero v Kentucky Bar Ass'n.*, 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988).

(2) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in- person or telephone contact even when not otherwise prohibited by subrule 2.015(C), if:

(a) the prospective client has made known to the lawyer desire not to be solicited by the lawyer; or

(b) the solicitation involves coercion, duress, or harassment.

(D) Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

Rule 2.016 Maintaining the Integrity of the Profession.

(A) Bar Admission and Disciplinary Matters. An applicant for admission to any state or Tribal bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(1) knowingly make a false statement of material fact; or

(2) fail to disclose a fact necessary to correct a misapprehension known to the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not requires disclosure of information protected by subrule 2.004(F).

(B) Judicial and Legal Officials.

(1) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, adjudicative officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(2) A lawyer who is a candidate for judicial office shall comply with the applicable provision of the Rule of Ethics for Tribunal Court Judges, Chapter 1.

(C) Reporting Professional Misconduct.

(1) A lawyer having knowledge that another lawyer has committed a significant violation of these Rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fairness as a lawyer shall inform the Judicial Commission.

(2) A lawyer having knowledge that a judge has committed a significant violation of the Rules of Ethics for Tribal Court Judges that raises a substantial question as to the judge's honesty, trustworthiness, or fairness for office shall inform the Judicial Commission.

(3) This Rule does not require disclosure of information otherwise protected by subrule 2.004(F).

(D) Misconduct. It is professional misconduct for a lawyer to:

(1) violate or attempt to violate these Rules, knowingly assist or induce another to do so, or do so through the acts of another;

(2) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fairness as a lawyer;

(3) engage in conduct that is prejudicial to the administration of justice;

(4) state or imply an ability to influence improperly a government agency or official; or knowingly assist a judge or judicial officer in conduct that is a violation of the Rules of Ethics for Tribal Court Judges or other Tribal law.

(E) Jurisdiction. A lawyer admitted to practice in the Tribal jurisdiction although engaged in practice elsewhere. A lawyer who is admitted to practice in another jurisdiction and who is practicing in this Tribal jurisdiction is subject to the disciplinary authority of this jurisdiction.

Subchapter 2.100 Enforcement Of Ethical Rules

Rule 2.101 Definitions. When used in this chapter, unless context otherwise indicates:

(A) "*Commission*" means the Judicial Commission.

(B) "*Complainant*" means the person who files the request for investigation.

(C) "*Investigation*" means fact-finding on alleged misconduct under the Judicial Commission Chairperson's direction.

(D) "*Judicial Commission*" means the Chief Justice and those persons appointed by the Chief Justice.

(E) "*Judicial Commission Chairperson*" means the person so appointed by the GTB Tribal Court.

(F) "*Respondent*" means an attorney, lay advocate, judge, or other Court personnel named in the request for investigation or complaint.

(G) "*Request for Investigation*" means the first step in bringing alleged misconduct to the Judicial Commission's attention.

(H) "*Tribal Council*" means the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council.

Rule 2.102 Enforcement Responsibility/Procedure/Relationship to Tribal Personnel Policies.

(A) Enforcement Responsibility. The Judicial Commission shall have the responsibility for enforcing the provision of this chapter, including the Rules of Judicial Conduct, the Rules of Court Personnel, and the Rules of Ethics for Lawyer and Lay Advocates as set forth in this chapter. Complaints shall not be received by or acted on by the Tribal Council except as appeals under Rule 1.207.

(B) Time Requirement for Rules. Within ninety (90) days of their appointment, the Judicial Commission must develop and publish written rules and policies as to how it will operate and function.

(C) Respondent. Where a respondent is an employee of the Tribe, any hearing procedures will apply rather than any hearing procedures set forth within Rule 1.400. Similarly, these Rules are supplemental to Tribal Personnel Policies or relevant Tribal Constitutional provisions shall control where there is any inconsistency between these Rules of Ethics and the Tribal Personnel Policies or relevant Tribal Constitutional Provisions.

Rule 2.103 Investigation.

(A) Receiving of a Complaint. Whenever the Judicial Commission shall receive from a complainant information in writing indicating a provision has been violated, the Commission shall conduct an investigation of the circumstances of the alleged violation. Such a request for investigation by a complainant of alleged misconduct, including the approximate time and place of it, to be signed and dated by the complainant, and be filed with the Judicial Commission.

(B) Conducting an Investigation. Upon the filing of a request for investigation, a member of the Judicial Commission shall be appointed by said Commission to conduct and oversee the investigation and such person shall be known as the Judicial Commission Chairperson.
(C) Notification. During the course of the investigation, the Judicial Commission Chairperson may notify the respondent of subject investigated.
(D) Misconduct by Respondent. The Judicial Chairperson may compile the respondent to answer questions, furnish documents and present any information deemed relevant to the investigation. Failure to do so on the part of the respondent is misconduct and grounds for discipline.

Rule 2.104 Review and Action Committee.
(A) Reporting Results. The Judicial Commission Chairperson shall report the results of each investigation to the Judicial Commission and make a recommendation for disposition of the matter.
(B) Review. The Judicial Commission shall review the recommendation and determine whether to dismiss the matter or initiate a disciplinary action.
(C) Dismissal of Complaint. If a complaint is dismissed, the complainant shall be notified.

Rule 2.105 Disciplinary Action; Procedure.
(A) If the Judicial Commission determines to proceed with a disciplinary action, said Commission shall prepare a written notice of the allegation and serve the notice upon respondent.
(B) The respondent shall be given fifteen (15) days within which to answer the charges in writing and request a hearing.
(C) The hearing shall be held by the Commission within twenty (20) days of receipt of respondent's request.
(D) The hearing shall be conducted by the Judicial Commission under rules applicable to a trial of a civil action in Tribal Court. The hearing shall be recorded and shall be open to the public.
(E) The Commission shall, at the conclusion of the hearing, determine based on the evidence presented whether a provision has been violated by respondent.

Rule 2.106 Disciplinary Action; Disposition. If the Judicial Commission find that a provision has been violated, it shall make one of the following dispositions, taking into account the severity of the offense and other factors the Judicial Commission deems relevant:
(A) issue a reprimand;
(B) suspend the respondent from his/her office or duties for a period of time;
(C) revoke respondent's license to practice or terminate respondent from his/her office;
(D) place respondent on probation for a specific period of time;
(E) require respondent to make restitution in an appropriate amount (where applicable); or
(F) admonish respondent, only by consent of said respondent further, the Commission shall have the discretion to impose other disposition not referenced above where the respondent is incompetent or incapacitated.

Rule 2.107 Appeal. [Deleted effective 3/20/2009.]

Rule 2.108 Confidentiality.
(A) Investigation. All papers, files, and communications in an investigation and proceedings before the Judicial Commission prior to the decision to proceed with a disciplinary action are confidential.
(B) After Service of a Notice. After service of a written notice on respondent under Rule 2.405(A), the proceedings and all papers filed are public.

CHAPTER 3

CODE OF CONDUCT FOR TRIBAL COURT EMPLOYEES

Rule 3.001 Introduction. Employees of the Tribal Court hold highly visible positions of public trust. Tribal Court employees must conduct their business in an environment and in a manner that favorably reflects the ideals consistent with the fundamental values of the Tribal judicial system. These values include: fairness, accessibility, accountability, effectiveness, responsiveness and independence. Their actions at all times should uphold and increase the public trust and confidence in the judicial branch of the Tribal government, reflect the highest degree of integrity, and demonstrate commitment to each principle embodied in this code.

Rule 3.002 Definitions.
(A) "Confidential information" includes, but is not limited to, information on pending cases that is not already a matter of public record and information concerning decision-making processes of particular judges.
(B) "Code of Conduct" means this Code of Conduct for Tribal Court Employees.
(C) "Conflict of interest" includes, but is not limited to situations where the court employee's objective ability and/or independent judgment in the performance of their official duties may be impaired; or when the court employee (including family) may receive a direct or indirect benefit resulting from any official action.
(D) "Court employee" includes all employees of the court (*i.e.,* full-time staff, part-time staff, volunteers, independent contractors, etc.) who represent the court and are therefore covered by this Code of Conduct. "Court employee" does not include judges whose conduct is regulated by Chapter I of these Court Rules.
(E) "Legal Advice" is advising someone to follow a specific or general course of action or to interpret law as it relates to a specific case or set of facts. For example, court personnel may provide: legal and procedural definitions; cites of statutes, court rules; public case information; general information on court operations; access to the court; general referrals; forms and instructions on how to complete forms. However, examples of what court personnel cannot provide or do include: legal interpretations; procedural advice; research of statutes, court rules and ordinances; confidential case information; confidential or restricted information on court operations; opinions; denying access to the court; discouraging or encouraging court filings; subjective or biased referrals; fill out forms for a party.
(F) "Procedural information" refers to identifying court rules, statutes, procedures or options in general.

Rule 3.003 Applicability. This Code of Conduct applies to all court employees, including, but not limited to, the positions of court clerk, court magistrate, court administrator, probation officer, peacemaking coordinator, drug court coordinator, program director, administrative assistant, or any other employee of the court, whether such employment is full-time, part-time, or on a pro tempore or contract basis.

Rule 3.004 Integrity and Independence of Court Employees. Court personnel should uphold the integrity and independence of the Tribal Judiciary and the court in that an independent and honorable judiciary is indispensible to the administration of justice in the Tribal community. Therefore, court employees should observe and impart to other Court employees high standards of conduct so that the integrity and independence of the Tribal Judiciary may be preserved. The provisions in this Code of Conduct should be construed and applied to further these objectives. The standards of this Code of Conduct shall not affect nor preclude other standards which may be promulgated by the Court.

Rule 3.005 Integration with Grand Traverse Band Government Personnel Policy.
(A) To the extent possible and where not otherwise in conflict with this Code of Conduct, the Tribal Judiciary adopts by reference the provisions of the Grand Traverse Band Government Personnel Policy

(hereinafter "GTB Personnel Policy"), including any amendments made from time to time subsequent to the adoption of this Code of Conduct. This Code of Conduct is intended to spell out and give notice to all court employees of the higher standards of conduct expected of them beyond the standard provisions of the GTB Personnel Policy. Each court employee shall be required to sign a written acknowledgement of their obligation to follow this Code of Conduct as a court employee, in addition to the GTB Personnel Policy.
(B) If there is any conflict between the provisions of this Code of Conduct and the GTB Personnel Policy, the rules stated in this Code of Conduct shall govern.
(C) Violation of this Code of Conduct by a court employee shall be considered actionable misconduct and/or unethical conduct under the GTB Personnel Policy. Except as otherwise provided in this Code of Conduct, any disciplinary action taken against a court employee shall be taken pursuant to the procedures outlined under the GTB Personnel Policy. Any court employees discharged from employment pursuant to this Code of Conduct will have the right to dispute their discharge from employment pursuant to the provisions of the GTB Personnel Policy.

Rule 3.006 Enforcement of Code of Conduct. Violation of this Code of Conduct by a court employee shall be considered misconduct and grounds for discipline, up to and including immediate involuntary termination of employment. The involuntary termination of a court employee shall be the result of a recommendation from the Court Administrator as reviewed and approved by the Chief Judge, except where the violation is alleged to have occurred by the Court Administrator, in which case the Chief Judge shall take sole action. A written determination of cause for discharge must be presented to the Chief Judge who shall approve of the termination of a court employee only when credible evidence of cause exists under this Code of Conduct and/or the GTB Personnel Policy.

Rule 3.100 Abuse of Position.
(A) Court employees will not use or attempt to use their position to secure unwarranted privileges for themselves or others.
(B) Court employees will not solicit or accept, or appear to solicit or accept, any gift, favor, or anything of value based upon any material understanding that the official actions, decisions, or judgments of any court employee would be influenced.
(C) Court employees will not discriminate against or otherwise give special treatment or anything of value to any person, whether or not for compensation, or permit family, social, or other relationships to influence or appear to influence my official conduct or judgment.
(D) Court employees will not request or accept anything of value beyond their compensation, as provided by the Tribal Court, for court related work.
(E) Court employees will use the resources, property, and funds under their official control judiciously and solely in accordance with prescribed legal and court operating procedures.
(F) Court employees will provide all court patrons with appropriate procedural information and will not give legal advice, unless the court employee is a licensed attorney at law and has specific authorization of the Chief Judge and their immediate supervisor to do so.

Comments on Rule 3.100:

Rule 3.100 of the Code of Conduct addresses the use of the real or apparent power of a position as a court employee to "benefit" the employee or someone else personally. There are many degrees of "abuse" ranging from the seemingly inconsequential to situations in which the average person would immediately conclude a court employee is obviously abusing their position. The Code does not attempt to define exactly what "abuse" is or try to quantify the amount an employee must benefit before a situation becomes abusive. The Code expresses ideals against which employees should measure their conduct.

Rule 3.100(A) addresses the concept of the use of a court position to secure "privileges" or "exemptions." Generally these would be special considerations given by others to the employee specifically because of the position as a court employee. Court employees should treat everyone with the same courtesy, tact and efficiency and expect to be treated that way. The enjoyment of special privileges or exemptions by an employee gives the impression that they are more special than ordinary people and reflects poorly on the notion that the judicial system and its employees are impartial. The acceptance of "partiality" by a court employee gives rise to the belief that the employee is partial.

Rule 3.100(B) addresses the soliciting or acceptance of any gift, favor or thing of value based on an understanding that official actions will be influenced. The solicitation or acceptance of a gift with the understanding that something will be done in return contravenes the core of the ideals expressed in this section. Public service should be delivered impartially, with equal service to all users. The administration of justice is subverted if employees appear to deliver service in a quid pro quo arrangement or to appear to do so. All users of the justice system must be treated equally. Gifts of any sort raise a question as to the independence of the employee. An understanding may be tacit on the part of the donor that the employee will look favorably upon the donor in the future. It will certainly seem so to observers. Seemingly small and innocent gifts may soon lead to larger ones, more and more threatening the integrity of the employee.

Rule 3.100(C) states the corollary that the official actions of an employee should not be affected or appear to be affected by kinship, rank, position or influence of any party or person. Many times relationships place temptation upon the employee to provide special service or non-service. Again, differential treatment in any of these situations undermines the integrity of the employee and the judicial system. In situations where an employee may appear to be favoring a relative or influential person, an employee could advise and seek counsel from their supervisor. An employee could also make sure another employee participates in the transaction so that the appearance of special unilateral action is eliminated.

Rule 3.100(D) emphasizes that the compensation of court employees is to be provided by the Tribal Court through their salary and benefits. An employee should not request or accept any additional compensation for doing their duty as a court employee. Acceptance of any additional compensation for doing their duty gives rise to the impression that the court employee will be responsive to the needs of the donor.

Rule 3.100(E) addresses the ideal that a court employee is a steward of the public resources that are placed at their disposal. Funds should be expended carefully, only for the purposes intended by the Tribal Court. Pitfalls could include such temptations as personal telephone calls at court expense, personal use of government property, such as pens, pencils, paper, printers, computers, vehicles, etc, or the use of funding unit property to assist non-employees in some way as a favor.

Rule 3.100(F) addresses the temptation to answer the many questions asked by users of the court which call for legal advice. There may be some attorney employees who are licensed to practice law and are authorized by the Chief Judge to tread into the area of legal advice. The Code acknowledges this. Other employees must not do so. On the other hand, avoidance of legal advice does not mean that employees should be afraid to provide excellent customer service. Legal advice does not refer to accurate information about the court or court procedures. Pitfalls arise when individuals describe a factual situation and ask for information on what they should or should not do.

Rule 3.200 Conflict of Interest.

(A) Court employees will avoid conflicts of interest and the appearance of conflicts of interest in the performance of their duties.

(B) Court employees will not engage in outside employment which may conflict or appear to conflict with the performance of their official responsibilities.

Comments on Rule 3.200:

Rule 3.200(A) infers that a conflict of interest exists when the court employee's ability to perform his or her duty is impaired or when the court employee, his or her family, or business would derive some benefit as a result of his or her position within the court system. Employees are obligated to perform their duties in a fair, impartial and objective manner. It is, therefore, required that employees avoid situations that would impair their ability to fulfill that obligation.

Examples of conflicts of interest are:

1. Employee entering contract directly or indirectly for services, supplies, equipment or realty with the court system.
2. Employees providing information to a company that would provide an advantage to that company over other companies.

Rule 3.200(B) indicates that the court employee's position with the court system must be his or her primary employment. Outside employment must be fulfilled outside of the normal working hours of the court and it must not be in conflict or interfere with the performance of the employee's duties and responsibilities at the court. No form of outside employment shall be performed utilizing the resources of the court and shall not require or induce the employee to disclose information acquired in the course of his or her official duties. Outside employment should not reflect adversely on the integrity of the court. One

example of employment which appears to be a conflict of interest and adversely reflect on the integrity of the court would be probation staff working for treatment agencies.

Rule 3.300 Confidentiality.

(A) Court employees will not disclose to any unauthorized person any confidential information acquired in the course of their court employment.

Comments on Rule 3.300:

Sensitive information acquired by court employees in the course of performing their official duties should never be revealed until it is made a matter of public record. Even when the information becomes public, court employees should exercise a great deal of discretion. Sometimes breaches of confidentiality do not involve intentional disclosures of official court records. Some are the result of innocent and casual remarks about pending or closed cases, about participants in litigation or about juries which could give attorneys, litigants and reporters confidential information. Such remarks can seriously compromise a case or a person's standing in the community. Court staff should discuss cases only for legitimate reasons, and should handle sensational or sensitive cases with great care and discretion. Examples of confidentiality issues are not limited to cases. Personnel, probation and LEIN issues all have confidential limitations. Court employees should guard against being overheard when discussing legitimate confidential information.

Rule 3.400 Political Activity

(A) Court employees are free to engage in political activities during non-working hours if such activity does not use, or appear to use, their position or the court in connection with such activities.
(B) Court employees will not discriminate in favor of or against any employee or applicant for employment because of his or her political contributions or political activities.

Comments on Rule 3.400:

Rule 3.400(A) discusses a court employee's participation in the democratic process, which indicates working for a political cause, party or candidate should not be hampered by his/her employment if done outside of working hours. This participation includes, but is not limited to, holding party membership, holding public office[1], making speeches, and making contributions of time and/or money to candidates, political parties or other groups engaged in political activity.

This participation in political activity should not transcend into the workplace by the displaying of political material (i.e., literature, badges, signs or other material advertising a political cause, party or candidate), soliciting signatures for political candidacy, and soliciting or receiving funds for political purposes. In addition no government equipment or resources of any kind are to be used for promoting political activity in the workplace before, during, or after work hours.

Rule 3.400(B) states that interaction between court employees during work hours should focus on professional duties and should exhibit mutual courtesy and respect to co-workers. Additionally, the evaluation of prospective employees should be based on their employable qualities such as job skills, knowledge, and attitude. Therefore, no employee will discriminate in favor of or against any employee or applicant for employment based on their political activities.

Rule 3.500 Performance of Duties.

(A) Court employees will carry out their responsibilities to the public in a timely, impartial, diligent, and courteous manner.
(B) Court employees will not discriminate on the basis of, nor display by words or conduct, a bias or prejudice based upon race, color, religion, national origin, gender, or other protected group, in the conduct of service to the court and the public.
(C) Court employees will enforce or otherwise carry out any properly issued rule or order of court.
(D) Court employees will promote ethical conduct and report any improper conduct and violations of this Code of Conduct by any persons to appropriate authorities.

[1] Holding public office is acceptable unless a conflict of interest exists with employment at the court. An example of a conflict would be serving on the Tribal Council whose oversight of budget and other policy issues impact the court.

(E) Court employees will actively pursue continuing education opportunities for the purpose of improving their professional skills and thereby providing higher quality service to the court and the public.
(F) Court employees will avoid any activity which would reflect adversely on my position or the court.

Comments on Rule 3.500:

Rule 3.500(A) deals with the idea that the court is a service to the public, and that actions by a court employee should reflect a high level of professionalism. Court employees need to be able to provide complete and understandable answers to the public's questions in an efficient manner. Simultaneously, they must recognize that colleagues are also customers, and they should be given the same level of consideration as public clients.

Rule 3.500(B) pertains to denigration of any individual(s) by a court employee. Essential to the administration of justice is allowing equal access and treatment for all. Every day court employees are called upon to assist people, and it is their responsibility to provide these customers with the utmost service, regardless of the individual's race, religion, gender, national origin, etc. Discrimination can come in varying forms (speech, conduct, etc.), yet court employees should be aware that no form of discrimination is acceptable and when discovered should be exposed and discouraged.

Rule 3.500(C) addresses the idea that for the court to be an effective institution, court employees must follow the rules/orders designed by the court. By enforcing the orders given by the court, employees encourage a shared level of understanding and efficiency. Disregarding rules/orders provided by the court allows for confusion and a decline in overall productivity that compromises the concept of professionalism.

Rule 3.500(D) states that court employees should faithfully pursue the guidelines explained in the Code of Conduct and that when necessary, report problems or violations to an appropriate authority within the court system.

Rule 3.500(E) acknowledges the idea that when working within the court, laws and rules of operation are continually changing due to legislation, higher court decisions, technology, etc. Therefore, court employees are encouraged to take advantage of educational opportunities that will advance their understanding and allow for better service.

Rule 3.500(F) addresses the idea that court employees are highly visible and that their actions reflect upon not only themselves, but the court as well. Improper behavior or the appearance thereof may compromise an employee's professional integrity. Before partaking in a particular action, court employees should consider its propriety. Court employees should conduct themselves in a manner that instills public trust and confidence.

Rule 3.600 Prior Rules of Ethics for Court Personnel Vacated. The Rules of Ethics for Court Personnel previously provided for in Chapter III of the Grand Traverse Band Court Rules, adopted on September 26, 1996, are hereby vacated in their entirety and replaced by this Code of Conduct for Tribal Court Employees.

CHAPTER 4
RULES OF CIVIL PROCEDURE

Subchapter 4.000 General Provisions

Rule 4.001 Applicability. The rules in this chapter govern procedure in all civil proceedings in all courts established by the Constitution and laws of the Grand Traverse Band of Ottawa and Chippewa Indians, except where a rule applicable to a specific type of proceeding provides a different procedure.

Rule 4.002 Title; Citation. These rules are the "Grand Traverse Band Tribal Court Rules." An individual rule may be referred to as "Grand Traverse Band Tribal Court Rule _____," and cited by the symbol "GTBCR _____,"

Rule 4.003 Effective Date. These rules take effect upon adoption. They govern all proceedings in actions brought on or after that date, and all further proceedings in actions then pending. A court may permit a pending action to proceed under the former rules if it finds that the application of these rules to that action would not be feasible or would work injustice.

Rule 4.004 Statutory Practice Provisions. Rules of practice set forth in any statute, if not in conflict with any of these rules, are effective until superseded by rules appropriately adopted by the Tribal Appellate Court.

Rule 4.005 Construction. These rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties.

Rule 4.006 Headings. The headings of a rule are not part of the rule and may not be used to construe the rule more broadly or more narrowly than the text indicates.

Rule 4.007 Number. Words used in the singular also apply to the plural, where appropriate.

Rule 4.008 Computation of Time. In computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules apply:
(A) In computing the period of time prescribed by these Rules or by any order of the Tribal Court, the day of the act or event from which the period begins to run is not included. The last day of the period is included, unless it falls on a Saturday, Sunday, or Tribal holiday. In that event, the last day of the period falls on the next regular business day.
(B) If a period is measured by a number of weeks, the last day of the period is the same day of the week as the day on which the period began.
(C) If a period is measured by months or years, the last day of the period is the same day of the month as the day on which the period began. If what would otherwise be the final month does not include that day, the last day of the period is the last day of that month. For example, "2 months" after January 31 is March 31, and "3 months" after January 31 is April 30.

Rule 4.009 Paper and Type-Size Standard.
(A) All pleadings and other papers prepared for filing in the courts of this state must be on good quality paper 8½ by 11 inch paper, and the print must be no smaller than 12-point type. This requirement does not apply to
(1) Forms approved by the Tribal Court, and
(2) Attachments and exhibits, but parties are encouraged to reduce or enlarge such papers to 8½ by 11 inches, if practical.
(B) Court clerks may not accept nonconforming papers except on written direction of a judge.

Rule 4.010 Collection of Fines and Costs. Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown.

Rule 4.011 Amendment Procedure.

(A) Notice of Proposed Amendment. Before amending the Grand Traverse Band Tribal Court Rules or other sets of rules within its jurisdiction, the Tribal Court will notify the Grand Traverse Band Legal Department and the Tribal Council of the proposed amendment, and the manner and date for submitting comments. The notice will be published once in the Tribal Newsletter and will also be posted at the Tribal Courthouse.

(B) Exceptions. The Court may modify or dispense with the notice requirements of this rule if it determines that there is a need for immediate action or if the proposed amendment would not significantly affect the delivery of justice.

Rule 4.012 Waiver or Suspension of Fees and Costs for Indigent Persons.

(A) Applicability.

(1) Only a natural person is eligible for the waiver or suspension of fees and costs under this rule.

(2) Except as provided in subrule (F), for the purpose of this rule "fees and costs" applies only to filing fees required by law.

(B) Execution of Affidavits. An sworn statement required by this rule may be signed either

(1) by the party in whose behalf the affidavit is made; or

(2) by a person having personal knowledge of the facts required to be shown, if the person in whose behalf the affidavit is made is unable to sign it because of minority or other disability. The affidavit must recite the minority or other disability.

(C) Persons Receiving Public Assistance. If a party shows by ex parte affidavit or otherwise that he or she is receiving any form of public assistance, the payment of fees and costs as to that party shall be suspended or waived.

(D) Other Indigent Persons. If a party shows by ex parte affidavit or otherwise that he or she is unable because of indigence to pay fees and costs, the court shall order those fees and costs either waived or suspended until the conclusion of the litigation.

(E) Domestic Relations Cases; Payment of Fees and Costs by Spouse.

(1) In an action for divorce, separate maintenance, or annulment or affirmation of marriage, the court shall order suspension of payment of fees and costs required to be paid by a party and order that they be paid by the spouse, if that party

(a) is qualified for a waiver or suspension of fees and costs under subrule (C) or (D), and

(b) is entitled to an order requiring the spouse to pay attorney fees.

(2) If the spouse is entitled to have the fees and costs waived or suspended under subrule (C) or (D), the fees and costs are waived or suspended for the spouse.

(F) Payment of Service Fees and Costs of Publication for Indigent Persons. If payment of fees and costs has been waived or suspended for a party and service of process must be made by an official process server or by publication, the court shall order the service fees or costs of publication paid by the county or funding unit in which the action is pending, if the party submits an ex parte affidavit stating facts showing the necessity for that type of service of process.

(G) Reinstatement of Requirement for Payment of Fees and Costs. If the payment of fees or costs has been waived or suspended under this rule, the court may on its own initiative order the person for whom the fees or costs were waived or suspended to pay those fees or costs when the reason for the waiver or suspension no longer exists.

Rule 4.013 Disqualification of Judge.

(A) Who May Raise. A party may raise the issue of a judge's disqualification by motion, or the judge may raise it.

(B) Grounds. A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which:

(1) The judge is personally biased or prejudiced for or against a party or attorney.

(2) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(3) The judge has been consulted or employed as an attorney in the matter in controversy.

(4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

(5) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding.

(6) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(d) is to the judge's knowledge likely to be a material witness in the proceeding.

A judge is not disqualified merely because the judge's former law clerk is an attorney of record for a party in an action that is before the judge or is associated with a law firm representing a party in an action that is before the judge.

(C) Procedure.

(1) Time for Filing. To avoid delaying trial and inconveniencing the witnesses, a motion to disqualify must be filed within 14 days after the moving party discovers the ground for disqualification. If the discovery is made within 14 days of the trial date, the motion must be made forthwith. If a motion is not timely filed, untimeliness, including delay in waiving jury trial, is a factor in deciding whether the motion should be granted.

(2) All Grounds to be Included; Affidavit. In any motion under this rule, the moving party must include all grounds for disqualification that are known at the time the motion is filed. An affidavit must accompany the motion.

(3) Ruling. The challenged judge shall decide the motion. If the challenged judge denies the motion, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo; or if the challenged judge is the chief judge, on the request of a party, the challenged judge shall refer the motion to the associate judge, who shall decide the motion de novo.

(4) Motion Granted. When a judge is disqualified, the action must be assigned to another judge of the same court, or, if one is not available, the court administrator shall assign another judge.

(D) Remittal of Disqualification. If it appears that there may be grounds for disqualification, the judge may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement shall be in writing or placed on the record.

Rule 4.014 Incarcerated Parties.

(A) This subrule applies to

(1) domestic relations actions involving minor children, and

(2) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights, in which a party is incarcerated in a county jail or state or federal prison.

(B) The party seeking an order regarding a minor child shall

(1) contact the department to confirm the incarceration and the incarcerated party's prison number and location;

(2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and

(3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule.

(C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, the court shall issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.

(D) All court documents or correspondence mailed to the incarcerated party concerning any matter covered by this rule shall include the name and the prison number of the incarcerated party on the envelope.

(E) The purpose of the telephone call described in this subrule is to determine

(1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,

(2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,

(3) whether the incarcerated party is capable of self-representation, if that is the party's choice,

(4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and

(5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.

(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call.

(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

Rule 4.015 Photographing, Recording, and Broadcasting in Court.

(A) Introduction. The tribal judiciary is responsible for ensuring the fair and equal administration of justice. The tribal judiciary adjudicates controversies, both civil and criminal, in accordance with established legal procedures in the calmness and solemnity of the courtroom. Photographing, recording, and broadcasting of courtroom proceedings may be permitted as authorized in this rule if executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected. This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings.

(B) Definitions. As used in this rule:

(1) “Media coverage” means any photographing, recording, or broadcasting of court proceedings by the media using television, radio, photographic, or recording equipment.

(2) “Media” or “media agency” means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, in-house publication, professional journal, or other news-reporting or news-gathering agency.

(3) “Court” means the courtroom at issue, the courthouse, and its entrances and exits.

(4) “Judge” means the judge assigned to or presiding at the proceeding, except as provided in subsection (E)(1) if no judge has been assigned.

(5) "Photographing" means recording a likeness, regardless of the method used, including by digital or photographic methods. As used in this rule, photographing does not include drawings or sketchings of the court proceedings.

(6) "Recording" means the use of any analog or digital device to aurally or visually preserve court proceedings. As used in this rule, recording does not include handwritten notes on the court record, whether by court reporter or by digital or analog preservation.

(7) "Broadcasting" means a visual or aural transmission or signal, by any method, of the court proceedings, including any electronic transmission or transmission by sound waves.

(C) Photographing, recording, and broadcasting prohibited. Except as provided in this rule, court proceedings may not be photographed, recorded, or broadcast. This rule does not prohibit courts from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the courthouse or between court facilities if the broadcasts are controlled by the court and court personnel.

(D) Personal recording devices. The judge may permit inconspicuous personal recording devices to be used by persons in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device must obtain advance permission from the judge. The recordings must not be used for any purpose other than as personal notes.

(E) Media coverage. Media coverage may be permitted only on written order of the judge as provided in this subdivision. The judge in his or her discretion may permit, refuse, limit, or terminate media coverage. This rule does not otherwise limit or restrict the right of the media to cover and report court proceedings.

(1) Request for order. The media may request an order on a *Media Request to Photograph, Record, or Broadcast* form which shall be provided by the Court upon request. The form must be filed at least five court days before the portion of the proceeding to be covered unless good cause is shown. A completed, proposed order on *Order on Media Request to Permit Coverage* form must be filed with the request. The judge assigned to the proceeding must rule on the request. If no judge has been assigned, the request will be submitted to the Chief Judge, and thereafter be ruled on by the judge assigned to the proceeding. The clerk must promptly notify the parties that a request has been filed.

(2) Hearing on request. The judge may hold a hearing on the request or may rule on the request without a hearing.

(3) Factors to be considered by the judge. In ruling on the request, the judge is to consider the following factors:

(a) The importance of maintaining public trust and confidence in the judicial system;

(b) The importance of promoting public access to the judicial system;

(c) The parties' support of or opposition to the request;

(d) The nature of the case;

(e) The privacy rights of all participants in the proceeding, including witnesses, jurors, and victims;

(f) The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;

(g) The effect on the parties' ability to select a fair and unbiased jury;

(h) The effect on any ongoing law enforcement activity in the case;

(i) The effect on any unresolved identification issues;

(j) The effect on any subsequent proceedings in the case;

(k) The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;

(l) The effect on excluded witnesses who would have access to the televised testimony of prior witnesses;

(m) The scope of the coverage and whether partial coverage might unfairly influence or distract the jury;

(n) The difficulty of jury selection if a mistrial is declared;

(o) The security and dignity of the court;

(p) Undue administrative or financial burden to the court or participants;

(q) The interference with neighboring courtrooms;
(r) The maintenance of the orderly conduct of the proceeding; and
(s) Any other factor the judge deems relevant.

(4) Order permitting media coverage. The judge ruling on the request to permit media coverage is not required to make findings or a statement of decision. The order may incorporate any local rule or order of the presiding or supervising judge regulating media activity outside of the courtroom. The judge may condition the order permitting media coverage on the media agency's agreement to pay any increased court-incurred costs resulting from the permitted media coverage (for example, for additional court security or utility service). Each media agency is responsible for ensuring that all its media personnel who cover the court proceeding know and follow the provisions of the court order and this rule.

(5) Modified order. The order permitting media coverage may be modified or terminated on the judge's own motion or on application to the judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered under the application must be given to the parties and each media agency permitted by the previous order to cover the proceeding.

(6) Prohibited coverage. The judge may not permit media coverage of the following:
(a) Proceedings held in chambers;
(b) Proceedings closed to the public by law or by court rule;
(c) Jury selection;
(d) Jurors or spectators; or
(e) Conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench.

(7) Equipment and personnel . The judge may require media agencies to demonstrate that proposed personnel and equipment comply with this rule. The judge may specify the placement of media personnel and equipment to permit reasonable media coverage without disruption of the proceedings.

(8) Normal requirements for media coverage of proceedings. Unless the judge in his or her discretion orders otherwise, the following requirements apply to media coverage of court proceedings:
(a) One television camera and one still photographer will be permitted.
(b) The equipment used may not produce distracting sound or light. Signal lights or devices to show when equipment is operating may not be visible.
(c) An order permitting or requiring modification of existing sound or lighting systems is deemed to require that the modifications be installed, maintained, and removed without public expense or disruption of proceedings.
(d) Microphones and wiring must be unobtrusively located in places approved by the judge and must be operated by one person.
(e) Operators may not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction.
(f) Equipment or clothing must not bear the insignia or marking of a media agency.

(9) Media pooling. If two or more media agencies of the same type request media coverage of a proceeding, they must file a joint statement of agreed arrangements. If they are unable to agree, the judge may deny media coverage by that type of media agency.

(F) Sanctions. Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings of the court and may be the basis for an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions as provided by law.

Subchapter 4.100 Commencement Of Action; Service Of Process; Pleadings; Motions

Rule 4.101 Form and Commencement of Action.

(A) Form of Action. There is one form of action known as a "civil action."

(B) Commencement of Action. A civil action is commenced by filing a complaint with a court.

Rule 4.102 Summons; Expiration of Summons; Dismissal of Action for Failure to Serve.

(A) Issuance. On the filing of a complaint, the court clerk shall issue a summons to be served as provided in Rule 4.103 and 4.105. A separate summons may issue against a particular defendant or group of defendants. A duplicate summons may be issued from time to time and is as valid as the original summons.

(B) Form. A summons must be issued "In the name of the people of the Grand Traverse Band of Ottawa and Chippewa Indians," under the seal of the court that issued it. It must be directed to the defendant, and include

(1) the name and address of the court,

(2) the names of the parties,

(3) the file number,

(4) the name and address of the plaintiff's attorney or the address of a plaintiff appearing without an attorney,

(5) the defendant's address, if known,

(6) the name of the court clerk,

(7) the date on which the summons was issued,

(8) the last date on which the summons is valid,

(9) a statement that the summons is invalid unless served on or before the last date on which it is valid,

(10) the time within which the defendant is required to answer or take other action, and

(11) a notice that if the defendant fails to answer or take other action within the time allowed, judgment may be entered against the defendant for the relief demanded in the complaint.

(C) Amendment. At any time on terms that are just, a court may allow process or proof of service of process to be amended, unless it clearly appears that to do so would materially prejudice the substantive rights of the party against whom the process issued. An amendment relates back to the date of the original issuance or service of process unless the court determines that relation back would unfairly prejudice the party against whom the process issued.

(D) Expiration. A summons expires 91 days after the date the complaint is filed. However, within those 91 days, on a showing of due diligence by the plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the complaint is filed. If such an extension is granted, the new summons expires at the end of the extended period. The judge may impose just conditions on the issuance of the second summons. Duplicate summonses issued under subrule (A) do not extend the life of the original summons. The running of the 91-day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

(E) Dismissal as to Defendant Not Served.

(1) On the expiration of the summons as provided in subrule (D), the action is deemed dismissed without prejudice as to a defendant who has not been served with process as provided in these rules, unless the defendant has submitted to the court's jurisdiction. As to a defendant added as a party after the filing of the first complaint in the action, the time provided in this rule runs from the filing of the first pleading that names that defendant as a party.

(2) After the time stated in subrule (E)(1), the clerk shall examine the court records and enter an order dismissing the action as to a defendant who has not been served with process or submitted to the court's jurisdiction. The clerk's failure to enter a dismissal order does not continue an action deemed dismissed.

(3) The clerk shall give notice of the entry of a dismissal order under Rule 4.107 and record the date of the notice in the case file. The failure to give notice does not affect the dismissal.

(F) Setting Aside Dismissal. A court may set aside the dismissal of the action as to a defendant under subrule (E) only on stipulation of the parties or when all of the following conditions are met:

(1) within the time provided in subrule (D), service of process was in fact made on the dismissed defendant, or the defendant submitted to the court's jurisdiction;

(2) proof of service of process was filed or the failure to file is excused for good cause shown;

(3) the motion to set aside the dismissal was filed within 28 days after notice of the order of dismissal was given, or, if notice of dismissal was not given, the motion was promptly filed after the plaintiff learned of the dismissal.

(G) Exception; Eviction Proceedings. subrules (D), (E), and (F) do not apply to eviction proceedings governed by the Judicial Eviction Ordinance, being 13 GTBC §1001 et seq., and by subchapter 4.200 of these rules.

Rule 4.103 Process; Who May Serve.

(A) Service Generally. Process in civil actions may be served by any legally competent adult who is not a party or an officer of a corporate party.

(B) Service Requiring Seizure of Property. A writ of restitution or process requiring the seizure or attachment of property may only be served by

(1) a Grand Traverse Band Tribal Police officer, a sheriff or deputy sheriff, or a bailiff or court officer appointed by the court for that purpose,

(2) an officer of the Michigan Department of State Police in an action in which the State of Michigan is a party, or

(3) a police officer of an incorporated city or village in an action in which the city or village is a party.

A writ of garnishment may be served by any person authorized by subrule (A).

(C) Service in a Governmental Institution. If personal service of process is to be made on a person in a governmental institution, hospital, or home, service must be made by the person in charge of the institution or by someone designated by that person.

(D) Process Requiring Arrest. Process in civil proceedings requiring the arrest of a person may be served only by a sheriff, deputy sheriff, or police officer, or by a court officer appointed by the court for that purpose.

Rule 4.104 Process; Proof of Service.

(A) Requirements. Proof of service may be made by

(1) written acknowledgment of the receipt of a summons and a copy of the complaint, dated and signed by the person to whom the service is directed or by a person authorized under these rules to receive the service of process;

(2) a certificate stating the facts of service, including the manner, time, date, and place of service, if service is made within the State of Michigan by

(a) a Grand Traverse Band Tribal Police Officer,

(b) a sheriff, a deputy sheriff or bailiff, if that officer holds office in the county in which the court issuing the process is held,

(c) an appointed court officer,

(d) an attorney for a party; or

(3) an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.

The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location.

(B) Failure to File. Failure to file proof of service does not affect the validity of the service.

(C) Publication, Posting, and Mailing. If the manner of service used requires sending a copy of the summons and complaint by mail, the party requesting issuance of the summons is responsible for arranging the mailing and filing proof of service. Proof of publication, posting, and mailing under Rule 4.106 is governed by Rule 4.106(G).

Rule 4.105 Process; Manner of Service.

(A) Individuals. Process may be served on a resident or nonresident individual by

(1) delivering a summons and a copy of the complaint to the defendant personally; or

(2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant

acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

(B) Individuals; Substituted Service. Service of process may be made

(1) on a nonresident individual, by

(a) serving a summons and a copy of the complaint in the State of Michigan on an agent, employee, representative, sales representative, or servant of the defendant, and

(b) sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address;

(2) on a minor, by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom he or she resides;

(3) on a defendant for whom a guardian or conservator has been appointed and is acting, by serving a summons and a copy of the complaint on the guardian or conservator;

(4) on an individual doing business under an assumed name, by

(a) serving a summons and copy of the complaint on the person in charge of an office or business establishment of the individual, and

(b) sending a summons and a copy of the complaint by registered mail addressed to the individual at his or her usual residence or last known address.

(C) Partnerships; Limited Partnerships. Service of process on a partnership or limited partnership may be made by

(1) serving a summons and a copy of the complaint on any general partner; or

(2) serving a summons and a copy of the complaint on the person in charge of a partnership office or business establishment and sending a summons and a copy of the complaint by registered mail, addressed to a general partner at his or her usual residence or last known address.

(D) Private Corporations, Domestic and Foreign. Service of process on a domestic or foreign corporation may be made by

(1) serving a summons and a copy of the complaint on an officer or the resident agent;

(2) serving a summons and a copy of the complaint on a director, trustee, or person in charge of an office or business establishment of the corporation and sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation;

(3) serving a summons and a copy of the complaint on the last presiding officer, president, cashier, secretary, or treasurer of a corporation that has ceased to do business by failing to keep up its organization by the appointment of officers or otherwise, or whose term of existence has expired;

(4) sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the State of Michigan Corporation and Securities Bureau if

(a) the corporation has failed to appoint and maintain a resident agent or to file a certificate of that appointment as required by law;

(b) the corporation has failed to keep up its organization by the appointment of officers or otherwise; or

(c) the corporation's term of existence has expired.

(E) Partnership Associations; Unincorporated Voluntary Associations. Service of process on a partnership association or an unincorporated voluntary association may be made by

(1) serving a summons and a copy of the complaint on an officer, director, trustee, agent, or person in charge of an office or business establishment of the association, and

(2) sending a summons and a copy of the complaint by registered mail, addressed to an office of the association. If an office cannot be located, a summons and a copy of the complaint may be sent by registered mail to a member of the association other than the person on whom the summons and complaint was served.

(F) Service on Insurer. If service on an insurer is made by serving the State of Michigan Commissioner of Insurance, as permitted by Michigan statute, 2 summonses and a copy of the complaint must be delivered or mailed by registered mail to the office of the State of Michigan Commissioner of Insurance.

(G) Public Corporations. Service of process on a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, or public body may be made by serving a summons and a copy of the complaint on:

(1) the chairperson of the board of commissioners or the county clerk of a county;

(2) the mayor, the city clerk, or the city attorney of a city;

(3) the president, the clerk, or a trustee of a village;

(4) the supervisor or the township clerk of a township;

(5) the president, the secretary, or the treasurer of a school district;

(6) the president or the secretary of the Michigan State Board of Education;

(7) the president, the secretary, or other member of the governing body of a corporate body or an unincorporated board having control of a state institution;

(8) the president, the chairperson, the secretary, the manager, or the clerk of any other public body organized or existing under the constitution or laws of the Grand Traverse Band of Ottawa and Chippewa Indians or the State of Michigan, when no other method of service is specially provided by statute.

