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CHAPTER 6 -CRIMINAL PROCEDURE

Subchapter 6.000 General Provisions

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Tribal Ordinances or Statutes.

(A) The rules in this chapter govern matters of procedure in criminal cases before the Tribal Court.

(B) Civil Rules Applicable. The provisions of the rules of civil procedure apply to cases governed by this chapter, except

(1) as otherwise provided by rule, Tribal ordinance or statute,
(2) when it clearly appears that they apply to civil actions only, or
(3) when a Tribal ordinance, statute or court rule provides a like or different procedure.

Depositions and other discovery proceedings under the rules of civil procedure may not be taken for the purposes of discovery in cases governed by this chapter.

(C) Rules and Tribal Ordinance or Statutes Superseded. The rules in this chapter supersede all prior court rules in this chapter and any Tribal ordinance or statutory procedure pertaining to and inconsistent with a procedure provided by a rule in this chapter.

Rule 6.003 Definitions. For purposes of subchapters 6.000-6.800:

(A) “Party” includes the lawyer representing the party.
(B) “Defendant's lawyer” includes a lay advocate or a self-represented defendant proceeding without a lawyer.
(C) “Prosecutor” includes any lawyer prosecuting the case.
(D) “Court” or “judicial officer” includes a judge or a magistrate.
(E) “Court clerk” includes a deputy clerk.
(F) “Court reporter” includes a court recorder.
(G) “Interlocutory appeal” is an appeal of a ruling by a trial court that is made before the trial itself has concluded.
(H) The Court includes by reference all definitions contained within the LRBOI Tribal Code.

Rule 6.004 Speedy Trial.

(A) Right to Speedy Trial. The defendant and the Tribe are entitled to a speedy trial and to a speedy resolution of all matters before the court.

(B) Priorities in Scheduling Criminal Cases. The trial court has the responsibility to establish and control a trial calendar. In assigning cases to the calendar, and insofar as it is practicable,

(1) the trial of criminal cases must be given preference over the trial of civil cases except cases of child welfare and juvenile delinquency in which the juvenile is detained, and

(2) the trial of defendants in custody and of defendants whose pretrial liberty presents unusual risks must be given preference over other criminal cases.

(C) Delay in Cases; Recognizance Release. In a criminal case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance. In computing the 28-day period, the court is to exclude

(1) periods of delay resulting from other proceedings concerning the defendant, including but not limited to competency and criminal responsibility proceedings, pretrial motions, interlocutory appeals, and the trial of other charges,

(2) the period of delay during which the defendant is not competent to stand trial,

(3) the period of delay resulting from an adjournment requested or consented to by the defendant's lawyer,

(4) the period of delay resulting from an adjournment requested by the prosecutor, but only if the prosecutor demonstrates on the record either

(a) the unavailability, despite the exercise of due diligence, of material evidence that the prosecutor has reasonable cause to believe will be available at a later date; or

(b) exceptional circumstances justifying the need for more time to prepare the tribe's case,

(5) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable, and

(6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.

(D) Criminal cases that do not adequately progress toward adjudication within 120 days after arraignment may be dismissed with prejudice. Absent a showing of good cause, criminal cases must be fully adjudicated within 270 days of the date of arraignment or they may be dismissed by the Court with prejudice.

Rule 6.005 Right to Court-Appointed Attorney; Advice; Waiver.

(A) Advice of Right. At the arraignment on the warrant or complaint, the court must advise the defendant

(1) of entitlement to an attorney's assistance at all subsequent court proceedings, and

(2) that the court will appoint an attorney if the defendant wants one and is financially unable to retain one.

(B) Repayment of Cost of Counsel. The court may require partial or full reimbursement to the Court of the cost of providing a court-appointed attorney and may establish a plan for collecting the contribution or repayment.

(C) Appointment or Waiver of a Attorney. If the court determines that the defendant is financially unable to retain an attorney, it must promptly appoint an attorney and promptly notify the attorney of the appointment. The court may not permit the defendant to make an initial waiver of the right to be represented by an attorney without first

(1) advising the defendant of the charge, the maximum possible jail sentence for the offense, any mandatory minimum sentence required by law, the risk involved in self-representation, and

(2) offering the defendant the opportunity to consult with a retained attorney or, if the defendant is indigent, the opportunity to consult with an appointed attorney.

(D) Scope of Trial Attorney's Responsibilities. The responsibilities of the trial attorney appointed to represent the defendant include

(1) representing the defendant in all trial court proceedings through initial sentencing

(2) filing of interlocutory appeals the attorney deems appropriate,

(3) responding to any pre-conviction appeals by the prosecutor, and

(4) unless an appellate attorney has been appointed, filing of post-conviction motions the attorney deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing, at the trial level.

Subchapter 6.100 Preliminary Proceedings

Rule 6.101 The Complaint.

(A) Definition and Form. A complaint is a written accusation that a named or described person has committed a specified criminal offense. The complaint must set forth the substance of the accusation against the defendant and the name, the LRBOI citation, and penalty of the offense allegedly committed. To the extent possible, the complaint should specify the time and place of the alleged offense. Allegations relating to conduct, the method of committing the offense, mental state, and the consequences of conduct may be stated in the alternative.

(1) A complaint must state the grounds on which Tribal Court jurisdiction may be asserted.

(2)The prosecutor shall first look to the LRBOI Tribal Codes to determine if the elements of any crime enumerated in that code serves as a basis for charging a person.

(3) Except as provided herein, State of Michigan law may be cited as the basis of a charge only when the LRBOI Tribal Code is silent regarding a general class of crimes.

(4) Except as provided herein, the statutes of another jurisdiction may not be used to substitute for the LRBOI Tribal Code when the LRBOI Tribal Code substantially addresses the elements of a crime charged under the laws and ordinances of another jurisdiction.

(5) Charges brought under the laws of the State of Michigan shall be, whenever possible, converted to charges under the LRBOI Tribal Code when the facts and circumstances forming the basis of arrest are substantially defined by those crimes enumerated in the LRBOI Tribal Code.

(B) Signature and Oath. The complaint must be verified, or signed and sworn to before a judge.

