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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 Little River Band of Ottawa Indians, except where a rule applicable to a specific type of proceeding provides a different procedure.

Rule 4.002 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 4.003 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 4.004 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 4.005 Number. Words used in the singular also apply to the plural, where appropriate.

Rule 4.006 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 4.007 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 4.008 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) 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 4.010 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 – Prohibition.

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 seriousness of the courtroom. Any, photographing, recording, or broadcasting of any hearing is strictly prohibited. Any request for photographs, recordings, and or broadcasting in the courtroom must be made in writing to the judge hearing the case, at least 48 hours prior to the requested time. Requests of this sort are subject to the discretion of the judge hearing the case.

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 Little River Band of Ottawa 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.

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 Little River Band of Ottawa Indians Public Safety 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 Little River Public Safety officer, 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 Little River Band Public Safety Officer,

(b) a sheriff, a deputy sheriff or bailiff

(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) 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.

(D) 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.

(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.

(E) 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 Little River Band of Ottawa Indians, publishing a copy of the order once, or for such further time as the court may require, in the Little River 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 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) 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 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 28 days after being served with the summons and a copy of the complaint.

(2) 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.

(3) 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 bserved. 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 4.110 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 neither admit nor deny and leave Plaintiff to its proof; 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.

(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.

(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 Little River Band of Ottawa 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 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 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, may 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 may be 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 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 if a jury trial has been requested.

(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) 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), and any supporting brief or affidavits must be served at least 10 days before the time set for the hearing,.

(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 at least 5 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 may 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 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. It is not considered filed until the motion fee it paid.

(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) 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.

(C) 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) 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 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 crossclaim may include a claim that the party against whom it is asserted is or may be liable to the crossclaimant 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.

(2) Within 21 days the person served with the summons and third-party complaint (the "third-party defendant") must respond to the third-party plaintiff's claim within 21 days, 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.

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 these Rules.

(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) 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.

(3) 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, may 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 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 Little River Band of Ottawa 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 4.304 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 Little River Band of Ottawa 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 Little River Band of Ottawa 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 is made.

(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, phone 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 motion the court for an order compelling discovery as follows:

(1) a deponent fails to answer a question propounded or submitted under Rule 4.306 or 4.307,

(2) a corporation or other entity fails to make a designation under Rule 4.306(B)(5) or 4.307(A)(1),

(3) a party fails to answer an interrogatory submitted under Rule 4.309, or

(4) 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.

(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 may 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 may 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 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) 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.

(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.

Rule 4.403 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; mediation or Peacemaking; and other procedures provided by local court rule or ordered on stipulation of the parties.

(B) 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, under the Peacemaking procedures.

(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.

(A) Scope and Applicability of Rule; Definitions.

(1) This rule applies to cases that the court refers to mediation as provided in Rule 4.410.

(2) "Mediation" 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 has no authoritative decision-making power.

(3) The court may order, on stipulation of the parties, the use of other settlement procedures.

(B) Referral to Mediation; Objections to referral.

(1) The court in its discretion may order the parties to complete mediation. The order referring the case to mediation shall specify whether the case is being referred for mediation.

(2) The Court must approve the mediator(s) assigned to the case.

(3) The rule for disqualification of a mediator is the same as for the disqualification of a judge. The mediator or peacemaker must promptly disclose any potential basis for disqualification.

(4) Objections to Referral to Mediation or Peacemaking.

(a) To object to mediation, a party must file a written motion to remove the case from mediation, and serve a copy upon the opposing party within 14 days after receiving notice of the order assigning the case to mediation. 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.

(C) Scheduling and Conduct of Mediation or Peacemaking.

(1) Scheduling. The order referring the case for mediation shall specify the time within which the mediation is to be completed. The court clerk shall send a copy of the order to each party and the mediator selected. Upon receipt of the court's order, the mediator shall promptly confer with the parties to schedule mediation 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 may direct the parties to submit in advance, or bring to the mediation, 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 Mediatio. The mediator shall meet with counsel and the parties, explain the mediation process, and then proceed with the process. The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation 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. Within 7 days after the completion of the mediation the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further mediation proceedings are contemplated.

(4) Settlement. If the case is settled through mediation, 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, 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 relating to a mediation 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 under subrule (C)(3),

(b) information reasonably required by court personnel to administer and evaluate the mediation 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.

(E) 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.

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 ordinance, resolution, 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 an ordinance, resolution, 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.

(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 must be signed by a judge and effect of an order.

(C) Notice to Witness of Required Attendance.

(1) The requester 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 3 days before the witness is to appear if the person is within the nine county service area, or at least 5 days if outside the nine counties.

(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 Little River Band of Ottawa Indians;
(2) be imprinted with the seal of the the court;
(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.

(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.
A subpoena may be served anywhere in the State of Michigan in the manner provided by Rule 4.105. It is the responsibility of the requester of the subpoena to serve the subpoena.

(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.

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) 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.
(A) 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.

(B) 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) 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 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) is biased for or against a party or attorney;

(3) 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;

(4) has opinions or conscientious scruples that would improperly influence the person's verdict;

(5) has been subpoenaed as a witness in the action;

(6) has already sat on a trial of the same issue;

(7) has served as a grand or petit juror in a criminal case based on the same transaction;

(8) is related within two degrees to one of the parties or attorneys;

(9) is the guardian, conservator, ward, partner, or client of a party or attorney;

(10) 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;

(11) has a financial interest other than that of a taxpayer in the outcome of the action;

(12) 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.

Rule 4.517 Findings by Court.

(A) Requirements.

(1) In actions tried on the facts without a 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.

(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.

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 the 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.

(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 constitution of the Little River Band of Ottawa 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 4.611 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. (Reducing or adding)

(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 4.620 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 4.625 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.