The service of process may be made on an officer having substantially the same duties as those named or described above, irrespective of title. In any case, service may be made by serving a summons and a copy of the complaint on a person in charge of the office of an officer on whom service may be made and sending a summons and a copy of the complaint by registered mail addressed to the officer at his or her office.

(H) Agent Authorized by Appointment or by Law.

(1) Service of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process.

(2) Whenever, pursuant to statute or court rule, service of process is to be made on a nongovernmental defendant by service on a public officer, service on the public officer may be made by registered mail addressed to his or her office.

(I) Discretion of the Court.

(1) On a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the defendant's address or last known address, or that no address of the defendant is known. If the name or present address of the defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.

(3) Service of process may not be made under this subrule before entry of the court's order permitting it.

(J) Jurisdiction; Range of Service; Effect of Improper Service.

(1) Provisions for service of process contained in these rules are intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances. These rules are not intended to limit or expand the jurisdiction given the Tribal courts over a defendant. The jurisdiction of a court over a defendant is governed by the United States Constitution and the constitution and laws of the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court.

(2) There is no territorial limitation on the range of process issued by the Tribal Court.

(3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

(K) Registered and Certified Mail.

(1) If a rule uses the term "registered mail," that term includes the term "certified mail," and the term "registered mail, return receipt requested" includes the term "certified mail, return receipt requested." However, if certified mail is used, the receipt of mailing must be postmarked by the post office.

(2) If a rule uses the term "certified mail," a postmarked receipt of mailing is not required. Registered mail may be used when a rule requires certified mail.

Rule 4.106 Notice by Posting or Publication.

(A) Availability. This rule governs service of process by publication or posting pursuant to an order under Rule 4.105(I).

(B) Procedure. A request for an order permitting service under this rule shall be made by motion in the manner provided in Rule 4.105(I). In ruling on the motion, the court shall determine whether mailing is required under subrules (D)(2) or (E)(2).

(C) Notice of Action; Contents.

(1) The order directing that notice be given to a defendant under this rule must include

(a) the name of the court,

(b) the names of the parties,

(c) a statement describing the nature of the proceedings,

(d) directions as to where and when to answer or take other action permitted by law or court rule, and

(e) a statement as to the effect of failure to answer or take other action.

(2) If the names of some or all defendants are unknown, the order must describe the relationship of the unknown defendants to the matter to be litigated in the best way possible, as, for example, unknown claimants, unknown owners, or unknown heirs, devisees, or assignees of a named person.

(D) Publication of Order; Mailing. If the court orders notice by publication, the defendant shall be notified of the action by

(1) publishing a copy of the order once each week for 3 consecutive weeks, or for such further time as the court may require, in a newspaper in the county where the defendant resides, if known, and if not, in the county where the action is pending; or if the defendant is a member of the Grand Traverse Band of Ottawa and Chippewa Indians, publishing a copy of the order once, or for such further time as the court may require, in the Grand Traverse Band Newsletter, and

(2) sending a copy of the order to the defendant at his or her last known address by registered mail, return receipt requested, before the date of the last publication. If the plaintiff does not know the present or last known address of the defendant, and cannot ascertain it after diligent inquiry, mailing a copy of the order is not required. The moving party is responsible for arranging for the mailing and proof of mailing.

(E) Posting; Mailing. If the court orders notice by posting, the defendant shall be notified of the action by

(1) posting a copy of the order in the courthouse and 2 or more other public places as the court may direct for 3 continuous weeks or for such further time as the court may require; and

(2) sending a copy of the order to the defendant at his or her last known address by registered mail, return receipt requested, before the last week of posting. If the plaintiff does not know the present or last known address of the defendant, and cannot ascertain it after diligent inquiry, mailing a copy of the order is not required. The moving party is responsible for arranging for the mailing and proof of mailing.

The order must designate who is to post the notice and file proof of posting. Only a person listed in Rule 4.103(B)(1), (2), or (3) may be designated.

(F) Newspaper Defined.

(1) The term "newspaper" as used in this rule is limited to a newspaper published in the English language for the dissemination of general news and information or for the dissemination of legal news. The newspaper must have a bona fide list of paying subscribers or have been published at least once a week in the same community without interruption for at least 2 years, and have been established, published, and circulated at least once a week without interruption for at least 1 year in the county where publication is to occur.

(2) If no newspaper qualifies in the county where publication is to be made under subrule (D)(1) the term "newspaper" includes a newspaper that by this rule is qualified to publish notice of actions commenced in an adjoining county.

(G) Proof of Service. Service of process made pursuant to this rule may be proven as follows:

(1) Publication must be proven by an affidavit of the publisher or the publisher's agent

(a) stating facts establishing the qualification of the newspaper in which the order was published,

(b) setting out a copy of the published order, and

(c) stating the dates on which it was published.

(2) Posting must be proven by an affidavit of the person designated in the order under subrule (E) attesting that a copy of the order was posted for the required time in the courthouse in a conspicuous place open to the public and in the other places as ordered by the court.

(3) Mailing must be proven by affidavit. The affiant must attach a copy of the order as mailed, and a return receipt.

Rule 4.107 Service and Filing of Pleadings and Other Papers.

(A) Service; When Required.

(1) Unless otherwise stated in this rule, every party who has filed a pleading, an appearance, or a motion must be served with a copy of every paper later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with papers that relate to that motion.

(2) Except as provided in Rule 4.603, after a default is entered against a party, further service of papers need not be made on that party unless he or she has filed an appearance or a written demand for service of papers. However, a pleading that states a new claim for relief against a party in default must be served in the manner provided by Rule 4.105.

(3) If an attorney appears on behalf of a person who has not received a copy of the complaint, a copy of the complaint must be delivered to the attorney on request.

(4) All papers filed on behalf of a defendant must be served on all other defendants not in default.

(B) Service on Attorney or Party.

(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a) The original service of the summons and complaint must be made on the party as provided by Rule 4.105;

(b) When a contempt proceeding for disobeying a court order is initiated, the notice or order must be delivered to the party, unless the court orders otherwise;

(c) After a final judgment has been entered and the time for an appeal of right has passed, papers must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;

(d) The court may order service on the party.

(2) If two or more attorneys represent the same party, service of papers on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a paper.

(3) If a party prosecutes or defends the action on his or her own behalf, service of papers must be made on the party in the manner provided by subrule (C).

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means

(a) handing it to the attorney personally;

(b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or

(c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.

(2) Delivery to Party. Delivery of a copy to a party within this rule means

(a) handing it to the party personally; or

(b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.

(3) Mailing. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

(D) Proof of Service. Except as otherwise provided by Rule 4.104, 4.105, or 4.106, proof of service of papers required or permitted to be served may be by written acknowledgment of service, affidavit of the person making the service, a statement regarding the service verified under Rule 4.114(A), or other proof satisfactory to the court. The proof of service may be included at the end of the paper as filed. Proof of service must be filed promptly and at least at or before a hearing to which the paper relates.

(E) Service Prescribed by Court. When service of papers after the original complaint cannot reasonably be made because there is no attorney of record, because the party cannot be found, or for any other reason, the court, for good cause on ex parte application, may direct in what manner and on whom service may be made.

(F) Numerous Parties. In an action in which there is an unusually large number of parties on the same side, the court on motion or on its own initiative may order that

(1) they need not serve their papers on each other;

(2) responses to their pleadings need only be served on the party to whose pleading the response is made;

(3) a cross-claim, counterclaim, or allegation in an answer demanding a reply is deemed denied by the parties not served; and

(4) the filing of a pleading and service on an adverse party constitutes notice of it to all parties.

A copy of the order must be served on all parties in the manner the court directs.

(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk.

Rule 4.108 Time.

(A) Time for Service and Filing of Pleadings.

(1) A defendant must serve and file an answer or take other action permitted by law or these rules within 21 days after being served with the summons and a copy of the complaint on the Grand Traverse Band of Ottawa and Chippewa Indians reservation or in the State of Michigan in the manner provided in Rule 4.105(A)(1).

(2) If service of the summons and a copy of the complaint is made outside the State of Michigan, or if the manner of service used requires the summons and a copy of the complaint to be sent by registered mail addressed to the defendant, the defendant must serve and file an answer or take other action permitted by law or these rules within 28 days after service.

(3) When service is made in accordance with Rule 4.106, the court shall allow a reasonable time for the defendant to answer or take other action permitted by law or these rules, but may not prescribe a time less than 28 days after publication or posting is completed.

(4) A party served with a pleading stating a cross-claim or counterclaim against that party must serve and file an answer or take other action permitted by law or these rules within 21 days after service.

(5) A party served with a pleading to which a reply is required or permitted may serve and file a reply within 21 days after service of the pleading to which it is directed.

(B) Time for Filing Motion in Response to Pleading. A motion raising a defense or an objection to a pleading must be served and filed within the time for filing the responsive pleading or, if no responsive pleading is required, within 21 days after service of the pleading to which the motion is directed.

(C) Effect of Particular Motions and Amendments. When a motion or an amended pleading is filed, the time for pleading set in subrule (A) is altered as follows, unless a different time is set by the court:

(1) If a motion under Rule 4.116 made before filing a responsive pleading is denied, the moving party must serve and file a responsive pleading within 21 days after notice of the denial. However, if the moving party, within 21 days, files an application for leave to appeal from the order, the time is extended until 21 days after the denial of the application unless the appellate court orders otherwise.

(2) An order granting a motion under Rule 4.116 must set the time for service and filing of the amended pleading, if one is allowed.

(3) The response to a supplemental pleading or to a pleading amended either as of right or by leave of court must be served and filed within the time remaining for response to the original pleading or within 21 days after service of the supplemental or amended pleading, whichever period is longer.

(4) If the court has granted a motion for more definite statement, the responsive pleading must be served and filed within 21 days after the more definite statement is served.

(D) Time for Service of Order to Show Cause. An order to show cause must set the time for service of the order and for the hearing, and may set the time for answer to the complaint or response to the motion on which the order is based.

(E) Extension of Time. A court may, with notice to the other parties who have appeared, extend the time for serving and filing a pleading or motion or the doing of another act, if the request is made before the expiration of the period originally prescribed. After the expiration of the original period, the court may, on motion, permit a party to act if the failure to act was the result of excusable neglect. However, if a rule governing a particular act limits the authority to extend the time, those limitations must be observed. Rule 4.603(D) applies if a default has been entered.

(F) Unaffected by Expiration of Term. The time provided for the doing of an act or the holding of a proceeding is not affected or limited by the continuation or expiration of a term of court. The continuation or expiration of a term of court does not affect the power of a court to do an act or conduct a proceeding in a civil action pending before it.

Rule 4.109 Security for Costs; Bonds.

(A) Motion. On motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court, or, if the claiming party appeals, by the trial and appellate courts. The court shall determine the amount in its discretion.

(B) Exceptions. subrule (A) does not apply in the following circumstances:

(1) The court may allow a party to proceed without furnishing security for costs if the party's pleading states a legitimate claim and the party shows by affidavit that he or she is financially unable to furnish a security bond.

(2) Security shall not be required of

(a) the United States or an agency or instrumentality of the United States;

(b) the Grand Traverse Band of Ottawa and Chippewa Indians or a governmental unit of the Tribe, including but not limited to a public, municipal, quasi-municipal or governmental corporation, unincorporated board, public body, or political subdivision; or

(c) the State of Michigan or a governmental unit of the state, including but not limited to a public, municipal, quasi-municipal or governmental corporation, unincorporated board, public body, or political subdivision; or

(d) an officer of a governmental unit or agency exempt from security who brings an action in his or her official capacity.

(C) Modification of Order. The court may order new or additional security at any time on just terms,

(1) if the party or the surety moves out of the State of Michigan, or

(2) if the original amount of the bond proves insufficient.

A person who becomes a new or additional surety is liable for all costs from the commencement of the action, as if he or she had been the original surety.

Rule 4.110 Pleadings.

(A) Definition of "Pleading." The term "pleading" includes only:

(1) a complaint,
(2) a cross-claim,
(3) a counterclaim,
(4) a third-party complaint,
(5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and
(6) a reply to an answer.

No other form of pleading is allowed.

(B) When Responsive Pleading Required. A party must file and serve a responsive pleading to

(1) a complaint,
(2) a counterclaim,
(3) a cross-claim,
(4) a third-party complaint, or
(5) an answer demanding a reply.

(C) Designation of Cross-Claim or Counterclaim. A cross-claim or a counterclaim may be combined with an answer. The counterclaim or cross-claim must be clearly designated as such.

(1) A responsive pleading is not required to a cross-claim or counterclaim that is not clearly designated as such in the answer.

(2) If a party has raised a cross-claim or counterclaim in the answer, but has not designated it as such, the court may treat the pleading as if it had been properly designated and require the party to amend the pleading, direct the opposing party to file a responsive pleading, or enter another appropriate order.

(3) The court may treat a cross-claim or counterclaim designated as a defense, or a defense designated as a cross-claim or counterclaim, as if the designation had been proper and issue an appropriate order.

Rule 4.111 General Rules of Pleading.

(A) Pleading to be Concise and Direct; Inconsistent Claims.

(1) Each allegation of a pleading must be clear, concise, and direct.
(2) Inconsistent claims or defenses are not objectionable. A party may

(a) allege two or more statements of fact in the alternative when in doubt about which of the statements is true;

(b) state as many separate claims or defenses as the party has, regardless of consistency and whether they are based on legal or equitable grounds or on both.

All statements made in a pleading are subject to the requirements of Rule 4.114.

(B) Statement of Claim. A complaint, counterclaim, cross-claim, or third-party complaint must contain the following:

(1) A statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend; and

(2) A demand for judgment for the relief that the pleader seeks. If the pleader seeks an award of money, a specific amount must be stated if the claim is for a sum certain or a sum that can by computation be made certain. Otherwise, a specific amount may not be stated, and the pleading must include allegations that show that the claim is within the jurisdiction of the court. Declaratory relief may be claimed in cases of actual controversy. See Rule 4.605. Relief in the alternative or relief of several different types may be demanded.

(C) Form of Responsive Pleading. As to each allegation on which the adverse party relies, a responsive pleading must

(1) state an explicit admission or denial;
(2) plead no contest; or
(3) state that the pleader lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial.

(D) Form of Denials. Each denial must state the substance of the matters on which the pleader will rely to support the denial.

(E) Effect of Failure to Deny.

(1) Allegations in a pleading that requires a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied in the responsive pleading.

(2) Allegations in a pleading that does not require a responsive pleading are taken as denied.

(3) A pleading of no contest, provided for in subrule (C)(2), permits the action to proceed without proof of the claim or part of the claim to which the pleading is directed. Pleading no contest has the effect of an admission only for purposes of the pending action.

(F) Defenses; Requirement That Defense Be Pleaded.

(1) Pleading Multiple Defenses. A pleader may assert as many defenses, legal or equitable or both, as the pleader has against an opposing party. A defense is not waived by being joined with other defenses.

(2) Defenses Must Be Pleaded; Exceptions. A party against whom a cause of action has been asserted by complaint, cross-claim, counterclaim, or third-party claim must assert in a responsive pleading the defenses the party has against the claim. A defense not asserted in the responsive pleading or by motion as provided by these rules is waived, except for the defenses of lack of jurisdiction over the subject matter of the action, and failure to state a claim on which relief can be granted. However,

(a) a party who has asserted a defense by motion filed pursuant to Rule 4.116 before filing a responsive pleading need not again assert that defense in a responsive pleading later filed;

(b) if a pleading states a claim for relief to which a responsive pleading is not required, a defense to that claim may be asserted at the trial unless a pretrial conference summary pursuant to Rule 4.401(C) has limited the issues to be tried.

(3) Affirmative Defenses. Affirmative defenses must be stated in a party's responsive pleading, either as originally filed or as amended in accordance with Rule 4.118. Under a separate and distinct heading, a party must state the facts constituting

(a) an affirmative defense, such as contributory negligence; the existence of an agreement to arbitrate; assumption of risk; payment; release; satisfaction; discharge; license; fraud; duress; estoppel; statute of frauds; statute of limitations; immunity granted by law; want or failure of consideration; or that an instrument or transaction is void, voidable, or cannot be recovered on by reason of statute or nondelivery;

(b) a defense that by reason of other affirmative matter seeks to avoid the legal effect of or defeat the claim of the opposing party, in whole or in part;

(c) a ground of defense that, if not raised in the pleading, would be likely to take the adverse party by surprise.

Rule 4.112 Pleading Special Matters.

(A) Capacity; Legal Existence.

(1) Except to the extent required to show jurisdiction of a court, it is not necessary to allege

(a) the capacity of a party to sue,

(b) the authority of a party to sue or be sued in a representative capacity, or

(c) the legal existence of an organized association of persons that is made a party.

(2) A party wishing to raise an issue about

(a) the legal existence of a party,

(b) the capacity of a party to sue or be sued, or

(c) the authority of a party to sue or be sued in a representative capacity,

must do so by specific allegation, including supporting facts peculiarly within the pleader's knowledge.

(B) Fraud, Mistake, or Condition of Mind.

(1) In allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity.

(2) Malice, intent, knowledge, and other conditions of mind may be alleged generally.

(C) Conditions Precedent.

(1) In pleading performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred.

(2) A denial of performance or occurrence must be made specifically and with particularity.

(D) Action on Policy of Insurance.

(1) In an action on a policy of insurance, it is sufficient to allege

(a) the execution, date, and amount of the policy,

(b) the premium paid or to be paid,

(c) the property or risk insured,

(d) the interest of the insured, and

(e) the loss.

(2) A defense of

(a) breach of condition, agreement, representation, or warranty of a policy of insurance or of an application for a policy; or

(b) failure to furnish proof of loss as required by the policy must be stated specifically and with particularity.

(E) Action on Written Instrument.

(1) In an action on a written instrument, the execution of the instrument and the handwriting of the defendant are admitted unless the defendant specifically denies the execution or the handwriting and supports the denial with an affidavit filed with the answer. The court may, for good cause, extend the time for filing the affidavits.

(2) This subrule also applies to an action against an indorser and to a party against whom a counterclaim or a cross-claim on a written instrument is filed.

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

(G) Judgment. A judgment or decision of a domestic or foreign court, a tribal court of a federally recognized Indian tribe, a judicial or quasi-judicial tribunal, or a board or officer, must be alleged with sufficient particularity to identify it; it is not necessary to state facts showing jurisdiction to render it.

(H) Statutes, Ordinances, or Charters. In pleading a statute, ordinance, or municipal charter, it is sufficient to identify it, without stating its substance.

(I) Special Damages. When items of special damage are claimed, they must be specifically stated.

(J) Law of Other Jurisdictions; Notice in Pleadings. A party who intends to rely on or raise an issue concerning the law of

(1) a state other than the State of Michigan,

(2) a United States territory,

(3) a foreign nation or unit thereof, or

(4) a federally recognized Indian tribe other than the Grand Traverse Band of Ottawa and Chippewa Indians,

must give notice of that intention either in his or her pleadings or in a written notice served by the close of discovery.

Rule 4.113 Form of Pleadings and Other Papers.

(A) Applicability. The rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules. However, an affidavit must be verified by oath or affirmation.

(B) Preparation. Every pleading must be legibly printed in the English language in type no smaller than 12 point.

(C) Captions.

(1) The first part of every pleading must contain a caption stating

(a) the name of the court;

(b) the names of the parties or the title of the action, subject to subrule (D);

(c) the case number, including a prefix of the year filed and a two-letter suffix for the case-type code from a list provided by the Court Administrator according to the principal subject matter of the proceeding;

(d) the identification of the pleading [see Rule 4.110(A)];

(e) the name, business address, telephone number, and state bar number of the pleading attorney;

(f) the name, address, and telephone number of a pleading party appearing without an attorney; and

(g) the name and state bar number of each other attorney who has appeared in the action.

(2) The caption of a complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff, or of a plaintiff appearing without an attorney:

(a) There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

(b) A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in [this court]/[_____ Court], where it was given docket number _____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.

(3) If an action has been assigned to a particular judge in a multi-judge court, the name of that judge must be included in the caption of a pleading later filed with the court.

(D) Names of Parties.

(1) In a complaint, the title of the action must include the names of all the parties, with the plaintiff's name placed first.

(2) In other pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties, such as "et al."

(E) Paragraphs; Separate Statements.

(1) All allegations must be made in numbered paragraphs, and the paragraphs of a responsive pleading must be numbered to correspond to the numbers of the paragraphs being answered.

(2) The content of each paragraph must be limited as far as practicable to a single set of circumstances.

(3) Each statement of a claim for relief founded on a single transaction or occurrence or on separate transactions or occurrences, and each defense other than a denial, must be stated in a separately numbered count or defense.

(F) Exhibits; Written Instruments.

(1) If a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading as an exhibit unless the instrument is

(a) a matter of public record in the county in which the action is commenced and its location in the record is stated in the pleading;

(b) in the possession of the adverse party and the pleading so states;

(c) inaccessible to the pleader and the pleading so states, giving the reason; or

(d) of a nature that attaching the instrument would be unnecessary or impractical and the pleading so states, giving the reason.

(2) An exhibit attached or referred to under subrule (F)(1)(a) or (b) is a part of the pleading for all purposes.

(G) Adoption by Reference. Statements in a pleading may be adopted by reference only in another part of the same pleading.

Rule 4.114 Signatures of Attorneys and Parties; Verification; Effect; Sanctions.

(A) Applicability. This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules. See Rule 4.113(A). In this rule, the term "document" refers to all such papers.

(B) Verification.

(1) Except when otherwise specifically provided by rule or statute, a document need not be verified or accompanied by an affidavit.

(2) If a document is required or permitted to be verified, it may be verified by

(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or

(b) except as to an affidavit, including the following signed and dated declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief."

In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (B)(2)(b) may be found in contempt of court.

(C) Signature.

(1) Requirement. Every document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document.

(2) Failure to Sign. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party.

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in Rule 4.625(A)(2). The court may not assess punitive damages.

Rule 4.115 Motion to Correct or to Strike Pleadings.

(A) Motion for More Definite Statement. If a pleading is so vague or ambiguous that it fails to comply with the requirements of these rules, an opposing party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details desired. If the motion is granted and is not obeyed within 14 days after notice of the order, or within such other time as the court may set, the court may strike the pleading to which the motion was directed or enter an order it deems just.

(B) Motion to Strike. On motion by a party or on the court's own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules.

Rule 4.116 Summary Disposition.

(A) Judgment on Stipulated Facts.

(1) The parties to a civil action may submit an agreed-upon stipulation of facts to the court.

(2) If the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so.

(B) Motion.

(1) A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense.

(2) A motion under this rule may be filed at any time consistent with subrule (D) and subrule (G)(1), but the hearing on a motion brought by a party asserting a claim shall not take place until at least 28 days after the opposing party was served with the pleading stating the claim.

(C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:

(1) The court lacks jurisdiction over the person or property.

(2) The process issued in the action was insufficient.

(3) The service of process was insufficient.

(4) The court lacks jurisdiction of the subject matter.

(5) The party asserting the claim lacks the legal capacity to sue.

(6) Another action has been initiated between the same parties involving the same claim.

(7) The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

(8) The opposing party has failed to state a claim on which relief can be granted.

(9) The opposing party has failed to state a valid defense to the claim asserted against him or her.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

(D) Time to Raise Defenses and Objections. The grounds listed in subrule (C) must be raised as follows:

(1) The grounds listed in subrule (C)(1), (2), and (3) must be raised in a party's first motion under this rule or in the party's responsive pleading, whichever is filed first, or they are waived.

(2) The grounds listed in subrule (C)(5), (6), and (7) must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading. Amendment of a responsive pleading is governed by Rule 4.118.

(3) The grounds listed in subrule (C)(4), (8), (9), and (10) may be raised at any time.

(E) Consolidation; Successive Motions.

(1) A party may combine in a single motion as many defenses or objections as the party has based on any of the grounds enumerated in this rule.

(2) No defense or objection is waived by being joined with one or more other defenses or objections.

(3) A party may file more than one motion under this rule, subject to the provisions of subrule (F).

(F) Motion or Affidavit Filed in Bad Faith. A party or an attorney found by the court to have filed a motion or an affidavit in violation of the provisions of Rule 4.114 may, in addition to the imposition of other penalties prescribed by that rule, be found guilty of contempt.

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, Rule 4.119 applies to motions brought under this rule.

(a) Unless a different period is set by the court,

(i) a written motion under this rule with supporting brief and any affidavits must be filed and served at least 21 days before the time set for the hearing, and

(ii) any response to the motion (including brief and any affidavits) must be filed and served at least 7 days before the hearing.

(b) If the court sets a different time for filing and serving a motion or a response, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(c) A copy of a motion or response (including brief and any affidavits) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(2) Except as to a motion based on subrule (C)(8) or (9), affidavits, depositions, admissions, or other documentary evidence may be submitted by a party to support or oppose the grounds asserted in the motion.

(3) Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required

(a) when the grounds asserted do not appear on the face of the pleadings, or

(b) when judgment is sought based on subrule (C)(10).

(4) A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

(5) The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10). Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9).

(6) Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C)(1)-(7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.

(H) Affidavits Unavailable.

(1) A party may show by affidavit that the facts necessary to support the party's position cannot be presented because the facts are known only to persons whose affidavits the party cannot procure. The affidavit must

(a) name these persons and state why their testimony cannot be procured, and

(b) state the nature of the probable testimony of these persons and the reason for the party's belief that these persons would testify to those facts.

(2) When this kind of affidavit is filed, the court may enter an appropriate order, including an order

(a) denying the motion, or

(b) allowing additional time to permit the affidavit to be supported by further affidavits, or by depositions, answers to interrogatories, or other discovery.

(I) Disposition by Court; Immediate Trial.

(1) If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.

(2) If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.

(3) A court may, under proper circumstances, order immediate trial to resolve any disputed issue of fact, and judgment may be entered forthwith if the proofs show that a party is entitled to judgment on the facts as determined by the court. An immediate trial may be ordered if the grounds asserted are based on subrules (C)(1) through (C)(6), or if the motion is based on subrule (C)(7) and a jury trial as of right has not been demanded on or before the date set for hearing. If the motion is based on subrule (C)(7) and a jury trial has been demanded, the court may order immediate trial, but must afford the parties a jury trial as to issues raised by the motion as to which there is a right to trial by jury.

(4) The court may postpone until trial the hearing and decision on a matter involving disputed issues of fact brought before it under this rule.

(5) If the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by Rule 4.118, unless the evidence then before the court shows that amendment would not be justified.

(J) Motion Denied; Case Not Fully Adjudicated on Motion.

(1) If a motion under this rule is denied, or if the decision does not dispose of the entire action or grant all the relief demanded, the action must proceed to final judgment. The court may:

(a) set the time for further pleadings or amendments required;

(b) examine the evidence before it and, by questioning the attorneys, ascertain what material facts are without substantial controversy, including the extent to which damages are not disputed; and

(c) set the date on which all discovery must be completed.

(2) A party aggrieved by a decision of the court entered under this rule may:

(a) seek interlocutory leave to appeal as provided for by these rules;

(b) claim an immediate appeal as of right if the judgment entered by the court constitutes a final judgment under Rule 4.604(B); or

(c) proceed to final judgment and raise errors of the court committed under this rule in an appeal taken from final judgment.

Rule 4.117 Appearances.

(A) Appearance by Party.

(1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. The party's address and telephone number must be included in the appearance.

(2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to receive copies of all pleadings and papers as provided by Rule 4.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

(1) In General. An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.

(2) Notice of Appearance.

(a) If an appearance is made in a manner not involving the filing of a paper with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. The attorney's address and telephone number must be included in the appearance.

(b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to service of pleadings and papers as provided by Rule 4.107(A).

(3) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment by the trial court.

(2) An attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

Rule 4.118 Amended and Supplemental Pleadings.

(A) Amendments.

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

(3) On a finding that inexcusable delay in requesting an amendment has caused or will cause the adverse party additional expense that would have been unnecessary had the request for amendment been filed earlier, the court may condition the order allowing amendment on the offending party's reimbursing the adverse party for the additional expense, including reasonable attorney fees.

(4) Amendments must be filed in writing, dated, and numbered consecutively, and must comply with Rule 4.113. Unless otherwise indicated, an amended pleading supersedes the former pleading.

(B) Response to Amendments. Within the time prescribed by Rule 4.108, a party served with an amendment to a pleading requiring a response under Rule 4.110(B) must

(1) serve and file a pleading in response to the amended pleading, or

(2) serve and file a notice that the party's pleading filed in response to the opposing party's earlier pleading will stand as the response to the amended pleading.

(C) Amendments to Conform to the Evidence.

(1) When issues not raised by the pleadings are tried by express or implied consent of the parties, they are treated as if they had been raised by the pleadings. In that case, amendment of the pleadings to conform to the evidence and to raise those issues may be made on motion of a party at any time, even after judgment.

(2) If evidence is objected to at trial on the ground that it is not within the issues raised by the pleadings, amendment to conform to that proof shall not be allowed unless the party seeking to amend satisfies the court that the amendment and the admission of the evidence would not prejudice the objecting party in maintaining his or her action or defense on the merits. The court may grant an adjournment to enable the objecting party to meet the evidence.

(D) Relation Back of Amendments. An amendment that adds a claim or a defense relates back to the date of the original pleading if 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.

(E) Supplemental Pleadings. On motion of a party the court may, on reasonable notice and on just terms, permit the party to serve a supplemental pleading to state transactions or events that have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or a defense. The court may order the adverse party to plead, specifying the time allowed for pleading.

Rule 4.119 Motion Practice.

(A) Form of Motions.

(1) An application to the court for an order in a pending action must be by motion. Unless made during a hearing or trial, a motion must

(a) be in writing,

(b) state with particularity the grounds and authority on which it is based,

(c) state the relief or order sought, and

(d) be signed by the party or attorney as provided in Rule 4.114.

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based. Except as permitted by the court, the combined

length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked judge's copy on the cover sheet; that notation may be handwritten.

(3) A motion and notice of the hearing on it may be combined in the same document.

(4) If a contested motion is filed after rejection of a proposed order under subrule (D), a copy of the rejected order and an affidavit establishing the rejection must be filed with the motion.

(B) Form of Affidavits.

(1) If an affidavit is filed in support of or in opposition to a motion, it must:

(a) be made on personal knowledge;

(b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and

(c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit.

(2) Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to the affidavit unless the papers or copies:

(a) have already been filed in the action;

(b) are matters of public record in the county in which the action is pending;

(c) are in the possession of the adverse party, and this fact is stated in the affidavit or the motion; or

(d) are of such nature that attaching them would be unreasonable or impracticable, and this fact and the reasons are stated in the affidavit or the motion.

(C) Time for Service and Filing of Motions and Responses.

(1) Unless a different period is set by these rules or by the court for good cause, a written motion (other than one that may be heard ex parte), notice of the hearing on the motion, and any supporting brief or affidavits must be served as follows:

(a) at least 9 days before the time set for the hearing, if served by mail, or

(b) at least 7 days before the time set for the hearing, if served by delivery under Rule 4.107(C)(1) or (2).

(2) Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be served as follows:

(a) at least 5 days before the hearing, if served by mail, or

(b) at least 3 days before the hearing, if served by delivery under Rule 4.107(C)(1) or (2).

(3) If the court sets a different time for serving a motion or response its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(4) Unless the court sets a different time, a motion must be filed at least 7 days before the hearing, and any response to a motion required or permitted by these rules must be filed at least 3 days before the hearing.

(D) Uncontested Orders.

(1) Before filing a motion, a party may serve on the opposite party a copy of a proposed order and a request to stipulate to the court's entry of the proposed order.

(2) On receipt of a request to stipulate, a party may

(a) stipulate to the entry of the order by signing the following statement at the end of the proposed order: "I stipulate to the entry of the above order"; or

(b) waive notice and hearing on the entry of an order by signing the following statement at the end of the proposed order: "Notice and hearing on entry of the above order is waived."

A proposed order is deemed rejected unless it is stipulated to or notice and hearing are waived within 7 days after it is served.

(3) If the parties have stipulated to the entry of a proposed order or waived notice and hearing, the court may enter the order. If the court declines to enter the order, it shall notify the moving party that a hearing on the motion is required. The matter then proceeds as a contested motion under subrule (E).

(4) The moving party must serve a copy of an order entered by the court pursuant to subrule (D)(3) on the parties entitled to notice under Rule 4.107, or notify them that the court requires the matter to be heard as a contested motion.

(5) Notwithstanding the provisions of subrule (D)(3), stipulations and orders for adjournment are governed by Rule 4.503.

(E) Contested Motions.

(1) Contested motions should be noticed for hearing at the time designated by the court for the hearing of motions. A motion will be heard on the day for which it is noticed, unless the court otherwise directs. If a motion cannot be heard on the day it is noticed, the court may schedule a new hearing date or the moving party may renotice the hearing.

(2) When a motion is based on facts not appearing of record, the court may hear the motion on affidavits presented by the parties, or may direct that the motion be heard wholly or partly on oral testimony or deposition.

(3) A court may, in its discretion, dispense with or limit oral arguments on motions, and may require the parties to file briefs in support of and in opposition to a motion.

(4) Appearance at the hearing is governed by the following:

(a) A party who, pursuant to subrule (D)(2), has previously rejected the proposed order before the court must either

(i) appear at the hearing held on the motion, or

(ii) before the hearing, file a response containing a concise statement of reasons in opposition to the motion and supporting authorities.

A party who fails to comply with this subrule is subject to assessment of costs under subrule (E)(4)(c).

(b) Unless excused by the court, the moving party must appear at a hearing on the motion. A moving party who fails to appear is subject to assessment of costs under subrule (E)(4)(c); in addition, the court may assess a penalty not to exceed $100, payable to the clerk of the court.

(c) If a party violates the provisions of subrule (E)(4)(a) or (b), the court shall assess costs against the offending party, that party's attorney, or both, equal to the expenses reasonably incurred by the opposing party in appearing at the hearing, including reasonable attorney fees, unless the circumstances make an award of expenses unjust.

(F) Motions for Rehearing or Reconsideration.

(1) Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., Rule 4.604[A], 4.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion.

(2) No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs.

(3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

(G) Motion Fees. The following provisions apply to actions in which a motion fee is required:

(1) A motion fee must be paid on the filing of any request for an order in a pending action, whether the request is entitled "motion," "petition," "application," or otherwise.

(2) The clerk shall charge a single motion fee for all motions filed at the same time in an action regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions.

(3) A motion fee may not be charged:

(a) in criminal cases;
(b) for a notice of settlement of a proposed judgment or order under Rule 4.602(B);
(c) for a request for an order waiving fees under Rule 4.012;
(d) if the motion is filed at the same time as another document in the same action as to which a fee is required; or
(e) for entry of an uncontested order under subrule (D).

Subchapter 4.200 Parties; Joinder Of Claims And Parties; Venue; Transfer Of Actions

Rule 4.201 Parties Plaintiff and Defendant; Capacity.

(A) Designation of Parties. The party who commences a civil action is designated as plaintiff and the adverse party as defendant. In an appeal the relative position of the parties and their designations as plaintiff and defendant are the same, but they are also designated as appellant and appellee.

(B) Real Party in Interest. An action must be prosecuted in the name of the real party in interest, subject to the following provisions:

(1) A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

(2) An action on the bond of a public officer required to give bond to the people of the Grand Traverse Band of Ottawa and Chippewa Indians may be brought in the name of the person to whom the right on the bond accrues.

(3) An action on a bond, contract, or undertaking made with an officer of the Grand Traverse Band of Ottawa and Chippewa Indians, or of a governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision, may be brought in the name of the Tribe or the governmental unit for whose benefit the contract was made.

(4) An action may be brought by a tribal member against the Grand Traverse Band of Ottawa and Chippewa Indians and Tribal Council members, in their official capacities, as contemplated under Article XIII, Section 2 of the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians.

(C) Capacity to Sue or be Sued.

(1) A natural person may sue or be sued in his or her own name.

(2) A person conducting a business under a name subject to certification under the assumed name statute may be sued in that name in an action arising out of the conduct of that business.

(3) A partnership, partnership association, or unincorporated voluntary association having a distinguishing name may sue or be sued in its partnership or association name, in the names of any of its members designated as such, or both.

(4) A domestic or a foreign corporation may sue or be sued in its corporate name, unless a statute provides otherwise.

(5) Actions to which the Tribe or a governmental unit (including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision) is a party may be brought by or against the Tribe or governmental unit in its own name, or in the name of an officer authorized to sue or be sued on its behalf. An officer of the Tribe or governmental unit must be sued in the officer's official capacity to enforce the performance of an official duty. An officer who sues or is sued in his or her official capacity may be described as a party by official title and not by name, but the court may require the name to be added.

(D) Unknown Parties; Procedure.

(1) Persons who are or may be interested in the subject matter of an action, but whose names cannot be ascertained on diligent inquiry, may be made parties by being described as:

(a) unknown claimants;
(b) unknown owners; or

(c) unknown heirs, devisees, or assignees of a deceased person who may have been interested in the subject matter of the action.

If it cannot be ascertained on diligent inquiry whether a person who is or may be interested in the subject matter of the action is alive or dead, what disposition the person may have made of his or her interest, or where the person resides if alive, the person and everyone claiming under him or her may be made parties by naming the person and adding "or [his or her] unknown heirs, devisees, or assignees."

(2) The names and descriptions of the persons sought to be made parties, with a statement of the efforts made to identify and locate them, must be stated in the complaint and verified by oath or affirmation by the plaintiff or someone having knowledge of the facts in the plaintiff's behalf. The court may require a more specific description to be made by amendment.

(3) A publication giving notice to persons who cannot be personally served must include the description of unknown persons as set forth in the complaint or amended complaint.

(4) The publication and all later proceedings in the action are conducted as if the unknown parties were designated by their proper names. The judgment rendered determines the nature, validity, and extent of the rights of all parties.

(5) A person desiring to appear and show his or her interest in the subject matter of the action must proceed under Rule 4.209. Subject to that rule, the person may be made a party in his or her proper name.

(E) Minors and Incompetent Persons. This subrule does not apply to probate proceedings.

(1) Representation.

(a) If a minor or incompetent person has a conservator, actions may be brought and must be defended by the conservator on behalf of the minor or incompetent person.

(b) If a minor or incompetent person does not have a conservator to represent the person as plaintiff, the court shall appoint a competent and responsible person to appear as next friend on his or her behalf, and the next friend is responsible for the costs of the action.

(c) If the minor or incompetent person does not have a conservator to represent the person as defendant, the action may not proceed until the court appoints a guardian ad litem, who is not responsible for the costs of the action unless, by reason of personal misconduct, he or she is specifically charged costs by the court. It is unnecessary to appoint a representative for a minor accused of a civil infraction.

(2) Appointment of Representative.

(a) Appointment of a next friend or guardian ad litem shall be made by the court as follows:

(i) if the party is a minor 14 years of age or older, on the minor's nomination, accompanied by a written consent of the person to be appointed;

(ii) if the party is a minor under 14 years of age or an incompetent person, on the nomination of the party's next of kin or of another relative or friend the court deems suitable, accompanied by a written consent of the person to be appointed; or

(iii) if a nomination is not made or approved within 21 days after service of process, on motion of the court or of a party.

(b) The court may refuse to appoint a representative it deems unsuitable.

(c) The order appointing a person next friend or guardian ad litem must be promptly filed with the clerk of the court.

(3) Security.

(a) Except for costs and expenses awarded to the next friend or guardian ad litem or the represented party, a person appointed under this subrule may not receive money or property belonging to the minor or incompetent party or awarded to that party in the action, unless he or she gives security as the court directs.

(b) The court may require that the conservator representing a minor or incompetent party give security as the court directs before receiving the party's money or property.

(4) Incompetency While Action Pending. A party who becomes incompetent while an action is pending may be represented by his or her conservator, or the court may appoint a next friend or guardian ad litem as if the action had been commenced after the appointment.

Rule 4.202 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.

(a) A motion for substitution may be made by a party, or by the successor or representative of the deceased party.

(b) Unless a motion for substitution is made within 91 days after filing and service of a statement of the fact of the death, the action must be dismissed as to the deceased party, unless the party seeking substitution shows that there would be no prejudice to any other party from allowing later substitution.

(c) Service of the statement or motion must be made on the parties as provided in Rule 4.107, and on persons not parties as provided in Rule 4.105.

(2) If one or more of the plaintiffs or one or more of the defendants in an action dies, and the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. A party or attorney who learns that a party has died must promptly file a notice of the death.

(B) Transfer or Change of Interest. If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c).

(C) Public Officers; Death or Separation From Office. When an officer of the class described in Rule 4.201(C)(5) is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against the officer's successor without a formal order of substitution.

(D) Substitution at Any Stage. Substitution of parties under this rule may be ordered by the court either before or after judgment or by the Court of Appeals or Supreme Court pending appeal. If substitution is ordered, the court may require additional security to be given.

Rule 4.203 Joinder of Claims, Counterclaims, and Cross-Claims.

(A) Compulsory Joinder. In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

(B) Permissive Joinder. A pleader may join as either independent or alternate claims as many claims, legal or equitable, as the pleader has against an opposing party. If a claim is one previously cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court may grant relief only in accordance with the substantive rights of the parties.

(C) Counterclaim Exceeding Opposing Claim. A counterclaim may, but need 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) Cross-Claim Against Co-Party. A pleading may state as a cross-claim a claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or that relates to property that is the subject matter of the original action. The 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.

(E) Time for Filing Counterclaim or Cross-Claim. A counterclaim or cross-claim must be filed with the answer or filed as an amendment in the manner provided by Rule 4.118. If a motion to amend to state a

counterclaim or cross-claim is denied, the litigation of that claim in another action is not precluded unless the court specifies otherwise.
(F) Separate Trials; Separate Judgment. If the court orders separate trials as provided in Rule 4.505(B), judgment on a claim, counterclaim, or cross-claim may be rendered in accordance with the terms of Rule 4.604 when the court has jurisdiction to do so. The judgment may be rendered even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 4.204 Third-Party Practice.
(A) When Defendant May Bring in Third Party.

(1) Any time after commencement of an action, a defending party, as a third-party plaintiff, may serve a summons and complaint on 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. The third-party plaintiff need not obtain leave to make the service if the third-party complaint is filed within 21 days after the third-party plaintiff's original answer was filed. Otherwise, leave on motion with notice to all parties is required. Unless the court orders otherwise, the summons issued on the filing of a third-party complaint is valid for 21 days after it is issued, and must include the expiration date. See Rule 4.102(B)(8).

(2) Within the time provided by Rule 4.108(A)(1)-(3), the person served with the summons and third-party complaint (the "third-party defendant") must respond to the third-party plaintiff's claim as provided in Rule 4.111, and may file counterclaims against the third-party plaintiff and cross-claims against other parties as provided in Rule 4.203. 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 a 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.

(3) The plaintiff may assert a 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 must respond as provided in Rule 4.111 and may file counterclaims and cross-claims as provided in Rule 4.203.

(4) A party may move for severance, separate trial, or dismissal of the third-party claim. The court may direct entry of a final judgment on either the original claim or the third-party claim, in accordance with Rule 4.604(B).