(C) Prosecutor's Approval or Posting of Security. A complaint may not be filed without a prosecutor's written approval endorsed on the complaint or attached to it.

(D) Bill of Particulars. The court, on motion, may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense.

(E) Notice of Intent to Seek Enhanced Sentence. A notice of intent to seek an enhanced sentence

must list the prior convictions that may be relied upon for purposes of sentence enhancement. The notice must be filed within 21 days after the defendant is arraigned on the complaint charging the underlying charge, or before trial begins, if the defendant is tried within the 21-day period.

(F) Harmless Error. Absent a timely objection and a showing of prejudice, a court may not dismiss a complaint or reverse a conviction because of an untimely filing or because of an incorrectly cited Tribal ordinance or statute or a variance between the complaint and proof regarding time, place, the manner in which the offense was committed, or other factual detail relating to the alleged offense. This provision does not apply to the untimely filing of a notice of intent to seek an enhanced sentence.

(G) Amendment of Information. The court before, during, or after trial may permit the prosecutor to amend the complaint unless the proposed amendment would unfairly surprise or prejudice the defendant. On motion, the court must strike unnecessary allegations from the complaint.

Rule 6.102 Arrest on a Warrant.

(A) Issuance of Warrant. A court must issue an arrest warrant, or a summons in accordance with Rule 6.103, if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.

(B) Probable Cause Determination. A finding of probable cause may be based on hearsay evidence and rely on factual allegations included in the complaint, affidavits from the complainant or others, the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources.

(C) Contents of Warrant; Court's Subscription. A warrant must

(1) contain the accused's name, if known, or an identifying name or description;
(2) contain the accused's tribal affiliation and tribal id number.
(3) describe the offense charged in the complaint;
(4) command a public safety officer or other person authorized by law to arrest and bring the accused before a judicial officer of the court; and
(5) be signed by the court.

(D) Warrant Specification of Interim Bail. The court may specify on the warrant the bail that an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant.

(E) Execution and Return of Warrant. Only a public safety officer or other person authorized by law may execute an arrest warrant. On execution or attempted execution of the warrant, the officer must make a return on the warrant and deliver it to the court before which the arrested person is to be taken.

(F) Release on Interim Bail. If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision. The accused may obtain release by posting the bail on the warrant and by submitting a recognizance to appear before a specified court at a specified date and time, provided that

(1) the accused is arrested prior to the expiration date, if any, of the bail provision;
(2) the accused is arrested in the nine county service area of the Tribe, or in the county in which

the accused resides or is employed, and the accused is not wanted on another charge;
(3) the accused is not under the influence of liquor or controlled substance; and
(4) the condition of the accused or the circumstances at the time of arrest do not otherwise suggest a need for judicial review of the original specification of bail.

Rule 6.103 Summons Instead of Arrest.

(A) Issuance of Summons. If the prosecutor so requests, the court may issue a summons instead of an arrest warrant. If an accused fails to appear in response to a summons, the court, on request, must issue an arrest warrant.

(B) Form. A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.

(C) Service and Return of Summons. A summons may be served by
(1) delivering a copy to the named individual; or
(2) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or
(3) mailing a copy to the individual's last known address.

Service should be made promptly to give the accused adequate notice of the appearance date. The person serving the summons must make a return to the court before which the person is summoned to appear.

Rule 6.104 Arraignment on the Warrant or Complaint.

(A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule.
(1) Unless good cause is demonstrated, arraignment must occur without unnecessary delay after the accused is detained.
(a) The arresting officer must notify the prosecutor of the arrest within 8 hours making the arrest.
(b) The prosecuting attorney must file a copy of the complaint at least one hour prior to the defendant’s arraignment.

(B) Place of Arraignment. An accused arrested pursuant to a warrant must be taken to the Tribal Court specified in the warrant. If the arrest occurs outside the county in which the Tribal Court is located, the arresting agency must make arrangements with the authorities of the Little River Band of Ottawa Indians to have the accused promptly transported to the Tribal Court for arraignment in accordance with the provisions of this rule. In extraordinary situations and with consent of the detaining facility, the prosecutor and court staff may travel to the place of detention to conduct an arraignment, or conduct the arraignment by phone or video conference.

(C) Arrest Without Warrant. If an accused is arrested without a warrant, a complaint complying with Rule 6.101 must be filed at or before the time of arraignment. On receiving the complaint and on finding probable cause, the court must either issue a warrant or endorse the complaint. Arraignment of the accused may then proceed in accordance with subrule (D).

(D) Arraignment Procedure; Judicial Responsibilities. A copy of the complaint must be provided to the defendant before the defendant is asked to plead. The court at the arraignment must

(1) inform the accused of the nature of the offense charged, and its maximum possible jail sentence and any mandatory minimum sentence required by law;
(2) inform the accused of the right to a trial;
(3) advise the accused of the right to a lawyer or other counsel at all subsequent court proceedings (meaning there is no right to a lawyer or other counsel at arraignment), if the accused is charged with something other than a civil infraction, that an attorney will be appointed upon showing of indigence, (on public assistance) if the accused so requests.
(4) advise the defendant of the pleading options. If the defendant offers a plea other than not guilty, the court must proceed in accordance with the rules and make appropriate findings on the record as required under subchapter 6.300. Otherwise, the court must enter a plea of not guilty on the record;
(5) determine what form of pretrial release, if any, is appropriate; and
(6) inquire and make findings as to whether the tribal court can assert jurisdiction.

(E) Arraignment Procedure; Recording. A verbatim record must be made of the arraignment.

Rule 6.105 Pretrial Release.

(A) In General. At the defendant's first appearance before a court, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be
(1) held in custody as provided in subrule (B);
(2) released on personal recognizance or an unsecured appearance bond; or
(3) released conditionally, with or without money bail.

(B) Remand into Custody. The court may deny pretrial release to a defendant charged with any violent offense, or if the court is not satisfied that a conditional release will reasonably ensure the appearance of the defendant as required, or that a conditional release will reasonably ensure the safety of the public.