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

(B) When Plaintiff May Bring in Third Party. A plaintiff against whom a claim or counterclaim is asserted may bring in a third party under this rule to the same extent as a defendant.
(C) Exception; Small Claims. The provisions of this rule do not apply to small claims actions in the tribal court.

Rule 4.205 Necessary Joinder of Parties.
(A) Necessary Joinder. Subject to the provisions of subrule (B), persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests.
(B) Effect of Failure to Join. When persons described in subrule (A) have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in the action, and may prescribe the time and order of pleading. If jurisdiction over those persons can be acquired only by their consent or voluntary appearance, the court may proceed with the action and grant appropriate relief to persons who are parties to prevent a failure of justice. In determining whether to proceed, the court shall consider

(1) whether a valid judgment may be rendered in favor of the plaintiff in the absence of the person not joined;

(2) whether the plaintiff would have another effective remedy if the action is dismissed because of the nonjoinder;

(3) the prejudice to the defendant or to the person not joined that may result from the nonjoinder; and

(4) whether the prejudice, if any, may be avoided or lessened by a protective order or a provision included in the final judgment.

Notwithstanding the failure to join a person who should have been joined, the court may render a judgment against the plaintiff whenever it is determined that the plaintiff is not entitled to relief as a matter of substantive law.

(C) Names of Omitted Persons and Reasons for Nonjoinder to be Pleaded. In a pleading in which relief is asked, the pleader must state the names, if known, of persons who are not joined, but who ought to be parties if complete relief is to be accorded to those already parties, and must state why they are not joined.

Rule 4.206 Permissive Joinder of Parties.

(A) Permissive Joinder.

(1) All persons may join in one action as plaintiffs

(a) if they assert a 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 a question of law or fact common to all of the plaintiffs will arise in the action; or

(b) if their presence in the action will promote the convenient administration of justice.

(2) All persons may be joined in one action as defendants

(a) if there is asserted against them jointly, severally, or in the alternative, a right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if a question of law or fact common to all of the defendants will arise in the action; or

(b) if their presence in the action will promote the convenient administration of justice.

(3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be rendered for one or more of the parties against one or more of the parties as the rights and liabilities of the parties are determined.

(B) Separate Trials. The court may enter orders to prevent a party from being embarrassed, delayed, or put to expense by the joinder of a person against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or enter other orders to prevent delay or prejudice.

Rule 4.207 Misjoinder and Nonjoinder of Parties. Misjoinder of parties is not a ground for dismissal of an action. Parties may be added or dropped by order of the court on motion of a party or on the court's own initiative at any stage of the action and on terms that are just. When the presence of persons other than the original parties to the action is required to grant complete relief in the determination of a counterclaim or cross-claim, the court shall order those persons to be brought in as defendants if jurisdiction over them can be obtained. A claim against a party may be severed and proceeded with separately.

Rule 4.209 Intervention.

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

(1) when a tribal statute or court rule confers an unconditional right to intervene;

(2) by stipulation of all the parties; or

(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and 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. On timely application a person may intervene in an action

(1) when a tribal statute or court rule 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.

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 seeking to intervene must apply to the court by motion and give notice in writing to all parties under Rule 4.107. The motion must

(1) state the grounds for intervention, and

(2) be accompanied by a pleading stating the claim or defense for which intervention is sought.

(D) Notice to Legal Department. When the validity of a Tribal statute or a rule or regulation is in question in an action to which the Tribe or an officer or agency of the Tribe is not a party, the court may require that notice be given to the Grand Traverse Band Legal Department, specifying the pertinent statute, rule, or regulation.

Subchapter 4.300 Discovery

Rule 4.301 Completion of Discovery.

(A) In the tribal court, the time for completion of discovery shall be set by an order entered under Rule 4.401(B)(2)(a).

(B) After the time for completion of discovery, a deposition of a witness taken solely for the purpose of preservation of testimony may be taken at any time before commencement of trial without leave of court.

Rule 4.302 General Rules Governing Discovery.

(A) Availability of Discovery.

(1) After commencement of an action, parties may obtain discovery by any means provided in subchapter 4.300 of these rules.

(2) Notwithstanding the provisions of this or any other rule, discovery is not permitted in actions in the small claims division of the court or in civil infraction actions.

(B) Scope of Discovery.

(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 another party, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of an insurance agreement under which a 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. Information concerning the insurance agreement is not by reason of disclosure admissible at trial. For purposes of this subrule, an application for insurance is not part of an insurance agreement.

(3) Trial Preparation; Materials.

(a) Subject to the provisions of subrule (B)(4), a party may obtain discovery of documents and tangible things otherwise discoverable under subrule (B)(1) and prepared in anticipation of litigation or for trial by or for another party or another party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only on a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and 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.

(b) Without the showing required by subrule (B)(3)(a), a party or a nonparty may obtain a statement concerning the action or its subject matter previously made by the person making the request. A nonparty whose request is refused may move for a court order. The provisions of Rule 4.313(A)(5) apply to the award of expenses incurred in relation to the motion.

(c) For purposes of subrule (B)(3)(b), a statement previously made is

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

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

(4) Trial Preparation; Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subrule (B)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a)(i) A party may through interrogatories require another party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter about which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may take the deposition of a person whom the other party expects to call as an expert witness at trial.

(iii) On motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions (pursuant to subrule [B][4][C]) concerning fees and expenses as the court deems appropriate.

(b) A party may not discover the identity of and 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, except

(i) as provided in Rule 4.311, or

(ii) where an order has been entered on 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 under subrules (B)(4)(a)(ii) or (iii) or (B)(4)(b) pay the expert a reasonable fee for time spent in a deposition, but not including preparation time; and

(ii) with respect to discovery obtained under subrule (B)(4)(a)(ii) or (iii), the court may require, and with respect to discovery obtained under subrule (B)(4)(b) 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.

(d) A party may depose a witness that he or she expects to call as an expert at trial. The deposition may be taken at any time before trial on reasonable notice to the opposite party, and may be offered as evidence at trial as provided in Rule 4.308(A). The court need not adjourn the trial because of the unavailability of expert witnesses or their depositions.

(C) Protective Orders. On motion by a party or by the person from whom discovery is sought, and on reasonable notice and for good cause shown, the court in which the action is pending may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following orders:

(1) that the discovery not be had;

(2) that the 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 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 deposition shall be taken only for the purpose of discovery and shall not be admissible in evidence except for the purpose of impeachment;

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

(9) 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 terms and conditions as are just, order that a party or person provide or permit discovery. The provisions of Rule 4.313(A)(5) apply to the award of expenses incurred in relation to the motion.

(D) Sequence and Timing of Discovery. Unless the court orders otherwise, on motion, for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay another party's discovery.

(E) Supplementation of Responses.

(1) Duty to Supplement. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information acquired later, except as follows:

(a) A party is under a duty seasonably to supplement the response with respect to a question directly addressed to

(i) the identity and location of persons having knowledge of discoverable matters; and

(ii) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information on the basis of which the party knows that

(i) the response was incorrect when made; or

(ii) the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time before trial through new requests for supplementation of prior responses.

(2) Failure to Supplement. If the court finds, by way of motion or otherwise, that a party has not seasonably supplemented responses as required by this subrule the court may enter an order as is just, including an order providing the sanctions stated in Rule 4.313(B), and, in particular, Rule 4.313(B)(2)(b).

(F) Stipulations Regarding Discovery Procedure. Unless the court orders otherwise, the parties may by written stipulation:

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

(2) modify the procedures of these rules for other methods of discovery, except that stipulations extending the time within which discovery may be sought or for responses to discovery may be made only with the approval of the court.

(G) Signing of Discovery Requests, Responses, and Objections; Sanctions.

(1) In addition to any other signature required by these rules, every request for discovery and every response or objection to such a request made by a party represented by an attorney shall

be signed by at least one attorney of record. A party who is not represented by an attorney must sign the request, response, or objection.

(2) 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 another party need not take any action with respect to it until it is signed.

(3) The signature of the attorney or party constitutes a certification that he or she has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it 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.

(4) If a certification is made in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

(H) Filing and Service of Discovery Materials.

(1) Unless a particular rule requires filing of discovery materials, requests, responses, depositions, and other discovery materials may not be filed with the court except as follows:

(a) If discovery materials are to be used in connection with a motion, they must either be filed separately or be attached to the motion or an accompanying affidavit;

(b) If discovery materials are to be used at trial they must be either filed or made an exhibit;

(c) The court may order discovery materials to be filed.

(2) Copies of discovery materials served under these rules must be served on all parties to the action, unless the court has entered an order under Rule 4.107(F).

(3) On appeal, only discovery materials that were filed or made exhibits are part of the record on appeal.

(4) Removal and destruction of discovery materials are governed by Rule 4.316.

Rule 4.303 Depositions Before Action or Pending Appeal.

(A) Before Action.

(1) Petition. A person who desires to perpetuate his or her own testimony or that of another person, for use as evidence and not for the purpose of discovery, regarding a matter that may be cognizable in the tribal court may file a verified petition in the tribal court. The petition must be entitled in the name of the petitioner and must show:

(a) that the petitioner expects to be a party to an action cognizable in the tribal court but is presently unable to bring it or cause it to be brought and the reasons why;

(b) the subject matter of the expected action and the petitioner's interest in it;

(c) the facts sought to be established by the proposed testimony and the reasons for desiring to perpetuate it;

(d) the names or a description of the persons that 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 that the petitioner expects to elicit from each.

The petition must 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 serve a notice on 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 specified time and place, for the order described in the petition. At least 21 days before the date of hearing, the notice must be served in the manner provided in Rule 4.105 for service of summons. If service cannot be made on an expected adverse party with due diligence, the court may issue an order as is just for service by publication or otherwise, and may appoint, for persons not served in the manner provided in Rule 4.105, an attorney to represent them, and to cross-examine the deponent. If an expected adverse party is a minor or an incompetent person, the law relating to minors and incompetents, including Rule 4.201(E), applies.

(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 issue an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions are to be taken on oral examination or written interrogatories. The depositions may then be taken in accordance with these rules. In addition the court may issue orders of the character provided for by Rule 4.310 and 4.311.

(4) Use of Deposition.

(a) If a deposition to perpetuate testimony is taken under these rules, it may be used in an action involving the same subject matter subsequently brought in Tribal Court, in accordance with Rule 4.308.

(b) If a deposition to perpetuate testimony has been taken under the Federal Rules of Civil Procedure, or the rules of a state court, the court may, if it finds that the deposition was taken in substantial compliance with these rules, allow the deposition to be used as if it had been taken under these rules.

(B) Pending Appeal. If an appeal has been taken from a judgment of a trial court, or before the taking of an appeal if the time for appeal has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use if there are further proceedings in that court. The party who wishes to perpetuate the testimony may move for leave to take the depositions, with the same notice and service of the motion as if the action were then pending in the trial court. The motion must show

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

(2) the reasons for perpetuating their testimony.

If the court finds that the perpetuation of testimony is proper to avoid a failure or delay of justice, it may issue an order allowing the depositions to be taken and may issue orders of the character provided for by Rule 4.310 and 4.311. The depositions may then be taken and used in the same manner and under the same conditions prescribed in these rules for depositions taken in actions pending before the court.

Rule 4.304 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 dominion of the United States, depositions may be taken

(1) before a person authorized to administer oaths by the laws of the Grand Traverse Band of Ottawa and Chippewa Indians, the State of Michigan or any other state, the United States, or the place where the examination is held;

(2) before a person appointed by the court in which the action is pending; or

(3) before a person on whom the parties agree by stipulation under Rule 4.302(F)(1).

A person acting under subrule (A)(2) or (3) has the power to administer oaths, take testimony, and do all other acts necessary to take a deposition.

(B) In Foreign Countries. In a foreign country, depositions may be taken

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

(2) before a person commissioned by the court, and a person so commissioned has the power by virtue of the commission to administer a necessary oath and take testimony; or

(3) pursuant to a letter rogatory.

A commission or a letter rogatory may be issued on motion and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in another manner is impracticable or inconvenient; both a commission and a letter rogatory may be issued in a proper case. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [*name of country*]." Evidence obtained in response to a letter rogatory need not be excluded merely because it is not a verbatim transcript or the testimony was not taken under oath, or because of a similar departure from the requirements for depositions taken within the United States under these rules.

(C) Disqualification for Interest. Unless the parties agree otherwise by stipulation in writing or on the record, a deposition may not be taken before a person who is

(1) a relative or employee of or an attorney for a party,

(2) a relative or employee of an attorney for a party, or

(3) financially interested in the action.

Rule 4.305 Subpoena for Taking Deposition.

(A) General Provisions.

(1) After serving the notice provided for in Rule 4.303(A)(2), 4.306(B), or 4.307(A)(2), a party may have a subpoena issued in the manner provided by Rule 4.506 for the person named or described in the notice. Service on a party or a party's attorney of notice of the taking of the deposition of a party, or of a director, trustee, officer, or employee of a corporate party, is sufficient to require the appearance of the deponent; a subpoena need not be issued.

(2) The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated documents or other tangible things relevant to the subject matter of the pending action and within the scope of discovery under Rule 4.302(B). The procedures in Rule 4.310 apply to a party deponent.

(3) A deposition notice and a subpoena under this rule may provide that the deposition is solely for producing documents or other tangible things for inspection and copying, and that the party does not intend to examine the deponent.

(4) A subpoena issued under this rule is subject to the provisions of Rule 4.302(C), and the court in which the action is pending, on timely motion made before the time specified in the subpoena for compliance, may

(a) quash or modify the subpoena if it is unreasonable or oppressive;

(b) enter an order permitted by Rule 4.302(C); or

(c) condition denial of the motion on prepayment by the person on whose behalf the subpoena is issued of the reasonable cost of producing books, papers, documents, or other tangible things.

(5) Service of a subpoena on the deponent must be made as provided in Rule 4.506. A copy of the subpoena must be served on all other parties in the same manner as the deposition notice.

(B) Inspection and Copying of Documents. A subpoena issued under subrule (A) may command production of documents or other tangible things, but the following rules apply:

(1) The subpoena must be served at least 14 days before the time for production. The subpoenaed person may, not later than the time specified in the subpoena for compliance, serve on the party serving the subpoena written objection to inspection or copying of some or all of the designated materials.

(2) If objection is made, the party serving the subpoena is not entitled to inspect and copy the materials without an order of the court in which the action is pending.

(3) The party serving the subpoena may, with notice to the deponent, move for an order compelling production of the designated materials. Rule 4.313(A)(5) applies to motions brought under this subrule.

(C) Place of Examination.

(1) A deponent may be required to attend an examination in the county where the deponent resides, is employed, or transacts business in person, or at another convenient place specified by order of the court.

(2) In an action pending in the Tribal Court, the court may order a nonresident plaintiff or an officer or managing agent of the plaintiff to appear for a deposition at a designated place on tribal lands of the Grand Traverse Band of Ottawa and Chippewa Indians, in the State of Michigan or elsewhere on terms and conditions that are just, including payment by the defendant of the reasonable expenses of travel, meals, and lodging incurred by the deponent in attending.

(3) If it is shown that the deposition of a nonresident defendant cannot be taken in the state where the defendant resides, the court may order the defendant or an officer or managing agent of the defendant to appear for a deposition at a designated place on tribal lands of the Grand Traverse Band of Ottawa and Chippewa Indians, in the State of Michigan or elsewhere on terms and conditions that are just, including payment by the plaintiff of the reasonable expenses of travel, meals, and lodging incurred by the deponent in attending.

(D) Petition to Other Courts to Compel Testimony. When the place of examination is in the State of Michigan or another state, territory, or country, the party desiring to take the deposition may petition a court of that state, territory, or country for a subpoena or equivalent process to require the deponent to attend the examination.

(E) Action Pending in Other Courts. An officer or a person authorized by the laws of another tribe, state, territory, or country to take a deposition on the tribal lands of the Grand Traverse Band of Ottawa and Chippewa Indians, with or without a commission, in an action pending in a court of that tribe, state, territory, or country may petition the tribal court for a subpoena to compel the deponent to give testimony if the deponent resides, is employed, transacts business in person, or is found on said tribal lands. The court may hear and act on the petition with or without notice, as the court directs.

Rule 4.306 Depositions on Oral Examination.

(A) When Depositions May Be Taken.

(1) After commencement of the action, a party may take the testimony of a person, including a party, by deposition on oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition before the defendant has had a reasonable time to obtain an attorney. A reasonable time is deemed to have elapsed if:

(a) the defendant has filed an answer;

(b) the defendant's attorney has filed an appearance;

(c) the defendant has served notice of the taking of a deposition or has taken other action seeking discovery;

(d) the defendant has filed a motion under Rule 4.116; or

(e) 28 days have expired after service of the summons and complaint on a defendant or after service made under Rule 4.106.

(2) The deposition of a person confined in prison or of a patient in a state home, institution, or hospital for the mentally ill or mentally handicapped, or any other state hospital, home, or institution, may be taken only by leave of court on terms as the court provides.

(B) Notice of Examination; Subpoena; Production of Documents and Things.

(1) A party desiring to take the deposition of a person on oral examination must give reasonable notice in writing to every other party to the action. The notice must state

(a) the time and place for taking the deposition, and

(b) the name and address of each person to be examined, if known, or, 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 the subpoena to be served directs the deponent to produce documents or other tangible things, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice.

(2) On motion for good cause, the court may extend or shorten the time for taking the deposition. The court may regulate the time and order of taking depositions to best serve the convenience of the parties and witnesses and the interests of justice.

(3) The attendance of witness may be compelled by subpoena as provided in Rule 4.305.

(4) The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition. Rule 4.310 applies to the request.

(5) In a notice and subpoena, a party may name as the deponent a public or private corporation, partnership, association, or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization named must 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 must advise a nonparty organization of its duty to make the designation. The persons designated shall testify to matters known or reasonably available to the organization. This subrule does not preclude taking a deposition by another procedure authorized in these rules.

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections.

(1) The person before whom the deposition is to be taken must put the witness on oath. Examination and cross-examination of the witness shall proceed as permitted at a trial under the Grand Traverse Band Tribal Court Rules of Evidence. In lieu of participating in the oral examination, a party may send written questions to the person conducting the examination, who shall propound them to the witness and record the witness' answers.

(2) The person before whom the deposition is taken shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness.

(a) The testimony must be taken stenographically or recorded by other means in accordance with this subrule. The testimony need not be transcribed unless requested by one of the parties.

(b) While the testimony is being taken, a party, as a matter of right, may also make a record of it by nonsecret mechanical or electronic means, except that video recording is governed by Rule 4.315. Any use of the recording in court is within the discretion of the court. A person making such a record must furnish a duplicate of the record to another party at the request and expensed of the other party.

(3) The court may order, or the parties may stipulate, that the testimony at a deposition be recorded by other than stenographic means.

(a) The order or stipulation must designate the manner of recording and preserving the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A deposition in the form of a recording may be filed with the court as are other depositions.

(b) If a deposition is taken by other than stenographic means on order of the court, a party may nevertheless arrange to have a stenographic transcription made at that party's own expense.

(c) Before a deposition taken by other than stenographic means may be used in court it must be transcribed unless the court enters an order waiving transcription. The costs of transcription are borne by the parties as determined by the court.

(d) subrule (C)(3) does not apply to video depositions, which are governed by Rule 4.315.

(4) All objections made at the deposition, including objections to

(a) the qualifications of the person taking the deposition,

(b) the manner of taking it,

(c) the evidence presented, or

(d) the conduct of a party,

must be noted on the record by the person before whom the deposition is taken.

Subject to limitation imposed by an order under Rule 4.302(C) or subrule (D) of this rule, evidence objected to on grounds other than privilege shall be taken subject to the objections.

(D) Motion to Terminate or Limit Examination.

(1) At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in a manner unreasonably to annoy, embarrass, or oppress the deponent or party, or that the matter inquired about is privileged, a court in which the action is pending or the court in the county or district where the deposition is being taken may order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 4.302(C). If the order entered terminates the examination, it may resume only on order of the court in which the action is pending.

(2) On demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to move for an order. Rule 4.313(A)(5) applies to the award of expenses incurred in relation to the motion.

(3) If a party knows before the time scheduled for the taking of a deposition that he or she will assert that the matter to be inquired about is privileged, the party must move to prevent the taking of the deposition before its occurrence or be subject to costs under subrule (G).

(4) A party who has a privilege regarding part or all of the testimony of a deponent must either assert the privilege at the deposition or lose the privilege as to that testimony for purposes of the action. A party who claims a privilege at a deposition may not at the trial offer the testimony of the deponent pertaining to the evidence objected to at the deposition. A party who asserts a privilege regarding medical information is subject to the provisions of Rule 4.314(B).

(E) Exhibits. Documents and things produced for inspection during the examination of the witness must, on the request of a party, be marked for identification and annexed to the deposition, if practicable, and may be inspected and copied by a party, except as follows:

(1) The person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals.

(2) If the person producing the materials requests their return, the person conducting the examination or the stenographer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to the deposition. A party may move for an order that the original be annexed to and filed with the deposition, pending final disposition of the action.

(F) Certification and Transcription; Filing; Copies.

(1) If transcription is requested by a party, the person conducting the examination or the stenographer must certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. A deposition transcribed and certified in accordance with subrule (F) need not be submitted to the witness for examination and signature.

(2) On payment of reasonable charges, the person conducting the examination shall furnish a copy of the deposition to a party or to the deponent. Where transcription is requested by a party other than the party requesting the deposition, the court may order, or the parties may stipulate, that the expense of transcription or a portion of it be paid by the party making the request.

(3) Except as provided in subrule (C)(3) or in Rule 4.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall, after transcription and certification:

(a) securely seal the transcript in an envelope endorsed with the title and file number of the action and marked "Deposition of [*name of witness*]," and promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk of that court for filing;

(b) give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.

(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 with the deposition 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 the other party the reasonable expenses incurred in attending, including reasonable attorney fees.

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

Rule 4.307 Depositions on Written Questions.

(A) Serving Questions; Notice.

(1) Under the same circumstances as set out in Rule 4.306(A), a party may take the testimony of a person, including a party, by deposition on written questions. The attendance of the witnesses may be compelled by the use of a subpoena as provided in Rule 4.305. A deposition on written questions may be taken of a public or private corporation or partnership or association or governmental agency in accordance with the provisions of Rule 4.306(B)(5).

(2) A party desiring to take a deposition on written questions shall serve them on every other party with a notice stating

(a) the name and address of the person who is to answer them, 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 person before whom the deposition is to be taken.

(3) Within 14 days after the notice and written questions are served, a party may serve cross-questions on all other parties. Within 7 days after being served with cross-questions, a party may serve redirect questions on all other parties. Within 7 days after being served with redirect questions, a party may serve recross-questions on all other parties. The parties, by stipulation in writing, or the court, for cause shown, may extend or shorten the time requirements.

(B) Taking of Responses and Preparation of Record. A copy of the notice, any stipulation, and copies of all questions served must be delivered by the party who proposed the deposition to the person before whom the deposition will be taken as stated in the notice. The person before whom the deposition is to be taken must proceed promptly to take the testimony of the witness in response to the questions, and, if requested, to transcribe, certify, and file the deposition in the manner provided by Rule 4.306(C), (E), and (F), attaching the copy of the notice, the questions, and any stipulations of the parties.

Rule 4.308 Use of Depositions in Court Proceedings.

(A) In General.

Depositions or parts thereof shall be admissible at trial or on the hearing of a motion or in an interlocutory proceeding only as provided in the Grand Traverse Band Tribal Court Rules of Evidence.

(B) Objections to Admissibility. Subject to the provisions of subrule (C) and Rule 4.306(C)(4), objection may be made at the trial or hearing to receiving in evidence a deposition or part of a deposition for any reason that would require the exclusion of the evidence.

(C) Effect of Errors or Irregularities in Depositions.

(1) Notice. Errors or irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving notice.

(2) Disqualification of Person Before Whom Taken. Objection to taking a deposition because of disqualification of the person 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) Taking of Deposition.

(a) Objections to the 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 a 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 deposition 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 other kind which might be cured if promptly presented, are waived unless seasonable objection is made at the taking of the deposition.

(c) Objections to the form of written questions submitted under Rule 4.307 are waived unless served in writing on the party propounding them within the time allowed for serving the succeeding cross-questions or other questions and within 7 days after service of the last questions authorized.

(d) On motion and notice a party may request a ruling by the court on an objection in advance of the trial.

(4) Certification, Transcription, and Filing of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom it was taken are waived unless a motion objecting to the deposition is filed within a reasonable time.

(5) Harmless Error. None of the foregoing errors or irregularities, even when not waived, or any others, preclude or restrict the use of the deposition, except insofar as the court finds that the errors substantially destroy the value of the deposition as evidence or render its use unfair or prejudicial.

Rule 4.309 Interrogatories to Parties.

(A) Availability; Procedure for Service. A party may serve on another party written interrogatories to be answered by the party served or, if the party served is a public or private corporation, partnership, association, or governmental agency, by an officer or agent. Interrogatories may, without leave of court, be served:

(1) on the plaintiff after commencement of the action;

(2) on a defendant with or after the service of the summons and complaint on that defendant.

(B) Answers and Objections.

(1) Each interrogatory must be answered separately and fully in writing under oath. The answers must include such information as is available to the party served or that the party could obtain from his or her employees, agents, representatives, sureties, or indemnitors. If the answering party objects to an interrogatory, the reasons for the objection must be stated in lieu of an answer.

(2) The answering party shall repeat each interrogatory or subquestion immediately before the answer to it.

(3) The answers must be signed by the person making them and the objections signed by the attorney or an unrepresented party making them.

(4) The party on whom the interrogatories are served must serve the answers and objections, if any, on all other parties within 28 days after the interrogatories are served, except that a defendant may serve answers within 42 days after being served with the summons and complaint. The court may allow a longer or shorter time and, for good cause shown, may excuse service on parties other than the party who served the interrogatories.

(C) Motion to Compel Answers. The party submitting the interrogatories may move for an order under Rule 4.313(A) with respect to an objection to or other failure to answer an interrogatory. If the motion is based on the failure to serve answers, proof of service of the interrogatories must be filed with the motion. The motion must state 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.

(D) Scope; Use at Trial.

(1) An interrogatory may relate to matters that can be inquired into under Rule 4.302(B).

(2) 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 an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(3) The answer to an interrogatory may be used to the extent permitted by the rules of evidence.

(E) Option to Produce Business Records. Where the answer to an interrogatory may be derived from

(1) the business records of the party on whom the interrogatory has been served,

(2) an examination, audit, or inspection of business records, or

(3) a compilation, abstract, or summary based on such records,

and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to identify, as readily as can the party served, the records from which the answer may be derived.

Rule 4.310 Requests for Production of Documents and Other Things; Entry on Land for Inspection and Other Purposes.

(A) Definitions. For the purpose of this rule,

(1) "Documents" includes 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.

(2) "Entry on land" means entry upon designated land or other property in the possession or control of the person on whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or a designated object or operation on the property, within the scope of Rule 4.302(B).

(B) Scope.

(1) A party may serve on another party a request

(a) to produce and permit the requesting party, or someone acting for that party,

(i) to inspect and copy designated documents or

(ii) to inspect and copy, test, or sample other tangible things

that constitute or contain matters within the scope of Rule 4.302(B) and that are in the possession, custody, or control of the party on whom the request is served; or

(b) to permit entry on land.

(2) A party may serve on a nonparty a request

(a) to produce and permit the requesting party or someone acting for that party to inspect and test or sample tangible things that constitute or contain matters within the scope of Rule 4.302(B) and that are in the possession, custody, or control of the person on whom the request is served; or

(b) to permit entry on land.

(C) Request to Party.

(1) The request may, without leave of court, be served on the plaintiff after commencement of the action and on the defendant with or after the service of the summons and complaint on that defendant. The request must list the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party on whom the request is served must serve a written response within 28 days after service of the request, except that a defendant may serve a response within 42 days after being served with the summons and complaint. The court may allow a longer or shorter time. With respect to each item or category, the response must state that inspection and related activities will be permitted as requested or that the request is objected to, in which event the reasons for objection must be stated. If objection is made to part of an item or category, the part must be specified.

(3) The party submitting the request may move for an order under Rule 4.313(A) with respect to an objection to or a failure to respond to the request or a part of it, or failure to permit inspection

as requested. If the motion is based on a failure to respond to a request, proof of service of the request must be filed with the motion. The motion must state 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.

(4) The party to whom the request is submitted may seek a protective order under Rule 4.302(C).

(5) 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.

(6) Unless otherwise ordered by the court for good cause, the party producing items for inspection shall bear the cost of assembling them and the party requesting the items shall bear any copying costs.

(D) Request to Nonparty.

(1) A request to a nonparty may be served at any time, except that leave of the court is required if the plaintiff seeks to serve a request before the occurrence of one of the events stated in Rule 4.306(A)(1).

(2) The request must be served on the person to whom it is directed in the manner provided in Rule 4.105, and a copy must be served on the other parties.

(3) The request must

(a) list the items to be inspected and tested or sampled, either by individual item or by category, and describe each item and category with reasonable particularity,

(b) specify a reasonable time, place, and manner of making the inspection and performing the related acts, and

(c) inform the person to whom it is directed that unless he or she agrees to allow the inspection or entry at a reasonable time and on reasonable conditions, a motion may be filed seeking a court order to require the inspection or entry.

(4) If the person to whom the request is directed does not permit the inspection or entry within 14 days after service of the request (or a shorter time if the court directs), the party seeking the inspection or entry may file a motion to compel the inspection or entry under Rule 4.313(A). The motion must include a copy of the request and proof of service of the request. The movant must serve the motion on the person from whom discovery is sought as provided in Rule 4.105.

(5) The court may order the party seeking discovery to pay the reasonable expenses incurred in complying with the request by the person from whom discovery is sought.

(6) This rule does not preclude an independent action against a nonparty for production of documents and other things and permission to enter on land or a subpoena to a nonparty under Rule 4.305.

Rule 4.311 Physical and Mental Examination 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 in which the action is pending may order the party to submit to a physical or mental or blood examination by a physician (or other appropriate professional) or to produce for examination the person in the party's custody or legal control. The order may be entered only on motion for good cause with notice to the person to be examined and to all parties. The order must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made, and may provide that the attorney for the person to be examined may be present at the examination.

(B) Report of Examining Physician.

(1) If requested by the party against whom an order is entered under subrule (A) or by the person examined, the party causing the examination to be made must deliver to the requesting person a copy of a detailed written report of the examining physician setting out the findings, including results of all tests made, diagnosis, and conclusions, together with like reports on all earlier examinations of the same condition, and must make available for inspection and examination x-rays, cardiograms, and other diagnostic aids.

(2) After delivery of the report, the party causing the examination to be made is entitled on request to receive from the party against whom the order is made a similar report of any examination previously or thereafter made of the same condition, and to a similar inspection of all diagnostic aids unless, in the case of a report on the examination of a nonparty, the party shows that he or she is unable to obtain it.

(3) If either party or a person examined refuses to deliver a report, the court on motion and notice may enter an order requiring delivery on terms as are just, and if a physician refuses or fails to comply with this rule, the court may order the physician to appear for a discovery deposition.

(4) By requesting and obtaining a report on the examination ordered under this rule, or by taking the deposition of the examiner, the person examined waives any privilege he or she may have in that action, or another action involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the person as to the same mental or physical condition.

(5) subrule (B) applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise.

(6) subrule (B) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

Rule 4.312 Request for Admission.

(A) Availability; Scope. Within the time for completion of discovery, a party may serve on another party a written request for the admission of the truth of a matter within the scope of Rule 4.302(B) stated in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of documents described in the request. Copies of the documents must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested must be stated separately.

(B) Answer; Objection.

(1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter. Unless the court orders a shorter time a defendant may serve an answer or objection within 42 days after being served with the summons and complaint.

(2) The answer must specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it. A denial must fairly meet the substance of the request, and when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, the party must specify the parts that are admitted and denied.

(3) 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 he or she has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(4) If an objection is made, the reasons must be stated. A party who considers that a matter of which an 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 4.313(C), deny the matter or state reasons why he or she cannot admit or deny it.

(C) Motion Regarding Answer or Objection. The party who has requested the admission may move to determine the sufficiency of the answer or objection. The motion must state 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. 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 the rule, it may order either that the matter is admitted, or that an amended answer be served. The court may, in lieu of one of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time before trial. The provisions of Rule 4.313(A)(5) apply to the award of expenses incurred in relation to the motion.

(D) Effect of Admission.

(1) A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission. The court may condition amendment or withdrawal of the admission on terms that are just.

(2) An admission made by a party under this rule is for the purpose of the pending action only and is not an admission for another purpose, nor may it be used against the party in another proceeding.

(E) Public Records.

(1) A party intending to use as evidence

(a) a record that a public official is required by federal, state, or municipal authority to receive for filing or recording or is given custody of by law, or

(b) a memorial of a public official,

may prepare a copy, synopsis, or abstract of the record, insofar as it is to be used, and serve it on the adverse party sufficiently in advance of trial to allow the adverse party a reasonable opportunity to determine its accuracy.

(2) The copy, synopsis, or abstract is then admissible in evidence as admitted facts in the action, if otherwise admissible, except insofar as its inaccuracy is pointed out by the adverse party in an affidavit filed and served within a reasonable time before trial.

(F) Filing With Court. Requests and responses under this rule must be filed with the court either before service or within a reasonable time thereafter.

Rule 4.313 Failure to Provide or to Permit Discovery; Sanctions.

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

(1) Appropriate Court. A motion for an order under this rule may be made to the court in which the action is pending, or, as to a matter relating to a deposition, to a court in the county or district where the deposition is being taken.

(2) Motion. If

(a) a deponent fails to answer a question propounded or submitted under Rule 4.306 or 4.307,

(b) a corporation or other entity fails to make a designation under Rule 4.306(B)(5) or 4.307(A)(1),

(c) a party fails to answer an interrogatory submitted under Rule 4.309, or

(d) in response to a request for inspection submitted under Rule 4.310, a person fails to respond that inspection will be permitted as requested, the party seeking discovery may move for an order compelling an answer, a designation, or inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Ruling; Protective Order. If the court denies the motion in whole or in part, it may enter a protective order that it could have entered on motion made under Rule 4.302(C).

(4) Evasive or Incomplete Answer. For purposes of this subrule an evasive or incomplete answer is to be treated as a failure to answer.

(5) Award of Expenses of Motion.

(a) If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(b) If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion, or both, to pay to the person who opposed the motion the reasonable expenses incurred in opposing the motion, including

attorney 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 apportion the reasonable expenses incurred in relation to the motion among the parties and other persons in a just manner.

(B) Failure to Comply With Order.

(1) Sanctions by Court Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by a court in the location in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party, or a person designated under Rule 4.306(B)(5) or 4.307(A)(1) to testify on behalf of a party, fails to obey an order to provide or permit discovery, including an order entered under subrule (A) of this rule or under Rule 4.311, the court in which the action is pending may order such sanctions as are just, including, but not limited to the following:

(a) an order that the matters regarding which the order was entered or other designated facts may 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 the party from introducing designated matters into evidence;

(c) an order striking pleadings or parts of pleadings, staying further proceedings until the order is obeyed, dismissing the action or proceeding or a part of it, or rendering a judgment by default against the disobedient party;

(d) in lieu of or in addition to the foregoing orders, an order treating as a contempt of court the failure to obey an order, except an order to submit to a physical or mental examination;

(e) where a party has failed to comply with an order under Rule 4.311(A) requiring the party to produce another for examination, such orders as are listed in subrules (B)(2)(a), (b), and (c), unless the party failing to comply shows that he or she is unable to produce such person for examination.

In lieu of or in addition to the foregoing orders, the court shall require the party failing to obey the order or the attorney advising the party, or both, to pay the reasonable expenses, including attorney 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) Expenses on Failure to Admit. If a party denies the genuineness of a document, or the truth of a matter as requested under Rule 4.312, and if the party requesting the admission later proves the genuineness of the document or the truth of the matter, the requesting party may move for an order requiring the other party to pay the expenses incurred in making that proof, including attorney fees. The court shall enter the order unless it finds that

(1) the request was held objectionable pursuant to Rule 4.312,

(2) the admission sought was of no substantial importance,

(3) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or

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

(D) Failure of Party to Attend at Own Deposition, to Serve Answers to Interrogatories, or to Respond to Request for Inspection.

(1) If a party; an officer, director, or managing agent of a party; or a person designated under Rule 4.306(B)(5) or 4.307(A)(1) to testify on behalf of a party fails

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

(b) to serve answers or objections to interrogatories submitted under Rule 4.309, after proper service of the interrogatories; or

(c) to serve a written response to a request for inspection submitted under Rule 4.310, after proper service of the request, on motion, the court in which the action is pending may order such sanctions as are just. Among others, it may take an action authorized under subrule (B)(2)(a), (b), and (c).

(2) In lieu of or in addition to an order, the court shall require the party failing to act or the attorney advising the party, or both, to pay the reasonable expenses, including attorney 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.

(3) A failure to act described in this subrule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has moved for a protective order as provided by Rule 4.302(C).

Rule 4.314 Discovery of Medical Information Concerning Party.

(A) Scope of Rule.

(1) When a mental or physical condition of a party is in controversy, medical information about the condition is subject to discovery under these rules to the extent that

(a) the information is otherwise discoverable under Rule 4.302(B), and

(b) the party does not assert that the information is subject to a valid privilege.

(2) Medical information subject to discovery includes, but is not limited to, medical records in the possession or control of a physician, hospital, or other custodian, and medical knowledge discoverable by deposition or interrogatories.

(3) For purposes of this rule, medical information about a mental or physical condition of a party is within the control of the party, even if the information is not in the party's immediate physical possession.

(B) Privilege; Assertion; Waiver; Effects.

(1) A party who has a valid privilege may assert the privilege and prevent discovery of medical information relating to his or her mental or physical condition. The privilege must be asserted in the party's written response to a request for production of documents under Rule 4.310, in answers to interrogatories under Rule 4.309(B), before or during the taking of a deposition, or by moving for a protective order under Rule 4.302(C). A privilege not timely asserted is waived in that action, but is not waived for the purposes of any other action.

(2) Unless the court orders otherwise, if a party asserts that the medical information is subject to a privilege and the assertion has the effect of preventing discovery of medical information otherwise discoverable under Rule 4.302(B), the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or mental or physical condition.

(C) Response by Party to Request for Medical Information.

(1) A party who is served with a request for production of medical information under Rule 4.310 must either:

(a) make the information available for inspection and copying as requested;

(b) assert that the information is privileged;

(c) object to the request as permitted by Rule 4.310(B)(2); or

(d) furnish the requesting party with signed authorizations in the form approved by the Tribal Court state court administrator sufficient in number to enable the requesting party to obtain the information requested from persons, institutions, hospitals, and other custodians in actual possession of the information requested.

(2) A party responding to a request for medical information as permitted by subrule (C)(1)(d) must also inform the adverse party of the physical location of the information requested.

(D) Release of Medical Information by Custodian.

(1) A physician, hospital, or other custodian of medical information (referred to in this rule as the "custodian") shall comply with a properly authorized request for the medical information within 28 days after the receipt of the request, or, if at the time the request is made the patient is hospitalized for the mental or physical condition for which the medical information is sought,

within 28 days after the patient's discharge or release. The court may extend or shorten these time limits for good cause.

(2) In responding to a request for medical information under this rule, the custodian will be deemed to have complied with the request if the custodian

(a) makes the information reasonably available for inspection and copying; or

(b) delivers to the requesting party the original information or a true and exact copy of the original information accompanied by a sworn certificate in the form approved by the Tribal Court, signed by the custodian verifying that the copy is a true and complete reproduction of the original information.

(3) If it is essential that an original document be examined when the authenticity of the document, questions of interpretation of handwriting, or similar questions arise, the custodian must permit reasonable inspection of the original document by the requesting party and by experts retained to examine the information.

(4) If x-rays or other records incapable of reproduction are requested, the custodian may inform the requesting party that these records exist, but have not been delivered pursuant to subrule (D)(2). Delivery of the records may be conditioned on the requesting party or the party's agent signing a receipt that includes a promise that the records will be returned to the custodian after a reasonable time for inspection purposes has elapsed.

(5) In complying with subrule (D)(2), the custodian is entitled to receive reasonable reimbursement in advance for expenses of compliance.

(6) If a custodian does not respond within the time permitted by subrule (D)(1) to a party's authorized request for medical information, a subpoena may be issued under Rule 4.305(A)(2), directing that the custodian present the information for examination and copying at the time and place stated in the subpoena.

(E) Persons Not Parties. Medical information concerning persons not parties to the action is not discoverable under this rule.

Rule 4.315 Video Depositions.

(A) When Permitted. Depositions authorized under Rule 4.303 and 4.306 may be taken by means of simultaneous audio and visual electronic recording without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this rule.

(B) Rules Governing. Except as provided in this rule, the taking of video depositions is governed by the rules governing the taking of other depositions unless the nature of the video deposition makes compliance impossible or unnecessary.

(C) Procedure.

(1) A notice of the taking of a video deposition and a subpoena for attendance at the deposition must state that the deposition is to be visually recorded.

(2) A video deposition must be timed by means of a digital clock or clocks capable of displaying the hours, minutes, and seconds. The clock or clocks must be in the picture at all times during the taking of the deposition.

(3) A video deposition must begin with a statement on camera of the date, time, and place at which the recording is being made, the title of the action, and the identification of the attorneys.

(4) The person being deposed must be sworn as a witness on camera by an authorized person.

(5) More than one camera may be used, in sequence or simultaneously.

(6) The parties may make audio recordings while the video deposition is being taken.

(7) At the conclusion of the deposition a statement must be made on camera that the deposition is completed.

(D) Custody of Tape and Copies.

(1) The person making the video recording must retain possession of it. The video recording must be securely sealed and marked for identification purposes.

(2) The parties may purchase audio or audio-visual copies of the recording from the operator.

(E) Filing; Notice of Filing. If a party requests that the deposition be filed, the person who made the recording shall

(1) file the recording with the court under Rule 4.306(F)(3), together with an affidavit identifying the recording, stating the total elapsed time, and attesting that no alterations, additions, or deletions other than those ordered by the court have been made;

(2) give the notice required by Rule 4.306(F)(3), and

(3) serve copies of the recording on all parties who have requested them under Rule 4.315(D)(2).

(F) Use as Evidence; Objections.

(1) A video deposition may not be used in a court proceeding unless it has been filed with the court.

(2) Except as modified by this rule, the use of video depositions in court proceedings is governed by Rule 4.308.

(3) A party who seeks to use a video deposition at trial must provide the court with either

(a) a transcript of the deposition, which shall be used for ruling on any objections, or

(b) a stipulation by all parties that there are no objections to the deposition and that the recording (or an agreed portion of it) may be played.

(4) When a video deposition is used in a court proceeding, the court must indicate on the record what portions of the recording have been played. The court reporter or recorder need not make a record of the statements in the recording.

(G) Custody of Video Deposition After Filing. After filing, a video deposition shall remain in the custody of the court unless the court orders the recording stored elsewhere for technical reasons or because of special storage problems. The order directing the storage must direct the custodian to keep the recordings sealed until the further order of the court. Video depositions filed with the court shall have the same status as other depositions and documents filed with the court, and may be reproduced, preserved, destroyed, or salvaged as directed by order of the court.

(H) Appeal. On appeal the recording remains part of the record and shall be transmitted with it. A party may request that the appellate court view portions of the video deposition. If a transcript was not provided to the court under subrule (F)(3), the appellant must arrange and pay for the preparation of a transcript to be included in the record on appeal.

(I) Costs. The costs of taking a video deposition and the cost for its use in evidence may be taxed as costs as provided by Rule 4.625 in the same manner as depositions recorded in other ways.

Rule 4.316 Removal of Discovery Materials From File.

(A) Definition. For the purpose of this rule, "discovery material" means deposition transcripts, audio or video recordings of depositions, interrogatories, and answers to interrogatories and requests to admit.

(B) Removal from File. In civil actions, discovery materials may be removed from files and destroyed in the manner provided in this rule.

(1) By Stipulation. If the parties stipulate to the removal of discovery materials from the file, the clerk may remove the materials and dispose of them in the manner provided in the stipulation.

(2) By the Clerk.

(a) The clerk may initiate the removal of discovery materials from the file in the following circumstances.

(i) If an appeal has not been taken, 18 months after entry of judgment on the merits or dismissal of the action.

(ii) If an appeal has been taken, 91 days after the appellate proceedings are concluded, unless the action is remanded for further proceedings in the trial court.

(b) The clerk shall notify the parties and counsel of record, when possible, that discovery materials will be removed from the file of the action and destroyed on a specified date at least 28 days after the notice is served unless within that time

(i) the party who filed the discovery materials retrieves them from the clerk's office, or

(ii) a party files a written objection to removal of discovery materials from the file.

If an objection to removal of discovery materials is filed, the discovery materials may not be removed unless the court so orders after notice and opportunity for the objecting party to be heard. The clerk shall schedule a hearing and give notice to the parties. The rules governing motion practice apply.

(3) By Order. On motion of a party, or on its own initiative after notice and hearing, the court may order discovery materials removed at any other time on a finding that the materials are no longer necessary. However, no discovery materials may be destroyed by court personnel or the clerk until the periods set forth in subrule (2)(a)(i) or (2)(a)(ii) have passed.

Subchapter 4.400 Pretrial Procedure; Alternative Dispute Resolution; Offers Of Judgment; Settlements

Rule 4.401 Pretrial Procedures; Conferences; Scheduling Orders.

(A) Time; Discretion of Court. At any time after the commencement of the action, on its own initiative or the request of a party, the court may direct that the attorneys for the parties, alone or with the parties, appear for a conference. The court shall give reasonable notice of the scheduling of a conference. More than one conference may be held in an action.

(B) Early Scheduling Conference and Order.

(1) Early Scheduling Conference. The court may direct that an early scheduling conference be held. In addition to those considerations enumerated in subrule (C)(1), during this conference the court should consider:

(a) whether jurisdiction and venue are proper or whether the case is frivolous,

(b) whether to refer the case to an alternative dispute resolution or peacemaking procedure under Rule 4.410, and

(c) the complexity of a particular case and enter a scheduling order setting time limitations for the processing of the case and establishing dates when future actions should begin or be completed in the case.

(2) Scheduling Order.

(a) At an early scheduling conference under subrule (B)(1), a pretrial conference under subrule (C), or at such other time as the court concludes that such an order would facilitate the progress of the case, the court shall establish times for events the court deems appropriate, including

(i) the initiation or completion of an ADR or peacemaking process,

(ii) the amendment of pleadings, adding of parties, or filing of motions,

(iii) the completion of discovery,

(iv) the exchange of witness lists under subrule (I), and

(v) the scheduling of a pretrial conference, a settlement conference, or trial.

More than one such order may be entered in a case.

(b) The scheduling of events under this subrule shall take into consideration the nature and complexity of the case, including the issues involved, the number and location of parties and potential witnesses, including experts, the extent of expected and necessary discovery, and the availability of reasonably certain trial dates.

(c) Whenever reasonably practical, the scheduling of events under this subrule shall be made after meaningful consultation with all counsel of record.

(i) If a scheduling order is entered under this subrule in a manner that does not permit meaningful advance consultation with counsel, within 14 days after entry of the order, a party may file and serve a written request for amendment of the order detailing the reasons why the order should be amended.

(ii) Upon receiving such a written request, the court shall reconsider the order in light of the objections raised by the parties. Whether the reconsideration occurs at a conference or in some other manner, the court must either enter a new scheduling order or notify the parties in writing that the court declines to amend

the order. The court must schedule a conference, enter the new order, or send the written notice, within 14 days after receiving the request.

(iii) The submission of a request pursuant to this subrule, or the failure to submit such a request, does not preclude a party from filing a motion to modify a scheduling order.

(C) Pretrial Conference; Scope.

(1) At a conference under this subrule, in addition to the matters listed in subrule (B)(1), the court and the attorneys for the parties may consider any matters that will facilitate the fair and expeditious disposition of the action, including:

(a) the simplification of the issues;

(b) the amount of time necessary for discovery;

(c) the necessity or desirability of amendments to the pleadings;

(d) the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;

(e) the limitation of the number of expert witnesses;

(f) the consolidation of actions for trial, the separation of issues, and the order of trial when some issues are to be tried by a jury and some by the court;

(g) the possibility of settlement;

(h) whether mediation, case evaluation, or some other form of alternative dispute resolution would be appropriate for the case, and what mechanisms are available to provide such services;

(i) the identity of the witnesses to testify at trial;

(j) the estimated length of trial;

(k) whether all claims arising out of the transaction or occurrence that is the subject matter of the action have been joined as required by Rule 4.203(A);

(l) other matters that may aid in the disposition of the action.

(2) Conference Order. If appropriate, the court shall enter an order incorporating agreements reached and decisions made at the conference.

(D) Order for Trial Briefs. The court may direct the attorneys to furnish trial briefs as to any or all of the issues involved in the action.

(E) Appearance of Counsel. The attorneys attending the conference shall be thoroughly familiar with the case and have the authority necessary to fully participate in the conference. The court may direct that the attorneys who intend to try the case attend the conference.

(F) Presence of Parties at Conference. If the court anticipates meaningful discussion of settlement, the court may direct that the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers, or other persons:

(1) be present at the conference or be immediately available at the time of the conference; and

(2) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may require the availability of a specified individual; provided, however, that the availability of a substitute who has the information and authority required by subrule (F)(2) shall constitute compliance with the order.

The court's order may specify whether the availability is to be in person or by telephone.

This subrule does not apply to an early scheduling conference held pursuant to subrule (B).

(G) Failure to Attend or to Participate.

(1) Failure of a party or the party's attorney or other representative to attend a scheduled conference or to have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement, as directed by the court, may constitute a default to which Rule 4.603 is applicable or a ground for dismissal under Rule 4.504(B).

(2) The court shall excuse a failure to attend a conference or to participate as directed by the court, and shall enter a just order other than one of default or dismissal, if the court finds that

(a) entry of an order of default or dismissal would cause manifest injustice; or

(b) the failure was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in Rule 4.313(B)(2).

(H) Conference After Discovery. If the court finds at a pretrial conference held after the completion of discovery that due to a lack of reasonable diligence by a party the action is not ready for trial, the court may enter an appropriate order to facilitate preparation of the action for trial and may require the offending party to pay the reasonable expenses, including attorney fees, caused by the lack of diligence.

(I) Witness Lists.

(1) No later than the time directed by the court under subrule (B)(2)(a), the parties shall file and serve witness lists. The witness list must include:

(a) the name of each witness, and the witness' address, if known; however, records custodians whose testimony would be limited to providing the foundation for the admission of records may be identified generally;

(b) whether the witness is an expert, and the field of expertise.

(2) The court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown.

(3) This subrule does not prevent a party from obtaining an earlier disclosure of witness information by other discovery means as provided in these rules.

Rule 4.402 Use of Communication Equipment.

(A) Definition. "Communication equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other.

(B) Use. A court may, on its own initiative or on the written request of a party, direct that communication equipment be used for a motion hearing, pretrial conference, scheduling conference, or status conference. The court must give notice to the parties before directing on its own initiative that communication equipment be used. A party wanting to use communication equipment must submit a written request to the court at least 7 days before the day on which such equipment is sought to be used, and serve a copy on the other parties, unless good cause is shown to waive this requirement. The requesting party also must provide a copy of the request to the office of the judge to whom the request is directed. The court may, with the consent of all parties or for good cause, direct that the testimony of a witness be taken through communication equipment. A verbatim record of the proceeding must still be made.

(C) Burden of Expense. The party who initiates the use of communication equipment shall pay the cost for its use, unless the court otherwise directs. If the use of communication equipment is initiated by the court, the cost for its use is to be shared equally, unless the court otherwise directs.

Rule 4.406 Use of Facsimile Communication Equipment.

(A) Definition. "Facsimile communication equipment" means a machine that transmits and reproduces graphic matter (as printing or still pictures) by means of signals sent over telephone lines.

(B) Use. The Tribal Court may permit the filing of pleadings, motions, affidavits, opinions, orders, or other documents by the use of facsimile communication equipment. Except as provided by Rule 4.012, a clerk shall not permit the filing of any document for which a filing fee is required unless the full amount of the filing fee is paid or deposited in advance with the clerk.

(C) Paper. All filings must be on good quality 8½ by 11-inch paper, and the print must be no smaller than 12-point type. These requirements do not apply to attachments and exhibits, but parties are encouraged to reduce or enlarge such documents to 82 by 11 inches, if practical.

(D) Fees. In addition to fees required by the Tribal Code, the Tribal Court may impose fees for facsimile filings.

(E) Number of Pages. The Tribal Court may establish a maximum number of pages that may be sent at one time.

(F) Hours. Documents received during the regular business hours of the court will be deemed filed on that business day. Documents received after regular business hours and on weekends or designated

court holidays will be deemed filed on the next business day. A document is considered filed if the transmission begins during regular business hours, as verified by the court, and the entire document is received.

(G) Originals. Documents filed by facsimile communication equipment shall be considered original documents. The filing party shall retain the documents that were transmitted by facsimile communication equipment.

(H) Signature. For purposes of Rule 4.114, a signature includes a signature transmitted by facsimile communication equipment.

Rule 4.410 Alternative Dispute Resolution.

(A) Scope and Applicability of Rule; Definitions.

(1) All civil cases, including domestic relations cases, are subject to alternative dispute resolution processes unless otherwise provided by statute or court rule.

(2) For the purposes of this rule, alternative dispute resolution (ADR) means any process designed to resolve a legal dispute in the place of court adjudication, and includes settlement conferences ordered under Rule 4.401; mediation or Peacemaking under Rule 4.411; and other procedures provided by local court rule or ordered on stipulation of the parties.

(B) ADR Plan.

(1) The Tribal Court shall adopt an ADR and Peacemaking plan by administrative order. The plan must be in writing and available to the public in the ADR clerk's office.

(2) At a minimum, the ADR and Peacemaking plan must:

(a) designate an ADR clerk, who may be the clerk of the court, the court administrator, or some other person;

(b) if the court refers cases to mediation or Peacemaking under Rule 4.411, specify how the list of persons available to serve as mediators or Peacemakers will be maintained and the system by which mediators will be assigned from the list under Rule 4.411(B)(3);

(c) include provisions for disseminating information about the operation of the court's ADR and Peacemaking programs to litigants and the public; and

(d) specify how access to ADR processes will be provided for indigent persons. If a party qualifies for waiver of filing fees under Rule 4.012 or the court determines on other grounds that the party is unable to pay the full cost of an ADR provider's services, and free or low-cost dispute resolution services are not available, the court shall not order that party to participate in an ADR process.

(3) The plan may also provide for referral relationships with local dispute resolution centers, including those affiliated with the Community Dispute Resolution Program.

(4) The Tribal Court may jointly adopt and administer an ADR plan with another Court.

(C) Order for ADR.

(1) At any time, after consultation with the parties, the court may order that a case be submitted to an appropriate ADR or Peacemaking process. More than one such order may be entered in a case.

(2) Unless the specific rule under which the case is referred provides otherwise, in addition to other provisions the court considers appropriate, the order shall

(a) specify, or make provision for selection of, the ADR or Peacemaking provider;

(b) provide time limits for initiation and completion of the ADR or Peacemaking process; and

(c) make provision for the payment of the ADR provider.

(3) The order may require attendance at ADR or Peacemaking proceedings as provided in subrule (D).

(D) Attendance at ADR or Peacemaking Proceedings.

(1) Appearance of Counsel. The attorneys attending an ADR or Peacemaking proceeding shall be thoroughly familiar with the case and have the authority necessary to fully participate in the proceeding. The court may direct that the attorneys who intend to try the case attend ADR or Peacemaking proceedings.

(2) Presence of Parties. The court may direct that the parties to the action, agents of parties, representatives of lienholders, representatives of insurance carriers, or other persons:

(a) be present at the ADR proceeding or be immediately available at the time of the proceeding; and

(b) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may specify whether the availability is to be in person or by telephone.

(3) Failure to Attend.

(a) Failure of a party or the party's attorney or other representative to attend a scheduled ADR or Peacemaking proceeding, as directed by the court, may constitute a default to which Rule 4.603 is applicable or a ground for dismissal under Rule 4.504(B).

(b) The court shall excuse a failure to attend an ADR or Peacemaking proceeding, and shall enter a just order other than one of default or dismissal, if the court finds that

(i) entry of an order of default or dismissal would cause manifest injustice; or

(ii) the failure to attend was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in Rule 4.313(B)(2).

(E) Objections to ADR or Peacemaking. Within 14 days after entry of an order referring a case to an ADR or Peacemaking process, a party may move to set aside or modify the order. A timely motion must be decided before the case is submitted to the ADR or Peacemaking process.

(F) Supervision of ADR or Peacemaking Plan. The chief judge shall exercise general supervision over the implementation of this rule and shall review the operation of the court's ADR or Peacemaking plan at least annually to assure compliance with this rule. In the event of noncompliance, the court shall take such action as is needed. This action may include recruiting persons to serve as ADR or Peacemaking providers or changing the court's ADR or Peacemaking plan.

Rule 4.411 Mediation or Peacemaking.

(A) Scope and Applicability of Rule; Definitions.

(1) This rule applies to cases that the court refers to mediation or Peacemaking as provided in Rule 4.410, including domestic relations cases.

(2) "Mediation" or “Peacemaking” is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator or peacemaker has no authoritative decision-making power.

(3) This rule does not restrict the Tribal Court or the Friend of the Court from enforcing custody, parenting time, and support orders.

(4) The court may order, on stipulation of the parties, the use of other settlement procedures.

(B) Referral to Mediation or Peacemaking; Objections to referral.

(1) The court in its discretion may order the parties to complete mediation or Peacemaking. The order referring the case to mediation or Peacemaking shall specify whether the case is being referred for mediation or for Peacemaking.

(2) The Court shall assign the mediator(s) or peacemaker(s) assigned to the case.

(3) The rule for disqualification of a mediator or peacemaker is the same as that provided in Rule 4.013 for the disqualification of a judge. The mediator or peacemaker must promptly disclose any potential basis for disqualification.

(4) Parties who are subject to an order of protection or personal protection order or who are involved in dependent child (ICW) proceedings under the Children’s Code (10 GTBC §101 et seq. may not be referred to mediation or Peacemaking without a hearing to determine if mediation or Peacemaking is appropriate.

(5) Objections to Referral to Mediation or Peacemaking.

(a) To object to mediation or Peacemaking, a party must file a written motion to remove the case from mediation or Peacemaking, and serve a copy upon the opposing party

within 14 days after receiving notice of the order assigning the case to mediation or peacemaking. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of the parties or the court orders otherwise.

(b) A timely motion must be heard before the case is mediated or Peacemaking occurs.

(c) Cases may be exempt from mediation or Peacemaking on the basis of the following:

(i) child abuse or neglect;

(ii) domestic abuse, unless attorneys for both parties will be present at the mediation or Peacemaking session;

(iii) inability of one or both parties to negotiate for themselves, unless attorneys for both parties will be present at the mediation or Peacemaking session;

(iv) reason to believe that one or both parties' health or safety would be endangered by mediation or Peacemaking; or

(v) for other good cause shown.

(C) Scheduling and Conduct of Mediation or Peacemaking.

(1) Scheduling. The order referring the case for mediation or Peacemaking shall specify the time within which the mediation or Peacemaking is to be completed. The court clerk shall send a copy of the order to each party and the mediator or peacemaker selected. Upon receipt of the court's order, the mediator or peacemaker shall promptly confer with the parties to schedule mediation or peacemaking in accordance with the order. Factors that may be considered in arranging the process may include the need for limited discovery before mediation or peacemaking, the number of parties and issues, and the necessity for multiple sessions. The mediator or peacemaker may direct the parties to submit in advance, or bring to the mediation or peacemaking, documents or summaries providing information about the case. Failure to submit these materials to the mediator within the designated time may subject the offending party to sanctions imposed by the Court.

(2) Conduct of Mediation or Peacemaking. The mediator or peacemaker shall meet with counsel and the parties, explain the mediation or peacemaking process, and then proceed with the process. The mediator or peacemaker shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation or peacemaking will continue until a settlement is reached, the mediator or peacemaker determines that a settlement is not likely to be reached, the end of the first mediation or peacemaking session, or until a time agreed to by the parties. Additional sessions may be held as long as it appears that the process may result in settlement of the case.

(3) Completion of Mediation or Peacemaking. Within 7 days after the completion of the mediation or Peacemaking process, the mediator or peacemaker shall so advise the court, stating only the date of completion of the process, who participated in the mediation or peacemaking, whether settlement was reached, and whether further mediation or Peacemaking proceedings are contemplated.

(4) Settlement. If the case is settled through mediation or Peacemaking, within 21 days the attorneys shall prepare and submit to the court the appropriate documents to conclude the case. If unrepresented, the parties shall prepare and submit to the court the appropriate documents to conclude the case.

(5) Confidentiality. Statements made during the mediation or Peacemaking, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator or Peacemaker relating to a mediation or peacemaking are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to

(a) the report of the mediator or peacemaker under subrule (C)(3),

(b) information reasonably required by court personnel to administer and evaluate the mediation or Peacemaking program,

(c) information necessary for the court to resolve disputes regarding the mediator's fee (if any), or

(d) information necessary for the court to consider issues raised under Rule 4.410(D)(3).

(D) Fees.

(1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator or peacemaker's experience and usual charges for services performed.

(2) The costs of mediation shall be divided between the parties on a pro-rata basis unless otherwise agreed by the parties or ordered by the court. The mediator's fee shall be paid no later than

(a) 42 days after the mediation process is concluded, or

(b) the entry of judgment, or

(c) the dismissal of the action,

whichever occurs first.

(3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other than that provided in subrule (D)(2).

(4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate order to enforce the payment of the fee.

(5) If a party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.

(6) There is no fee under the Tribal Court Peacemaking program.

(E) List of Mediators.

(1) Application. An eligible person desiring to serve as a mediator may apply to the court clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the court clerk.

(a) The form shall include a certification that

(i) the applicant meets the requirements for service under the court's selection criteria;

(ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and

(iii) the mediator will comply with the court rules, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the Michigan State Court Administrator under subrule (G).

(b) On the form the applicant shall indicate the applicant's hourly rate for providing mediation services.

(c) The form shall include an optional section identifying the applicant's gender and racial/ethnic background.

(2) Review of Applications. The court clerk shall review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.

(a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.

(b) Selections shall be made without regard to race, ethnic origin, or gender.

(c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public at the Tribal Court.

(3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the court clerk's decision by the Chief Judge. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.

(4) Removal from List. The court clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the court clerk's decision by the Chief Judge. The court does not need to provide a hearing.

(F) Qualification of Mediators.

(1) Small Claims Mediation. The tribal court may develop individual plans to establish qualifications for persons serving as mediators in small claims cases.

(2) General Civil Mediation. To be eligible to serve as a general civil mediator, a person must meet the following minimum qualifications:

(a) Complete a training program approved by the Michigan State Court Administrator providing the generally accepted components of mediation skills;

(b) Have one or more of the following:

(i) Juris doctor degree or graduate degree in conflict resolution; or

(ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation.

(c) Observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator.

(3) Domestic Relations Mediation. To be eligible to serve as a domestic relations mediator under this rule, an applicant must meet the following minimum qualifications:

(a) The applicant must

(i) be a licensed attorney, a licensed or limited psychologist, a licensed professional counselor, or a licensed marriage and family therapist;

(ii) have a masters degree in counseling, social work, or marriage and family therapy;

(iii) have a graduate degree in behavioral science; or

(iv) have 5 years experience in family counseling.

(b) The applicant must have completed a training program approved by the Michigan State Court Administrator providing the generally accepted components of domestic relations mediation skills.

(c) The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator, and have conducted one domestic relations mediation to conclusion under the supervision and observation of an approved mediator.

(4) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (F)(2), may apply to the court clerk for special approval. The court clerk shall make the determination on the basis of criteria provided by the Michigan State Court Administrator.

(5) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is ground for removal from the list under subrule(E)(4).

(G) Standards of Conduct for Mediators. The court shall apply the standards of conduct for mediators approved by the Michigan State Court Administrator, designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be
available to the public.

(H) Evaluative Mediation.

(1) This subrule applies if the parties request evaluative mediation, or if they do so at the conclusion of mediation and the mediator is willing to provide an evaluation.

(2) If settlement is not reached during mediation, the mediator, within a reasonable period after the conclusion of the mediation shall prepare a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes only. The mediator's recommendation shall be submitted to the parties of record only and may not be submitted or made available to the court.

(3) If both parties accept the mediator's recommendation in full, the parties or their attorneys shall proceed to have a judgment entered in conformity with the recommendation.

(4) If the mediator's recommendation is not accepted in full by both parties and the parties are unable to reach an agreement as to the remaining contested issues, the mediator shall report to the court under subrule (C)(3), and the case will proceed toward trial.

(5) The court may not impose sanctions against either party for rejecting the mediator's recommendation. The court may not inquire and neither the parties nor the mediator may inform the court of the identity of the party or parties who rejected the mediator's recommendation.

(6) The mediator's report and recommendation may not be read by the court and may not be admitted into evidence or relied upon by the court as evidence of any of the information contained in it without the consent of both parties. The court shall not request the parties' consent to read the mediator's recommendation.

Rule 4.420 Settlements and Judgments for Minors and Legally Incapacitated Individuals.

(A) Applicability. This rule governs the procedure to be followed for the entry of a consent judgment, a settlement, or a dismissal pursuant to settlement in an action brought for a minor or an incompetent person by a next friend, guardian, or conservator. Before an action is commenced, the settlement of a claim on behalf of a minor or a legally incapacitated individual by a next friend, guardian, or conservator or where a minor or a legally incapacitated individual is to receive a distribution from a wrongful death claim. Before an action is commenced, the settlement of a claim on behalf of a minor or a legally incapacitated individual is governed by the State of Michigan Estates and Protected Individuals Code.

(B) Procedure. In actions covered by this rule, a proposed consent judgment, settlement, or dismissal pursuant to settlement must be brought before the judge to whom the action is assigned, and the judge shall pass on the fairness of the proposal.

(1) If the claim is for damages because of personal injury to the minor or legally incapacitated individual,

(a) the minor or legally incapacitated individual shall appear in court personally to allow the judge an opportunity to observe the nature of the injury unless, for good cause, the judge excuses the minor's or legally incapacitated individual presence, and

(b) the judge may require medical testimony, by deposition or in court, if not satisfied of the extent of the injury.

(2) If the next friend, guardian, or conservator is a person who has made a claim in the same action and will share in the settlement or judgment of the minor or legally incapacitated individual, then a guardian ad litem for the minor or legally incapacitated individual must be appointed by the judge before whom the action is pending to approve the settlement or judgment.

(3) If a next friend, guardian or conservator for the minor or legally incapacitated individual as been appointed by the tribal court the terms of the proposed settlement or judgment may be approved by the court in which the action is pending upon a finding that the payment arrangement is in the best interests of the minor or legally incapacitated individual, but no judgment or dismissal may enter until the court receives written verification from the tribal court that it has passed on the sufficiency of the bond and the bond, if any has been filed with the tribal court.

(4) The following provisions apply to settlements for minors.

(a) If the settlement or judgment requires payment of more than $5,000 to the minor either immediately, or if the settlement or judgment is payable in installments in any single year during minority, a conservator must be appointed by the tribal court before the entry of the judgment or dismissal.

(b) If the settlement or judgment does not require payment of more than $5,000 to the minor in any single year, the money may be paid in accordance with the provisions of Michigan Complied Laws § 700.5102.

(5) If a settlement or judgment provides for the creation of a trust for the minor or legally incapacitated individual, the tribal court shall determine the amount to be paid to the trust, but

the trust shall not be funded without prior approval of the trust by the tribal court pursuant to notice to all interested persons and a hearing.

Subchapter 4.500 Trials; Subpoenas; Juries

Rule 4.501 Scheduling Trials; Court Calendars.

(A) Scheduling Conferences or Trial.

(1) Unless the further processing of the action is already governed by a scheduling order under Rule 4.401(B)(2), the court shall

(a) schedule a pretrial conference under Rule 4.401,

(b) schedule the action for an alternative dispute resolution process,

(c) schedule the action for trial, or

(d) enter another appropriate order to facilitate preparation of the action for trial.

(2) A court may adopt a trial calendar or other method for scheduling trials without the request of a party.

(B) Expedited Trials.

(1) On its own initiative, the motion of a party, or the stipulations of all parties, the court may shorten the time in which an action will be scheduled for trial, subject to the notice provisions of subrule (C).

(2) In scheduling trials, the court shall give precedence to actions involving a contest over the custody of minor children and to other actions afforded precedence by statute or court rule.

(C) Notice of Trial. Attorneys and parties must be given 28 days' notice of trial assignments, unless

(1) a rule or statute provides otherwise as to a particular type of action,

(2) the adjournment is of a previously scheduled trial, or

(3) the court otherwise directs for good cause.

Notice may be given orally if the party is before the court when the matter is scheduled, or by mailing or delivering copies of the notice or calendar to attorneys of record and to any party who appears on his or her own behalf.

(D) Attorney Scheduling Conflicts.

(1) The court and counsel shall make every attempt to avoid conflicts in the scheduling of trials.

(2) When conflicts in scheduled trial dates do occur, it is the responsibility of counsel to notify the court as soon as the potential conflict becomes evident. In such cases, the courts and counsel involved shall make every attempt to resolve the conflict in an equitable manner, with due regard for the priorities and time constraints provided by statute and court rule. When counsel cannot resolve conflicts through consultation with the individual courts, the judges shall consult directly to resolve the conflict.

(3) Except where a statute, court rule, or other special circumstance dictates otherwise, priority for trial shall be given to the case in which the pending trial date was set first.

Rule 4.502 Dismissal for Lack of Progress.

(A) Notice of Proposed Dismissal.

(1) On motion of a party or on its own initiative, the court may order that an action in which no steps or proceedings appear to have been taken within 91 days be dismissed for lack of progress unless the parties show that progress is being made or that the lack of progress is not attributable to the party seeking affirmative relief.

(2) A notice of proposed dismissal may not be sent with regard to a case

(a) in which a scheduling order has been entered under Rule 4.401(B)(2) and the times for completion of the scheduled events have not expired,

(b) which is set for a conference, an alternative dispute resolution process, hearing, or trial.

(3) The notice shall be given in the manner provided in Rule 4.501(C) for notice of trial.

(B) Action by Court.

(1) If a party does not make the required showing, the court may direct the clerk to dismiss the action for lack of progress. Such a dismissal is without prejudice unless the court specifies otherwise.

(2) If an action is not dismissed under this rule, the court shall enter orders to facilitate the prompt and just disposition of the action.

(C) Reinstatement of Dismissed Action. On motion for good cause, the court may reinstate an action dismissed for lack of progress on terms the court deems just. On reinstating an action, the court shall enter orders to facilitate the prompt and just disposition of the action.

Rule 4.503 Adjournments.

(A) Applicability. This rule applies to adjournments of trials, alternative dispute resolution processes, pretrial conferences, and all motion hearings.

(B) Motion or Stipulation for Adjournment.

(1) Unless the court allows otherwise, a request for an adjournment must be by motion or stipulation made in writing or orally in open court and is based on good cause.

(2) A motion or stipulation for adjournment must state

(a) which party is requesting the adjournment,

(b) the reason for it, and

(c) whether other adjournments have been granted in the proceeding and, if so, the number granted.

(3) The entitlement of a motion or stipulation for adjournment must specify whether it is the first or a later request, e.g., "Plaintiff's Request for Third Adjournment."

(C) Absence of Witness or Evidence.

(1) A motion to adjourn a proceeding because of the unavailability of a witness or evidence must be made as soon as possible after ascertaining the facts.

(2) An adjournment may be granted on the ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence.

(3) If the testimony or the evidence would be admissible in the proceeding, and the adverse party stipulates in writing or on the record that it is to be considered as actually given in the proceeding, there may be no adjournment unless the court deems an adjournment necessary.

(D) Order for Adjournment; Costs and Conditions.

(1) In its discretion the court may grant an adjournment to promote the cause of justice. An adjournment may be entered by order of the court either in writing or on the record in open court, and the order must state the reason for the adjournment.

(2) In granting an adjournment, the court may impose costs and conditions. When an adjournment is granted conditioned on payment of costs, the costs may be taxed summarily to be paid on demand of the adverse party or the adverse party's attorney, and the adjournment may be vacated if nonpayment is shown by affidavit.

(E) Rescheduling.

(1) Except as provided in subrule (E)(2), at the time the proceeding is adjourned under this rule, or as soon thereafter as possible, the proceeding must be rescheduled for a specific date and time.

(2) A court may place the matter on a specified list of actions or other matters which will automatically reappear before the court on the first available date.

(F) Death or Change of Status of Attorney. If the court finds that an attorney

(1) has died or is physically or mentally unable to continue to act as an attorney for a party,

(2) has been disbarred,

(3) has been suspended,

(4) has been placed on inactive status, or

(5) has resigned from active membership in the bar, the court shall adjourn a proceeding in which the attorney was acting for a party. The party is entitled to 28 days' notice that he or she

must obtain a substitute attorney or advise the court in writing that the party intends to appear on his or her own behalf.

Rule 4.504 Dismissal of Actions.

(A) Voluntary Dismissal; Effect.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 4.420, an action may be dismissed by the plaintiff without an order of the court and on the payment of costs

(a) by filing a notice of dismissal before service by the adverse party of an answer or of a motion under Rule 4.116, whichever first occurs; or

(b) by filing a stipulation of dismissal signed by all the parties.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a dismissal under subrule (A)(1)(a) operates as an adjudication on the merits when filed by a plaintiff who has previously dismissed an action in any court based on or including the same claim.

(2) By Order of Court. Except as provided in subrule (A)(1), an action may not be dismissed at the plaintiff's request except by order of the court on terms and conditions the court deems proper.

(a) If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the court shall not dismiss the action over the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(b) Unless the order specifies otherwise, a dismissal under subrule (A)(2) is without prejudice.

(B) Involuntary Dismissal; Effect.

(1) If the plaintiff fails to comply with these rules or a court order, a defendant may move for dismissal of an action or a claim against that defendant.

(2) In an action tried without a jury, after the presentation of the plaintiff's evidence the defendant, without waiving the right to offer evidence if the motion is not granted, may move for dismissal on the ground that on the facts and the law the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 4.517.

(3) Unless the court otherwise specifies in its order for dismissal, a dismissal under this subrule or a dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for failure to join a party under Rule 4.205, operates as an adjudication on the merits.

(C) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. This rule applies to the dismissal of a counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone, pursuant to subrule (A)(1), must be made before service by the adverse party of a responsive pleading or a motion under Rule 4.116, or, if no pleading or motion is filed, before the introduction of evidence at the trial.

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

(E) Dismissal for Failure to Serve Defendant. An action may be dismissed as to a defendant under Rule 4.102(E).

Rule 4.505 Consolidation; Separate Trials.

(A) Consolidation. When actions involving a substantial and controlling common question of law or fact are pending before the court, it may

(1) order a joint hearing or trial of any or all the matters in issue in the actions;

(2) order the actions consolidated; and

(3) enter orders concerning the proceedings to avoid unnecessary costs or delay.

(B) Separate Trials. For convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, the court may order a separate trial of one or more claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 4.506 Subpoena; Order to Attend.

(A) Attendance of Party or Witness.

(1) The court in which a matter is pending may by order or subpoena command a party or witness to appear for the purpose of testifying in open court on a date and time certain and from time to time and day to day thereafter until excused by the court, and to produce notes, records, documents, photographs, or other portable tangible things as specified.

(2) The court may require a party and a representative of an insurance carrier for a party with information and authority adequate for responsible and effective participation in settlement discussions to be present or immediately available at trial.

(3) A subpoena may be issued only in accordance with this rule or Rule 4.305 or 4.621(C).

(B) Authorized Signatures.

(1) A subpoena signed by an attorney of record in the action or by the clerk of the court in which the matter is pending has the force and effect of an order signed by the judge of that court.

(2) For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, or lithographed.

(C) Notice to Witness of Required Attendance.

(1) The signer of a subpoena must issue it for service on the witness sufficiently in advance of the trial or hearing to give the witness reasonable notice of the date and time the witness is to appear. Unless the court orders otherwise, the subpoena must be served at least 2 days before the witness is to appear.

(2) The party having the subpoena issued must take reasonable steps to keep the witness informed of adjournments of the scheduled trial or hearing.

(3) If the served witness notifies the party that it is impossible for the witness to be present in court as directed, the party must either excuse the witness from attendance at that time or notify the witness that a special hearing may be held to adjudicate the issue.

(D) Form of Subpoena. A subpoena must:

(1) be entitled in the name of the People of the Grand Traverse Band of Ottawa and Chippewa Indians;

(2) be imprinted with the seal of the Grand Traverse Band of Ottawa and Chippewa Indians;

(3) have typed or printed on it the name of the court in which the matter is pending;

(4) state the place where the trial or hearing is scheduled;

(5) state the title of the action in which the person is expected to testify;

(6) state the file designation assigned by the court; and

(7) state that failure to obey the commands of the subpoena or reasonable directions of the signer as to time and place to appear may subject the person to whom it is directed to penalties for contempt of court.

The Tribal Court shall develop and approve a subpoena form for use.

(E) Refusal of Witness to Attend or to Testify; Contempt.

(1) If a person fails to comply with a subpoena served in accordance with this rule or with a notice under subrule (C)(2), the failure may be considered a contempt of court by the court in which the action is pending.

(2) If a person refuses to be sworn or to testify regarding a matter not privileged after being ordered to do so by the court, the refusal may be considered a contempt of court.

(F) Failure of Party to Attend. If a party or an officer, director, or managing agent of a party fails to attend or produce documents or other tangible evidence pursuant to a subpoena or an order to attend, the court may:

(1) stay further proceedings until the order is obeyed;

(2) tax costs to the other party or parties to the action;

(3) strike all or a part of the pleadings of that party;
(4) refuse to allow that party to support or oppose designated claims and defenses;
(5) dismiss the action or any part of it; or
(6) enter judgment by default against that party.

(G) Service of Subpoena and Order to Attend; Fees.

(1) A subpoena may be served anywhere in the State of Michigan in the manner provided by Rule 4.105. The fee for attendance and mileage provided by law must be tendered to the person on whom the subpoena is served at the time of service. Tender must be made in cash, by money order, by cashier's check, or by a check drawn on the account of an attorney of record in the action or the attorney's authorized agent.

(2) A subpoena may also be served by mailing to a witness a copy of the subpoena and a postage-paid card acknowledging service and addressed to the party requesting service. The fees for attendance and mileage provided by law are to be given to the witness after the witness appears at the court, and the acknowledgment card must so indicate. If the card is not returned, the subpoena must be served in the manner provided in subrule (G)(1).

(3) A subpoena or order to attend directed to a party, or to an officer, director, or managing agent of a party, may be served in the manner provided by Rule 4.107, and fees and mileage need not be paid.

(H) Hearing on Subpoena or Order.

(1) A person served with a subpoena or order to attend may appear before the court in person or by writing to explain why the person should not be compelled to comply with the subpoena, order to attend, or directions of the party having it issued.

(2) The court may direct that a special hearing be held to adjudicate the issue.

(3) For good cause with or without a hearing, the court may excuse a witness from compliance with a subpoena, the directions of the party having it issued, or an order to attend.

(4) A person must comply with the command of a subpoena unless relieved by order of the court or written direction of the person who had the subpoena issued.

(I) Subpoena for Production of Hospital Medical Records.

(1) Except as provided in subrule (I)(5), a hospital may comply with a subpoena calling for production of medical records belonging to the hospital in the manner provided in this subrule. This subrule does not apply to x-ray films or to other portions of a medical record that are not susceptible to photostatic reproduction.

(a) The hospital may deliver or mail to the clerk of the court in which the action is pending, without cost to the parties, a complete and accurate copy of the original record.

(b) The copy of the record must be accompanied by a sworn certificate, in the form approved by the Tribal Court, signed by the medical record librarian or another authorized official of the hospital, verifying that it is a complete and accurate reproduction of the original record.

(c) The envelope or other container in which the record is delivered to the court shall be clearly marked to identify its contents. If the hospital wishes the record returned when it is no longer needed in the action, that fact must be stated on the container, and, with the record, the hospital must provide the clerk with a self-addressed, stamped envelope that the clerk may use to return the record.

(d) The hospital shall promptly notify the attorney for the party who caused the subpoena to be issued that the documents involved have been delivered or mailed to the court in accordance with subrule (I)(1).

(2) The clerk shall keep the copies sealed in the container in which they were supplied by the hospital. The container shall be clearly marked to identify the contents, the name of the patient, and the title and number of the action. The container shall not be opened except at the direction of the court.

(3) If the hospital has requested that the record be returned, the clerk shall return the record to the hospital when 42 days have passed after a final order terminating the action, unless an appeal has been taken. In the event of an appeal, the record shall be returned when 42 days

have passed after a final order terminating the appeal. If the hospital did not request that the record be returned as provided in subrule (I)(1)(c), the clerk may destroy the record after the time provided in this subrule.

(4) The admissibility of the contents of medical records produced under this rule or under Rule 4.314 is not affected or altered by these procedures and remains subject to the same objections as if the original records were personally produced by the custodian at the trial or hearing.

(5) A party may have a subpoena issued directing that an original record of a person be produced at the trial or hearing by the custodian of the record. The subpoena must specifically state that the original records, not copies, are required. A party may also require, by subpoena, the attendance of the custodian without the records.

Rule 4.507 Conduct of Trials.

(A) Opening Statements. Before the introduction of evidence, the attorney for the party who is to commence the evidence must make a full and fair statement of that party's case and the facts the party intends to prove. Immediately thereafter or immediately before the introduction of evidence by the adverse party, the attorney for the adverse party must make a like statement. Opening statements may be waived with the consent of the court and the opposing attorney.

(B) Opening the Evidence. Unless otherwise ordered by the court, the plaintiff must first present the evidence in support of the plaintiff's case. However, the defendant must first present the evidence in support of his or her case, if

(1) the defendant's answer has admitted facts and allegations of the plaintiff's complaint to the extent that, in the absence of further statement on the defendant's behalf, judgment should be entered on the pleadings for the plaintiff, and

(2) the defendant has asserted a defense on which the defendant has the burden of proof, either as a counterclaim or as an affirmative defense.

(C) Examination and Cross-Examination of Witnesses. Unless otherwise ordered by the court, no more than one attorney for a party may examine or cross-examine a witness.

(D) Interpreters. The court may appoint an interpreter of its own selection and may set reasonable compensation for the interpreter. The compensation is to be paid out of funds provided by law or by one or more of the parties, as the court directs, and may be taxed as costs, in the discretion of the court.

(E) Final Arguments. After the close of all the evidence, the parties may rest their cases with or without final arguments. The party who commenced the evidence is entitled to open the argument and, if the opposing party makes an argument, to make a rebuttal argument not beyond the issues raised in the preceding arguments.

(F) Time Allowed for Opening Statements and Final Arguments. The court may limit the time allowed each party for opening statements and final arguments. It shall give the parties adequate time for argument, having due regard for the complexity of the action, and may make separate time allowances for co-parties whose interests are adverse.

(G) Deposit of Fees. Proofs may not be taken in the trial of a civil action unless the trial fee and judgment fee provided by law have been deposited with the clerk of the court.

(H) Agreements to be in Writing. An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

Rule 4.508 Jury Trial of Right.

(A) Right Preserved. The right of trial by jury as declared by the constitution must be preserved to the parties inviolate.

(B) Demand for Jury. A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. The jury fee provided by law must be paid at the time the demand is filed.

(C) Specifications of Issues.

(1) In a demand for jury trial, a party may specify the issues the party wishes so tried; otherwise, the party is deemed to have demanded trial by jury of all the issues so triable.

(2) If a party has demanded trial by jury of only some of the issues, another party, within 14 days after service of a copy of the demand or within less time as the court may order, may serve a demand for trial by jury of another or all the issues of fact in the action.

(D) Waiver; Withdrawal.

(1) A party who fails to file a demand or pay the jury fee as required by this rule waives trial by jury.

(2) Waiver of trial by jury is not revoked by an amendment of a pleading asserting only a claim or defense arising out of the conduct, transaction, or occurrence stated, or attempted to be stated, in the original pleading.

(3) A demand for trial by jury may not be withdrawn without the consent, expressed in writing or on the record, of the parties or their attorneys.

Rule 4.509 Trial by Jury or by Court.

(A) By Jury. If a jury has been demanded as provided in Rule 4.508, the action or appeal must be designated in the court records as a jury action. The trial of all issues so demanded must be by jury unless

(1) the parties agree otherwise by stipulation in writing or on the record, or

(2) the court on motion or on its own initiative finds that there is no right to trial by jury of some or all of those issues.

(B) By Court. Issues for which a trial by jury has not been demanded as provided in Rule 4.508 will be tried by the court. In the absence of a demand for a jury trial of an issue as to which a jury demand might have been made of right, the court in its discretion may order a trial by jury of any or all issues.

(C) Sequence of Trial. In an action in which some issues are to be tried by jury and others by the court, or in which a number of claims, cross-claims, defenses, counterclaims, or third-party claims involve a common issue, the court may determine the sequence of trial of the issues, preserving the constitutional right to trial by jury according to the basic nature of every issue for which a demand for jury trial has been made under Rule 4.508.

Rule 4.510 Juror Personal History Questionnaire.

(A) Form. The Tribal Court shall adopt a juror personal history questionnaire.

(B) Completion of Questionnaire.

(1) The court clerk shall supply each juror drawn for jury service with a questionnaire in the form adopted pursuant to subrule (A). The court clerk shall direct the juror to complete the questionnaire in the juror's own handwriting before the juror is called for service.

(2) Refusal to answer the questions on the questionnaire, or answering the questionnaire falsely, is contempt of court.

(C) Filing the Questionnaire.

(1) On completion, the questionnaire shall be filed with the court clerk. The only persons allowed to examine the questionnaire are:

(a) the judges of the court;

(b) the court clerk and deputy clerks;

(c) parties to actions in which the juror is called to serve and their attorneys; and

(d) persons authorized access by court rule or by court order.

(2) The attorneys must be given a reasonable opportunity to examine the questionnaires before being called on to challenge for cause.

(a) The Tribal Court shall develop procedures for providing attorneys and parties reasonable access to juror questionnaires.

(b) If attorneys or parties receive copies of juror questionnaires, an attorney or party may not release them to any person who would not be entitled to examine them under subrule (C)(1).

(3) The questionnaires must be kept on file for 3 years from the time they are filled out.