(C) Release on Personal Recognizance. If the defendant is not ordered held in custody pursuant to subrule (B), the court must order the pretrial release of the defendant on personal recognizance, subject to the conditions that the defendant will appear as required, will not leave the State of Michigan without permission of the court, and will not commit any crime while released, unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public.

(D) Conditional Release. If the court determines that the release described in subrule (C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate, including, but not limited to

(1) that the defendant will appear as required, will not leave the Tribe’s nine county service area without permission of the court, and will not commit any crime while released, and
(2) subject to any condition or conditions the court determines are reasonably necessary to

ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to

(a) make reports to a court or agency as are specified by the court or the agency;
(b) not use alcohol or illicitly use any controlled substance;
(c) comply with a substance abuse testing or monitoring program;
(d) comply with restrictions on personal associations, place of residence, place of employment, or travel;
(e) comply with a specified curfew;
(f) continue to seek employment or maintain employment;
(g) attend school if applicable;
(h) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;
(i) not possess a firearm or other dangerous weapon;
(j) not enter specified premises or areas and not assault, beat, molest or wound a named person or persons;
(k) to have no contact with an alleged victim either directly or through any third parties.
(l) satisfy any injunctive order made a condition of release; or
(m) comply with any other condition, including the requirement of money bail as described in subrule (E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.

(F) Decision; Statement of Reasons.

(1) In deciding which release to use and what terms and conditions to impose, the court should consider relevant information, including

(a) defendant's prior criminal record, including juvenile offenses for the past 3 years;
(b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution for the past 3 years;
(c) defendant's history of substance abuse or addiction;
(d) defendant's mental condition, including character and reputation for dangerousness;
(e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;
(f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;
(g) the availability of responsible members of the community who would give personal assurances for or monitor the defendant;
(h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence, and
(i) any other facts bearing on the risk of nonappearance or danger to the public.

(2) If the court orders the defendant held in custody pursuant to subrule (B) or released on conditions in subrule (D) that include money bail, the court must state the reasons for its decision on the record. The court need not make a finding on each of the enumerated factors.

(G) Termination of Release Order.

(1) If the conditions of the release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bond, and return the cash posted in the full amount of a bond.

(2) If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the bond, if any, forfeited.

(a) The court must mail notice of any revocation order as soon as possible, but no later than 7 days after the date of a revocation of bond order to the defendant at the defendant's last known address and, if forfeiture of bond has been ordered, to anyone who posted bond.
(b) If the defendant does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bond for the entire amount of the bond and costs of the court proceedings.
(c) The bail or bond deposit made under subrule (E) must be applied to the costs and, if any remains, to the balance of the judgment. The balance of the judgment may be enforced and collected as a judgment entered in a civil case or as otherwise provided by tribal law. The court may order the balance of the judgment to be deducted from the defendant's per capita distribution.

(3) If money was deposited on a bond executed by the defendant, the money must be first applied to the amount of any fine, costs, or assessments imposed and any balance returned, subject to subrule (G)(1). The court may order any balance owed by the defendant on the judgment may be deducted from the defendant's per capita distribution.

Rule 6.106 Pretrial Conference.

The court, on its own initiative or on motion of either party, may
direct the prosecutor and the defendant and/or the defendant's attorney or lay advocate to appear for a pretrial conference. The court may require collateral matters and pretrial motions to be filed and argued no later than this conference.

Rule 6.110 Misdemeanor Traffic Offenses.

(A) Citation; Complaint; Summons; Warrant.
(1) A misdemeanor traffic case may be begun by one of the following procedures:
(a) Service by a law enforcement officer on the defendant of a written citation, and the filing of the citation in the Tribal Court.
(b) The filing of a sworn complaint in the Tribal Court and the issuance of an arrest warrant. A citation may serve as the sworn complaint and as the basis for a misdemeanor warrant.
(c) Other special procedures authorized by Tribal ordinance or statute.
(2) The citation serves as a summons to command
(a) the initial appearance of the defendant; and
(b) a response from the defendant as to his or her guilt of the violation alleged.
(3) A single citation may not allege both a misdemeanor and a civil infraction.

(B) Appearances; Failure To Appear. If a defendant fails to appear or otherwise to respond to any matter pending relative to a misdemeanor traffic citation, the court may:

(1) initiate the procedures required by tribal contempt procedures for the failure to answer a citation;
(2) may mail a notice to appear to the defendant at the address in the citation;
(3) may issue a warrant for the defendant's arrest after a sworn complaint is filed with the court.

(C) Contested Cases.

(1) A contested case may not be heard until a citation is filed with the court. A citation that is not signed and filed on paper, when required by the court, will be dismissed with prejudice.

Rule 6.120 Joinder and Severance; Single Defendant.

(A) Permissive Joinder. A complaint may charge a single defendant with any two or more offenses. Each offense must be stated in a separate count. Two or more complaints against a single defendant may be consolidated for a single trial.

(B) Right of Severance; Unrelated Offenses. On the defendant's motion, the court must sever unrelated offenses for separate trials. For purposes of this rule, two offenses are related if they are based on

(1) the same conduct, or
(2) a series of connected acts or acts constituting part of a single scheme or plan.

(C) Other Joinder or Severance. On the motion of either party, except as to offenses severed under subrule (B), the court may join or sever offenses on the ground that joinder or severance is appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. Subject to an objection by either party, the court may sever offenses on its own initiative.

Rule 6.121 Joinder and Severance; Multiple Defendants.

(A) Permissive Joinder. A complaint may charge two or more defendants with the same offense. It may charge two or more defendants with two or more offenses when

(1) each defendant is charged with accountability for each offense, or
(2) the offenses are related as defined in Rule 6.120(B).

When more than one offense is alleged, each offense must be stated in a separate count. Two or more complaints against different defendants may be consolidated for a single trial whenever the defendants could be charged in the same complaint under this rule.

(B) Right of Severance; Unrelated Offenses. On a defendant's motion, the court must sever offenses that are not related as defined in Rule 6.120(B).

(C) Right of Severance; Related Offenses. On a defendant's motion, the court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant.