(D) Summoning Jurors for Court Attendance. The court clerk or the court administrator, as designated by the chief judge, shall summon jurors for court attendance at the time and in the manner directed by the chief judge, the presiding judge, or the judge to whom the action in which jurors are being called for service is assigned. For a juror's first required court appearance, service must be by written notice addressed to the juror at his or her residence as shown by the records of the clerk. The notice may be by ordinary mail or by personal service. For later service, notice may be in the manner directed by the court. The person giving notice to jurors shall keep a record of the notice and make a return if directed by the court. The return is presumptive evidence of the fact of service.

Rule 4.511 Impaneling the Jury.

(A) Selection of Jurors.

(1) Persons who have not been discharged or excused as prospective jurors by the court are subject to selection for the action or actions to be tried during their term of service as provided by law.

(2) In an action that is to be tried before a jury, the names or corresponding numbers of the prospective jurors shall be deposited in a container, and the prospective jurors must be selected for examination by a random blind draw from the container.

(3) The court may provide for random selection of prospective jurors for examination from less than all of the prospective jurors not discharged or excused.

(4) Prospective jurors may be selected by any other fair and impartial method directed by the court or agreed to by the parties.

(B) Alternate Jurors. The court may direct that 7 or more jurors be impaneled to sit. After the instructions to the jury have been given and the action is ready to be submitted, unless the parties have stipulated that all the jurors may deliberate, the names of the jurors must be placed in a container and names drawn to reduce the number of jurors to 6, who shall constitute the jury. The court may retain the alternate jurors during deliberations. If the court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

(C) Examination of Jurors. The court may conduct the examination of prospective jurors or may permit the attorneys to do so.

(D) Challenges for Cause. The parties may challenge jurors for cause, and the court shall rule on each challenge. A juror challenged for cause may be directed to answer questions pertinent to the inquiry. It is grounds for a challenge for cause that the person:

(1) is not qualified to be a juror;

(2) has been convicted of a felony;

(3) is biased for or against a party or attorney;

(4) shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;

(5) has opinions or conscientious scruples that would improperly influence the person's verdict;

(6) has been subpoenaed as a witness in the action;

(7) has already sat on a trial of the same issue;

(8) has served as a grand or petit juror in a criminal case based on the same transaction;

(9) is related within the ninth degree (civil law) of consanguinity or affinity to one of the parties or attorneys;

(10) is the guardian, conservator, ward, landlord, tenant, employer, employee, partner, or client of a party or attorney;

(11) is or has been a party adverse to the challenging party or attorney in a civil action, or has complained of or has been accused by that party in a criminal prosecution;

(12) has a financial interest other than that of a taxpayer in the outcome of the action;

(13) is interested in a question like the issue to be tried.

Exemption from jury service is the privilege of the person exempt, not a ground for challenge.

(E) Peremptory Challenges.

(1) A juror peremptorily challenged is excused without cause.

(2) Each party may peremptorily challenge three jurors. Two or more parties on the same side are considered a single party for purposes of peremptory challenges. However, when multiple parties having adverse interests are aligned on the same side, three peremptory challenges are allowed to each party represented by a different attorney, and the court may allow the opposite side a total number of peremptory challenges not exceeding the total number of peremptory challenges allowed to the multiple parties.

(3) Peremptory challenges must be exercised in the following manner:

(a) First the plaintiff and then the defendant may exercise one or more peremptory challenges until each party successively waives further peremptory challenges or all the challenges have been exercised, at which point jury selection is complete.

(b) A "pass" is not counted as a challenge but is a waiver of further challenge to the panel as constituted at that time.

(c) If a party has exhausted all peremptory challenges and another party has remaining challenges, that party may continue to exercise his or her remaining peremptory challenges until they are exhausted.

(F) Replacement of Challenged Jurors. After the jurors have been seated in the jurors' box and a challenge for cause is sustained or a peremptory challenge exercised, another juror must be selected and examined before further challenges are made. This juror is subject to challenge as are other jurors.

(G) Oath of Jurors. The jury must be sworn by the clerk substantially as follows:

"Each of you do solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, by all that you hold sacred."

Rule 4.512 Rendering Verdict.

(A) Majority Verdict; Stipulations Regarding Number of Jurors and Verdict. The parties may stipulate in writing or on the record that

(1) the jury will consist of any number less than 6,

(2) a verdict or a finding of a stated majority of the jurors will be taken as the verdict or finding of the jury, or

(3) if more than six jurors were impaneled, all of the jurors may deliberate.

Except as otherwise provided in these rules, in the absence of such stipulation, a verdict in a civil action tried by 6 jurors will be received when 5 jurors agree.

(B) Return; Poll.

(1) The jury must return its verdict in open court.

(2) A party may require a poll to be taken by the court asking each juror if it is his or her verdict.

(3) If the number of jurors agreeing is less than required, the jury must be sent out for further deliberation; otherwise the verdict is complete, and the court shall discharge the jury.

(C) Discharge From Action; New Jury. The court may discharge a jury from the action:

(1) because of an accident or calamity requiring it;

(2) by consent of all the parties;

(3) whenever an adjournment or mistrial is declared;

(4) whenever the jurors have deliberated until it appears that they cannot agree.

The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury discharged.

(D) Responsibility of Officers.

(1) All court officers, including trial attorneys, must attend during the trial of an action until the verdict of the jury is announced.

(2) A trial attorney may, on request, be released by the court from further attendance, or the attorney may designate an associate or other attorney to act for him or her during the deliberations of the jury.

Rule 4.513 View.

(A) By Jury. On motion of either party or on its own initiative, the court may order an officer to take the jury as a whole to view property or a place where a material event occurred. During the view, no person other than the officer designated by the court may speak to the jury concerning a subject connected with the trial. The court may order the party requesting a jury view to pay the expenses of the view.

(B) By Court. On application of either party or on its own initiative, the court sitting as trier of fact without a jury may view property or a place where a material event occurred.

Rule 4.514 Special Verdicts.

(A) Use of Special Verdicts; Form. The court may require the jury to return a special verdict in the form of a written finding on each issue of fact, rather than a general verdict. If a special verdict is required, the court shall, in advance of argument and in the absence of the jury, advise the attorneys of this fact and, on the record or in writing, settle the form of the verdict. The court may submit to the jury:

(1) written questions that may be answered categorically and briefly;

(2) written forms of the several special findings that might properly be made under the pleadings and evidence; or

(3) the issues by another method, and require the written findings it deems most appropriate.

The court shall give to the jury the necessary explanation and instruction concerning the matter submitted to enable the jury to make its findings on each issue.

(B) Judgment. After a special verdict is returned, the court shall enter judgment in accordance with the jury's findings.

(C) Failure to Submit Question; Waiver; Findings by Court. If the court omits from the special verdict form an issue of fact raised by the pleadings or the evidence, a party waives the right to a trial by jury of the issue omitted unless before the jury retires the party demands its submission to the jury. The court may make a finding as to an issue omitted without a demand; or, if the court fails to do so, it is deemed to have made a finding in accord with the judgment on the special verdict.

Rule 4.515 Motion for Directed Verdict.

A party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds in support of the motion. If the motion is not granted, the moving party may offer evidence without having reserved the right to do so, as if the motion had not been made. A motion for a directed verdict that is not granted is not a waiver of trial by jury, even though all parties to the action have moved for directed verdicts.

Rule 4.516 Instructions to Jury.

(A) Request for Instructions.

(1) At a time the court reasonably directs, the parties must file written requests that the court instruct the jury on the law as stated in the requests. In the absence of a direction from the court, a party may file a written request for jury instructions at or before the close of the evidence.

(2) In addition to requests for instructions submitted under subrule (A)(1), after the close of the evidence each party shall submit in writing to the court a statement of the issues and may submit the party's theory of the case as to each issue. The statement must be concise, be narrative in form, and set forth as issues only those disputed propositions of fact which are supported by the evidence. The theory may include those claims supported by the evidence or admitted.

(3) A copy of the requested instructions must be served on the adverse parties in accordance with Rule 4.107.

(4) The court shall inform the attorneys of its proposed action on the requests before their arguments to the jury.

(5) The court need not give the statements of issues or theories of the case in the form submitted if the court presents to the jury the material substance of the issues and theories of each party.

(B) Instructing the Jury.

(1) After the jury is sworn and before evidence is taken, the court shall give such preliminary instructions regarding the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. Rule 4.516(D)(2) does not apply to such preliminary instructions.

(2) At any time during the trial, the court may, with or without request, instruct the jury on a point of law if the instruction will materially aid the jury to understand the proceedings and arrive at a just verdict.

(3) Before or after arguments or at both times, as the court elects, the court shall instruct the jury on the applicable law, the issues presented by the case, and, if a party requests as provided in subrule (A)(2), that party's theory of the case. The court, at its discretion, may also comment on the evidence, the testimony, and the character of the witnesses as the interests of justice require.

(4) While the jury is deliberating, the court may further instruct the jury in the presence of or after reasonable notice to the parties.

(5) Either on the request of a party or on the court's own motion, the court may provide the jury with

(a) a full set of written instructions,

(b) a full set of electronically recorded instructions, or

(c) a partial set of written or recorded instructions if the jury asks for clarification or restatement of a particular instruction or instructions or if the parties agree that a partial set may be provided and agree on the portions to be provided.

If it does so, the court must ensure that such instructions are made a part of the record.

(C) Objections. A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record before the jury retires to consider the verdict (or, in the case of instructions given after deliberations have begun, before the jury resumes deliberations), stating specifically the matter to which the party objects and the grounds for the objection. Opportunity must be given to make the objection out of the hearing of the jury.

(D) Model Civil Jury Instructions.

(2) Pertinent portions of the instructions approved by the State of Michigan Committee on Model Civil Jury Instructions (M Civ JI) or its predecessor committee must be given in each action in which jury instructions are given if

(a) they are applicable,

(b) they accurately state the applicable law, and

(c) they are requested by a party.

(3) Whenever the committee recommends that no instruction be given on a particular matter, the court shall not give an instruction unless it specifically finds for reasons stated on the record that

(a) the instruction is necessary to state the applicable law accurately, and

(b) the matter is not adequately covered by other pertinent model civil jury instructions.

(4) This subrule does not limit the power of the court to give additional instructions on applicable law not covered by the model instructions . Additional instructions when given must be patterned as nearly as practicable after the style of the model instructions and must be concise, understandable, conversational, unslanted, and nonargumentative.

Rule 4.517 Findings by Court.

(A) Requirements.

(1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

(2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.

(3) The court may state the findings and conclusions on the record or include them in a written opinion.

(4) Findings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule. See, e.g., Rule 4.504(B).

(5) The clerk shall notify the attorneys for the parties of the findings of the court.

(6) Requests for findings are not necessary for purposes of review.

(7) No exception need be taken to a finding or decision.

(B) Amendment. On motion of a party made within 21 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 new trial pursuant to Rule 4.611. When findings of fact are made in an action tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether the party raising the question has objected to the findings or has moved to amend them or for judgment.

Rule 4.518 Receipt and Return or Disposal of Exhibits.

(A) Receipt of Exhibits. Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by administrative order of the Tribal Court.

(B) Return or Disposal of Exhibits. At the conclusion of a trial or hearing, exhibits should be retrieved by the parties submitting them except that any weapons and drugs shall be returned to the confiscating agency for proper disposition. If the exhibits are not retrieved by the parties within 56 days after conclusion of the trial or hearing, the court may properly dispose of the exhibits without notice to the parties.

Subchapter 4.600 Judgments And Orders; Postjudgment Proceedings

Rule 4.601 Judgments.

(A) Relief Available. Except as provided in subrule (B), every final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings.

(B) Default Judgment. A judgment by default may not be different in kind from, nor exceed in amount, the relief demanded in the pleading, unless notice has been given pursuant to Rule 4.603(B)(1).

Rule 4.602 Entry of Judgments and Orders.

(A) Signing; Statement; Date of Entry.

(1) Except as provided in this rule and in Rule 4.603, all judgments and orders must be in writing, signed by the court and dated with the date they are signed.

(2) The date of signing an order or judgment is the date of entry.

(3) Each judgment must state, immediately preceding the judge's signature, whether it resolves the last pending claim and closes the case. Such a statement must also appear on any other order that disposes of the last pending claim and closes the case.

(B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:

(1) The court may sign the judgment or order at the time it grants the relief provided by the judgment or order.

(2) The court shall sign the judgment or order when its form is approved by all the parties and if, in the court's determination, it comports with the court's decision.

(3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.

(a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport

with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

(b) Objections regarding the accuracy or completeness of the judgment or order must state with specificity the inaccuracy or omission.

(c) The party filing the objections must serve them on all parties as required by Rule 4.107, together with a notice of hearing and an alternative proposed judgment or order.

(4) A party may prepare a proposed judgment or order and notice it for settlement before the court.

(C) Filing. The original of the judgment or order must be placed in the file.

(D) Service.

(1) The party securing the signing of the judgment or order shall serve a copy, within 7 days after it has been signed, on all other parties, and file proof of service with the court clerk.

Rule 4.603 Default and Default Judgment.

(A) Entry; Notice; Effect.

(1) If 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 must enter the default of that party.

(2) Notice of the entry must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court. The court clerk shall send the notice.

(3) Once the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or Rule 4.612.

(B) Default Judgment.

(1) Notice of Request for Judgment.

(a) A party seeking a default judgment must give notice of the request for judgment to the defaulted party

(i) if the party against whom the judgment is sought has appeared in the action;

(ii) if the request for entry of judgment seeks relief different in kind from, or greater in amount than, that stated in the pleadings; or

(iii) if the pleadings do not state a specific amount demanded.

(b) The notice required by this subrule must be served at least 7 days before entry of the requested judgment.

(c) If the defaulted party has appeared, the notice may be given in the manner provided by Rule 4.107. If the defaulted party has not appeared, the notice may be served by personal service, by ordinary first-class mail at the defaulted party's last known address or the place of service, or as otherwise directed by the court.

(d) If the default is entered for failure to appear for a scheduled trial, notice under this subrule is not required.

(2) Default Judgment Entered by Clerk. On request of the plaintiff supported by an affidavit as to the amount due, the clerk may sign and enter judgment for that amount and costs against the defendant, if

(a) the plaintiff's claim against a defendant is for a sum certain or for a sum that can by computation be made certain,

(b) the default was entered because the defendant failed to appear, and

(c) the defaulted defendant is not an infant or incompetent person.

The clerk may not enter or record a judgment based on a note or other written evidence of indebtedness until the note or writing is filed with the clerk for cancellation, except by special order of the court.

(3) Default Judgment Entered by Court. In all other cases the party entitled to a judgment by default must apply to the court for the judgment.

(a) A judgment by default may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator, guardian ad litem, or other representative.

(b) If, in order for the court to enter judgment or to carry it into effect, it is necessary to

(i) take an account,

(ii) determine the amount of damages,

(iii) establish the truth of an allegation by evidence, or

(iv) investigate any other matter,

the court may conduct hearings or order references it deems necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution.

(4) Notice of Entry of Judgment. The court clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given.

(C) Nonmilitary Affidavit. Nonmilitary affidavits required by law must be filed before judgment is entered in actions in which the defendant has failed to appear.

(D) Setting Aside Default.

(1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

(2) Except as provided in Rule 4.612, if personal service was made on the party against whom the default was taken, the default, and default judgment if one has been entered, may only be set aside if the motion is filed

(a) before entry of judgment, or

(b) if judgment has been entered, within 21 days after the default entered.

(3) In addition, the court may set aside an entry of default and a judgment by default in accordance with Rule 4.612.

(4) An order setting aside the default must be conditioned on the party against whom the default was taken paying the taxable costs incurred by the other party in reliance on the default, except as prescribed in Rule 4.625(D). The order may also impose other conditions the court deems proper, including a reasonable attorney fee.

(E) Application to Parties Other Than Plaintiff. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff or a party who pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 4.601(B).

Rule 4.604 Judgment in Actions Involving Multiple Claims or Multiple Parties.

(A) Except as provided in subrule (B), an order or other form of decision adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties, does not terminate the action as to any of the claims or parties, and the order is subject to revision before entry of final judgment adjudicating all the claims and the rights and liabilities of all the parties. Such an order or other form of decision is not appealable as of right before entry of final judgment. A party may file an application for leave to appeal from such an order.

(B) In receivership and similar actions, the court may direct that an order entered before adjudication of all of the claims and rights and liabilities of all the parties constitutes a final order on an express determination that there is no just reason for delay.

Rule 4.605 Declaratory Judgments.

(A) Power to Enter Declaratory Judgment.

(1) In a case of actual controversy within its jurisdiction, the Tribal Court may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

(2) For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.

(B) Procedure. The procedure for obtaining declaratory relief is in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in the constitution, statutes, and court rules of the Grand Traverse Band of Ottawa and Chippewa Indians.

(C) Other Adequate Remedy. The existence of another adequate remedy does not preclude a judgment for declaratory relief in an appropriate case.

(D) Hearing. The court may order a speedy hearing of an action for declaratory relief and may advance it on the calendar.

(E) Effect; Review. Declaratory judgments have the force and effect of, and are reviewable as, final judgments.

(F) Other Relief. Further necessary or proper relief based on a declaratory judgment may be granted, after reasonable notice and hearing, against a party whose rights have been determined by the declaratory judgment.

Rule 4.610 Motion for Judgment Notwithstanding the Verdict.

(A) Motion.

(1) Within 21 days after entry of judgment, a party may move to have the verdict and judgment set aside, and to have judgment entered in the moving party's favor. The motion may be joined with a motion for a new trial, or a new trial may be requested in the alternative.

(2) If a verdict was not returned, a party may move for judgment within 21 days after the jury is discharged.

(3) A motion to set aside or otherwise nullify a verdict or a motion for a new trial is deemed to include a motion for judgment notwithstanding the verdict as an alternative.

(B) Ruling.

(1) If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as requested in the motion.

(2) If a verdict was not returned, the court may direct the entry of judgment as requested in the motion or order a new trial.

(3) In ruling on a motion under this rule, the court must give a concise statement of the reasons for the ruling, either in a signed order or opinion filed in the action, or on the record.

(C) Conditional Ruling on Motion for New Trial.

(1) If the motion for judgment notwithstanding the verdict under subrule (A) is granted, the court shall also conditionally rule on any motion for a new trial, determining whether it should be granted if the judgment is vacated or reversed, and shall specify the grounds for granting or denying the motion for a new trial.

(2) A conditional ruling under this subrule has the following effects:

(a) If the motion for a new trial is conditionally granted, that ruling does not affect the finality of the judgment.

(b) If the motion for a new trial is conditionally granted and the judgment is reversed on appeal, the new trial proceeds unless the appellate court orders otherwise.

(c) If the motion for a new trial is conditionally denied, on appeal the appellee may assert error in that denial. If the judgment is reversed on appeal, subsequent proceedings are in accordance with the order of the appellate court.

(D) Motion for New Trial After Ruling. The party whose verdict has been set aside on a motion for judgment notwithstanding the verdict may serve and file a motion for a new trial pursuant to Rule 4.611 within 14 days after entry of judgment. A party who fails to move for a new trial as provided in this subrule has waived the right to move for a new trial.

(E) Appeal After Denial of Motion.

(1) If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling that party to a new trial if the appellate

court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict.

(2) If the appellate court reverses the judgment, nothing in this rule 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 should be granted.

Rule 4.611 New Trials; Amendment of Judgments.

(A) Grounds.

(1) A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:

(a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial.

(b) Misconduct of the jury or of the prevailing party.

(c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

(d) A verdict clearly or grossly inadequate or excessive.

(e) A verdict or decision against the great weight of the evidence or contrary to law.

(f) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial.

(g) Error of law occurring in the proceedings, or mistake of fact by the court.

(h) A ground listed in Rule 4.612 warranting a new trial.

(2) On a motion for a new trial in an action tried without a jury, the court may

(a) set aside the judgment if one has been entered,

(b) take additional testimony,

(c) amend findings of fact and conclusions of law, or

(d) make new findings and conclusions and direct the entry of a new judgment.

(B) Time for Motion. A motion for a new trial made under this rule or a motion to alter or amend a judgment must be filed and served within 21 days after entry of the judgment.

(C) On Initiative of Court. Within 21 days after entry of a judgment, the court on its own initiative may order a new trial for a reason for which it might have granted a new trial on motion of a party. The order must specify the grounds on which it is based.

(D) Affidavits.

(1) If the facts stated in the motion for a new trial or to amend the judgment do not appear on the record of the action, the motion must be supported by affidavit, which must be filed and served with the motion.

(2) The opposing party has 21 days after service within which to file and serve opposing affidavits. The period may be extended by the parties by written stipulation for 21 additional days, or may be extended or shortened by the court for good cause shown.

(3) The court may permit reply affidavits and may call and examine witnesses.

(E) Remittitur and Additur.

(1) If the court finds that the only error in the trial is the inadequacy or excessiveness of the verdict, it may deny a motion for new trial on condition that within 14 days the nonmoving party consent in writing to the entry of judgment in an amount found by the court to be the lowest (if the verdict was inadequate) or highest (if the verdict was excessive) amount the evidence will support.

(2) If the moving party appeals, the agreement in no way prejudices the nonmoving party's argument on appeal that the original verdict was correct. If the nonmoving party prevails, the original verdict may be reinstated by the appellate court.

(F) Ruling on Motion. In ruling on a motion for a new trial or a motion to amend the judgment, the court shall give a concise statement of the reasons for the ruling, either in an order or opinion filed in the action or on the record.

(G) Notice of Decision. The clerk must notify the parties of the decision on the motion for a new trial, unless the decision is made on the record while the parties are present.

Rule 4.612 Relief From Judgment or Order.

(A) Clerical Mistakes.

(1) Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party and after notice, if the court orders it.

(2) If a claim of appeal is filed or the Tribal Appellate Court grants leave to appeal, the trial court may not set aside or amend the judgment or order appealed from except:

(a) by order of the Court of Appeals,

(b) by stipulation of the parties,

(c) after a decision on the merits in an action in which a preliminary injunction was granted, or

(d) as otherwise provided by law.

(B) Defendant Not Personally Notified. A defendant over whom personal jurisdiction was necessary and acquired, but who did not in fact have knowledge of the pendency of the action, may enter an appearance within 1 year after final judgment, and if the defendant shows reason justifying relief from the judgment and innocent third persons will not be prejudiced, the court may relieve the defendant from the judgment, order, or proceedings for which personal jurisdiction was necessary, on payment of costs or on conditions the court deems just.

(C) Grounds for Relief From Judgment.

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 4.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation.

(3) This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court.

Rule 4.613 Limitations on Corrections of Error.

(A) Harmless Error. An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

(B) Correction of Error by Other Judges. A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

(C) Review of Findings by Trial Court. Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.

Rule 4.614 Stay of Proceedings to Enforce Judgment.

(A) Automatic Stay; Exceptions: Injunctions, Receiverships, and Family Litigation.

(1) Except as provided in this rule, execution may not issue on a judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after its entry. If a motion for new trial, a motion to alter or amend the judgment, a motion for judgment notwithstanding the verdict, or a motion to amend or for additional findings of the court is filed and served within 21 days after entry of the judgment, execution may not issue on the judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after the entry of the order on the motion, unless otherwise ordered by the court on motion for good cause. Nothing in this rule prohibits the court from enjoining the transfer or disposition of property during the 21-day period.

(2) The following orders may be enforced immediately after entry unless the court orders otherwise on motion for good cause:

(a) A temporary restraining order.

(b) A preliminary injunction.

(c) Injunctive relief included in a final judgment.

(d) An interlocutory order in a receivership action.

(e) In a domestic relations action, an order before judgment concerning the custody, control, and management of property; for temporary alimony; or for support or custody of minor children and expenses.

(3) Subrule (C) governs the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(B) Stay on Motion for Relief From Judgment. In its discretion and on proper conditions for the security of the adverse party, the court may stay the execution of, or proceedings to enforce, a judgment pending the disposition of a motion for relief from a judgment or order under Rule 4.612.

(C) Injunction Pending Appeal. If an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court may suspend, modify, restore, or grant an injunction during the pendency of the appeal on terms as to bond or otherwise that are proper for the security of the adverse party's rights.

(D) Stay on Appeal. Stay on appeal is governed by Rule 9.311.

(E) Stay in Favor of Governmental Party. In an action or proceeding in which the state, an authorized state officer, a corporate body in charge of a state institution, or a municipal corporation, is a party, bond may not be required of that party as a prerequisite to taking an appeal or making an order staying proceedings.

(F) Power of Tribal Appellate Court Not Limited. This rule does not limit the power of the Tribal Appellate court to

(1) stay proceedings during the pendency of an appeal before them;

(2) suspend, modify, restore, or grant an injunction during the pendency of the appeal; or

(3) enter an order appropriate to preserve the status quo or effectiveness of the judgment to be entered.

(G) Stay of Judgment on Multiple Claims. When a court has ordered a final judgment on some, but not all, of the claims presented in the action under the conditions stated in Rule 4.604(B), the court may

(1) stay enforcement of the judgment until the entry of a later judgment or judgments, and

(2) prescribe conditions necessary to secure the benefit of the judgment to the party in whose favor it was entered.

Rule 4.620 Satisfaction of Judgment.

A judgment may be shown satisfied of record in whole or in part by:

(1) filing with the clerk a satisfaction signed and acknowledged by the party or parties in whose favor the judgment was rendered, or their attorneys of record;

(2) payment to the clerk of the judgment, interest, and costs, if it is a money judgment only; or

(3) filing a motion for entry of an order that the judgment has been satisfied.

The court shall hear proofs to determine whether the order should be entered. The clerk must, in each instance, indicate in the court records that the judgment is satisfied in whole or in part.

Rule 4.621 Proceedings Supplementary to Judgment.

(A) Relief Under These Rules. When a party to a civil action obtains a money judgment, that party may, by motion in that action or by a separate civil action:

(1) obtain the relief formerly obtainable by a creditor's bill;

(2) obtain relief supplementary to judgment as under MCL 600.6101-600.6143 and

(3) obtain other relief in aid of execution authorized by statute or court rule.

(B) Pleading.

(1) If the motion or complaint seeks to reach an equitable interest of a debtor, it must be verified, and

(a) state the amount due the creditor on the judgment, over and above all just claims of the debtor by way of setoff or otherwise, and

(b) show that the debtor has equitable interests exceeding $100 in value.

(2) The judgment creditor may obtain relief under MCL 600.6110, and discovery under subchapter 4.300 of these rules.

(C) Subpoenas and Orders. A subpoena or order to enjoin the transfer of assets pursuant to MCL 600.6119 must be served under Rule 4.105. The subpoena must specify the amount claimed by the judgment creditor. The court shall endorse its approval of the issuance of the subpoena on the original subpoena, which must be filed in the action. The subrule does not apply to subpoenas for ordinary witnesses.

(D) Order Directing Delivery of Property or Money.

(1) When a court orders the payment of money or delivery of personal property to an officer who has possession of the writ of execution, the order may be entered on notice the court deems just, or without notice.

(2) If a receiver has been appointed, or a receivership has been extended to the supplementary proceeding, the order may direct the payment of money or delivery of property to the receiver.

(E) Receivers. When necessary to protect the rights of a judgment creditor, the court may appoint a receiver in a proceeding under subrule (A)(2), pending the determination of the proceeding.

(F) Violation of Injunction. The court may punish for contempt a person who violates the restraining provision of an order or subpoena or, if the person is not the judgment debtor, may enter judgment against the person in the amount of the unpaid portion of the judgment and costs allowed by law or these rules or in the amount of the value of the property transferred, whichever is less.

(G) New Proceeding. If there has been a prior supplementary proceeding with respect to the same judgment against the party, whether the judgment debtor or another person, further proceedings may be commenced against that party only by leave of court. Leave may be granted on ex parte motion of the judgment creditor, but only on a finding by the court, based on affidavit of the judgment creditor or another person having personal knowledge of the facts, other than the attorney of the judgment creditor. The affidavit must state that

(1) there is reason to believe that the party against whom the proceeding is sought to be commenced has property or income the creditor is entitled to reach, or, if a third party, is indebted to the judgment debtor;

(2) the existence of the property, income, or indebtedness was not known to the judgment creditor during the pendency of a prior supplementary proceeding; and

(3) the additional supplementary proceeding is sought in good faith to discover assets and not to harass the judgment debtor or third party.

(H) Appeal; Procedure; Bonds. A final order entered in a supplementary proceeding may be appealed in the usual manner. The appeal is governed by the provisions of chapter 9 of these rules except as modified by this subrule.

(1) The appellant must give a bond to the effect that he or she will pay all costs and damages that may be awarded against him or her on the appeal. If the appeal is by the judgment creditor,

the amount of the bond may not exceed $200, and subrules (H)(2)-(4) do not apply. If the appeal is by a party other than the judgment creditor, Subrules (H)(2)-(4) apply.

(2) If the order appealed from is for the payment of money or the delivery of property, the bond of the appellant must be in an amount at least double the amount of the money or property ordered to be paid or delivered. The bond must be on the condition that if the order appealed from is affirmed in whole or in part the appellant will

(a) pay the amount directed to be paid or deliver the property in as good condition as it is at the time of the appeal, and

(b) pay all damages and costs that may be awarded against the appellant.

(3) If the order appealed from directs the assignment or delivery of papers or documents by the appellant, the papers must be delivered to the clerk of the court in which the proceeding is pending or placed in the hands of an officer or receiver, as the judge who entered the order directs, to await the appeal, subject to the order of the appellate courts.

(4) If the order appealed from directs the sale of real estate of the appellant or delivery of possession by the appellant, the appeal bond must also provide that during the possession of the property by the appellant, or any person holding under the appellant, he or she will not commit or suffer any waste of the property, and that if the order is affirmed he or she will pay the value of the use of the property from the time of appeal until the delivery of possession.

Rule 4.622 Receivers in Supplementary Proceedings.

(A) Powers and Duties.

(1) A receiver of the property of a debtor appointed pursuant to MCL 600.6104(4) has, unless restricted by special order of the court, general power and authority to sue for and collect all the debts, demands, and rents belonging to the debtor, and to compromise and settle those that are unsafe and of doubtful character.

(2) A receiver may sue in the name of the debtor when it is necessary or proper to do so, and may apply for an order directing the tenants of real estate belonging to the debtor, or of which the debtor is entitled to the rents, to pay their rents to the receiver.

(3) A receiver may make leases as may be necessary, for terms not exceeding one year.

(4) A receiver may convert the personal property into money, but may not sell real estate of the debtor without a special order of the court.

(5) A receiver is not allowed the costs of a suit brought by the receiver against an insolvent person from whom the receiver is unable to collect the costs, unless the suit is brought by order of the court or by consent of all persons interested in the funds in the receiver's hands.

(6) A receiver may sell doubtful debts and doubtful claims to personal property at public auction, giving at least 7 days' notice of the time and place of the sale.

(7) A receiver must give security to cover the property of the debtor that may come into the receiver's hands, and must hold the property for the benefit of all creditors who have commenced, or will commence, similar proceedings during the continuance of the receivership.

(8) A receiver may not pay the funds in his or her hands to the parties or to another person without an order of the court.

(9) A receiver may only be discharged from the trust on order of the court.

(B) Notice When Other Action or Proceeding Pending; Appointment.

(1) The court shall ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether another action or motion under Rule 4.621 is pending against the judgment debtor.

(2) If another action or motion under Rule 4.621 is pending and a receiver has not been appointed in that proceeding, notice of the application for the appointment of a receiver and of all subsequent proceedings respecting the receivership must be given, as directed by the court, to the judgment creditor prosecuting the other action or motion.

(3) If several actions or motions under Rule 4.621 are filed by different creditors against the same debtor, only one receiver may be appointed, unless the first appointment was obtained by fraud or collusion, or the receiver is an improper person to execute the trust.

(4) If another proceeding is commenced after the appointment of a receiver, the same person may be appointed receiver in the subsequent proceeding, and must give further security as the court directs. The receiver must keep a separate account of the property of the debtor acquired since the commencement of the first proceeding, and of the property acquired under the appointment in the later proceeding.

(C) Claim of Adverse Interest in Property.

(1) If a person brought before the court by the judgment creditor under Rule 4.621 claims an interest in the property adverse to the judgment debtor, and a receiver has been appointed, the interest may be recovered only in an action by the receiver.

(2) The court may by order forbid a transfer or other disposition of the interest until the receiver has sufficient opportunity to commence the action.

(3) The receiver may bring an action only at the request of the judgment creditor and at the judgment creditor's expense in case of failure. The receiver may require reasonable security against all costs before commencing the action.

(D) Expenses in Certain Cases. When there are no funds in the hands of the receiver at the termination of the receivership, the court, on application of the receiver, may set the receiver's compensation and the fees of the receiver's attorney for the services rendered, and may direct the party who moved for the appointment of the receiver to pay these sums in addition to the necessary expenditures of the receiver. If more than one creditor sought the appointment of a receiver, the court may allocate the costs among them.

Rule 4.625 Taxation of Costs.

(A) Right to Costs.

(1) In General. Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.

(2) Frivolous Claims and Defenses. Upon motion of any party, if the court finds that a civil action or defense to a civil action was frivolous, the court shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney. The amount of costs and fees awarded shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

(3) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(4) As used in this rule:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

(B) Rules for Determining Prevailing Party.

(1) Actions With Several Judgments. If separate judgments are entered under Rule 4.116 or 4.505(A) and the plaintiff prevails in one judgment in an amount and under circumstances which

would entitle the plaintiff to costs, he or she is deemed the prevailing party. Costs common to more than one judgment may be allowed only once.

(2) Actions With Several Issues or Counts. In an action involving several issues or counts that state different causes of action or different defenses, the party prevailing on each issue or count may be allowed costs for that issue or count. If there is a single cause of action alleged, the party who prevails on the entire record is deemed the prevailing party.

(3) Actions With Several Defendants. If there are several defendants in one action, and judgment for or dismissal of one or more of them is entered, those defendants are deemed prevailing parties, even though the plaintiff ultimately prevails over the remaining defendants.

(4) Costs on Review in Appellate Court. An appellant in the Tribal Appellate Court who improves his or her position on appeal is deemed the prevailing party.

(C) Costs in Certain Trivial Actions. In an action brought for damages in contract or tort in which the plaintiff recovers less than $100 (unless the recovery is reduced below $100 by a counterclaim), the plaintiff may recover costs no greater than the amount of damages.

(D) Costs When Default or Default Judgment Set Aside. The following provisions apply to an order setting aside a default or a default judgment:

(1) If personal jurisdiction was acquired over the defendant, the order must be conditioned on the defendant's paying or securing payment to the party seeking affirmative relief the taxable costs incurred in procuring the default or the default judgment and acting in reliance on it;

(2) If jurisdiction was acquired by publication, the order may be conditioned on the defendant's paying or securing payment to the party seeking affirmative relief all or a part of the costs as the court may direct;

(3) If jurisdiction was in fact not acquired, costs may not be imposed.

(E) Costs in Garnishment Proceedings. Costs in garnishment proceedings are allowed as in civil actions. Costs may be awarded to the garnishee defendant as follows:

(1) The court may award the garnishee defendant as costs against the plaintiff reasonable attorney fees and other necessary expenses the garnishee defendant incurred in filing the disclosure, if the issue of the garnishee defendant's liability to the principal defendant is not brought to trial.

(2) The court may award the garnishee defendant, against the plaintiff, the total costs of the garnishee defendant's defense, including all necessary expenses and reasonable attorney fees, if the issue of the garnishee defendant's liability to the principal defendant is tried and

(a) the garnishee defendant is held liable in a sum no greater than that admitted in disclosure, or

(b) the plaintiff fails to recover judgment against the principal defendant.

In either (a) or (b), the garnishee defendant may withhold from the amount due the principal defendant the sum awarded for costs, and is chargeable only for the balance.

(F) Procedure for Taxing Costs.

(1) Costs may be taxed by the court on signing the judgment, or may be taxed by the clerk as provided in this subrule.

(2)When costs are to be taxed by the clerk, the party entitled to costs must present to the clerk, within 28 days after the judgment is signed, or within 28 days after entry of an order denying a motion for new trial, a motion to set aside the judgment, or a motion for other postjudgment relief except a motion under Rule 4.612(C),

(a) a bill of costs conforming to subrule (G),

(b) a copy of the bill of costs for each other party, and

(c) a list of the names and addresses of the attorneys for each party or of parties not represented by attorneys.

In addition, the party presenting the bill of costs shall immediately serve a copy of the bill and any accompanying affidavits on the other parties. Failure to present a bill of costs within the time prescribed constitutes a waiver of the right to costs.

(3) Within 14 days after service of the bill of costs, another party may file objections to it, accompanied by affidavits if appropriate. After the time for filing objections, the clerk must

promptly examine the bill and any objections or affidavits submitted and allow only those items that appear to be correct, striking all charges for services that in the clerk's judgment were not necessary. The clerk shall notify the parties in the manner provided in Rule 4.107.

(4) The action of the clerk is reviewable by the court on motion of any affected party filed within 7 days from the date that notice of the taxing of costs was sent, but on review only those affidavits or objections that were presented to the clerk may be considered by the court.

(G) Bill of Costs; Supporting Affidavits.

(1) Each item claimed in the bill of costs, except fees of officers for services rendered, must be specified particularly.

(2) The bill of costs must be verified and must contain a statement that

(a) each item of cost or disbursement claimed is correct and has been necessarily incurred in the action, and

(b) the services for which fees have been charged were actually performed.

(3) If witness fees are claimed, an affidavit in support of the bill of costs must state the distance traveled and the days actually attended. If fees are claimed for a party as a witness, the affidavit must state that the party actually testified as a witness on the days listed.

(H) Taxation of Fees on Settlement. Unless otherwise specified a settlement is deemed to include the payment of any costs that might have been taxable.

(I) Special Costs or Damages.

(1) In an action in which the plaintiff's claim is reduced by a counterclaim, or another fact appears that would entitle either party to costs, to multiple costs, or to special damages for delay or otherwise, the court shall, on the application of either party, have that fact entered in the records of the court. A taxing officer may receive no evidence of the matter other than a certified copy of the court records or the certificate of the judge who entered the judgment.

(2) Whenever multiple costs are awarded to a party, they belong to the party. Officers, witnesses, jurors, or other persons claiming fees for services rendered in the action are entitled only to the amount prescribed by law.

(3) A judgment for multiple damages under a statute entitles the prevailing party to single costs only, except as otherwise specially provided by statute or by these rules.

Rule 4.626 Attorney Fees.

An award of attorney fees may include an award for the time and labor of any legal assistant who contributed nonclerical, legal support under the supervision of an attorney, provided the legal assistant meets the criteria set forth in Article 1, § 6 of the Bylaws of the State Bar of Michigan.

Rule 4.630 Disability of Judge.

If, after a verdict is returned or findings of fact and conclusions of law are filed, the judge before whom an action has been tried is unable to perform the duties prescribed by these rules because of death, illness, or other disability, another judge regularly sitting in the Tribal Court may perform those duties. However, if the substitute judge is not satisfied that he or she can do so, the substitute judge may grant a new trial.

Subchapter 4.700 Minor Trust Accounts

Rule 4.701 Standard for Consideration of Petitions for Distributions from Minor Trust Accounts.

(A) Standards to be applied by the Tribal Court. Pursuant to the Court's discretion in considering whether to authorize minor trust petitions under 18 GTBC § 1605(e)(3)(B), and consistent with the Court's duty under 18 GTBC § 1605(e)(4) to preserve the minor's estate to the greatest extent possible, the Court adopts the following standards to be applied to petitions for distributions from minor trust accounts, to apply to all pending and future minor trust petitions:

(1) The Court shall only approve requests for funds from a minor trust account that are for necessary expenses directly related to the health, education or welfare of the minor, and that also directly benefit the minor.

(B) Prohibitions.

(1) The Court shall not approve distributions from the minor trust account to pay for items which are a parent's basic responsibility to provide for their child, such as food, clothing, transportation, or shelter.

(2) The Court shall not allow minor trust funds to be loaned to parents, guardians, or other relatives of the minor.

(3) The Court shall not allow distributions which only indirectly benefit the minor.

(C) Distributions. When a distribution from a minor trust account is ordered by the Court, the Court shall order that any funds distributed shall be considered a loan from the minor trust account to the minor, and shall further order said loan to be repaid from the minor's next regular distribution or distributions from their minor trust account (at age 19, 20 and/or 21).

CHAPTER 5
[RESERVED]

CHAPTER 6
CRIMINAL PROCEDURE

Subchapter 6.000 General Provisions

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Tribal Ordinances or Statutes.

(A) The rules in this chapter govern matters of procedure in criminal cases before the Tribal Court.

(B) Civil Rules Applicable. The provisions of the rules of civil procedure apply to cases governed by this chapter, except

(1) as otherwise provided by rule, Tribal ordinance or statute,

(2) when it clearly appears that they apply to civil actions only, or

(3) when a Tribal ordinance, statute or court rule provides a like or different procedure.

Depositions and other discovery proceedings under the rules of civil procedure may not be taken for the purposes of discovery in cases governed by this chapter.

(C) Rules and Tribal Ordinance or Statutes Superseded. The rules in this chapter supersede all prior court rules in this chapter and any Tribal ordinance or statutory procedure pertaining to and inconsistent with a procedure provided by a rule in this chapter.

Rule 6.002 Purpose and Construction. These rules are intended to promote a just determination of every criminal proceeding. They are to be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 6.003 Definitions. For purposes of subchapters 6.000-6.800:

(A) “Party” includes the lawyer representing the party.

(B) “Defendant's lawyer” includes a lay advocate or a self-represented defendant proceeding without a lawyer.

(C) “Prosecutor” includes any lawyer prosecuting the case.

(D) “Court” or “judicial officer” includes a judge or a magistrate.

(E) “Court clerk” includes a deputy clerk.

(F) “Court reporter” includes a court recorder.

(G) The Court includes by reference all definitions contained within the GTB Tribal Code.

Rule 6.004 Speedy Trial.

(A) Right to Speedy Trial. The defendant and the Tribe are entitled to a speedy trial and to a speedy resolution of all matters before the court.

(B) Priorities in Scheduling Criminal Cases. The trial court has the responsibility to establish and control a trial calendar. In assigning cases to the calendar, and insofar as it is practicable,

(1) the trial of criminal cases must be given preference over the trial of civil cases except cases of child welfare and juvenile delinquency in which the juvenile is detained, and

(2) the trial of defendants in custody and of defendants whose pretrial liberty presents unusual risks must be given preference over other criminal cases.

(C) Delay in Cases; Recognizance Release. In a criminal case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance. In computing the 28-day period, the court is to exclude

(1) periods of delay resulting from other proceedings concerning the defendant, including but not limited to competency and criminal responsibility proceedings, pretrial motions, interlocutory appeals, and the trial of other charges,

(2) the period of delay during which the defendant is not competent to stand trial,

(3) the period of delay resulting from an adjournment requested or consented to by the defendant's lawyer,

(4) the period of delay resulting from an adjournment requested by the prosecutor, but only if the prosecutor demonstrates on the record either

(a) the unavailability, despite the exercise of due diligence, of material evidence that the prosecutor has reasonable cause to believe will be available at a later date; or

(b) exceptional circumstances justifying the need for more time to prepare the tribe's case,

(5) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable, and

(6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.

(D) Criminal cases that do not adequately progress toward adjudication within 120 days after arraignment may be dismissed with prejudice. Absent a showing of good cause, criminal cases must be fully adjudicated within 270 days of the date of arraignment or they may be dismissed by the Court with prejudice.

Rule 6.005 Right to Court-Appointed Attorney; Advice; Waiver; Joint Representation.