(D) Discretionary Severance. On the motion of any party, the court may sever the trial of defendants on the ground that severance is appropriate to promote fairness to the parties and a fair determination of the guilt or innocence of one or more of the defendants. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of defendants or the complexity or nature of the evidence, the convenience of witnesses, and the parties' readiness for trial.

Rule 6.125 Mental Competency Hearing.

(A) Applicable Provisions. Except as provided in these rules, a mental competency hearing in a criminal case shall be governed by Michigan Compiled Laws, Section 330.2020 et seq., unless and until superseded by a mental health code adopted by the Tribe.

(B) Time and Form of Motion. The issue of the defendant's competence to stand trial or to participate in other criminal proceedings may be raised at any time during the proceedings against the defendant. The issue may be raised by the court before which such proceedings are pending or being held, or by motion of a party. Unless the issue of defendant's competence arises during the course of proceedings, a motion raising the issue of defendant's competence must be in writing. If the competency issue arises during the course of proceedings, the court may adjourn the proceeding or, if the proceeding is defendant's trial, the court may, consonant with double jeopardy considerations, declare a mistrial.

(C) Order for Examination.

(1) On a showing that the defendant may be incompetent to stand trial, the court must order the defendant to undergo an examination by a certified or licensed examiner of the center for forensic psychiatry or other facility officially certified by the to perform examinations relating to the issue of competence to stand trial.
(2) The defendant must appear for the examination as required by the court.
(3) If the defendant is held in detention pending trial, the examination may be performed in the place of detention or the defendant may be transported by the Little River Band public safety/police, or an agency designated by the court to a diagnostic facility for examination.
(4) The court may order commitment to a diagnostic facility for examination if the defendant fails to appear for the examination as required or if commitment is necessary for the performance of the examination.
(5) The defendant must be released from the facility on completion of the examination and, if (3) is applicable, returned to the place of detention.

(D) Independent Examination. On a showing of good cause by either party, the court may order an independent examination of the defendant relating to the issue of competence to stand trial.

(E) Hearing. A competency hearing must be held within 10 days of receipt of the report or on conclusion of the proceedings then before the court, whichever is sooner, unless the court, on a showing of good cause, grants an adjournment.

(F) Motions; Testimony.

(1) A motion made while a defendant is incompetent to stand trial may be heard and decided if the presence of the defendant is not essential for a fair hearing (or trial) and decision on the

motion. No licensed attorney representing an incompetent defendant may be compelled to participate in a hearing held in absentia (on absence) if the attorney objects in writing or on the record on ethical grounds prior to commencement of such a hearing, pursuant the Little River Band of Ottawa Indians Rules of Professional Conduct, these Court Rules, or the Michigan Rules of Professional Conduct or these Court Rules, if the attorney is an attorney licensed in Michigan.
(2) Testimony may be presented in a pretrial defense motion if the defendant's presence could not assist the defense.

Subchapter 6.200 Discovery

Rule 6.201 Discovery.

(A) Mandatory Disclosure. A party upon request must provide all other parties:

(1) the names and addresses of all lay and expert witnesses whom the party intends to call at trial;
(2) any written or recorded statement by a lay witness whom the party intends to call at trial, except that a defendant is not obliged to provide the defendant's own statement;
(3) any report of any kind produced by or for an expert witness whom the party intends to call at trial;
(4) any criminal record that the party intends to use at trial to impeach a witness;
(5) any document, photograph, or other paper that the party intends to introduce at trial; and
(6) a description of and an opportunity to inspect any tangible physical evidence that the party intends to introduce at trial. On good cause shown, the court may order that a party be given the opportunity to test without destruction such tangible physical evidence.

(B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:

(1) any exculpatory information or evidence known to the prosecuting attorney discovered at any time prior to the conclusion of a case;
(2) any police report concerning the case, except so much of a report as concerns a continuing investigation;
(3) any written or recorded statements by a defendant, codefendant, or accomplice, even if that person is not a prospective witness at trial;
(4) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and
(5) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.

(C) Prohibited Discovery.

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is constitutionally protected from disclosure or protected pursuant to Tribal ordinance or statute, or tribally recognized privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (2).
(2) If a defendant demonstrates a good-faith belief, grounded in fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in-camera inspection of the records.
(a) If the privilege is absolute, and the privilege holder refuses to waive the privilege to

permit an in-camera inspection, the trial court shall suppress or strike the privilege holder's testimony.

(b) If the court is satisfied, following an in-camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel. If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony.

(c) Regardless of whether the court determines that the records should be made available to the defense, the court shall make findings sufficient to facilitate meaningful appellate review.

(d) The court shall seal and preserve the records for review in the event of an appeal

(i) by the defendant, on an interlocutory basis or following conviction, if the court determines that the records should not be made available to the defense,

or (ii) by the prosecution, on an interlocutory basis, if the court determines that the records should be made available to the defense.

(e) Records disclosed under this rule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.

(D) Excision. When some parts of material or information are discoverable and other parts are not discoverable, the party must disclose the discoverable parts and may excise the remainder. The party must inform the other party that non-discoverable information has been excised and withheld. On motion, the court must conduct a hearing in camera to determine whether the reasons for excision are justifiable. If the court upholds the excision, it must seal and preserve the record of the hearing for review in the event of an appeal.

(E) Protective Orders. Upon motion, and showing of good cause, the court may enter an appropriate protective order. In considering whether good cause exists, the court shall consider the parties' interests in a fair trial; the risk to any person of harm, undue annoyance, intimidation, or threats; the risk that evidence will be fabricated; and the need for secrecy regarding the identity of informants or other law enforcement matters. On motion, with notice to the other party, the court may permit the showing of good cause for a protective order to be made in camera. If the court grants a protective order, it must seal and preserve the record of the hearing for review in the event of an appeal.

(F) Timing of Discovery. Unless otherwise ordered by the court, the prosecuting attorney must comply with the requirements of this rule within 7 days of a request under this rule and a defendant must comply with the requirements of this rule within 14 days of a request under this rule.

(G) Copies. Except as ordered by the court on good cause shown, a party's obligation to provide a photograph or paper of any kind is satisfied by providing a clear copy.

(H) Continuing Duty to Disclose. If at any time a party discovers additional information or material subject to disclosure under this rule, the party, without further request, must promptly notify the other party.

(I) Modification. On good cause shown, the court may order a modification of the requirements and prohibitions of this rule.

(J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order that testimony or evidence be excluded, or may order another remedy.

Rule 6.301 Available Pleas.

(A) Possible Pleas. Subject to the rules in this subchapter, a defendant may plead not guilty, guilty, no contest, guilty but mentally ill, or not guilty by reason of insanity. If the defendant refuses to plead or stands mute, or the court, pursuant to the rules, refuses to accept the defendant's plea, the court must enter a not guilty plea on the record. A plea of not guilty places in issue every material allegation in the information and permits the defendant to raise any defense not otherwise waived.

(B) Pleas That Require the Court's Consent. A defendant may enter a plea of no contest only with the consent of the court.

(C) Pleas That Require the Consent of the Court and the Prosecutor. A defendant may enter the following pleas only with the consent of the court and the prosecutor:

(1) A defendant who has asserted an insanity defense may enter a plea of guilty but mentally ill or a plea of not guilty by reason of insanity. Before such a plea may be entered, the defendant must comply with a mental health examination if ordered by the Court.

(D) Pleas to Lesser Charges. The court may not accept a plea to an offense other than the one charged without the consent of the prosecutor.

Rule 6.302 Pleas of Guilty and No Contest.

(A) Plea Requirements. The court may not accept a plea of guilty or no contest unless it is convinced that the plea is one entered knowingly, voluntarily, and accurately. Before accepting a plea of guilty or no contest, the judge must place the defendant under oath and personally carry out subrules (B)-(E).

(B) An Knowingly Entered Plea. Speaking directly to the defendant, the court must advise the defendant and determine that the defendant understands:

(1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;

(2) the maximum possible jail sentence for the offense and any mandatory minimum sentence required by law;

(3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:

(a) to be tried by a jury, if jail is being sought, or is likely;

(b) to be tried by the court without a jury, if the defendant chooses and the prosecutor and court consent;

(c) to be presumed innocent until proved guilty;

(d) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;

(e) to have the witnesses against the defendant appear at the trial;

(f) to question the witnesses against the defendant;

(g) to have the court order any witnesses the defendant has for the defense to appear at the trial;

(h) to remain silent during the trial;

(i) to not have that silence used against the defendant; and
(j) to testify at the trial if the defendant wants to testify.

(4) once the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea.

(C) A Voluntary Plea.

(1) The court must ask the prosecutor and the defendant's lawyer whether they have made a plea agreement, if not stated on the record by the prosecutor or defendant's lawyer.

(2) If there is a plea agreement, the court must ask the prosecutor or the defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant, if not otherwise stated on the record.

(3) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a specific sentence disposition or a prosecutorial sentence recommendation, the court may

(a) reject the agreement; or
(b) accept the agreement after having considered the pre-sentencing report, in which event it must sentence the defendant to the sentence agreed to or recommended by the prosecutor; or
(c) accept the agreement without having considered the pre-sentencing report; or
(d) take the plea agreement under advisement.

If the court accepts the agreement without having considered the pre-sentencing report or takes the plea agreement under advisement, it must explain to the defendant that the court is not bound to follow the sentence disposition or recommendation agreed to by the prosecutor, and that if the court chooses not to follow it, the defendant will be allowed to withdraw from the plea agreement.

(4) The court must ask the defendant:

(a) whether anyone has promised the defendant anything the plea agreement (if applicable), and whether anyone has promised anything beyond what is in the plea agreement;
(b) whether anyone has threatened the defendant; and
(c) whether it is the defendant's own choice to plead guilty.

(D) An Accurate Plea.

(1) If the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading.
(2) If the defendant pleads no contest, the court shall not question him or her about his or her participation in the crime, but shall make the determination on the basis of other available information.

(E) Additional Inquiries. On completing the conversational exchange (colloquy) with the defendant, the court must ask the prosecutor and the defendant's lawyer whether either is aware of any promises, threats, or inducements
other than those already disclosed on the record, and whether the court has complied with subrules (B)-(D). If it appears to the court that it has failed to comply with subrules (B)-(D), the court may not accept the defendant's plea until the deficiency is corrected.

(F) Plea Under Advisement; Plea Record. The court may take the plea under advisement. A verbatim record must be made of the plea proceeding.

Rule 6.303 Plea of Guilty but Mentally Ill.

Before accepting a plea of guilty but mentally ill, the
court must comply with the requirements of Rule 6.302. In addition to establishing a factual basis for the plea pursuant to Rule 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill, but not insane, at the time of the offense to which the plea is entered. The reports must be made a part of the record.

Rule 6.304 Plea of Not Guilty by Reason of Insanity.

(A) Advice to Defendant. Before accepting a plea of not guilty by reason of insanity, the court must comply with the requirements of Rule 6.302 except that subrule (C) of this rule, rather than Rule 6.302(D), governs the manner of determining the accuracy of the plea.

(B) Additional Advice Required. After complying with the applicable requirements of Rule 6.302, the court must advise the defendant, and determine whether the defendant understands, that the plea will result in the defendant's commitment for diagnostic examination at the center of forensic psychiatry for up to 60 days, and that after the examination, the court may order the defendant to be committed for an indefinite period of time.

(C) Factual Basis. Before accepting a plea of not guilty by reason of insanity, the court must examine the psychiatric reports prepared and hold a hearing that establishes support for findings that

(1) the defendant committed the acts charged, and

(2) a reasonable doubt exists about the defendant's legal sanity at the time of the offense.

(D) Report of Plea. After accepting the defendant's plea, the court must forward to the center for forensic psychiatry a full report, in the form of a settled record, of the facts concerning the crime to which the defendant pleaded and the defendant's mental state at the time of the crime.

Rule 6.310 Withdrawal or Vacating of Plea Before Acceptance or Sentence.

(A) Withdrawal Before Acceptance. The defendant has a right to withdraw any plea until the court accepts it on the record.