(A) Advice of Right. At the arraignment on the warrant or complaint, the court must advise the defendant

(1) of entitlement to an attorney's assistance at all subsequent court proceedings, and

(2) that the court will appoint an attorney at the Tribe's expense if the defendant wants one and is financially unable to retain one. The court must question the defendant to determine whether the defendant wants an attorney and, if so, whether the defendant is financially unable to retain one.

(B) Questioning Defendant about Indigence or Inability to Retain Attorney. If the defendant requests an attorney and claims financial inability to retain one, the court must determine whether the defendant is indigent or unable to obtain adequate representation without substantial hardship to themselves or their families. An attorney shall be appointed for all persons who are found indigent or who are financially unable to obtain adequate representation without substantial hardship to themselves or their families. A defendant will be presumed indigent if he or she receives public assistance such as food stamps, aid to families of dependent children, Medicaid, disability insurance, or other similar public assistance.

(1) Factors to consider. The determination of indigence or substantial hardship must also be guided by the following factors:

(a) present employment, earning capacity and living expenses;

(b) outstanding debts and liabilities, secured and unsecured;

(c) whether the defendant has qualified for and is receiving any form of public assistance;

(d) whether the defendant's disposable income and liquid assets are adequate to cover the cost of retaining private counsel, without undue financial hardship to the defendant and the defendant's dependents; and

(e) any other circumstances that would impair the ability to pay an attorney's fee as would ordinarily be required to retain competent counsel.

(2) As used in the factors listed in subsection (1) above, the following shall apply:

(a) The determination of the costs of retaining private counsel shall be based upon the nature of the criminal charge, the anticipated complexity of the defense, the estimated cost of presenting a legal defense, and the fees charged by lawyers in the community for providing defense services in similar cases. Income shall include all salaries and wages after taxes, including interest, dividends, social security, unemployment compensation, worker's compensation, pension, annuities, and contributions from other family members.

(b) Expenses shall include, but are not limited to, all living expenses, business or farm expenses, including food, utilities, housing, child support and alimony, obligations, education or employment expenses, child care, medical expenses, and transportation.

Disposable income shall be determined by assessing monthly income and subtracting monthly expenses.

(c) Liquid assets shall include, but are not limited to, cash, checking and savings accounts, stocks, bonds, certificates of deposits, and equity in real or personal property that can be readily converted to cash.

(d) Appointment of an attorney will not be denied merely because the defendant is able to post bond, or merely because the defendant receives per-capita income.

(C) Repayment of Cost of Counsel. If a defendant is able to pay all or part of the cost of an attorney without substantial financial hardship, the court may require partial or full reimbursement to the Court of the cost of providing a court-appointed attorney and may establish a plan for collecting the contribution or repayment.

(D) Appointment or Waiver of a Attorney. If the court determines that the defendant is financially unable to retain an attorney, it must promptly appoint an attorney and promptly notify the attorney of the appointment. The court may not permit the defendant to make an initial waiver of the right to be represented by an attorney without first

(1) advising the defendant of the charge, the maximum possible jail sentence for the offense, any mandatory minimum sentence required by law, the risk involved in self-representation, and

(2) offering the defendant the opportunity to consult with a retained attorney or, if the defendant is indigent, the opportunity to consult with an appointed attorney.

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of an attorney, the record of each subsequent proceeding (e.g., arraignment, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to an attorney's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

(1) the defendant must reaffirm that an attorney's assistance is not wanted; or

(2) if the defendant requests an attorney and is financially unable to retain one, the court must appoint one; or

(3) if the defendant wants to retain an attorney and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one. The court may refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate attorneys unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained attorney or attorneys associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the attorney. The court may not permit the joint representation unless:

(1) the attorney or attorneys state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;

(2) the defendants state on the record after the court's inquiry and the attorney's statement, that they desire to proceed with the same attorney; and

(3) the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding.

(G) Unanticipated Conflict of Interest. If, in a case of joint representation, a conflict of interest arises at any time, including trial, the attorney must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate attorneys. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interests of justice require.

(H) Scope of Trial Attorney's Responsibilities. The responsibilities of the trial attorney appointed to represent the defendant include

(1) representing the defendant in all trial court proceedings through initial sentencing

(2) filing of interlocutory appeals the attorney deems appropriate,
(3) responding to any pre-conviction appeals by the prosecutor, and
(4) unless an appellate attorney has been appointed, filing of post-conviction motions the attorney deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing.

Subchapter 6.100 Preliminary Proceedings

Rule 6.101 The Complaint.

(A) Definition and Form. A complaint is a written accusation that a named or described person has committed a specified criminal offense. The complaint must set forth the substance of the accusation against the defendant and the name, the GTB statutory citation, and penalty of the offense allegedly committed. To the extent possible, the complaint should specify the time and place of the alleged offense. Allegations relating to conduct, the method of committing the offense, mental state, and the consequences of conduct may be stated in the alternative.

(1) A complaint must state the grounds on which Tribal Court jurisdiction may be asserted.
(2) The prosecutor shall first look to the GTB Tribal Code to determine if the elements of any crime enumerated in that code serves as a basis for charging a person.
(3) Except as provided herein, State of Michigan law may be cited as the basis of a charge only when the GTB Tribal Code is silent regarding a general class of crimes.
(4) Except as provided herein, the statutes of another jurisdiction may not be used to substitute for the GTB Tribal Code when the GTB Tribal Code substantially addresses the elements of a crime charged under the laws and ordinances of another jurisdiction.
(5) Charges brought under the laws of the State of Michigan shall be, whenever possible, converted to charges under the GTB Tribal Code when the facts and circumstances forming the basis of arrest are substantially defined by those crimes enumerated in the GTB Tribal Code.

(B) Signature and Oath. The complaint must be verified, or signed and sworn to before a judicial officer or court clerk.
(C) Prosecutor's Approval or Posting of Security. A complaint may not be filed without a prosecutor's written approval endorsed on the complaint or attached to it.
(D) Bill of Particulars. The court, on motion, may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense.
(E) Notice of Intent to Seek Enhanced Sentence. A notice of intent to seek an enhanced sentence pursuant to 9 GTBC §107(t) must list the prior convictions that may be relied upon for purposes of sentence enhancement. The notice must be filed within 21 days after the defendant is arraigned on the complaint charging the underlying charge, or before trial begins, if the defendant is tried within the 21-day period.
(F) Harmless Error. Absent a timely objection and a showing of prejudice, a court may not dismiss a complaint or reverse a conviction because of an untimely filing or because of an incorrectly cited Tribal ordinance or statute or a variance between the complaint and proof regarding time, place, the manner in which the offense was committed, or other factual detail relating to the alleged offense. This provision does not apply to the untimely filing of a notice of intent to seek an enhanced sentence or untimely or improper notice of intent to seek incarceration at sentencing.
(G) Amendment of Information. The court before, during, or after trial may permit the prosecutor to amend the complaint unless the proposed amendment would unfairly surprise or prejudice the defendant. On motion, the court must strike unnecessary allegations from the complaint.

Rule 6.102 Arrest on a Warrant.

(A) Issuance of Warrant. A court must issue an arrest warrant, or a summons in accordance with Rule 6.103, if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.
(B) Probable Cause Determination. A finding of probable cause may be based on hearsay evidence and rely on factual allegations included in the complaint, affidavits from the complainant or others, the

testimony of a sworn witness adequately preserved to permit review, or any combination of these sources.

(C) Contents of Warrant; Court's Subscription. A warrant must

(1) contain the accused's name, if known, or an identifying name or description;

(2) contain the accused's tribal affiliation and tribal id number.

(3) describe the offense charged in the complaint;

(4) command a peace officer or other person authorized by law to arrest and bring the accused before a judicial officer of the court; and

(5) be signed by the court.

(D) Warrant Specification of Interim Bail. The court may specify on the warrant the bail that an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant.

(E) Execution and Return of Warrant. Only a peace officer or other person authorized by law may execute an arrest warrant. On execution or attempted execution of the warrant, the officer must make a return on the warrant and deliver it to the court before which the arrested person is to be taken.

(F) Release on Interim Bail. If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision. The accused may obtain release by posting the bail on the warrant and by submitting a recognizance to appear before a specified court at a specified date and time, provided that

(1) the accused is arrested prior to the expiration date, if any, of the bail provision;

(2) the accused is arrested in the six county service area of the Tribe, or in the county in which the accused resides or is employed, and the accused is not wanted on another charge;

(3) the accused is not under the influence of liquor or controlled substance; and

(4) the condition of the accused or the circumstances at the time of arrest do not otherwise suggest a need for judicial review of the original specification of bail.

Rule 6.103 Summons Instead of Arrest.

(A) Issuance of Summons. If the prosecutor so requests, the court may issue a summons instead of an arrest warrant. If an accused fails to appear in response to a summons, the court, on request, must issue an arrest warrant.

(B) Form. A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.

(C) Service and Return of Summons. A summons may be served by

(1) delivering a copy to the named individual; or

(2) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or

(3) mailing a copy to the individual's last known address.

Service should be made promptly to give the accused adequate notice of the appearance date. The person serving the summons must make a return to the court before which the person is summoned to appear.

Rule 6.104 Arraignment on the Warrant or Complaint.

(A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule.

(1) Unless good cause is demonstrated, arraignment must occur without unnecessary delay after the accused is detained.

(a) The arresting officer must notify the prosecutor of the arrest within 8 hours making the arrest.

(b) The prosecuting attorney must file a copy of the complaint at least one hour prior to the defendant's arraignment.

(B) Place of Arraignment. An accused arrested pursuant to a warrant must be taken to the Tribal Court specified in the warrant. If the arrest occurs outside the county in which the Tribal Court is located, the arresting agency must make arrangements with the authorities of the Grand Traverse Band to have the accused promptly transported to the Tribal Court for arraignment in accordance with the provisions of this rule. In extraordinary situations and with consent of the detaining facility, the prosecutor and court staff may travel to the place of detention to conduct an arraignment.
(C) Arrest Without Warrant. If an accused is arrested without a warrant, a complaint complying with Rule 6.101 must be filed at or before the time of arraignment. On receiving the complaint and on finding probable cause, the court must either issue a warrant or endorse the complaint. Arraignment of the accused may then proceed in accordance with subrule (D).
(D) Arraignment Procedure; Judicial Responsibilities. A copy of the complaint must be provided to the defendant before the defendant is asked to plead. The court at the arraignment must

(1) inform the accused of the nature of the offense charged, and its maximum possible jail sentence and any mandatory minimum sentence required by law;

(2) inform the accused of the right to a trial by jury or by a judge without a jury if the prosecutor and court consents to the same;

(3) advise the accused of the right to a lawyer or other counsel at all subsequent court proceedings;

(4) advise the defendant of the pleading options. If the defendant offers a plea other than not guilty, the court must proceed in accordance with the rules and make appropriate findings on the record as required under subchapter 6.300. Otherwise, the court must enter a plea of not guilty on the record;

(5) determine what form of pretrial release, if any, is appropriate; and

(6) inquire and make findings as to whether the tribal court can assert jurisdiction.

(E) Arraignment Procedure; Recording. A verbatim record must be made of the arraignment.

Rule 6.106 Pretrial Release.

(A) In General. At the defendant's first appearance before a court, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be

(1) held in custody as provided in subrule (B);

(2) released on personal recognizance or an unsecured appearance bond; or

(3) released conditionally, with or without money bail (ten percent or cash).

(B) Remand into Custody. The court may deny pretrial release to a defendant charged with any violent offense, or if the court is not satisfied that a conditional release will reasonably ensure the appearance of the defendant as required, or that a conditional release will reasonably ensure the safety of the public.
(C) Release on Personal Recognizance. If the defendant is not ordered held in custody pursuant to subrule (B), the court must order the pretrial release of the defendant on personal recognizance, or on an unsecured appearance bond, subject to the conditions that the defendant will appear as required, will not leave the State of Michigan nor the Tribe's six county service area without permission of the court, and will not commit any crime while released, unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public.
(D) Conditional Release. If the court determines that the release described in subrule (C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate, including, but not limited to

(1) that the defendant will appear as required, will not leave the Tribe's six county service area without permission of the court, and will not commit any crime while released, and

(2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to

(a) make reports to a court or agency as are specified by the court or the agency;

(b) not use alcohol or illicitly use any controlled substance;

(c) comply with a substance abuse testing or monitoring program;

(d) comply with restrictions on personal associations, place of residence, place of employment, or travel;

(e) comply with a specified curfew;

(f) continue to seek employment or maintain employment;

(g) attend school if applicable;

(h) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;

(i) not possess a firearm or other dangerous weapon;

(j) not enter specified premises or areas and not assault, beat, molest or wound a named person or persons;

(k) to have no contact with an alleged victim either directly or through any third parties.

(l) satisfy any injunctive order made a condition of release; or

(m) comply with any other condition, including the requirement of money bail as described in subrule (E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.

(E) Money Bail. If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot otherwise be assured, money bail, with or without conditions described in subrule (D), may be required.

(1) The court may require the defendant to post a bond that is executed by the defendant, or by another, and secured by

(a) a cash deposit, or its equivalent, for the full bond amount, or

(b) a cash deposit of 10 percent of the bond amount, or, with the court's consent,

(c) designated real property.

(2) The court may require satisfactory proof of value and interest in property if the court consents to the posting of a bond secured by designated real property.

(F) Decision; Statement of Reasons.

(1) In deciding which release to use and what terms and conditions to impose, the court is to consider relevant information, including

(a) defendant's prior criminal record, including juvenile offenses for the past 3 years;

(b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution for the past 3 years;

(c) defendant's history of substance abuse or addiction;

(d) defendant's mental condition, including character and reputation for dangerousness;

(e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;

(f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;

(g) the availability of responsible members of the community who would vouch for or monitor the defendant;

(h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence, and

(i) any other facts bearing on the risk of nonappearance or danger to the public.

(2) If the court orders the defendant held in custody pursuant to subrule (B) or released on conditions in subrule (D) that include money bail, the court must state the reasons for its decision on the record. The court need not make a finding on each of the enumerated factors.

(G) Custody Hearing.

(1) Entitlement to Hearing. A court having jurisdiction over a defendant may conduct a custody hearing if the defendant is being held pursuant to subrule (B) and the defendant requests a custody hearing. The purpose of the hearing is to permit the parties to litigate all of the issues relevant to challenging or supporting a custody decision pursuant to subrule (B).

(2) Hearing Procedure.

(a) At the custody hearing, the defendant is entitled to be present and to be represented by a lawyer or other representative, and the defendant and the prosecutor are entitled to present witnesses and evidence, to proffer information, and to cross-examine each other's witnesses.

(b) The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes the findings required to enter an order under subrule (B), the defendant must be ordered released under subrule (C) or (D). A verbatim record of the hearing must be made.

(H) Termination of Release Order.

(1) If the conditions of the release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bond, and return the cash (or its equivalent) posted in the full amount of a bond.

(2) If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the bond, if any, forfeited.

(a) The court must mail notice of any revocation order as soon as possible, but no later than 7 days after the date of a revocation of bond order to the defendant at the defendant's last known address and, if forfeiture of bond has been ordered, to anyone who posted bond.

(b) If the defendant does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bond for the entire amount of the bond and costs of the court proceedings.

(c) The 10 percent bond deposit made under subrule (E) must be applied to the costs and, if any remains, to the balance of the judgment. The balance of the judgment may be enforced and collected as a judgment entered in a civil case or as otherwise provided by tribal law. The court may order the balance of the judgment to be deducted from the defendant's per capita distribution as provided under the Revenue Allocation Ordinance (RAO) of the Tribe.

(3) If money was deposited on a bond executed by the defendant, the money must be first applied to the amount of any fine, costs, or assessments imposed and any balance returned, subject to subrule (H)(1). The court may order any balance owed by the defendant on the judgment may be deducted from the defendant's per capita distribution as provided under the Revenue Allocation Ordinance (RAO) of the Tribe.

Rule 6.107 Pretrial Conference. The court, on its own initiative or on motion of either party, may direct the prosecutor and the defendant and/or the defendant's attorney or lay advocate to appear for a pretrial conference. The court may require collateral matters and pretrial motions to be filed and argued no later than this conference.

Rule 6.110 Misdemeanor Traffic Offenses.

(A) Citation; Complaint; Summons; Warrant.

(1) A misdemeanor traffic case may be begun by one of the following procedures:

(a) Service by a law enforcement officer on the defendant of a written citation, and the filing of the citation in the Tribal Court.

(b) The filing of a sworn complaint in the Tribal Court and the issuance of an arrest warrant. A citation may serve as the sworn complaint and as the basis for a misdemeanor warrant.

(c) Other special procedures authorized by Tribal ordinance or statute.

(2) The citation serves as a summons to command

(a) the initial appearance of the defendant; and

(b) a response from the defendant as to his or her guilt of the violation alleged.

(3) A single citation may not allege both a misdemeanor and a civil infraction.

(B) Appearances; Failure To Appear. If a defendant fails to appear or otherwise to respond to any matter pending relative to a misdemeanor traffic citation, the court may

(1) initiate the procedures required by tribal contempt procedures for the failure to answer a citation;

(2) may mail a notice to appear to the defendant at the address in the citation;

(3) may issue a warrant for the defendant's arrest after a sworn complaint is filed with the court.

(C) Arraignment. An arraignment in a misdemeanor traffic case may be conducted by

(1) a judge, or

(2) a court magistrate as authorized by Tribal ordinance or statute.

(D) Contested Cases.

(1) A contested case may not be heard until a citation is filed with the court. A citation that is not signed and filed on paper, when required by the court, will be dismissed with prejudice.

(2) A misdemeanor traffic case must be conducted in compliance with the constitutional and statutory procedures and safeguards applicable to criminal matters pursuant to the Title 9 of the GTB Tribal Code.

Rule 6.120 Joinder and Severance; Single Defendant.

(A) Permissive Joinder. A complaint may charge a single defendant with any two or more offenses. Each offense must be stated in a separate count. Two or more complaints against a single defendant may be consolidated for a single trial.

(B) Right of Severance; Unrelated Offenses. On the defendant's motion, the court must sever unrelated offenses for separate trials. For purposes of this rule, two offenses are related if they are based on

(1) the same conduct, or

(2) a series of connected acts or acts constituting part of a single scheme or plan.

(C) Other Joinder or Severance. On the motion of either party, except as to offenses severed under subrule (B), the court may join or sever offenses on the ground that joinder or severance is appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. Subject to an objection by either party, the court may sever offenses on its own initiative.

Rule 6.121 Joinder and Severance; Multiple Defendants.

(A) Permissive Joinder. A complaint may charge two or more defendants with the same offense. It may charge two or more defendants with two or more offenses when

(1) each defendant is charged with accountability for each offense, or

(2) the offenses are related as defined in Rule 6.120(B).

When more than one offense is alleged, each offense must be stated in a separate count. Two or more complaints against different defendants may be consolidated for a single trial whenever the defendants could be charged in the same complaint under this rule.

(B) Right of Severance; Unrelated Offenses. On a defendant's motion, the court must sever offenses that are not related as defined in Rule 6.120(B).

(C) Right of Severance; Related Offenses. On a defendant's motion, the court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant.

(D) Discretionary Severance. On the motion of any party, the court may sever the trial of defendants on the ground that severance is appropriate to promote fairness to the parties and a fair determination of the guilt or innocence of one or more of the defendants. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either

the number of defendants or the complexity or nature of the evidence, the convenience of witnesses, and the parties' readiness for trial.

Rule 6.125 Mental Competency Hearing.

(A) Applicable Provisions. Except as provided in these rules, a mental competency hearing in a criminal case shall be governed by MCL 330.2020 et seq., unless and until superseded by a mental health code adopted by the Tribe.

(B) Time and Form of Motion. The issue of the defendant's competence to stand trial or to participate in other criminal proceedings may be raised at any time during the proceedings against the defendant. The issue may be raised by the court before which such proceedings are pending or being held, or by motion of a party. Unless the issue of defendant's competence arises during the course of proceedings, a motion raising the issue of defendant's competence must be in writing. If the competency issue arises during the course of proceedings, the court may adjourn the proceeding or, if the proceeding is defendant's trial, the court may, consonant with double jeopardy considerations, declare a mistrial.

(C) Order for Examination.

(1) On a showing that the defendant may be incompetent to stand trial, the court must order the defendant to undergo an examination by a certified or licensed examiner of the center for forensic psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of competence to stand trial.

(2) The defendant must appear for the examination as required by the court.

(3) If the defendant is held in detention pending trial, the examination may be performed in the place of detention or the defendant may be transported by the Grand Traverse Band Tribal Police or a tribal agency designated by the court to a diagnostic facility for examination.

(4) The court may order commitment to a diagnostic facility for examination if the defendant fails to appear for the examination as required or if commitment is necessary for the performance of the examination.

(5) The defendant must be released from the facility on completion of the examination and, if (3) is applicable, returned to the place of detention.

(D) Independent Examination. On a showing of good cause by either party, the court may order an independent examination of the defendant relating to the issue of competence to stand trial.

(E) Hearing. A competency hearing must be held within 5 days of receipt of the report or on conclusion of the proceedings then before the court, whichever is sooner, unless the court, on a showing of good cause, grants an adjournment.

(F) Motions; Testimony.

(1) A motion made while a defendant is incompetent to stand trial may be heard and decided if the presence of the defendant is not essential for a fair hearing (or trial) and decision on the motion. No licensed attorney representing an incompetent defendant may be compelled to participate in a hearing held in absentia if the attorney objects in writing or on the record on ethical grounds prior to commencement of such a hearing, pursuant the Michigan Rules of Professional Conduct or these Court Rules.

(2) Testimony may be presented in a pretrial defense motion if the defendant's presence could not assist the defense.

Subchapter 6.200 Discovery

Rule 6.201 Discovery.

(A) Mandatory Disclosure. A party upon request must provide all other parties:

(1) the names and addresses of all lay and expert witnesses whom the party intends to call at trial;

(2) any written or recorded statement by a lay witness whom the party intends to call at trial, except that a defendant is not obliged to provide the defendant's own statement;

(3) any report of any kind produced by or for an expert witness whom the party intends to call at trial;

(4) any criminal record that the party intends to use at trial to impeach a witness;

(5) any document, photograph, or other paper that the party intends to introduce at trial; and

(6) a description of and an opportunity to inspect any tangible physical evidence that the party intends to introduce at trial. On good cause shown, the court may order that a party be given the opportunity to test without destruction such tangible physical evidence.

(B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:

(1) any exculpatory information or evidence known to the prosecuting attorney discovered at any time prior to the conclusion of a case.

(2) any police report concerning the case, except so much of a report as concerns a continuing investigation;

(3) any written or recorded statements by a defendant, codefendant, or accomplice, even if that person is not a prospective witness at trial;

(4) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and

(5) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.

(C) Prohibited Discovery.

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is constitutionally protected from disclosure or protected pursuant to Tribal ordinance or statute, or tribally recognized privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (2).

(2) If a defendant demonstrates a good-faith belief, grounded in fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in-camera inspection of the records.

(a) If the privilege is absolute, and the privilege holder refuses to waive the privilege to permit an in-camera inspection, the trial court shall suppress or strike the privilege holder's testimony.

(b) If the court is satisfied, following an in-camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel. If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony.

(c) Regardless of whether the court determines that the records should be made available to the defense, the court shall make findings sufficient to facilitate meaningful appellate review.

(d) The court shall seal and preserve the records for review in the event of an appeal

(i) by the defendant, on an interlocutory basis or following conviction, if the court determines that the records should not be made available to the defense, or

(ii) by the prosecution, on an interlocutory basis, if the court determines that the records should be made available to the defense.

(e) Records disclosed under this rule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.

(D) Excision. When some parts of material or information are discoverable and other parts are not discoverable, the party must disclose the discoverable parts and may excise the remainder. The party must inform the other party that non-discoverable information has been excised and withheld. On motion, the court must conduct a hearing in camera to determine whether the reasons for excision are

justifiable. If the court upholds the excision, it must seal and preserve the record of the hearing for review in the event of an appeal.
(E) Protective Orders. Upon motion, and showing of good cause, the court may enter an appropriate protective order. In considering whether good cause exists, the court shall consider the parties' interests in a fair trial; the risk to any person of harm, undue annoyance, intimidation, or threats; the risk that evidence will be fabricated; and the need for secrecy regarding the identity of informants or other law enforcement matters. On motion, with notice to the other party, the court may permit the showing of good cause for a protective order to be made in camera. If the court grants a protective order, it must seal and preserve the record of the hearing for review in the event of an appeal.
(F) Timing of Discovery. Unless otherwise ordered by the court, the prosecuting attorney must comply with the requirements of this rule within 7 days of a request under this rule and a defendant must comply with the requirements of this rule within 14 days of a request under this rule.
(G) Copies. Except as ordered by the court on good cause shown, a party's obligation to provide a photograph or paper of any kind is satisfied by providing a clear copy.
(H) Continuing Duty to Disclose. If at any time a party discovers additional information or material subject to disclosure under this rule, the party, without further request, must promptly notify the other party.
(I) Modification. On good cause shown, the court may order a modification of the requirements and prohibitions of this rule.
(J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order that testimony or evidence be excluded, or may order another remedy.

Subchapter 6.300 Pleas

Rule 6.301 Available Pleas.

(A) Possible Pleas. Subject to the rules in this subchapter, a defendant may plead not guilty, guilty, no contest, guilty but mentally ill, or not guilty by reason of insanity. If the defendant refuses to plead or stands mute, or the court, pursuant to the rules, refuses to accept the defendant's plea, the court must enter a not guilty plea on the record. A plea of not guilty places in issue every material allegation in the information and permits the defendant to raise any defense not otherwise waived.
(B) Pleas That Require the Court's Consent. A defendant may enter a plea of no contest only with the consent of the court.
(C) Pleas That Require the Consent of the Court and the Prosecutor. A defendant may enter the following pleas only with the consent of the court and the prosecutor:

(1) A defendant who has asserted an insanity defense may enter a plea of guilty but mentally ill or a plea of not guilty by reason of insanity. Before such a plea may be entered, the defendant must comply with a mental health examination if ordered by the Court.

(D) Pleas to Lesser Charges. The court may not accept a plea to an offense other than the one charged without the consent of the prosecutor.

Rule 6.302 Pleas of Guilty and No Contest.

(A) Plea Requirements. The court may not accept a plea of guilty or no contest unless it is convinced that the plea is one entered knowingly, voluntarily, and accurately. Before accepting a plea of guilty or no contest, the judge must place the defendant under oath and personally carry out subrules (B)-(E).
(B) An Knowingly Entered Plea. Speaking directly to the defendant, the court must advise the defendant and determine that the defendant understands:

(1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;

(2) the maximum possible jail sentence for the offense and any mandatory minimum sentence required by law;

(3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:

(a) to be tried by a jury;

(b) to be tried by the court without a jury, if the defendant chooses and the prosecutor and court consent;
(c) to be presumed innocent until proved guilty;
(d) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;
(e) to have the witnesses against the defendant appear at the trial;
(f) to question the witnesses against the defendant;
(g) to have the court order any witnesses the defendant has for the defense to appear at the trial;
(h) to remain silent during the trial;
(i) to not have that silence used against the defendant; and
(j) to testify at the trial if the defendant wants to testify.

(4) once the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea;

(C) A Voluntary Plea.

(1) The court must ask the prosecutor and the defendant's lawyer whether they have made a plea agreement.

(2) If there is a plea agreement, the court must ask the prosecutor or the defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant.

(3) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a specific sentence disposition or a prosecutorial sentence recommendation, the court may

(a) reject the agreement; or
(b) accept the agreement after having considered the pre-sentencing report, in which event it must sentence the defendant to the sentence agreed to or recommended by the prosecutor; or
(c) accept the agreement without having considered the pre-sentencing report; or
(d) take the plea agreement under advisement.

If the court accepts the agreement without having considered the pre-sentencing report or takes the plea agreement under advisement, it must explain to the defendant that the court is not bound to follow the sentence disposition or recommendation agreed to by the prosecutor, and that if the court chooses not to follow it, the defendant will be allowed to withdraw from the plea agreement.

(4) The court must ask the defendant:

(a) whether anyone has promised the defendant anything the plea agreement (if applicable), and whether anyone has promised anything beyond what is in the plea agreement;
(b) whether anyone has threatened the defendant; and
(c) whether it is the defendant's own choice to plead guilty.

(D) An Accurate Plea.

(1) If the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading.

(2) If the defendant pleads no contest, the court shall not question him or her about his or her participation in the crime, but shall make the determination on the basis of other available information.

(E) Additional Inquiries. On completing the colloquy with the defendant, the court must ask the prosecutor and the defendant's lawyer whether either is aware of any promises, threats, or inducements other than those already disclosed on the record, and whether the court has complied with subrules (B)-(D). If it appears to the court that it has failed to comply with subrules (B)-(D), the court may not accept the defendant's plea until the deficiency is corrected.

(F) Plea Under Advisement; Plea Record. The court may take the plea under advisement. A verbatim record must be made of the plea proceeding.

Rule 6.303 Plea of Guilty but Mentally Ill. Before accepting a plea of guilty but mentally ill, the court must comply with the requirements of Rule 6.302. In addition to establishing a factual basis for the plea pursuant to Rule 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill, but not insane, at the time of the offense to which the plea is entered. The reports must be made a part of the record.

Rule 6.304 Plea of Not Guilty by Reason of Insanity.
(A) Advice to Defendant. Before accepting a plea of not guilty by reason of insanity, the court must comply with the requirements of Rule 6.302 except that subrule (C) of this rule, rather than Rule 6.302(D), governs the manner of determining the accuracy of the plea.
(B) Additional Advice Required. After complying with the applicable requirements of Rule 6.302, the court must advise the defendant, and determine whether the defendant understands, that the plea will result in the defendant's commitment for diagnostic examination at the center of forensic psychiatry for up to 60 days, and that after the examination, the probate court may order the defendant to be committed for an indefinite period of time.
(C) Factual Basis. Before accepting a plea of not guilty by reason of insanity, the court must examine the psychiatric reports prepared and hold a hearing that establishes support for findings that
(1) the defendant committed the acts charged, and
(2) a reasonable doubt exists about the defendant's legal sanity at the time of the offense.
(D) Report of Plea. After accepting the defendant's plea, the court must forward to the center for forensic psychiatry a full report, in the form of a settled record, of the facts concerning the crime to which the defendant pleaded and the defendant's mental state at the time of the crime.

Rule 6.310 Withdrawal or Vacation of Plea Before Acceptance or Sentence.
(A) Withdrawal Before Acceptance. The defendant has a right to withdraw any plea until the court accepts it on the record.
(B) Withdrawal Before Sentence. On the defendant's motion or with the defendant's consent, the court, in the interest of justice may permit an accepted plea to be withdrawn before sentence is imposed unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by Rule 6.311(B). A defendant who enters a plea as a condition of participation in a diversionary or special court program, may not withdraw the plea once accepted into the diversionary or special program.
(C) Vacation of Plea Before Sentence. On the prosecutor's motion, the court may vacate a plea before sentence is imposed if the defendant has failed to comply with the terms of a plea agreement.

Rule 6.311 Challenging Plea After Sentence.
(A) Motion to Withdraw Plea. The defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal. After the time for filing an application for leave, the defendant may seek relief in accordance with the procedure set forth in subchapter 6.500.
(B) Remedy. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.
(C) Preservation of Issues. A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the

plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.

Rule 6.312 Effect of Withdrawal or Vacation of Plea. If a plea is withdrawn by the defendant or vacated by the trial court or an appellate court, the case may proceed to trial on any charges that had been brought or that could have been brought against the defendant if the plea had not been entered. Any statements or admissions made during a plea or sentencing allocution by a defendant whose plea has been allowed to be withdrawn may not be offered as evidence in the prosecution's case in chief, however any such statements or admissions may be used for purposes of impeachment if the defendant testifies in contradiction of those statements or admissions.

Subchapter 6.400 Trials

Rule 6.401 Right to Trial by Jury or by the Court. The defendant has the right to be tried by a jury, or may, with the consent of the prosecutor and approval by the court, elect to waive that right and be tried before the court without a jury.

Rule 6.402 Waiver of Jury Trial by the Defendant.
(A) Time of Waiver. The court may not accept a waiver of trial by jury until after the defendant has had or waived an arraignment on the complaint and has been offered an opportunity to consult with a lawyer. A defendant who has been arraigned shall inform the court if they wish to exercise their right to have a trial by jury within 28 days of arraignment. If the court does not receive a proper or timely request for jury trial within 28 days of arraignment, the right to a jury trial will be presumed to have been waived by the defendant, and the court may set the matter for a bench trial in its discretion.
(B) Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Rule 6.403 Trial by the Judge in Waiver Cases. When trial by jury has been waived, the court must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Rule 6.410 Jury Trial; Number of Jurors; Unanimous Verdict.
(A) Number of Jurors. Except as provided in this rule, a jury that decides a case must consist of 6 jurors. At any time before a verdict is returned, the parties may stipulate with the court's consent to have the case decided by a jury consisting of a specified number of jurors less than 6. On being informed of the parties' willingness to stipulate, the court must personally advise the defendant of the right to have the case decided by a jury consisting of 6 jurors. By addressing the defendant personally, the court must ascertain that the defendant understands the right and that the defendant voluntarily chooses to give up that right as provided in the stipulation. If the court finds that the requirements for a valid waiver have been satisfied, the court may accept the stipulation. Even if the requirements for a valid waiver have been satisfied, the court may, in the interest of justice, refuse to accept a stipulation, but it must state its reasons for doing so on the record. The stipulation and procedure described in this subrule must take place in open court and a verbatim record must be made.
(B) Unanimous Verdicts. A jury verdict must be unanimous.

Rule 6.411 Additional Jurors. The court may empanel more than 6 jurors. If more than the number of jurors required to decide the case are left on the jury before deliberations are to begin, the names of the jurors must be placed in a container and names drawn from it to reduce the number of jurors to the number required to decide the case. The court may retain the alternate jurors during deliberations. If the

court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

Rule 6.412 Selection of the Jury.

(A) Juror Personal History Questionnaire.

(1) Form. The court administrator shall adopt a juror personal history questionnaire.

(2) Completion of Questionnaire.

(a) The court clerk, as directed by the chief judge, shall supply each juror drawn for jury service with a questionnaire in the form adopted pursuant to sub rule (1). The court clerk shall direct the juror to complete the questionnaire in the juror's own handwriting before the juror is called for service.

(b) Refusal to answer the questions on the questionnaire, or answering the questionnaire falsely, is contempt of court.

(3) Filing the Questionnaire.

(a) On completion, the questionnaire shall be filed with the court, as designated under subrule (B)(1). The only persons allowed to examine the questionnaire are:

(i) the judges of the court;

(ii) the court clerk and deputy clerks;

(iii) parties to actions in which the juror is called to serve and their attorneys; and

(iv) persons authorized access by court rule or by court order.

(b) The attorneys must be given a reasonable opportunity to examine the questionnaires before being called on to challenge for cause.

(i) The court administrator shall develop model procedures for providing attorneys and parties reasonable access to juror questionnaires.

(ii) If the procedure selected allows attorneys or parties to receive copies of juror questionnaires, an attorney or party may not release them to any person who would not be entitled to examine them under subrule (3)(a).

(c) The questionnaires must be kept on file for 3 years from the time they are filled out.

(4) Summoning Jurors for Court Attendance. The court clerk, the court administrator, or the Grand Traverse Band Tribal Police, as designated by the chief judge, shall summon jurors for court attendance at the time and in the manner directed by the chief judge, the presiding judge, or the judge to whom the action in which jurors are being called for service is assigned. For a juror's first required court appearance, service must be by written notice addressed to the juror at his or her residence as shown by the records of the clerk. The notice may be by ordinary mail or by personal service. For later service, notice may be in the manner directed by the court. The person giving notice to jurors shall keep a record of the notice and make a return if directed by the court. The return is presumptive evidence of the fact of service.

(B) Impaneling the Jury.

(1) Instructions and Oath Before Selection. Before beginning the jury selection process, the court should give the prospective jurors appropriate preliminary instructions and must have them sworn.

(2) Selection of Jurors.

(a) Persons who have not been discharged or excused as prospective jurors by the court are subject to selection for the action or actions to be tried during their term of service as provided by law.

(b) In an action that is to be tried before a jury, the names or corresponding numbers of the prospective jurors shall be deposited in a container, and the prospective jurors must be selected for examination by a random blind draw from the container.

(c) The court may provide for random selection of prospective jurors for examination from less than all of the prospective jurors not discharged or excused.

(d) Prospective jurors may be selected by any other fair and impartial method directed by the court or agreed to by the parties.

(3) Alternate Jurors. The court may direct that 7 or more jurors be impaneled to sit. After the instructions to the jury have been given and the action is ready to be submitted, unless the parties have stipulated that all the jurors may deliberate, the names of the jurors must be placed in a container and names drawn to reduce the number of jurors to 6, who shall constitute the jury. The court may retain the alternate jurors during deliberations. If the court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

(4) Voir Dire of Prospective Jurors.

(a) Scope and Purpose. The scope of voir dire examination of prospective jurors is within the discretion of the court. It should be conducted for the purposes of discovering grounds for challenges for cause and of gaining knowledge to facilitate an intelligent exercise of peremptory challenges. The court should confine the examination to these purposes and prevent abuse of the examination process.

(b) Conduct of the Examination. The court may conduct the examination of prospective jurors or permit the lawyers to do so. If the court conducts the examination, it may permit the lawyers to supplement the examination by direct questioning or by submitting questions for the court to ask. On its own initiative or on the motion of a party, the court may provide for a prospective juror or jurors to be questioned out of the presence of the other jurors.

(5) Challenges for Cause. The parties may challenge jurors for cause, and the court shall rule on each challenge. A juror challenged for cause may be directed to answer questions pertinent to the inquiry. If, after the examination of any juror, the court finds that a ground for challenging a juror for cause is present, the court on its own initiative should, or on motion of either party must, excuse the juror from the panel. It is grounds for a challenge for cause that the person:

(a) is not qualified to be a juror;

(b) has been convicted of a felony;

(c) is significantly biased for or against a party or attorney;

(d) shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;

(e) has opinions or conscientious scruples that would improperly influence the person's verdict;

(f) has been subpoenaed as a witness in the action;

(g) has already sat on a trial of the same issue;

(h) has served as a grand or petit juror in a criminal case based on the same transaction;

(i) is related to one of the attorneys or parties to a degree that casts into significant doubt whether the juror would be fair or impartial;

(j) is the guardian, conservator, ward, landlord, tenant, employer, employee, partner, or client of a party or attorney;

(k) is or has been a party adverse to the challenging party or attorney in a civil action, or has complained of or has been accused by that party in a criminal prosecution;

(l) has a financial interest other than that of a taxpayer in the outcome of the action;

(m) is interested in a question like the issue to be tried.

Exemption from jury service is the privilege of the person exempt, not a ground for challenge.

(6) Peremptory Challenges.

(a) A juror peremptorily challenged is excused without cause.

(b) Each defendant is entitled to 3 peremptory challenges. The prosecutor is entitled to the same number of peremptory challenges as a defendant being tried alone, or, in the case of jointly tried defendants, the total number of peremptory challenges to which all the defendants are entitled. On a showing of good cause, the court may grant one or

more of the parties an increased number of peremptory challenges. The additional challenges granted by the court need not be equal for each party.

(c) Peremptory challenges must be exercised in the following manner:

(i) First the plaintiff and then the defendant may exercise one or more peremptory challenges until each party successively waives further peremptory challenges or all the challenges have been exercised, at which point jury selection is complete.

(ii) A "pass" is not counted as a challenge but is a waiver of further challenge to the panel as constituted at that time.

(iii) If a party has exhausted all peremptory challenges and another party has remaining challenges, that party may continue to exercise his or her remaining peremptory challenges until they are exhausted.

(7) Replacement of Challenged Jurors. After the jurors have been seated in the jurors' box and a challenge for cause is sustained or a peremptory challenge exercised, another juror must be selected and examined before further challenges are made. This juror is subject to challenge as are other jurors.

(8) Instructions and Oath After Selection. After the jury is selected and before trial begins, the court must have the jurors sworn and should give them appropriate pretrial instructions. The jury must be sworn by the clerk substantially as follows: "Do each of you solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you."

Rule 6.414 Conduct of Jury Trial.

(A) Court's Responsibility. The trial court must control the proceedings during trial, limit the evidence and arguments to relevant and proper matters, and take appropriate steps to ensure that the jurors will not be exposed to information or influences that might affect their ability to render an impartial verdict on the evidence presented in court. The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

(B) Opening Statements. Unless the parties and the court agree otherwise, the prosecutor, before presenting evidence, must make a full and fair statement of the prosecutor's case and the facts the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a like statement. The court may impose reasonable limits on the opening statements.

(C) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes and that they should not permit note taking to interfere with their attentiveness. The court also must instruct the jurors both to keep their notes confidential except as to other jurors and to destroy their notes when the trial is concluded.

(D) View. The court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no person other than the officer designated by the court may speak to the jury concerning a subject connected with the trial.

(E) Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable limits on the closing arguments.

(F) Instructions to the Jury. Before closing arguments, the court may give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of any written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the

jury as required and appropriate under the GTB tribal Code. After jury deliberations begin, the court may give additional instructions that are appropriate.
(G) Materials in Jury Room. The court may permit the jury, on retiring to deliberate, to take into the jury room a writing, other than the charging document, setting forth the elements of the charges against the defendant and any exhibits and writings admitted into evidence. On the request of a party or on its own initiative, the court may provide the jury with a full set of written instructions, a full set of electronically recorded instructions, or a partial set of written or recorded instructions if the jury asks for clarification or restatement of a particular instruction or instructions or if the parties agree that a partial set may be provided and agree on the portions to be provided. If it does so, the court must ensure that such instructions are made a part of the record.
(H) Review of Evidence. If, after beginning deliberation, the jury requests a review of certain testimony or evidence, the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may order the jury to deliberate further without the requested review, so long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

Rule 6.416 Presentation of Evidence. Subject to the rules in this chapter and to the rules of evidence, each party has discretion in deciding what witnesses and evidence to present.

Rule 6.419 Motion for Directed Verdict of Acquittal.
(A) Before Submission to Jury. After the prosecutor has rested the prosecution's case in chief and before the defendant presents proofs, the court on its own initiative may, or on the defendant's motion must, direct a verdict of acquittal on any charged offense as to which the evidence is insufficient to support conviction. The court may not reserve decision on the defendant's motion. If the defendant's motion is made after the defendant presents proofs, the court may reserve decision on the motion, submit the case to the jury, and decide the motion before or after the jury has completed its deliberations.
(B) After Jury Verdict. After a jury verdict, the defendant may file an original or renewed motion for directed verdict of acquittal in the same manner as provided by Rule 6.431(A) for filing a motion for a new trial.
(C) Conditional New Trial Ruling. If the court grants a directed verdict of acquittal after the jury has returned a guilty verdict, it must also conditionally rule on any motion for a new trial by determining whether it would grant the motion if the directed verdict of acquittal is vacated or reversed.
(D) Explanation of Rulings on Record. The court must state orally on the record or in a written ruling made a part of the record its reasons for granting or denying a motion for a directed verdict of acquittal and for conditionally granting or denying a motion for a new trial.