(B) Withdrawal Before Sentence. On the defendant's motion or with the defendant's consent, the court, in the interest of justice may permit an accepted plea to be withdrawn before sentence is imposed unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the

plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by Rule 6.311(B). A defendant who enters a plea as a condition of participation in a diversionary or special court program, may not withdraw the plea once accepted into the diversionary or special program.

(C) Vacating a Plea Before Sentence. On the prosecutor's motion, the court may vacate a plea before sentence is imposed if the defendant has failed to comply with the terms of a plea agreement.

Rule 6.311 Challenging Plea After Sentence.

(A) Motion to Withdraw Plea. The defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal. After the time for filing an application for leave, the defendant may seek relief in accordance with the procedure set forth in subchapter 6.500.

(B) Remedy. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to allow the plea and sentence to stand or to withdraw the plea. If the defendant decides to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

(C) Preservation of Issues. A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.

Rule 6.312 Effect of Withdrawal or Vacation of Plea.

If a plea is withdrawn by the defendant or vacated by the trial court or an appellate court, the case may proceed to trial on any charges that had been brought or that could have been brought against the defendant if the plea had not been entered.

Any statements or admissions made during a plea or sentencing statements by a defendant whose plea has been allowed to be withdrawn may not be offered as evidence in the prosecution’s case in chief, however, any such statements or admissions may be used for purposes of impeachment if the defendant
testifies in contradiction of those statements or admissions.

Subchapter 6.400 Trials

Rule 6.401 Right to Trial by Jury or by the Court.

The defendant has the right to be tried by a jury if jail is sought or is likely to be imposed, or may, with the consent of the prosecutor and approval by the court, elect to waive that right and be tried before the court without a jury.

Rule 6.402 Waiver of Jury Trial by the Defendant.

(A) Time of Waiver. The court may not accept a waiver of trial by jury until after the defendant has had or waived an arraignment on the complaint and has been offered an opportunity to consult with a lawyer.
A defendant who has been arraigned shall inform the court if they wish to exercise their right to have a trial by jury within 30 days of arraignment. If the court does not receive a proper or timely request for jury trial within 30 days of arraignment, the right to a jury trial will be presumed to have been waived by the defendant, and the court may set the matter for a bench trial in its discretion.

(B) Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Rule 6.403 Trial by the Judge in Waiver Cases.

When trial by jury has been waived, the court must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Rule 6.410 Jury Trial; Number of Jurors; Unanimous Verdict.

(A) Number of Jurors. Except as provided in this rule, a jury that decides a case must consist of 6 jurors. At any time before a verdict is returned, the parties may stipulate with the court's consent to have the case decided by a jury consisting of a specified number of jurors less than 6. On being informed of the parties' willingness to stipulate, the court must personally advise the defendant of the right to have the case decided by a jury consisting of 6 jurors. By addressing the defendant personally, the court must ascertain that the defendant understands the right and that the defendant voluntarily chooses to give up that right as provided in the stipulation. If the court finds that the requirements for a valid waiver have been satisfied, the court may accept the stipulation. Even if the requirements for a valid waiver have been satisfied, the court may, in the interest of justice, refuse to accept a stipulation, but it must state its reasons for doing so on the record. The stipulation and procedure described in this subrule must take place in open court and a verbatim record must be made.

(B) Unanimous Verdicts. A jury verdict must be unanimous.

Rule 6.411 Additional Jurors.

The court may impanel more than 6 jurors. If more than the number of jurors required to decide the case are left on the jury before deliberations are to begin, the names of the jurors must be placed in a container and names drawn from it to reduce the number of jurors to the number required to decide the case. The court may retain the alternate jurors during deliberations. If the court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

Rule 6.412 Selection of the Jury.

(A) Juror Personal History Questionnaire.

(1) Form. The court administrator shall adopt a juror personal history questionnaire.

(2) Completion of Questionnaire.

(a) The court clerk, as directed by the chief judge, shall supply each juror drawn for jury service with a questionnaire in the form adopted pursuant to sub rule (1). The court clerk shall direct the juror to complete the questionnaire in the juror's own handwriting before the juror is called for service.

(b) Refusal to answer the questions on the questionnaire, or answering the Questionnaire falsely, is contempt of court.

(3) Filing the Questionnaire.

(a) On completion, the questionnaire shall be filed with the court, as designated under subrule (B)(1). The only persons allowed to examine the questionnaire are:

(i) the judges of the court;

(ii) the court clerk and deputy clerks;

(iii) parties to actions in which the juror is called to serve and their attorneys; and

(iv) persons authorized access by court rule or by court order.

(b) The attorneys must be given a reasonable opportunity to examine the Questionnaires before being called on to challenge for cause.

(i) The court administrator shall develop model procedures for providing attorneys and parties reasonable access to juror questionnaires.

(ii) If the procedure selected allows attorneys or parties to receive copies of juror questionnaires, an attorney or party may not release them to any person who would not be entitled to examine them under subrule (3)(a).

(c) The questionnaires must be kept on file for 3 years from the time they are filled out.

(4) Summoning Jurors for Court Attendance. The court clerk, the court administrator, or the Little River Public Safety, as designated by the chief judge, shall summon jurors for court attendance at the time and in the manner directed by the chief judge, the presiding judge, or the judge to whom the action in which jurors are being called for service is assigned. For a juror's first required court appearance, service must be by written notice addressed to the juror at his or her residence as shown by the records of the clerk. The notice may be by ordinary mail or by personal service. For later service, notice may be in the manner directed by the court. The person giving notice to jurors shall keep a record of the notice and make a return if directed by the court. The return is presumptive evidence of the fact of service.

(B) Impaneling the Jury.

(1) Instructions and Oath Before Selection. Before beginning the jury selection process, the court should give the prospective jurors appropriate preliminary instructions and must have them sworn.

(2) Selection of Jurors.

(a) Persons who have not been discharged or excused as prospective jurors by the court are subject to selection for the action or actions to be tried during their term of service as provided by law.

(b) In an action that is to be tried before a jury, the names or corresponding numbers of the prospective jurors shall be deposited in a container, and the prospective jurors must be selected for examination by a random blind draw from the container.
(c) The court may provide for random selection of prospective jurors for examination from less than all of the prospective jurors not discharged or excused.
(d) Prospective jurors may be selected by any other fair and impartial method directed by the court or agreed to by the parties.