Rule 6.420 Verdict.
(A) Return. The jury must return its verdict in open court.
(B) Several Defendants. If two or more defendants are jointly on trial, the jury at any time during its deliberations may return a verdict with respect to any defendant as to whom it has agreed. If the jury cannot reach a verdict with respect to any other defendant, the court may declare a mistrial as to that defendant.
(C) Poll of Jury. Before the jury is discharged, the court on its own initiative may, or on the motion of a party must, have each juror polled in open court as to whether the verdict announced is that juror's verdict. If polling discloses the jurors are not in agreement, the court may (1) discontinue the poll and order the jury to retire for further deliberations, or (2) either (a) with the defendant's consent, or (b) after determining that the jury is deadlocked or that some other manifest necessity exists, declare a mistrial and discharge the jury.

Rule 6.425 Sentencing.
(A) Pre-sentence Report; Contents. Prior to sentencing, if the court refers the defendant to the probation department, the probation officer must investigate the defendant's background and character, verify

material information, and report in writing the results of the investigation to the court. The report must be succinct and, depending on the circumstances, include:

(1) a description of the defendant's prior criminal convictions and any juvenile adjudications occurring within two years prior to date of complaint,

(2) a complete description of the offense and the circumstances surrounding it,

(3) a brief description of the defendant's vocational background and work history, including military record and present employment status,

(4) a brief social history of the defendant, including marital status, financial status, length of residence in the community, educational background, and other pertinent data,

(5) the defendant's substance abuse history, medical issues, if any, and, if requested by the court, a current psychological or psychiatric report,

(6) information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim,

(7) if provided and requested by the victim, a written victim's impact statement as provided by law, if victim does not intend to make a victim's statement during the sentencing hearing,

(8) any statement the defendant wishes to make,

(9) any letters or statements of support timely filed, in support of defendant,

(10) a statement prepared by the prosecutor on the applicability of any consecutive sentencing provision,

(11) an evaluation of and prognosis for the defendant's adjustment in the community based on factual information in the report, with specific reference to facts contained in the report,

(12) a specific recommendation for disposition, and

(13) any other information that may aid the court in sentencing based on information that can be reasonably supported as being factual and not opinion,

(14) Any other information required pursuant to GTB Probation Policies and Procedures.

(B) Pre-sentence Report; Disclosure Before Sentencing. The court must permit the prosecutor, the defendant's lawyer, and the defendant to review the pre-sentence report at a reasonable time before the sentencing. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the non-disclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review. A Defendant acting in pro per shall receive all reports for review in the same form and content as that is disclosed to the prosecutor.

(C) Pre-sentence Report; Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, or the defendant not represented by a lawyer, with a copy of the pre-sentence report and any attachments to it.

(D) Imposition of Sentence.

(1) Sentencing Procedure. The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court, complying on the record, must:

(a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the pre-sentence report,

(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the pre-sentence report, and resolve any challenges in accordance with the procedure set forth in subrule (D)(2),

(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,

(d) determine that any request for incarceration or detention has been procedurally and substantively adequate,

(e) state the sentence being imposed, together with any credit for time served to which the defendant is entitled,

(f) articulate its reasons for imposing the sentence given, and

(g) if a victim of the crime has suffered harm and the court does not order restitution as provided by law or orders only partial restitution, state the reasons for its action.

(h) state the time period in which all fees, costs and fines and restitution must be paid and any terms and conditions for accessing per capita funds or minor trust accounts in order to satisfy fines, fees, costs, and restitution due. Minor trust funds may only be attached to pay the fees, fines and costs owed by a minor sentenced pursuant to the requirements of the Revenue Allocation Ordinance of the Grand Traverse Band Code. Per capita funds shall be attached pursuant to the Revenue Allocation Ordinance by court order for payment of any court fees, fines and costs which remain due 365 days after sentencing.

(2) Resolution of Challenges. If any information in the pre-sentence report is challenged, the court must make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(a) correct or delete the challenged information in the report, whichever is appropriate, and

(b) provide defendant's lawyer with an opportunity to review the corrected report.

(E) Advice Concerning the Right to Appeal.

(1) In a case involving a conviction following a trial, or a conviction following a plea of guilty or no contest, immediately after imposing sentence, the court must advise the defendant, on the record, that the defendant is entitled to appellate review of the conviction and sentence.

Rule 6.427 Judgment.

(A) Within seven (7) days after sentencing, the court must date and sign a written judgment of sentence that includes:

(1) the title and file number of the case;

(2) the defendant's name;

(3) the crime for which the defendant was convicted;

(4) the defendant's plea;

(5) the name of the defendant's attorney if one appeared;

(6) the jury's verdict or the finding of guilt by the court;

(7) the term of the sentence;

(8) the place of detention;

(9) the conditions incident to the sentence; and

(10) whether the conviction is reportable to the State of Michigan Secretary of State and, if so, the defendant's Michigan driver's license number.

If the defendant was found not guilty or for any other reason is entitled to be discharged, the court must enter judgment accordingly. The date a judgment is signed is its entry date.

(B) Sentencing Orders must also meet the following requirements:

(1) A sentencing Order must state clearly the sentence regarding each count on which the Defendant has been found guilty.

(2) No sentence may exceed the statutory term for each count.

(3) Probation periods shall be for no more than two years, and incarceration periods for each count shall total no more than that permitted by federal and tribal law.

(4) Sentencing orders must contain specific language distinguishing between costs, fines, fees and restitution and may direct a term of payment not to exceed the term of the entire sentence.

(5) For sentences that include incarceration, detention may be held in abeyance pending completion of court approved residential or non-residential treatment programs. Failure to complete the treatment program will void the abeyance and the term of incarceration or detention originally ordered pursuant to a sentencing order shall be immediately served.

(6) Incarceration or detention may be suspended pursuant to specific terms and conditions of probation. Should the defendant violate the terms and conditions of probation on which suspension is contingent, the defendant shall serve the remainder of the term of the suspended sentence in incarceration or detention.

(7) Sentences that include terms of incarceration, detention or treatment may be held in abeyance pending completion of a court approved diversion program. Should the Defendant fail to successfully complete the diversion program, the original sentence will become effective as of the date of unsuccessful termination of the defendant from the diversion program.

(8) Sentencing may include any combination of criminal remedies available pursuant to these Rules.

(9) Only cases which have properly joined pursuant to court rule may be sentenced in conjunction with another case, bearing a separate case number.

Rule 6.429 Correction and Appeal of Sentence

(A) Authority to Modify Sentence. The court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law.

(B) Time For Filing Motion.

(1) A motion for resentencing may be filed within 28 days after entry of the judgment.

(2) If a claim of appeal has been filed, a motion for resentencing may only be filed in accordance with the Tribal rules of appellate procedure.

(3) If the defendant fails to file a timely claim of appeal, the defendant may file a motion for re-sentencing within the time for filing an application for leave to appeal.

(C) Preservation of Issues Concerning Information Considered in Sentencing. A party shall not raise on appeal an issue challenging the accuracy of information relied upon in determining a sentence unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

Rule 6.431 New Trial

(A) Time for Making Motion.

(1) Any motion for a new trial must be filed within 28 days after entry of the judgment.

(2) If a claim of appeal has been filed, a motion for a new trial may only be filed in accordance with the procedure set forth in the Tribal rules of appellate procedure.

(3) If the defendant fails to file a timely claim of appeal, the defendant may file a motion for a new trial within the time for filing an application for leave to appeal.

(B) Reasons for Granting. On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

(C) Trial Without Jury. If the court tried the case without a jury, it may, on granting a new trial and with the defendant's consent, vacate any judgment it has entered, take additional testimony, amend its findings of fact and conclusions of law, and order the entry of a new judgment.

(D) Inclusion of Motion for Judgment of Acquittal. The court must consider a motion for a new trial challenging the weight or sufficiency of the evidence as including a motion for a directed verdict of acquittal.

Rule 6.432 Documents for Post Conviction Proceeding

(A) Appeals of Right. A defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents, and, unless the transcript has already

been ordered must order the preparation of the transcript. The Court may require the defendant to reimburse the court for the cost of copies and/or the transcript, and may require the defendant to pay a deposit against said costs in accordance with Tribal Court policy.

(B) Appeals by Leave. A defendant who may file an application for leave to appeal may obtain copies of transcripts and other documents as provided in this subrule.

(1) The defendant must make a written request to the sentencing court for specified documents or transcripts indicating that they are required to prepare an application for leave to appeal.

(2) If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.

(3) If the request includes the transcript of a proceeding that has not been transcribed, the court must order the materials transcribed and filed with court. After the transcript has been prepared, court clerk must provide a copy to the defendant.

(B) Other Post Conviction Proceedings. A defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in this subrule.

(1) The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue post conviction remedies in a tribal or federal court and are not otherwise available to the defendant.

(2) If the documents or transcripts have been filed with the court, the clerk must provide the defendant with copies of such materials.

(3) The court may order the transcription of additional proceedings if it finds that there is good cause for doing so. After such a transcript has been prepared, the clerk must provide a copy to the defendant.

Rule 6.433 Correcting Mistakes

(A) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party, and after notice if the court orders it.

(B) Substantive Mistakes. After giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous.

(C) Correction of Record. If a dispute arises as to whether the record accurately reflects what occurred in the trial court, the court, after giving the parties the opportunity to be heard, must resolve the dispute and, if necessary, order the record to be corrected.

(D) Correction During Appeal. If a claim of appeal has been filed or leave to appeal granted in the case, corrections under this rule are subject to the Tribal rules of appellate procedure.

Rule 6.440 Disability of Judge

(A) During Jury Trial. If, by reason of death, sickness, or other disability, the judge before whom a jury trial has commenced is unable to continue with the trial, another judge regularly sitting in or assigned to the court, on certification of having become familiar with the record of the trial, may proceed with and complete the trial.

(B) During Bench Trial. If a judge becomes disabled during a trial without a jury, another judge may be substituted for the disabled judge, but only if

(1) both parties consent in writing to the substitution, and

(2) the judge certifies having become familiar with the record of the trial, including the testimony previously given.

(C) After Verdict. If, after a verdict is returned or findings of fact and conclusions of law are filed, the trial judge because of disability becomes unable to perform the remaining duties the court must perform, another judge regularly sitting in or assigned to the court may perform those duties; but if that judge is not satisfied of an ability to perform those duties because of not having presided at the trial or determines that it is appropriate for any other reason, the judge may grant the defendant a new trial.

Rule 6.445 Probation Revocation

(A) Issuance of Summons; Warrant. On finding probable cause to believe that a probationer has violated a condition of probation, the court may

(1) issue a summons in accordance with Rule 6.103(B) and (C) for the probationer to appear for arraignment on the alleged violation, or

(2) issue a warrant for the arrest and detention of the probationer.

Unless good cause is demonstrated, arraignment must occur without unnecessary delay after the probationer is detained.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) ensure that the probationer receives written notice of the alleged violation,

(2) advise the probationer that

(a) the probationer has a right to contest the charge at a hearing, and

(b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint an attorney at the Tribe's expense if the defendant requests one and is financially unable to retain one (see Rule 6.005),

(3) determine what form of release, if any, is appropriate, and

(4) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing.

Upon advisement of his/her rights, the court shall ask the probationer to either admit or deny the specific allegation(s) of violation of the terms and conditions of probation. If the probationer knowing and willingly admits to a violation of terms and conditions of probation, the court may immediately impose sanctions or in its discretion schedule a sanctioning hearing. If the probationer denies the allegation(s), the court shall schedule an evidentiary hearing pursuant to subrules (C) and (D) below.

(C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within 10 days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) The Violation Hearing.

(1) Conduct of the Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses and to remain silent. The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The Tribe has the burden of proving a violation by a preponderance of the evidence.

(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with Rule 6.403.

(E) Pleas of Guilty. With the consent of the court that granted probation, the probationer may at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing,

(2) advise the probationer of the maximum possible jail or prison sentence for the offense,

(3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(F) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period for a period not to exceed the total sentencing period, or revoke probation and impose a sentence of incarceration or impose sanctions pursuant to the appropriate remedies for contempt of court. If the probationer is on probation under a suspended sentence or in a diversionary program, probation or diversion may be immediately revoked upon entry of an admission to violation of terms and conditions of probation.

(G) Review. The court must advise the probationer on the record, immediately after imposing sentence, that the probationer has a right to appeal.

CHAPTER 7
[RESERVED]

CHAPTER 8
RULES OF JURY SELECTION

Subchapter 8.000 Purpose and Definition

Rule 8.001 Purpose. The purpose of this chapter is to establish the procedure by which juries are selected for the Tribal Court.

Rule 8.002 Definitions. The following terms shall have the following meanings:
(A) "Tribal Court" is the trial level court of the Tribe;
(B) "Tribe" refers to the Grand Traverse Band of Ottawa and Chippewa Indians; and
(C) "Six-county primary service area" includes Leelanau, Grand Traverse, Benzie, Antrim, Charlevoix, and Manistee counties.

Subchapter 8.100 Right of Jury Trial

Rule 8.101 Criminal Cases. Any person accused of an offense punishable by jail shall be entitled to a trial by jury upon demand.

Rule 8.102 Civil Cases. Any party to a civil case for money damages (other than a small claims case) shall be entitled to a jury trial upon request and payment of the jury fee. No jury trial shall be allowed as to civil infractions, personal protection orders, cases brought under the Children's Code (10 GTBC, Chapter 1), or the Family Code (10 GTBC, Chapter 5). Notwithstanding the preceding, the Court may order a jury trial in any case if justice so demands.

Rule 8.103 Filing Requirements. **[Deleted effective 3/20/2009].**

Subchapter 8.200 Jury Pool

Rule 8.201 Membership. Each juror must be an enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians.

Rule 8.202 Residence. Each juror must be a resident of the six-county primary service area of the Tribe.

Rule 8.203 Age. Each juror must be at least eighteen (18) years of age.

Rule 8.204 Questionnaires. Jury questionnaires shall be mailed annually to an appropriate number of Tribal members residing in the six-county primary service area of the Tribe.

Rule 8.205 Random Selection. A random selection process shall be used to identify the potential jurors.

Rule 8.206 Mailing of Questionnaires. Each potential juror selected by the random draw shall be mailed a jury questionnaire by regular mail.

Rule 8.207 Filing Deadline. Each person who receives a jury questionnaire shall complete it and return it to the Tribal Court office within fourteen (14) days.

Rule 8.208 Access to Juror Questionnaires. The only persons allowed to examine completed jury questionnaires shall be:
(A) presiding judges of the Court;
(B) Tribal Court staff;

(C) parties to the action in which the jurors are called to serve and their attorneys or lay advocates; and
(D) any other person(s) expressly authorized access by other Court rules or by written order of the Court.

Rule 8.209 Annual Pool. Each person who is part of the jury pool shall remain in the pool for the remainder of the calendar year.

Rule 8.210 Exemption. Members of the Tribal Council and the Tribal Court judges and staff shall be exempt from jury duty.

Rule 8.211 Previous Service. Any person who serves on a jury shall be exempt from further jury service for the remainder of the calendar year.

Rule 8.212 Pool Replenishment. The jury pool may be replenished if necessary by random selection.

Subchapter 8.300 Jury Service

Rule 8.301 Jury Summons Process. When a jury trial is requested, the Court Clerk shall summon thirty (30) members of the jury pool for the jury selection process.

Rule 8.302 Excuse from Jury Duty. The Court may excuse any person from jury duty if such duty would cause extreme financial or health related hardship, or for good

Rule 8.303 Compensation. Each juror who is called and reports for jury duty or serves on a jury shall be entitled to a fee set by the Court. Applicable fees are posted in the Tribal Court office.

Rule 8.304 Contempt of Court. The following acts or omissions are punishable by the Court as contempt of court:
(A) failing to properly complete and return the jury questionnaire;
(B) failing to attend court when called for jury duty, or as otherwise directed by the Court at times specified without prior excuse of the Court;
(C) refusing to take an oath or affirmation;
(D) offering, promising, paying, or giving money or anything of value to, or taking money or anything of value from a person to evade jury service or to be wrongfully discharged;
(E) tampering with a jury list, jury selection box, or any other jury selection apparatus; and
(F) doing any act designed to subvert the purpose of these Court rules,

Subchapter 8.400 Impaneling The Jury

[Entire subchapter deleted effective 3/20/2009].

CHAPTER 9

RULES OF APPELLATE PROCEDURE

Subchapter 9.000 Purpose and Definition

9.001 Purpose. The purpose of this Chapter is to establish the procedures by which appeals are taken from decisions of the Tribal Court.

9.002 Definitions. The following terms shall have the meaning provided herein:
(A) "*Appellant*" means the party filing the appeal.
(B) "*Tribal Appellant Court*" means the party responding to another party's appeal.
(C) "*Tribal Court*" means the trial level of the Tribe.
(D) "*Tribe*" means the Grand Traverse Band of Ottawa and Chippewa Indians.

Subchapter 9.100 Organization and Composition of Tribal Appellate Court

Rule 9.101 Judges of Tribal Appellate Court. Consistent with Article V, Section 3(b) of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution, **t**he Tribal Appellate Court shall consist of three (3) judges. At least one (1) of the three (3) judges shall be an attorney licensed to practice before the courts of a state in the United States.

Rule 9.102 Term. Consistent with Article V, Section 3(b) of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution, each judge of the Tribal Appellate Court shall be appointed by an affirmative vote of five (5) of seven (7) members of the Tribal Council for a term of six (6) years, with no limit on the number of terms which can be served.

Rule 9.103 Chief Appellate Judge. The Chief Appellate Judge shall be selected by the three (3) appellate judges for a two-year term. The Chief Appellate Judge shall be responsible for the administration of the Tribal Appellate Court, and shall have duties specified in these Court Rules and as may be conferred by subsequent enactment.

Rule 9.104 Court Clerk. The Clerk of Tribal Court shall have the duties of Clerk for the Tribal Appellate Court.

Rule 9.105 Disqualification of Appellate Judge. An appellate judge shall disqualify him/herself from sitting on the appeal of any case in which:
(A) Direct Interest. The judge has a direct interest in the outcome;
(B) Witness. The judge was a witness at a trial; or
(C) Related. The judge is so related to either the appellant or the respondent as to bring into question the judge's ability to render an impartial decision.
(D) The judge is otherwise required to disqualify him/herself under Chapter 1 of these court rules.

Subchapter 9.200 Jurisdiction of Tribal Appellate Court

Rule 9.201 Exclusive Jurisdiction. The Tribal Appellate Court shall include the authority to determine the constitutionality of legislative acts of the Tribal governing body.

Rule 9.202 Review of Legislation. The jurisdiction of the Tribal Appellate Court shall include the authority to determine the constitutionality of legislative acts of the Tribal governing body.

Rule 9.203 Who May Appeal.
(A) Civil Cases. Any participant significantly and adversely affected by a decision of the Tribal Court in a civil case may appeal.

(B) Criminal Cases. Any participant in a criminal case, except the prosecution, may appeal a judgment or sentence. The prosecution may appeal a decision to the extent it raises a question of law, rather than of fact.

Rule 9.204 Subject of Appeal. An appeal is properly brought before the Tribal Appellate Court if:
(A) Final Order. A final judgment or order of the Tribal Court is concerned;
(B) Recusal. An order denying appellant's request for recusal is concerned; or
(C) Substantial Right. An order affecting a substantial right and which disposes of the matter is concerned.

Rule 9.205 Scope of Court's Review. In reviewing a matter on appeal, the Tribal Appellate Court may increase or decrease any sentence in a criminal case may affirm, modify, vacate, set aside or reverse any judgment, decree or order of the Tribal Court, may award the costs of the appeal, and may remand the case and direct entry of an appropriate judgment, decree or order, or require such further proceedings as may be just and equitable under the circumstances.

Subchapter 9.300 Procedure for Appeal

Rule 9.301 Time Period to Appeal.

(A) Civil Cases. An appeal to the Tribal Appellate Court in civil cases shall be made no later than twenty-eight (28) days after the entry of the written judgment or order of the Tribal Court.
(B) Criminal Cases. An appeal to the Tribal Appellate Court in criminal cases shall be made no later than twenty-eight (28) days after entry of the written judgment or order of the Tribal Court.
(C) Cross-Appeals. If one party has filed an appeal within the time period provided, the other party may take a Cross-Appeal by filing a Notice of Cross-Appeal within twenty-eight (28) days of service of the initial appeal.
(D) Untimely Appeals. Subject to the exception contained in subrule 9.301(E) below, failure to file an appeal within the time period provided in this Rule deprives the Tribal Appellate Court of subject matter jurisdiction to hear the appeal. Late appeals shall be denied filing by the Clerk of the Tribal Appellate Court unless leave for late filing has been granted by the Appellate Court.
(E) Grounds for Granting Late Appeal. The Court of Appeals may, at its discretion, grant leave to appeal from any order or judgment upon the showing by appellant, supported by affidavit, that there is merit in the reasons for appeal and that late filing was not due to appellant or appellant's attorney/advocate negligence.
(F) Expedited Appeals. The Court of Appeals may, at its discretion, upon motion by a party, grant an expedited appeal from any order or judgment upon a showing by the moving party, supported by an affidavit, that irreparable harm will be caused unless the appeal procedure is expedited.

Rule 9.302 Notice of Appeal.

(A) Filing Required. An appeal is made by the filing of a Notice of Appeal with the Clerk of the Tribal Appellate Court.
(B) Content of Notice. The Notice of Appeal shall bear the caption and case number of the case in Tribal Court, and shall be labeled “Notice of Appeal.” It shall state the date, judge, and content of the judgment or order appealed, and include a brief statement of the reasons for appeal, shall state whether oral arguments are requests, and the decision on the appeal desired from the Tribal Appellate Court. The appellant or the attorney appearing on appellant's behalf shall sign and date the notice.
(C) Defects in Notice. No appeal shall be dismissed for formal defects in the Notice of Appeal, if the latter appealed is clear from the document and it has been properly filed and served.
(D) Docketing of Appeal. Upon receipt of the Notice of Appeal and filing fee, the Clerk of the Tribal Appellate Court shall docket the appeal and notify the appellate judges of the pending appeal.
(E) Effect on Judgment by Filing Appeal. The filing of an appeal does not cause an automatic stay of the Tribal Court's judgment or order. A motion--and supporting brief seeking a stay should be addressed to the Tribal Court

Rule 9.303 Service of Notice of Appeal. A copy of the Notice of Appeal shall be served by the Clerk of the Tribal Appellate Court on all other parties by first class mail, and on the Clerk of the Tribal Court, if that position is separate from that of the Clerk of the Tribal Appellate Court. Proof of Service shall be filed simultaneously with the Notice of Appeal.

Rule 9.304 Appellate Filing Fee. The Clerk shall collect from each party who files a Notice of Appeal the appropriate filing fee. The Notice of Appeal shall be accepted by the Court without payment when the individual appellant submits an Application and Order for Waiver or Suspension of Fees and Court Costs with the Notice of Appeal.

Rule 9.305 Waiver of Fees.

(A) Applicability.

(1) Only a natural person is eligible for the waiver or suspension of fees and costs under this Rule.

(2) Except as provided in subrule 9.301(F), for the purpose of this Rule, "fees and costs" applies only to the filing fees required by law.

(B) Persons Receiving Public Assistance. If a party demonstrates by ex parte affidavit that he/she is primarily supported by any form of public assistance, the payment of fees and costs required by law or court rule as to that party shall be waived.

(C) Other Indigent Persons. If a party demonstrates by ex parte affidavit that he/she is unable to pay fees and costs required by law or court rule, the Tribal Appellate Court may order those fees and costs waived.

(D) Reinstatement of Requirement for Payment of Fees and Costs. If the payment of fees and costs has been waived under these Rules, the Court may on its own initiative order the person for whom the fees and costs were waived to pay those fees or costs when reason for the waiver no longer exists.

Rule 9.306 Bond. Upon notification of the filing of an appeal of a civil judgment or order, the Tribal Court may order the filing of a bond or cash equivalent thereof in an amount sufficient to guarantee payment or satisfaction of the judgment, including costs, in the event that judgment is affirmed on appeal. The Tribal Appellate Court may waive this requirement upon the petition of an appellant claiming indigence.

Rule 9.307 Record of Appeal. Upon receiving the Notice of Appeal, the Clerk of the Tribal Court shall compile for transmittal to the Tribal Appellate Court the record of the case on appeal The Clerk of the Tribal Court shall certify the contents of the record as true, correct, and complete as part of the transmittal to the Tribal Appellate Court.

(A) Pleadings, Orders, and Judgments. All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, orders and judgments, shall constitute the written record of the case on appeal. The Clerk of Tribal Court shall certify the contents of the record as true, correct, and complete as part of the transmittal to the Tribal Appellate Court.

(B) Hearing Transcript(s). The Clerk of Tribal Court shall also prepare a transcript of the proceedings in the Trial Court, the cost of which shall be borne by the appellant. The transcription fee shall be paid by appellant unless it is waived by order of the Tribal Court pursuant to appellant's petition for waiver of fees and costs. The Appellant may specify, in writing, to the Clerk which proceeding, or parts thereof, is needed for the Tribal Appellate Court to review the Tribal Court's decision. If only portions of the proceeding are requested, any other party may request within twenty-one (21) days of appellant's request, a transcription of any other portion, and shall pay the costs of its preparation to the Clerk.

(C) Notice of Record of Transmittal. The Clerk shall file a Notice of Transmittal of the Record, identifying each item included therein, together with a copy of any transcript, on each of the parties.

(D) Effect of Transmittal. No appeal issue may be considered by the Tribal Appellate Court until the Notice of Transmittal has been filed with the Clerk of the Tribal Appellate Court.

Rule 9.308 Briefing. Parties are encouraged, but not required, to file written briefs concerning the issue(s) on appeal, in order to assist the Tribal Appellate Court in its review. The following requirements apply if a brief is filed.
(A) Time to File a Brief. If an appellant wishes to file a brief, he/she must do so within twenty-eight (28) days of receiving Notice of Transmittal of the Record to the Tribal Appellate Court. If respondent wishes to file a brief, he/she must do so within forty-two (42) days of receiving Notice of Transmittal of Record, or within twenty-eight (28) days of receiving the Appellant's brief, whichever shall occur first. A reply brief may be submitted by appellant within twenty-eight (28) days of receiving respondent's brief.
(B) Format of Briefs. Briefs shall be typewritten, double-spaced, on white paper which is no more than eight and a half by eleven inches (8 1/2 x 11") in size. No brief shall exceed fifty (50) pages in length. Four (4) copies of each brief shall be submitted.
(C) Content of Briefs. The first brief to be filed shall contain a short statement of the case's history and a listing of the issues presented on appeal and how, if at all, the issues were decided by the Tribal Court. All briefs shall contain an argument and a conclusion, stating clearly the precise action sought from the Tribal Appellate Court.

Rule 9.309 Oral Argument. After timely written request and at the discretion of the Chief Justice, appeals will be scheduled for oral argument after the time to file briefs shall have expired. The length of arguments shall be sent by the appellate judges hearing the appeal, and shall be stated in the notice scheduling arguments.

Rule 9.310 Stay Pending Appeal. In the event that the Trial Court denies a request for stay of the judgment or order pending appeal, the Tribal Appellate Court may consider the request. A stay shall be granted only if the purposes of justice require it, and irreversible harm may occur if the stay is not granted. In determining whether or not to grant a stay, the Court shall consider:
(A) Criminal Case. In an appeal of a criminal case, the likelihood that appellant will flee the Court's jurisdiction during pendency of the appeal, and the ability of the appellant to post bond in lieu of incarceration during the pendency of the appeal;
(B) Money Judgment. In an appeal of a money judgment in a civil case, the existence of a bond pursuant to Rule 9.306 of these Rules; and
(C) Child Custody. In an appeal of a child custody order, the existence of an order changing the custodian of the child.

Rule 9.311 Motions before the Tribal Appellate Court. Any party requesting action by the Tribal Appellate Court on a matter unrelated to its decision on a pending appeal, such as a waiver of filing fee or a stay pending appeal, shall file a motion with the Clerk of the Tribal Appellate Court clearly stating the action requested and the reasons why the Court should do what is asked of it. Any motion shall be served on all other interested parties, who may file within five (5) days of receipt of response with the Court indicating agreement or disagreement with the motion. The Tribal Appellate Court shall issue a written order disposing of any motion filed.

Subchapter 9.400 Decisions of the Tribal Appellate Court

Rule 9.401 Standard of Review. The following standards apply to the Tribal Appellate Court when deciding an appeal.
(A) Judge Finding of Fact. A finding of fact by a jury shall be sustained unless clearly erroneous.
(B) Jury Finding of Fact. A finding of fact by a jury shall be sustained if there is any credible evidence to support it.
(C) Factual Inference. A factual inference drawn by a judge or jury shall be reviewed as a find of fact if more than one reasonable inference can be drawn from the fact(s).
(D) Witness Credibility .Any finding whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
(E) Conclusions of Law. A conclusion of law shall be reviewed by the Tribal Appellate Court *de novo.*

(F) Contracts. An unambiguous contract term is reviewed as a conclusion of law.
(G) Mixture of Fact and Law. A matter, which is a mixture of law and fact, is reviewed by the standard applicable to each element.
(H) Discretion of the Court. A matter which is determined within the Tribal Court discretion shall be sustained if it is apparent from the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the facts.
(I) Sentence or Penalty. A sentence and the imposition of fine, forfeiture, and/or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court.
(J) Substituted Judgment. A matter committed to the discretion of the Tribal court shall not be subject to the substituted judgment of the Tribal Appellate Court.

Rule 9.402 Issues Preserved on Appeal. The Tribal Appellate Court shall consider issues pursuant to the following requirements in deciding an appeal.
(A) Issues Omitted. The Tribal Appellate Court will not consider issues that were not raised before the Tribal Court unless a miscarriage of justice would result.
(B) Issues Raised. An issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by the Tribal Appellate Court.
(C) Moot. No issue which is moot at the time of argument shall be decided by the Tribal Appellate Court unless it is capable of repetition, yet likely to evade appellate review, due to its natures.
(D) Facts Omitted. Facts, which are not in the record, shall not be presented in any manner to the Tribal Appellate Court, and if presented, shall not be considered by that Court.

Rule 9.403 Content of Order or Judgment Appealed. Orders and judgments subject to an appeal shall contain the following, in order to facilitate justice by the Tribal Appellate Court.
(A) Non-Jury. In any proceeding tried to a judge without a jury, the judge shall make separate findings of fact and conclusions of law. The Tribal Court may do this orally on the record in open court, or issue a written opinion and order.
(B) Civil Jury. In any civil matter tried to a jury, if requested by either party or by the Court, the jury shall make a special verdict on each issue of fact placed before it.
(C) Findings of Fact. In the absence of findings of facts by the Tribal Court, the Tribal Appellate Court may affirm the judgment if supported by the record, reverse the judgment if it does not support it, or remand the case for the issuance of findings and conclusions.

Rule 9.404 Decisions of the Tribal Appellate Court. All decisions of the Court on an appeal, and all determinations of motions, shall be made as follows:
(A) Panel Majority. Any decision of the Court of Appeals shall be made by the majority of the judges on the panel. If no majority is reached on a decision, the order of judgment of the Tribal Court is upheld.
(B) Content. In the exercise of its jurisdiction under Rule 9.205, the decision of the Court of Appeals shall be in written form, which shall state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court. The panel shall determine which of its members in the majority shall write the decision.
(C) Order. The Court shall issue an order confirming with the decision, which shall direct the Tribal Court in its disposition of the case, that is the subject of appeal. Such order shall include the continuance or termination of any order relating to a stay and the posting of bond.
(D) Dissenting Opinions. Any member of the panel who disagrees with the majority's decision may issue a written dissent, which shall comply with the content requirements of subrule 9.404(B) above.
(E) Distribution of Decision. Within five (5) days of issuance, the Clerk of the Court of Appeals shall transmit by first class mail a copy of the decision to each interested party at their address of record, and to the Clerk of the Court of Appeals shall inform all of the date on which the decision was filed.
(F) Official Reporter. Any decision which determines an issue of law shall be retained and filed as Tribal substantive law and be reported to the official reporter of the Tribal Appellate Court. Any decision so filed shall become binding precedent.

Rule 9.405 Request for Reconsideration of Decision. A request for reconsideration may be filed with the Clerk of the Tribal Appellate Court, if made within fourteen (14) days of the decision's filing with the Clerk. A copy of the request must be served upon all other parties and on the Tribal Court.
(A) Content. The request must identify the exact element of the decision that is to be reconsidered, the reasons for the request, and any authority upon which the party relies.
(B) Response. Any other party may file a response(s) to the request within ten (10) days of service.
(C) Effect of Request. A request for rehearing shall stay all proceedings until the Tribal Appellate Court issues its decisions on the matter.
(D) Determination. The panel, which issues the decision, which is the subject of the request, shall also decide the request for rehearing. The request may be granted or denied, and if granted, the parties are entitled to brief under Rule 9.307 and oral argument under Rule 9.307.

Rule 9.406 Remand. The Clerk of the Tribal Appellate Court shall transmit the entire record of the Tribal Court, together with the decision and order of the Tribal Appellate Court, to the Clerk of Tribal Court within fifteen (15) days of the disposition of all post-decision motions, if any. Upon such transmittal, jurisdiction over the case is returned to the Tribal Court from which the appeal was made.

Subchapter 9.500 Court Administration

Rule 9.501 Authority to Waive Requirements. The Chief Appellate Judge may, upon good cause shown by written motion of a party, enlarge the time any party has to comply with these Rules, or waive the page limitation for briefing.

Rule 9.502 Standards for Computing Time Requirements. In computing the period of time prescribed by these Rules or by any order of the Tribal Appellate Court, the day of the act or event from which the period begins to run is not included. The last day of the period is included, unless it falls on a Saturday, Sunday, or Tribal holiday. In that event, the last day of the period falls on the next regular business day.

Rule 9.503 Requirements for Service.
(A) What Must Be Served. Any paper, of whatever kind, which is filed with the Clerk of the Tribal Appellate Court or the Clerk of the Tribal Court, shall be served on each other party. Proof of that service shall also be filed.
(B) Form of Service. If sufficient notification to other parties if service is made by first class mail. Services is considered complete upon mailing. Personal service on any other party may be made, if done in compliance with the rules for such service in the Tribal Court.
(C) Person Served. Service shall be made upon the party's attorney or Tribal Advocate, if any, and if the party is not requested, upon the party.

Rule 9.504 Practice Before the Tribal Court. Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Court of Appeals.

Rule 9.505 Rules of Court. The judges of the Tribal Appellate Court may make and amend such rules as are deemed by them appropriate for the proper and efficient administration of the Court. Such rules shall be filed with the Clerk of the Tribal Appellate Court, and made available as issued to all persons admitted to practice.

CHAPTER 10
RULES OF ENFORCEMENT AND RECOGNITION OF FOREIGN JUDGMENTS

Subchapter 10.000 Purpose And Definitions

Rule 10.001 Purpose. The purpose of this Chapter is to facilitate, improve and extend by court rule the enforcement and recognition of judgments between the Grand Traverse Band Tribal Court and other courts, whether they be tribal, state or federal.

Rule 10.002 Definitions. When used in this Chapter, unless the content otherwise indicates:
(A) "*Court*" means the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court.
(B) "*Foreign Court*" means all courts other than the Grand Traverse Band Tribal Court including tribal, state, or federal courts, and courts of foreign countries.
(C) "*Foreign Judgment*" means any judgment, decree, or order by any other tribal court, United States federal court, state court, or a court of a foreign country which is final in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory, or other relief
(D) "*Judgment Creditor*" means one who has had a judgment rendered in his/her favor. Judgment creditor is synonymous with the term judgment holder.
(E) "*Judgment Debtor*" means the party against whom a judgment has been rendered.
(F) "*Judgment Holder*" means one whom has had a judgment rendered in his/her favor. Judgment holder is synonymous with the term judgment creditor.
(G) "*Lawyer*" is synonymous with the term "*attorney*."
(H) "*Lay Advocate*" means a person who is a non-lawyer and who has been qualified by this Court to serve as an advocate on behalf of a party.
(I) "*Rendering Jurisdiction*" means the jurisdiction in which the foreign judgment was entered.

Subchapter 10.100 Enforcement And Recognition

Rule 10.101 Michigan State Court Judgments.
(A) The judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of a Michigan State Court are recognized and have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the Tribal Court of the Grand Traverse Band, subject to the provisions of this rule.
(B) The recognition described in subrule 10.101(A) applies only if the Michigan State Court:
(1) enacts an ordinance, court rule, or other binding measure that obligates the Michigan State Court to enforce the judgments, orders, warrants, subpoenas, records, and judicial acts of the Tribal Court of The Grand Traverse Band, and
(2) transmits the ordinance, court rule or other measure to the Tribal Court Administrator.
(C) A judgment, decree, order, warrant, subpoena, record, or other judicial act of a Michigan State Court that has taken the actions described in subrule 10.101(B) is presumed to be valid. To overcome that presumption, an objecting party must demonstrate that:
(1) the Michigan State Court lacked personal or subject-matter jurisdiction; or
(2) the judgment, decree, order, warrant, subpoena, record, or other judicial act of the Michigan State Court;
(a) was obtained by fraud, duress, or coercion;
(b) was obtained without fair notice or a fair hearing;
(c) is repugnant to the public policy of the Grand Traverse Band of Ottawa and Chippewa Indians; or
(d) is not final under the laws and procedures of the Michigan State Court.
(D) The recognition described in subrule 10.101(A) applies only if the person seeking recognition and enforcement complies with the conditions and procedures set forth in Rule 10.200 hereunder whenever Michigan State Court judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts are involved.

(E) This rule does not apply to judgments or orders that federal law requires to be given full faith and credit.

Rule 10.102 Tribal Court Judgments. The judgments decrees, orders, warrants, subpoenas, records, and other judicial acts of another tribal court of a federally-recognized tribe are recognized, and have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the Tribal Court of the Grand Traverse Band, subject to the provisions of this rule.

(A) The recognition described in subrule 10.102(A) applies only if the other tribal court:

(1) enacts an ordinance, court rule, or other binding measure that obligates the other tribal court to enforce the judgments, orders, warrants, subpoenas, records, and judicial acts of the Tribal Court of The Grand Traverse Band;

(2) transmits the ordinance, court rule or other measure to the Tribal Court Administrator.

(B) A judgment, decree, order, warrant, subpoena, record, or other judicial act of another tribal court that has taken the actions described in subrule 10.102-B is presumed to be valid. To overcome that presumption, an objecting party must demonstrate that:

(1) the other tribal court lacked personal or subject-matter jurisdiction; or

(2) the judgment, decree, order, warrant, subpoena, record, or other judicial act of the other tribal court:

(a) was obtained by fraud, duress, or coercion;

(b) was obtained without fair notice or a fair hearing;

(c) is repugnant to the public policy of the Grand Traverse Band of Ottawa and Chippewa Indians; or

(d) is not final under the laws and procedures of the other tribal court.

(C) The recognition described in subrule 10.102(A) applies only if the person seeking recognition and enforcement complies with the conditions and procedures set forth in Rule 10.200 hereunder whenever other tribal court judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts are involved.

(D) This rule does not apply to judgments or orders that federal law requires to be given full faith and credit.

Rule 10.103 Federal Court and Other State Court Judgments.

(A) Courts Granting Enforcement and Recognition. The judgments decrees, orders, warrants, subpoenas, records, or other judicial acts of a U.S. federal court or other state courts (with the exception of Michigan State Courts wherein Rule 10.101 shall apply) are recognized, and have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the Tribal Court of the Grand Traverse Band, subject to the provisions of this rule.

(B) The recognition described in subrule 10.101(A) applies only if the federal or other state court:

(1) enacts an ordinance, court rule, or other binding measure that obligates the federal court or other state court to enforce the judgments, orders, warrants, subpoenas, records, and judicial acts of the Tribal Court of The Grand Traverse Band;

(2) transmits the ordinance, court rule or other measure to the Tribal Court Administrator.

(C) A judgment, decree, order, warrant, subpoena, record, or other judicial act of a federal court or other state court that has taken the actions described in subrule 10.101(B) is presumed to be valid. To overcome that presumption, an objecting party must demonstrate that:

(1) the federal or other state court lacked personal or subject-matter jurisdiction; or

(2) the judgment, decree, order, warrant, subpoena, record, or other judicial act of the federal court or other state court:

(a) was obtained by fraud, duress, or coercion;

(b) was obtained without fair notice or a fair hearing;

(c) is repugnant to the public policy of the Grand Traverse Band of Ottawa and Chippewa Indians; or

(d) is not final under the laws and procedures of the federal court or other state court.

(D) The recognition described in subrule 10.101(A) applies only if the person seeking recognition and enforcement complies with the conditions and procedures set forth in Rule 10.200 hereunder whenever federal court or other state court judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts are involved.

(E) This rule does not apply to judgments or orders that federal law requires to be given full faith and credit.

(F) Courts Granting Full Faith and Credit. If the federal court or other state court does not grant (full faith and credit) to the judgments of the Grand Traverse Band Tribal Court, the Tribal Court shall have full discretion as to whether (full faith and credit) may be granted and shall be guided by the best interests of this Tribe and the parties, provided that the person seeking (full faith and credit) complies with the conditions and procedures set forth in Rule 10.200 hereunder.

Rule 10.104 Court Records and Judgments of a Foreign Country.

(A) Court of a Foreign Country Granting Enforcement and Recognition. The judgments, decrees, orders, warrants, subpoenas, records, or other judicial acts of a foreign court are recognized, and have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the Tribal Court of the Grand Traverse Band, subject to the provisions of this rule.

(B) The recognition described in subrule 10.104(A) applies only if the foreign court:

(1) enacts an ordinance, court rule, or other binding measure that obligates the federal court or other state court to enforce the judgments, orders, warrants, subpoenas, records, and judicial acts of the Tribal Court of The Grand Traverse Band;

(2) transmits the ordinance, court rule or other measure to the Tribal Court Administrator.

(C) A judgment, decree, order, warrant, subpoena, record, or other judicial act of a foreign court that has taken the actions described in subrule 10.104(B) is presumed to be valid. To overcome that presumption, an objecting party must demonstrate that:

(1) the foreign court lacked personal or subject-matter jurisdiction; or

(2) the judgment, decree, order, warrant, subpoena, record, or other judicial act of the foreign court:

(a) was obtained by fraud, duress, or coercion;

(b) was obtained without fair notice or a fair hearing;

(c) is repugnant to the public policy of the Grand Traverse Band of Ottawa and Chippewa Indians; or

(d) is not final under the laws and procedures of the foreign court

(D) The recognition described in subrule 10.104(A) applies only if the person seeking recognition and enforcement complies with the conditions and procedures set forth in Rule 10.200 hereunder whenever foreign court judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts are involved.

(E) A Court of a Foreign Country Not Granting Enforcement and Recognition. If the court of a foreign country does not grant enforcement and recognition to the judgments of the Grand Traverse Band Tribal Court, the Tribal Court shall have full discretion as to whether enforcement and recognition may be granted and shall be guided by the best interests of this tribe and the parties, provided that the person seeking enforcement and recognition complies with the conditions and procedures set forth in Rule 10.200 hereunder.

Subchapter 10.200 Recognition and/or Enforcement of Foreign Judgments

Rule 10.201 Application of Enforcement and Recognition to Final and Conclusive Judgments. In accordance with the enforcement and recognition provisions set forth in Rules 10.101 to 10.104, a foreign judgment that is final and conclusive is enforceable in the Grand Traverse Band Tribal Court pursuant to the following Rule.