(3) Alternate Jurors. The court may direct that 7 or more jurors be impaneled to sit. After the instructions to the jury have been given and the action is ready to be submitted, unless the parties have stipulated that all the jurors may deliberate, the names of the jurors must be placed in a container and names drawn to reduce the number of jurors to 6, who shall constitute the jury. The court may retain the alternate jurors during deliberations. If the court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

(4) Voir Dire of Prospective Jurors.

(a) Scope and Purpose. The scope of voir dire examination of prospective jurors is within the discretion of the court. It should be conducted for the purposes of discovering grounds for challenges for cause and of gaining knowledge to facilitate an intelligent exercise of peremptory challenges. The court should confine the examination to these purposes and prevent abuse of the examination process.
(b) Conduct of the Examination. The court may conduct the examination of prospective jurors or permit the lawyers to do so. If the court conducts the examination, it may permit the lawyers to supplement the examination by direct questioning or by submitting questions for the court to ask. On its own initiative or on the motion of a party, the court may provide for a prospective juror or jurors to be questioned out of the presence of the other jurors.

(5) Challenges for Cause. The parties may challenge jurors for cause, and the court shall rule on each challenge. A juror challenged for cause may be directed to answer questions pertinent to the inquiry. If, after the examination of any juror, the court finds that a ground for challenging a juror for cause is present, the court on its own initiative should, or on motion of either party must, excuse the juror from the panel. It is grounds for a challenge for cause that the person:

(a) is not qualified to be a juror;
(b) is significantly biased for or against a party or attorney;
(c) 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;
(d) has opinions or conscientious scruples that would improperly influence the person's verdict;
(e) has been subpoenaed as a witness in the action;
(f) has already sat on a trial of the same issue;
(g) has served as a grand or petit juror (in another court) in a criminal case based on the same transaction;
(h) is related to one of the attorneys or parties to a degree that casts into significant

doubt whether the juror would be fair or impartial;
(i) is the guardian, conservator, ward, landlord, tenant, employer, employee, partner, or client of a party or attorney;
(j) is or has been a party averse 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;
(k) has a financial interest other than that of a taxpayer in the outcome of the action;
(l) is interested in a question like the issue to be tried.

Exemption from jury service is the privilege of the person exempt, not a ground for challenge.

(6) Peremptory Challenges.

(a) A juror peremptorily challenged is excused without cause.

(b) Each defendant is entitled to 3 peremptory challenges. The prosecutor is entitled to the same number of peremptory challenges as a defendant being tried alone, or, in the case of jointly tried defendants, the total number of peremptory challenges to which all the defendants are entitled. On a showing of good cause, the court may grant one or more of the parties an increased number of peremptory challenges. The additional challenges granted by the court need not be equal for each party.

(c) Peremptory challenges must be exercised in the following manner:

(i) First the plaintiff and then the defendant may exercise one or more peremptory challenges until each party successively waives further peremptory challenges or all the challenges have been exercised, at which point jury selection is complete.

(ii) A “pass” is not counted as a challenge but is a waiver of further challenge to the panel as constituted at that time.

(iii) If a party has exhausted all peremptory challenges and another party has remaining challenges, that party may continue to exercise his or her remaining peremptory challenges until they are exhausted.

(7) Replacement of Challenged Jurors. After the jurors have been seated in the jurors' box and a challenge for cause is sustained or a peremptory challenge exercised, another juror must be selected and examined before further challenges are made. This juror is subject to challenge as are other jurors.

(8) Instructions and Oath After Selection. After the jury is selected and before trial begins, the court must have the jurors sworn and should give them appropriate pretrial instructions. The jury must be sworn by the clerk substantially as follows: “Do each of you solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, by all that you hold sacred.”

Rule 6.414 Conduct of Jury Trial.

(A) Court's Responsibility. The trial court must control the proceedings during trial, limit the evidence and arguments to relevant and proper matters, and take appropriate steps to ensure that the jurors will not be exposed to information or influences that might affect their ability to render an impartial verdict on the evidence presented in court. The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must

ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

(B) Opening Statements. Unless the parties and the court agree otherwise, the prosecutor, before presenting evidence, must make a full and fair statement of the prosecutor's case and the facts the prosecutor intends to prove. Immediately thereafter, the defendant may make a like statement. The court may impose reasonable limits on the opening statements.

(C) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes and that they should not permit note taking to interfere with their attentiveness. The court also must instruct the jurors both to keep their notes confidential except as to other jurors and to destroy their notes when the trial is concluded.

(D) View. The court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no person other than the officer designated by the court may speak to the jury concerning a subject connected with the trial.

(E) Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable limits on the closing arguments.

(F) Instructions to the Jury. Before closing arguments, the court may give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of any written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the jury as required and appropriate under the LRBOI Tribal Code. After jury deliberations begin, the court may give additional instructions that are appropriate.

(G) Materials in Jury Room. The court may permit the jury, on retiring to deliberate, to take into the jury room a writing, other than the charging document, setting forth the elements of the charges against the defendant and any exhibits and writings admitted into evidence. On the request of a party or on its own initiative, the court may provide the jury with a full set of written instructions, or a partial set of written instructions if the jury asks for clarification or restatement of a particular instruction or instructions or if the parties agree that a partial set may be provided and agree on the portions to be provided. If it does so, the court must ensure that such instructions are made a part of the record.

(H) Review of Evidence. If, after beginning deliberation, the jury requests a review of certain testimony or evidence, the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may order the jury to deliberate further without the requested review, so long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

Rule 6.415 Presentation of Evidence.

Subject to the rules in this chapter and to the rules of evidence, each party has discretion in deciding what witnesses and evidence to present.

Rule 6.416 Motion for Directed Verdict of Acquittal.

(A) Before Submission to Jury. After the prosecutor has rested the prosecution's case in chief and before the defendant presents proofs, the court on its own initiative may, or on the defendant's motion must, direct a verdict of acquittal on any charged offense as to which the evidence is insufficient to support conviction. The court may not reserve decision on the defendant's motion. If the defendant's motion is made after the defendant presents proofs, the court may reserve decision on the motion, submit the case to the jury, and decide the motion before or after the jury has completed its deliberations.