Rule 10.202 Registration of Foreign Judgment. A person seeking enforcement of a foreign judgment shall file:

(A) a copy of the foreign judgment, which has been authenticated by the clerk or registrar of the foreign court in the following manner:

(1) the clerk or registrar of the foreign court must attest in writing that he/she:

(a) is the clerk or registrar of the subject foreign court;

(b) is the custodian of the records of the subject foreign court; and

(c) has compared an annexed copy of the foreign judgment from the case with the original(s) on file and of record in the foreign court, and has found the copy of the foreign judgment to be a true copy of the whole of such original(s).

(2) upon completing the written attestation referenced in subrule 10.202(A)(1) above, the clerk or registrar of the foreign court must:

(a) sign and date attestation;

(b) affix the seal of the foreign court to said attestation; and

(c) annex a true copy of the foreign judgment to said attestation.

(B) a sworn affidavit by the judgment holder, or his/her lawyer or lay advocate, which includes all of the following:

(1) the name and last known post office address of the judgment debtor and the judgment creditor;

(2) that the judgment is final and that no appeal is pending;

(3) that no subsequent orders vacating, modifying, or reversing the judgment have been entered in the rendering jurisdiction;

(4) proof that the person against whom the foreign judgment has been rendered (i. e., judgment debtor) is subject to the jurisdiction of the Grand Traverse Band Tribal Court with regard to enforcement of said judgment;

(5) proof that the court from which the foreign judgment was issued provides reciprocal enforcement and recognition to the judgments of the Grand Traverse Band Tribal Court with regard to enforcement of said judgment;

(C) a filing fee for registering said foreign judgment.

Rule 10.203 Notice of Registration of Foreign Judgment. Upon the filing of the foreign judgment, attestation, affidavit and filing fee, the clerk of the court shall promptly mail notice of the filing of the foreign judgment along with a copy of the foreign judgment, attestation and affidavit referenced in Rule 10.202 to the judgment debtor at the address provided by the judgment creditor and shall make a note of the mailing in the docket and/or complete proof of mailing.

(A) Included in the Notice. The notice shall include the following:

(1) the name and post office address of the judgment holder and the judgment holder's lawyer or lay advocate, if any, in this court; and

(2) a directive that an order entering the enforcement of the foreign judgment shall be entered by the court within twenty-eight (28) days of the same having been served on the judgment debtor unless the judgment debtor files written objections with the court along with a request for a hearing on the same within said twenty-eight (28) day period.

(B) Mailing Notice. The judgment holder shall mail a notice of the filing along with a copy of the foreign judgment, attestation, and affidavit referenced in Rule 10.202 to the judgment debtor and shall file proof of mailing with the clerk of the court. Such notice shall be served on the judgment debtor in a manner consistent with applicable Tribal Court rules.

Rule 10.204 Objections; Hearing; Entry of Order Where Objections. In the event that the judgment debtor files written objections within the twenty-eight (28) day period set forth in Rule 10.203 above along with a request for a hearing, the clerk of the court shall send by first-class mail a copy of said objections to the judgment holder or his/her lawyer. In addition, the clerk of the court shall send by first- class mail a notice of hearing setting forth the date and time of hearing to the judgment holder and judgment debtor, or their respective lawyer(s) or lay advocate(s). The judgment debtor at the hearing will be required to demonstrate cause why the foreign judgment shall not be enforced by this court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the court shall issue an order either granting or denying enforcement of the foreign judgment.

Rule 10.205 Entry of Order Where No Objections. In the event that the judgment debtor does not file any written objections within the twenty-eight (28) day time period set forth in Rule 10.203 above, an order granting the enforcement of the foreign judgment shall be issued by the court.

Rule 10.206 Not Enforceable or Non-Recognizable Foreign Judgment. A foreign judgment is not enforceable or is non-recognizable if it was entered under the following circumstances, including but not limited to:

(A) Impartiality. The judgment was rendered by a process that does not assure the requisites of an impartial administration of justice including but not limited to due notice and a hearing;

(B) Personal Jurisdiction. The foreign court did not have both the personal jurisdiction over the judgment debtor and jurisdiction over the subject matter;

(C) Fraud. The judgment was obtained by fraud;

(D) Cause of Action. The cause of action on which the judgment is based provides a situation where granting enforcement and recognition would result in a Tribal Court order that is repugnant to Tribal law;

(E) Child Custody. The judgment involves enforcement of child custody provisions and anyone of the following:

(1) The foreign court did not have jurisdiction over the child(ren);

(2) the provisions of the Indian Child Welfare Act [25 USC §§1901-1963], if applicable, were not properly followed;

(3) due process was not provided to all persons participating in the foreign court proceeding; or

(F) Criminal Judgment. The judgment involves enforcement of a criminal judgment wherein the court has the authority to otherwise adjudicate a criminal proceeding against a defendant.

Rule 10.207 Appeal; Stay of Execution; Stay of Proceeding. If the judgment is pending or will be taken, or that a stay of execution has been granted, the court may stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

Rule 10.208 Post Judgment Proceedings Regarding Foreign Judgment; No Waiver of Immunity.

(A) A judgment holder of a foreign judgment may proceed to post judgment proceeding even when said tribe is served as a garnishee defendant for the wages or property of an employee who is a judgment debtor.

(B) The Grand Traverse Band does not waive its immunity from suit with regard to the enforcement of a foreign judgment in any post judgment proceedings even when said tribe is served as a garnishee defendant for the wages or property of an employee who is a judgment debtor.

Subchapter 10.300 Construction of Rules

Rule 10.301 Construction of Rules. These rules shall be construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

RULES OF EVIDENCE

OF THE

GRAND TRAVERSE BAND

OF OTTAWA AND CHIPPEWA INDIANS

TRIBAL COURT

GRAND TRAVERSE BAND TRIBAL COURT

RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 101 Scope
These rules govern proceedings in the courts of this Tribe to the extent and with the exceptions stated in Rule 1101. A statutory rule of evidence not in conflict with these rules or other rules adopted by the Tribal Appellate Court is effective until superseded by rule or decision of the Tribal Appellate Court.

Rule 102 Purpose
These rules are intended 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 103 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.

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(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 104 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 subdivision (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 105 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 106 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.

ARTICLE II. JUDICIAL NOTICE

Rule 201 Judicial Notice of Adjudicative Facts
(a) *Scope of rule.* This rule governs only judicial notice of adjudicative facts, and does not preclude judicial notice of legislative 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 within the territorial jurisdiction of the trial 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, and may require a party to supply necessary information.

(d) *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.

(e) *Time of taking notice.* Judicial notice may be taken at any stage of the proceeding.

(f) *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.

Rule 202 Judicial Notice of Law

(a) *When discretionary.* A court may take judicial notice without request by a party of (1) the common law, constitutions, and public statutes in force in every state, territory, and jurisdiction of the United States; (2) private acts and resolutions of the Congress of the United States, of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians, and of the Legislature of the State of Michigan, and ordinances and regulations of governmental subdivisions or agencies of the Grand Traverse Band of Ottawa and Chippewa Indians or State of Michigan; and (3) the laws of foreign countries.

(b) *When conditionally mandatory.* A court shall take judicial notice of each matter specified in paragraph (a) of this rule if a party requests it and (1) furnishes the court sufficient information to enable it properly to comply with the request and (2) has given each adverse party such notice as the court may require to enable the adverse party to prepare to meet the request.

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301 Presumptions in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by statute or by these rules, 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.

Rule 302 Presumptions in Criminal Cases

(a) *Scope.* In criminal cases, presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(b) *Instructing the jury.* Whenever the existence of a presumed fact against an accused is submitted to the jury, the court shall instruct the jury that it may, but need not, infer the existence of the presumed fact from the basic facts and that the prosecution still bears the burden of proof beyond a reasonable doubt of all the elements of the offense.

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401 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 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians, these rules, or other rules adopted by the Tribal Appellate Court. Evidence which is not relevant is not admissible.

Rule 403 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 considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404 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; or if evidence of a trait of character of the alleged victim of the crime is offered by the accused and admitted under subdivision (a)(2), evidence of a trait of character for aggression of the accused offered by the prosecution;

(2) *Character of alleged victim of homicide.* When self-defense is an issue in a charge of homicide, evidence of a trait of character for aggression of the alleged victim of the crime offered by an accused, or evidence offered by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a charge of homicide to rebut evidence that the alleged victim was the first aggressor;

(3) *Character of alleged victim of sexual conduct crime.* In a prosecution for criminal sexual conduct, evidence of the alleged victim's past sexual conduct with the defendant and evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease;

(4) *Character of witness.* Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) *Other crimes, wrongs, or acts.*

(1) 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, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

(2) 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 and the rationale, whether or not mentioned in subparagraph (b)(1), for admitting the evidence. If necessary to a determination of the admissibility of the evidence under this rule, the defendant shall be required to state the theory or theories of defense, limited only by the defendant's privilege against self-incrimination.

Rule 405 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 reports of 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 406 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 407 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 408 Compromise and Offers to Compromise
Evidence of (1) furnishing or offering or promising to furnish, or (2) 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, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409 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 410 Inadmissibility of Pleas, Plea Discussions, and Related Statements
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) A plea of nolo contendere, except that, to the extent that evidence of a guilty plea would be admissible, evidence of a plea of nolo contendere to a criminal charge may be admitted in a civil proceeding to support a defense against a claim asserted by the person who entered the plea;

(3) Any statement made in the course of any proceedings under MCR 6.302 or comparable state or federal procedure regarding either of the foregoing pleas; or

(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) 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 (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411 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, if controverted, or bias or prejudice of a witness.

ARTICLE V. PRIVILEGES

Rule 501 Privilege; General Rule
Privilege is governed by the common law, except as modified by statute or court rule.

ARTICLE VI. WITNESSES

Rule 601 Witnesses; General Rule of Competency
Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 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 703, relating to opinion testimony by expert witnesses.

Rule 603 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 604 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 605 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 606 Competency of Juror as Witness
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. No objection need be made in order to preserve the point.

Rule 607 Who May Impeach
The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608 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 609, 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 which 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 609 Impeachment by Evidence of Conviction of Crime
(a) *General rule.* For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and

(1) the crime contained an element of dishonesty or false statement, or

(2) the crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

(b) *Determining probative value and prejudicial effect.* For purposes of the probative value determination required by subrule (a)(2)(B), the court shall consider only the age of the conviction and the degree to which a conviction of the crime is indicative of veracity. If a determination of prejudicial effect is required, the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.

(c) *Time limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten 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.

(d) *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 which was punishable by death

or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(e) *Juvenile adjudications.* Evidence of juvenile adjudications is generally not admissible under this rule, except in subsequent cases against the same child in a juvenile proceeding of the tribal court. The court may, however, in a criminal case or a juvenile proceeding against the child 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 is necessary for a fair determination of the case or proceeding.

(f) *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 610 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 611 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.* A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. The judge may limit cross-examination with respect to matters not testified to on direct examination.

(c) *Leading Questions.*

(1) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony.

(2) Ordinarily leading questions should be permitted on cross-examination.

(3) When a party calls a hostile witness, an adverse party or a witness identified with an adverse party, interrogation may be by leading questions. It is not necessary to declare the intent to ask leading questions before the questioning begins or before the questioning moves beyond preliminary inquiries.

Rule 612 Writing or Object Used to Refresh Memory

(a) *While testifying.* If, while testifying, a witness uses a writing or object to refresh memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) *Before testifying.* If, before testifying, a witness uses a writing or object to refresh memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) *Terms and conditions of production and use.* A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence, for their bearing on credibility only unless otherwise admissible under these rules for another purpose, those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for

inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony the court shall examine the writing or object 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 or object is not produced, made available for inspection, 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 613 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 it shall be shown or disclosed to opposing counsel and the witness.

(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 801(d)(2).

Rule 614 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 615 Exclusion of Witnesses

At the request of a party the court may 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 (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701 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 702 Testimony by Experts

If the court determines that 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 if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of

reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 703 Bases of Opinion Testimony by Experts
The facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence. This rule does not restrict the discretion of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence hereafter.

Rule 704 Opinion on Ultimate Issue
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.

Rule 705 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 706 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 is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the Fifth Amendment of the United States Constitution. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(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.

Rule 707 Use of Learned Treatises for Impeachment
To the extent called to the attention of an expert witness upon cross-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, are admissible for impeachment purposes only. If admitted, the statements may be read into evidence but may not be received as exhibits.

ARTICLE VIII. HEARSAY

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement.* 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.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than the 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.* A statement is not hearsay if–

(1) *Prior statement of 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, or (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, or (C) one of identification of a person made after perceiving the person; or

(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, except statements made in connection with a guilty plea to a misdemeanor motor vehicle violation or an admission of responsibility for a civil infraction under laws pertaining to motor vehicles, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (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 on independent proof of the conspiracy.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *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.

(2) *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.

(3) *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.

(4) *Statements made for purposes of medical treatment or medical diagnosis in connection with treatment.* Statements made for purposes of medical treatment or medical diagnosis in connection with 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 necessary to such diagnosis and treatment.

(5) *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.

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, 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, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of entry in records kept in accordance with the provisions of paragraph (6).* 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 paragraph (6), 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.

(8) *Public records and reports.* Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) 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 police officers and other law enforcement personnel, and subject to the limitations of MCL 257.624.

(9) *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.

(10) *Absence of public record or entry.* To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, 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 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *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.

(12) *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 member of the clergy, 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.

(13) *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.

(14) *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.

(15) *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.

(16) *Statements in ancient documents.* Statements in a document in existence twenty years or more the authenticity of which is established.

(17) *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.

(18) *Deposition testimony of an expert.* Testimony given as a witness in a deposition taken in compliance with law in the course of the same proceeding if the court finds that the deponent is an expert witness and if the deponent is not a party to the proceeding.

(19) *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.

(20) *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 or nation in which located.

(21) *Reputation as to character.* Reputation of a person's character among associates or in the community.

(22) *Judgment of previous conviction.* Evidence of a final judgment, entered after a trial or upon a plea of guilty (or upon a plea of nolo contendere if evidence of the plea is not excluded by MRE 410), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the state 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.

(23) *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.

(24) *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 that 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 the statement 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 803A Hearsay Exception; Child's Statement About Sexual Act

A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding, provided:

(1) the declarant was under the age of ten when the statement was made;

(2) the statement is shown to have been spontaneous and without indication of manufacture;

(3) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective circumstance; and

(4) the statement is introduced through the testimony of someone other than the declarant.

If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule.

A statement may not be admitted under this rule unless the proponent of the statement makes known to the adverse party the intent to offer the statement, and the particulars of the statement, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.

This rule applies in criminal and juvenile proceedings only.

Rule 804 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; or

(2) persists in refusing to testify concerning the subject matter of thedeclarant's statement despite an order of the court to do so; or

(3) has a lack of memory of the subject matter of the declarant's statement; or

(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 subdivision (b)(2), (3), or (4), the

declarant's attendance or testimony) by process or other reasonable means, and in a criminal case, due diligence is shown.

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, 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) *Deposition Testimony.* Testimony given as a witness 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.

For purposes of this subsection only, "unavailability of a witness" also includes situations in which:

(A) The witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(B) On motion and notice, such exceptional circumstances exist as to make it desirable, in the interests 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.

(6) *Statement by declarant made unavailable by opponent.* A statement offered against a party that has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

(7) *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 that 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 the statement 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 805 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 806 Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801(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 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.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901 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 its 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 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 the Tribal Appellate Court or by a statute within the Grand Traverse Band Code.

Rule 902 Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *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, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *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 paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *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 (A) of the executing or attesting person, or (B) 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.

(4) *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 paragraph (1), (2), or (3) or complying with any law of the United States or of this state.

(5) *Official publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *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.

(8) *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 acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions created by law.* Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

(11) *Certified records of regularly conducted activity.* The original or a duplicate of a record, whether domestic or foreign, of regularly conducted business activity that would be admissible under rule 803(6), if accompanied by a written declaration under oath by its custodian or other qualified person certifying that

(A) The record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) The record was kept in the course of the regularly conducted business activity; and

(C) It was the regular practice of the business activity to make the record.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Rule 903 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.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Rule 1001 Contents of Writings, Recordings, and Photographs; Definitions

For purposes of this article the following definitions are applicable:

(1) *Writings and recordings.* "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs.* "Photographs" include still photographs, x-ray films, video tapes, and motion pictures.

(3) *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."

(4) *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 1002 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 or by statute.

Rule 1003 Admissibility of Duplicates
A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004 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–

(1) *Originals lost or destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) *Original not obtainable.* No original can be obtained by any available judicial process or procedure; or

(3) *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

(4) *Collateral matters.* The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005 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 902 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 1006 Summaries
The contents of voluminous writings, recordings, 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 reasonable time and place. The court may order that they be produced in court.

Rule 1007 Testimony or Written Admission of a 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 1008 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 104. 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.

ARTICLE XI. MISCELLANEOUS RULES

Rule 1101 Applicability

(a) *Rules applicable.* Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of the Grand Traverse Band of Ottawa and Chippewa Indians.

(b) *Rules inapplicable.* The rules other than those with respect to privileges do not apply in the following situations and proceedings:

(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 104(a).

(2) *Grand jury.* Proceedings before grand juries.

(3) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) *Contempt proceedings.* Contempt proceedings in which the court may act summarily.

(5) *Small claims.* Small claims matters before the tribal court.

(6) *In camera custody hearings.* In camera proceedings in child custody matters to determine a child's custodial preference.

(7) *Proceedings under the Children's Code.* Proceedings under the provisions of Title 10 of the Grand Traverse Band Code which state that the rules of evidence do not apply.

(8) *Preliminary examinations.* At preliminary examinations in criminal cases, hearsay is admissible to prove, with regard to property, the ownership, authority to use, value, possession and entry.

(9) *Domestic Relations Matters.* The court's consideration of a report or recommendation submitted by the friend of the court.

(10) *Mental Health Hearings.* In hearings under Chapters 4, 4A, 5, and 6 of the State of Michigan Mental Health Code, MCL 330.1400 *et seq.,* the court may consider hearsay data that are part of the basis for the opinion presented by a testifying mental health expert.

Rule 1102 Title

These rules are named the Grand Traverse Band Tribal Court Rules of Evidence and may be cited as "GTBRE".

ADMINISTRATIVE ORDERS

OF THE

GRAND TRAVERSE BAND

OF OTTAWA AND CHIPPEWA INDIANS

TRIBAL COURT

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-1

ORDER CONCERNING ACCESS TO COURT PROCEEDINGS

IT IS HEREBY ORDERED that the following rules concerning access to Tribal Court proceedings are hereby adopted:

1. **Definitions.** For the purposes of this order:

   a. "Band" and "Tribe" are synonymous and mean the Grand Traverse Band of Ottawa and Chippewa Indians.

   b. "Proceeding" means all court proceedings concerning the adjudication and/or disposition of a legal case pending before the Tribal Court, including, but not limited to, hearings or trials.

   c. "Deliberation" means the discussion and consideration by one or more Tribal Judiciary members of an issue in order to render a decision in a case.

   d. "Tribal Court" means the trial court level of the Tribe for purposes of this Order.

   e. "Tribal Judiciary Members" means the Judges and/or Appellate Judges of the Grand Traverse Band of Ottawa and Chippewa Indians.

2. **Court Proceedings.**

   a. **Open Proceedings.**

      i. All proceedings of the Tribal Court shall be open to all members of the Tribe and any interested parties, except as otherwise provided under Section 2.b. of this Order below.

      ii. All open proceedings shall be recorded to preserve the record for review of issue of law and fact and appellate review.

      iii. A party to a proceeding which would otherwise be open to the public pursuant to this Order may motion the Court to limit access to the proceedings, and must identify a specific interest to be protected. In order for the proceedings to be closed, the Court must conclude that the specific interest identified outweighs the right of access. The Court may also *sua sponte* (on its own motion) order the proceedings closed if it identifies a specific interest that outweighs the right of

access. The Court must narrowly tailor its order to accommodate the interest to be protected, and must state on the record the reasons for the decision to limit access to the proceeding.

iv. Nothing in this Administrative Order shall limit the inherent right of the Court to maintain order in the Courtroom and if necessary, to order the removal of any person or persons from the Courtroom and/or Courthouse who are being disruptive to any proceedings or who threaten the safety and security of anyone in the vicinity of the Courthouse.

b. **Closed Proceedings.**

i. The following Tribal Court proceedings shall be closed proceedings:

1. Cases filed under the Revised Children's Code, being 10 GTBC § 101, *et seq.*

2. Cases filed under the Juvenile Code, being 10 GTBC § 401, *et seq.*, pursuant to 10 GTBC

3. Any other proceedings required to be closed proceedings under any other applicable law.

ii. Closed proceedings shall be closed to the public. Only those parties, counsel, and witnesses (when testifying) that are directly involved in the case may attend closed proceedings. Any other persons may attend closed proceedings only with the prior permission of the Court.

iii. All closed proceedings shall be recorded to preserve the record for review of issue of law and fact and appellate review.

3. Deliberations. All deliberations by the Tribal Judiciary are confidential, shall be closed to the public, and shall not be recorded.

Dated: February 28, 2008

Wilson D Brott

Hon. Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-2

ORDER REGARDING CELL PHONES

IT IS HEREBY ORDERED that all cell phones or similar noise-emitting electronic devices within the Tribal Courthouse or other places of official Court business must be turned off, or placed in vibrate or silent mode. This Order applies to all persons inside the Courthouse, without exception. Any violation of this Order may result in the temporary or permanent confiscation of the offending phone or device, in the Court's discretion.

Dated: February 28, 2008

Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-3

ORDER CONCERNING COURT SECURITY AND WEAPONS

IT IS HEREBY ORDERED that:

1. No weapons shall be allowed in the Courthouse of the Grand Traverse Band Tribal Court or in any other facilities used for official Court business. This prohibition does not apply to Court security officers or law enforcement officers in the performance of their official duties, provided the officer is in uniform or otherwise properly identified and is not a party to a matter then before the Court. For example, a law enforcement officer or court security officer appearing at the request of or under subpoena from the prosecuting attorney to testify in a juvenile or criminal matter is not a party to the matter. However, a law enforcement officer or court security officer who is appearing before the Court as a defendant in a criminal matter, or who is a plaintiff or defendant in a civil matter would be considered a party, and thus would not be authorized to carry a weapon into the courthouse under those circumstances.

2. The Chief Judge may authorize additional persons to be exempted from this Order under appropriate circumstances.

3. All persons and objects that enter the Courthouse shall be subject to search and screening by any Court security personnel or law enforcement officers at any time while in the Courthouse or other facilities used for official Court business, for the purpose of enforcing this order and keeping weapons from entering any Court facilities.

4. Notice shall be posted at all public entrances that "No weapons are permitted in this Court facility."

5. Persons found to be in violation of this order may be held in criminal contempt of Court, and will be subject to the penalties stated in 3 GTBC § 702.

Dated: February 28, 2008

Wilson D Brott

Hon. Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-4

ORDER CONCERNING TRIBAL COURT DRUG TESTING

WHEREAS the Court has a limited number of court staff members able to perform drug testing, and

WHEREAS the court staff were trained to perform drug testing for the purpose of testing Tribal Court Defendants on bond, on probation or who are participating in the Healing to Wellness Drug Court program, and

WHEREAS the Court has staff has limited time and resources to devote to drug testing:

IT IS HEREBY ORDERED:

1. Court personnel shall only perform drug tests with respect to those Tribal Court Defendants who ordered to do so while on bond, on probation, or participating in the Healing to Wellness Drug Court program.

2. Unless previously arranged and agreed to by both the Chief Judge and Court Administrator, no other drug testing will be performed by court personnel.

Dated: February 28, 2008

Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-5.1

AMENDED ORDER CONCERNING REVIEW OF TRIBAL COURT RECORDS

WHEREAS the Court sees a need for a policy concerning access to Tribal Court files and records, and

WHEREAS the Court also has a legitimate interest in protecting the privacy of people who appear before the Court:

IT IS HEREBY ORDERED:

1. **Review and/or Copying of Tribal Court Records.**

   a. All records in the custody and control of the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court and Tribal Appellate Court (hereinafter collectively referred to as "Tribal Court") are open to the public for review and/or copying, except as limited by law or as further stated in this Order below.

   b. The Tribal Court shall deny or limit access to any records in the custody or control of the Tribal Court to the public:

      i. When the Constitution or laws of the Grand Traverse Band of Ottawa and Chippewa Indians, or other applicable federal or state law provides for confidentiality or limits access to such records;

      ii. To prevent unwarranted invasion of personal privacy, such as with personnel, membership, medical or psychological records;

      iii. To prevent damage to the investigative, competitive, or bargaining position of the Grand Traverse Band of Ottawa and Chippewa Indians, including with respect to pending or anticipated arbitration or litigation;

      iv. To protect minors involved in juvenile or child welfare (dependent child) proceedings under the Grand Traverse Band Code;

      v. In other circumstances in which non-disclosure protects a significant public interest of the Grand Traverse Band of Ottawa and Chippewa Indians.

      vi. In non-public sections of the records or files of the Tribal Court, including but not limited to, judge and court notes, communications, reports, research and/or work product on matters before the Tribal Court; or

      vii. When the record has been sealed by order of the Tribal Court or the Tribal Appellate Court.

2. **Requests for Review and/or Copying of Court Records.**

a. All persons or entities seeking to review and/or copy Tribal Court records must complete a *Record Request Form* before any review or copying of such records will be granted. Such form shall require the person or entity making the request to provide sufficient proof of their name, address, phone number and identification.

i. As a matter of comity and cooperation between justice systems, a Tribal Court judge or the Court Administrator may in their discretion waive the formal filing requirements of this Administrative Order as it relates to the sharing of information between courts and/or law enforcement agencies in order to effectuate the efficient administration of justice. For example, a judge may authorize a probation officer from another court to request information from a Tribal Court file concerning a defendant's prior convictions without filing the request form otherwise required under this order.

ii. The Court Administrator shall keep and maintain a list of persons so authorized to request Tribal court records without filing a formal records request.

iii. Any time information is provided by information request, the information provided shall be noted in the case file from which information is requested.

b. Requests seeking to review and/or copy Tribal Court records will be delayed pending a ruling on the request by a Tribal Court Judge. The Court, in its discretion, may order a hearing to be held on the request and shall provide notice to any interested parties concerning the file or records sought to be accessed.

c. Original records of the Tribal Courts shall not be removed from the Tribal Courthouse.

d. Review of records of the Tribal Courts shall only occur at the Tribal Court during regular hours when the Court is open to the public.

3. **Appeal of Denial for Request of Records.** An appeal may be filed in the Tribal Appellate Court of any denial of a request for records of the Tribal Court.

4. **Copies and Fees.**

a. Copies shall be produced at the Tribal Court.

b. Fees for copies shall be charged by the Court according to the normal schedule of court fees.

5. **Mailing.** Mailing of copies of records of the Tribal Court shall be by first-class mail through the United States Postal Service, unless requested otherwise.

6. **Payment.** All copy and mailing fees shall be paid in full and in advance to the Tribal Court prior to any copies being released or mailed to the requesting party.

Dated: January 26, 2009

Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-6

ORDER CONCERNING WORK RELEASE

WHEREAS the Court from time to time sentences individuals convicted of crimes in Grand Traverse Band Tribal Court to serve jail time; and

WHEREAS the Court and the Grand Traverse Band of Ottawa and Chippewa Indians have entered into contracts with various counties (presently Leelanau, Benzie, Antrim and Charlevoix Counties) to provide jail beds for defendants sentenced by the Grand Traverse Band Tribal Court to serve jail time; and

WHEREAS the Court desires to make the privilege of work release available in appropriate cases to inmates housed in the various county jails which it utilizes in order to allow the inmate to retain their employment; and

WHEREAS there is a need to provide rules to give guidance to the Court, jail staff and inmates alike, THEREFORE:

IT IS HEREBY ORDERED:

1. The Tribal Court, in its sole discretion, may authorize work release for any defendant sentenced to jail by the court, subject to the work release rules and regulations of the county jail in which the defendant is to be housed. There is no right to work release.

2. If work release is authorized by the Tribal Court, it must be so stated in the sentencing order. If there is no provision in the sentencing order for work release, then work release shall be presumed not to have been authorized by the court.

3. Work release shall only be allowed at sentencing. Work release shall not be allowed for inmates who are incarcerated awaiting trial or resolution of their case.

4. In order to be given work release, the inmate must qualify for work release under the rules and regulations of the county jail in which the inmate is housed. If the Tribal Court authorizes work release, but the inmate does not qualify for work release under the rules and regulations of the county jail in which the inmate is housed, work release will not be given unless otherwise authorized by the county jail.

5. The inmate must follow all work release rules and regulations of the county jail in which the inmate is housed.

6. The inmate will be responsible for paying any additional fees associated with work release directly to the county jail in which they are housed. Housing fees will be paid by the Tribe, with the inmate being ordered to reimburse the Court for any jail costs incurred by the Tribe.

7. The Sheriff's department shall have the discretion to deny or revoke work release privileges or impose any other discipline as they would any other inmate lodged in the county jail pursuant to their rules and regulations. There shall be no appeal to the Tribal Court for the denial or revocation of work release privileges.

8. Copies of each county's current rules and regulations concerning work release shall be kept with the original of this Order, and shall also be kept on file with the Tribal Court Administrator.

Dated: March 20, 2008

Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-7

ORDER REGARDING JUVENILE COST REIMBURSEMENTS

WHEREAS the Tribal Court from time to time place juveniles in foster care and detention; and

WHEREAS the Tribal Court incurs significant costs associated with services provided to juveniles, particularly as to juvenile placement and detention; and

WHEREAS the Tribal Court has the authority to order reimbursement of costs of care or service to juvenile offenders from both the juvenile and the parents, guardians or custodians of the juvenile; and

WHEREAS the Tribal Court has the authority to order repayment for any court-ordered costs to the Court from any per capita distributions and/or minor trust distributions pursuant to the Revenue Allocation Ordinance, specifically 18 GTBC § 1610(a). *See* attached memo from GTB Legal Department dated August 19, 2004 concerning juvenile detention reimbursements; and

WHEREAS the juvenile as well as the parents, guardians, or custodians who are responsible for their child's behavior should be responsible for those costs;

NOW, THEREFORE:

IT IS HEREBY ORDERED:

1. In every juvenile case in which the Court incurs costs for care or service, the Court shall order that all such costs be reimbursed to the Court by the juvenile, and/or the juvenile's parents, guardians or custodians, jointly and severally. Such costs include, but are not limited to, costs for:
   a. Foster care placement;
   b. Secure or non-secure detention;
   c. Other placement outside of the juvenile's home;
   d. Drug or alcohol testing fees;
   e. Court-ordered fines, fees, restitution, and court costs; and
   f. Any other costs incurred by the Court directly related to the juvenile.

2. The Court, in its discretion, may order that such costs be paid by having the amount owed deducted from the next available and each successive per capita distribution of the juvenile and/or the parents, guardians and/or custodians of the juvenile, along with any administrative fees for processing such deduction.

3. The Court, in its discretion, may also order that such costs be paid by having the amount owed deducted from the next available and each successive minor trust distribution of the juvenile, along with any administrative fees for processing such deduction.

Dated: March 20, 2008

Wilson D. Brott
Chief Judge

LEGAL NOTICE
Juvenile Detention Reimbusements

Date: August 19, 2004
To: GTB Membership
From: GTB Legal Department
RE: authority of tribal court to order the reimbursement of juvenile detention costs from minor's per capita trust fund

This is a memorandum authorized for release by the Tribal Council at the August 18, 2004 Tribal Council regular session. Its purpose is to inform the Tribal membership of the potential cost consequences related to juvenile incarcerations.

Question Presented:

May the Grand Traverse Band Tribal Court effectively issue an order that the minors per capita trust funds of juvenile Tribal Members may be garnished or otherwise taken from per capita trust fund distributions issued in accordance with 18 GTBC § 1605(e)(3) in order to reimburse the Tribe and/or the Tribal Court for costs incurred in the detention of the juvenile?

Opinion:

Yes. The Grand Traverse Band Tribal Court has authority under the Revenue Allocation Ordinance (RAO) to issue an order garnishing per capita trust fund distributions for the purpose of reimbursing the Tribe and/or the Tribal Court for costs incurred in detaining juvenile Tribal Members.

First, the Tribal Court may satisfy Tribal Member obligations by garnishing the per capita distribution. The RAO, specifically 18 GTBC § 1610(a), states:

> The Tribal Court shall establish a program to ensure that, if the Tribal Court has knowledge that any recipient of a per capita benefit is delinquent with respect to a valid existing GTB Tribal Court order establishing liability of the recipient as a result of the Tribal Court action, then the Tribal Court shall receive satisfaction of the Tribal Court's outstanding claim prior to distribution of such benefit under this RAO.

Second, per capita trust fund distributions under 18 GTBC §§ 1605(e)(3) and § 1611(a) are distributions that may be garnished by the Tribal Court in accordance with a valid Tribal Court order. Section 1605(e)(3) allows for the distribution of per capita minor trust funds at the ages of 21, 22, 23, and 24. Section 1611(a) allows for the distribution of regular semi-annual per capita funds to each Tribal Member over the age of 18. *See also* 18 GTBC § 1605(e)(1) (defining a "minor qualified tribal member" as a Tribal Member who has not reached the age of 18 by June 3rd or December 3rd of the benefit year in question).

It is important to note that the Tribal Court's authority to garnish is limited to the time of distribution, not before. As such, the Court may not garnish a minor's per capita trust fund until the time of distribution at the ages of 21, 22, 23, and 24. The trust document expressly states:

> Neither trust income nor principal nor any beneficiary's interest therein shall be subject to alienation, assignment, encumbrance or anticipation; to garnishment, attachment, execution or bankruptcy proceedings..., to any other claims of any creditor or to other person against the beneficiary; or to any other transfer, voluntary or involuntary, by or from any beneficiary.

Third, the Tribal Court may issue an order forcing Tribal Members detained in compliance with the criminal jurisdiction of the Grand Traverse Band to reimburse the Tribe and/or Tribal Court for costs incurred in their detention. Nothing in the GTB Constitution, the GTB Code, Tribal Court jurisprudence, or any other applicable statute or regulation prohibits the Tribal Court from issuing such an order. The GTB Constitution vests the "judicial power of the Grand Traverse Band" with the Tribal Judiciary. *See* GTB Const. art. V, § 1. Moreover, the "judicial power" extends to "all cases arising out of this Constitution, ordinances, regulations, and/or judicial decisions of the Grand Traverse Band...." *Id.* § 2. *See also id.* § 3(a) (The Tribal Court shall be a court of general jurisdiction....").

Significantly, other courts have issued valid orders garnishing the trust funds of detained minors. For example, the Michigan legislature mandated that the Michigan courts issue orders "contain[ing] a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service." M.C.L. § 712A.18(2). The Michigan Court of Appeals upheld the authority of the court to order the juvenile and his parents—before and after the juvenile reaches the age of majority—to reimburse the court for expenses incurred in housing juvenile. *See In re Reiswitz*, 236 Mich. App. 158, 165-68; 600 N.W.2d 135 (1999), *appeal denied*, 461 Mich. 995; 610 N.W.2d 927 (2000); *In re Brzezinski*, 214 Mich. App. 652, 678; 542 N.W.2d 871 (1995) (Griffin, J., dissenting), *dissenting opinion adopted*, 454 Mich. 890; 562 N.W.2d 785 (1995). Tangentially, other courts have held that parents may also be ordered to reimburse the court for such expenses. *E.g., In re T.H.*, 657 N.W.2d 273 (N.D. 2003); *In re P.C.*, 2001 WL 1530916 (Mo. App. 2001); *In re M.L.K.*, 2001 WL 688243 (Ind. App. 2001).

In sum, the Tribal Court has authority under the Revenue Allocation Ordinance to issue an order to compel the reimbursement of costs incurred in the detention of Tribal Member juveniles.

Please note, however, that this opinion *does not* apply to the land claims settlement trust funds arising out of P.L. 105-143.

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2008-8.2

SECOND AMENDED ORDER REGARDING WAIVER OF FILING FEES

WHEREAS there are certain matters which are of vital interest to the Tribe and/or its members, or matters which for policy reasons the Court does not wish to unduly burden the parties involved with imposition of a filing fee, and

WHEREAS the Court finds the need to clarify its prior Order Regarding Waiver of Filing Fees (Administrative Order 2008-8) to make clear that any case brought under Title 10, Chapter 1 of the Grand Traverse Band Code (10 GTBC §101 *et seq.*), including dependent child (ICW), emancipation, guardianship, conservatorship, and adoption cases,

NOW, THEREFORE:

IT IS HEREBY ORDERED:

1. The filing fees in the following matters shall be automatically waived without further order of the Court and without the need to request a fee waiver:
   a. Civil election disputes;
   b. Cases brought under the Children's Code, including dependent child (ICW) cases;
   c. Emancipation, guardianship, conservatorship, and adoption cases (whether for a child or an adult);
   d. Appeals to Tribal Court from the decision of an Administrative Hearing Officer under the GTB Personnel Policy;
   e. Personal Protection Orders; and
   f. Foreign Judgment Petitions from other courts.

2. In all other cases, the party filing the initial complaint may file an sworn statement/application requesting that the filing fee be waived or suspended. The burden is upon the applicant to show that they are indigent or on public assistance and/or state compelling reasons why the filing fee should be waived, pursuant to GTBCR 4.002. Failure to completely fill out the sworn statement/application may result in denial of the petition. Waiver or suspension of the filing fee is within the sole discretion of the Tribal Court.

Dated: January 16, 2009

Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2009-1

ORDER CONCERNING NOTICE TO FOSTER PARENTS IN DEPENDENT CHILD (ICW) PROCEEDINGS

WHEREAS the Children's Code of the Grand Traverse Band, being 10 GTBC §119 has specific provisions about who is to be provided notice, including the parent, legal guardian, or custodian, and

WHEREAS the Tribal Court does not believe the intent of that provision was to require foster parents with whom the child(ren) have been placed to attend court hearings related to the children who are the subject of the proceedings, and

WHEREAS the Tribal Court finds it unnecessary to require their attendance in any event,

NOW, THEREFORE:

IT IS HEREBY ORDERED:

1. Foster parents shall no longer automatically be provided notice of hearings in Dependent Child (ICW) cases by the Tribal Court.

2. The Tribal Presenting Officer or any other party may provide notice to any foster parents of any hearings if so desired.

3. Foster parents shall be allowed to attend Dependent Child (ICW) hearings if they choose to, but shall not be required to attend unless specifically ordered by the Court to attend, or unless subpoenaed to attend by any interested party.

Dated: February 11, 2009

Wilson D. Brott
Chief Judge

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

ADMINISTRATIVE ORDER 2009-2

ORDER AUTHORIZING INTERIM BONDS

WHEREAS the Grand Traverse Band Tribal Police Department is authorized to make arrests for crimes which come under the jurisdiction of this Court; and

WHEREAS the Tribal Court at this time does not have a magistrate to set bonds prior to Court hearings; and

WHEREAS under the law of the State of Michigan, law enforcement officers are allowed to provide interim bonds in certain misdemeanor cases pursuant to MCL 780.581 *et seq.*; and

WHEREAS the Court desires to give officers of the Grand Traverse Band Tribal Police Department (GTBPD), as well as law enforcement officers of those Sheriff's Departments who have cross-deputization agreements with the Grand Traverse Band of Ottawa and Chippewa Indians, authority to set interim bonds in certain types of criminal cases as specified below, and

WHEREAS the Court has authority to delegate the ability to set interim bonds

NOW, THEREFORE:

IT IS HEREBY ORDERED:

1. Definitions – For purposes of this Administrative Order, the following definitions shall apply:

   a. "Interim bond" means any bond set by an officer pursuant to the terms of this Administrative Order.

   b. "Magistrate" means a person duly authorized by the Grand Traverse Band Tribal Court to perform the duties of a magistrate.

   c. "Officer" or "law enforcement officer" means any law enforcement officer of the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Police Department (GTBPD), and any law enforcement or corrections officer of any Sheriff's Department within the State of Michigan which has a cross-deputization agreement in effect with the Grand Traverse Band of Ottawa and Chippewa Indians. This shall include any law enforcement or corrections officer who may not be currently deputized pursuant to such cross-deputization agreement.

2. The Court hereby authorizes law enforcement officers to set interim bonds for a person arrested to guarantee his or her appearance in cases concerning charges to be brought before the Grand Traverse Band Tribal Court, subject to the following conditions and restrictions:

a. Except as limited in subsection b. below, interim bonds may be set by an officer for persons arrested without a warrant for an offense under the Grand Traverse Band Tribal Code [including charges authorized to be brought under 9 GTBC §201 (State of Michigan offense not covered by the Tribal Code) and §202 (Michigan Motor Vehicle Code)]

b. Interim bond may not be issued by any officer with regard to the following offenses:

   i. Any assaultive or violent crime, including but not limited to, any crime brought under 9 GTBC §301 *et seq.*, being the Domestic Violence Code;

   ii. Any crime involving operating a motor vehicle under the influence of intoxicating liquor, a controlled substance, or a combination thereof;

   iii. Any crime which would be considered a felony under State of Michigan or federal law;

   iv. Any crime involving violation of a personal protection order;

   v. Any crime involving possession of a weapon;

   In all such cases, bond must be set by a Tribal Court Judge or Magistrate only.

c. The interim bond set by the officer may be a personal recognizance bond, but shall set for no amount greater than $100.00 cash.

d. The bond set by a GTBPD law enforcement officer shall not include any conditions other than to contact the Tribal Court as soon as possible to be advised of when they must appear before the Tribal Court. Only a Tribal Court Judge or Magistrate may impose additional bond conditions.

e. The person given the bond shall be given a receipt for the interim bond posted in a form substantially similar to the bond form attached hereto as "Attachment A".

3. If, in the opinion of the officer, the arrested person is under the influence of intoxicating liquor or a controlled substance, or a combination thereof, is wanted by police authorities to answer on another charge, is unable to establish or demonstrate his or her identity, or it is otherwise unsafe to release him or her, the arrested person shall be held until he or she is in a proper condition to be released, or until brought before the Tribal Court.

4. Any interim bond posted shall be posted with and collected by the county jail holding the arrested person, rather than with the arresting officer directly. Any funds so posted shall be forwarded to the Tribal Court within 72 hours.

5. Nothing in this order shall be construed as requiring or obligating an officer to set an interim bond. An arresting officer may always contact a Tribal Court Judge or Magistrate to set a bond.

6. Nothing within this Administrative Order shall limit the discretion of a Tribal Court Judge or Magistrate from modifying to a greater or lesser amount, or setting appropriate bond conditions.

7. This administrative order shall not apply to juveniles or juvenile offenses. Release orders for juveniles shall be issued only by a Tribal Court Judge or Magistrate.

Dated: March 2, 2009

Wilson D. Brott
Chief Judge

ATTACHMENT A

INTERIM BOND FORM

INTERIM BOND

Date _____

Received from _____ the sum of $_____ Dollars as cash bail to assure the appearance of _____, Defendant, before the Grand Traverse Band Tribal Court, at a time and place to be set by the Court, to answer to the charge(s) of _____.

Defendant must contact the Grand Traverse Band Tribal Court as soon as possible after your release at (231) 534-7050. The Tribal Court is open Monday-Friday, 8:00 a.m. – 5:00 p.m. If Defendant fails to appear at the time and place set by the Tribal Court and to submit to the jurisdiction of the Court and abide by any order of the Tribal Court, the amount specified above shall be forfeited to the Grand Traverse Band Tribal Court, and the Tribal Court may issue a bench warrant for Defendant's arrest. By depositing this money and accepting this receipt you waive any claim to the money following forfeiture.

_____

Officer: _____

Department: _____