(B) Explanation of Rulings on Record. The court must state orally on the record or in a written ruling made a part of the record its reasons for granting or denying a motion for a directed verdict of acquittal.

Rule 6.420 Verdict.

(A) Return. The jury must return its verdict in open court.

(B) Several Defendants. If two or more defendants are jointly on trial, the jury at any time during its deliberations may return a verdict with respect to any defendant as to whom it has agreed. If the jury cannot reach a verdict with respect to any other defendant, the court may declare a mistrial as to that defendant.

(C) Poll of Jury. Before the jury is discharged, the court on its own initiative may, or on the motion of a party must, have each juror polled in open court as to whether the verdict announced is that juror's verdict. If polling discloses the jurors are not in agreement, the court may (1) discontinue the poll and order the jury to retire for further deliberations, or (2) either (a) with the defendant's consent, or (b) after determining that the jury is deadlocked or that some other manifest necessity exists, declare a mistrial and discharge the jury.

Rule 6.425 Sentencing.

(A) Pre-sentence Report; Contents. Prior to sentencing, if the court refers the defendant to the probation
department, the probation officer must investigate the defendant's background and character, verify material information, and report in writing the results of the investigation to the court. The report must be succinct and, depending on the circumstances, include:

(1) a description of the defendant's prior criminal convictions and any juvenile adjudications occurring within three years prior to date of complaint,
(2) a complete description of the offense and the circumstances surrounding it,
(3) a brief description of the defendant's vocational background and work history, including military record and present employment status,
(4) a brief social history of the defendant, including marital status, financial status, length of residence in the community, educational background, and other pertinent data,
(5) the defendant's substance abuse history, medical issues, if any, and, if requested by the

court, a current psychological or psychiatric report,
(6) information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim,
(7) if provided and requested by the victim, a written victim's impact statement as provided by law, if victim does not intend to make a victim's statement during the sentencing hearing,
(8) any statement the defendant wishes to make,
(9) any letters or statements of support timely filed, in support of defendant,
(10) a statement prepared by the prosecutor on the applicability of any consecutive sentencing provision,
(11) an evaluation of and prognosis for the defendant's adjustment in the community based on factual information in the report, with specific reference to facts contained in the report,
(12) a specific recommendation for disposition, and
(13) any other information that may aid the court in sentencing based on information that can be reasonably supported as being factual and not opinion,
(14) Any other information required pursuant to LRBOI Tribal Court Probation Policies and Procedures.

(B) Pre-sentence Report; Disclosure Before Sentencing. The court must permit the prosecutor, the defendant's lawyer, and the defendant to review the pre-sentence report at a reasonable time before the sentencing. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the non-disclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review. A Defendant acting in pro per shall receive all reports for review in the same form and content as that is disclosed to the prosecutor.

(C) Pre-sentence Report; Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, or the defendant not represented by a lawyer, with a copy of the pre-sentence report and any attachments to it.

(D) Imposition of Sentence.

(1) Sentencing Procedure. The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court, complying on the record, must:

(a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the pre-sentence report,
(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the pre-sentence report, and resolve any challenges in accordance with the procedure set forth in subrule (D)(2),
(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,
(d) determine that any request for incarceration or detention has been procedurally and substantively adequate,

(e) state the sentence being imposed, together with any credit for time served to which the defendant is entitled, and
(f) if a victim of the crime has suffered harm and the court does not order restitution as provided by law or orders only partial restitution, state the reasons for its action.
(g) state the time period in which all fees, costs and fines and restitution must be paid.

(2) Resolution of Challenges. If any information in the pre-sentence report is challenged, the court must make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to
(a) correct or delete the challenged information in the report, whichever is appropriate, and (b) provide defendant's lawyer with an opportunity to review the corrected report.

(E) Advice Concerning the Right to Appeal. In a case involving a conviction following a trial, or a conviction following a plea of guilty or no contest, immediately after imposing sentence, the court must advise the defendant, on the record, that the defendant is entitled to appellate review of the conviction and sentence.

Rule 6.427 Judgment.

(A) Within seven (7) days after sentencing, the court must date and sign a written judgment of sentence that includes:
(1) the title and file number of the case;
(2) the defendant's name;
(3) the crime for which the defendant was convicted;
(4) the defendant's plea;
(5) the name of the defendant's attorney if one appeared;
(6) the jury's verdict or the finding of guilt by the court;
(7) the term of the sentence;
(8) the conditions incident to the sentence; and
(9) whether the conviction is reportable to the State of Michigan Secretary of State and, if so, the defendant's Michigan driver's license number.
If the defendant was found not guilty or for any other reason is entitled to be discharged, the court must enter judgment accordingly. The date a judgment is signed is its entry date.

(B) Sentencing Orders must also meet the following requirements:
(1) A sentencing Order must state clearly the sentence regarding each count on which the Defendant has been found guilty.
(2) No sentence may exceed the statutory term for each count.
(3) Probation periods shall be for no more than two years, and incarceration periods for each count shall total no more than that permitted by federal and tribal law.
(4) Sentencing orders must contain specific language distinguishing between costs, fines, fees and restitution and may direct a term of payment not to exceed the term of the entire sentence.
(5) For sentences that include incarceration, detention may be held in abeyance pending completion of court approved residential or non-residential treatment programs. Failure to complete the treatment program will void the abeyance and the term of incarceration or detention originally ordered pursuant to a sentencing order shall be immediately served.

(6) Incarceration or detention may be suspended pursuant to specific terms and conditions of probation. Should the defendant violate the terms and conditions of probation on which suspension is contingent, the defendant shall serve the remainder of the term of the suspended sentence in incarceration or detention.
(7) Sentences that include terms of incarceration, detention or treatment may be held in abeyance pending completion of a court approved diversion program. Should the Defendant fail to successfully complete the diversion program, the original sentence will become effective as of the date of unsuccessful termination of the defendant from the diversion program.
(8) Sentencing may include any combination of criminal remedies available pursuant to these Rules.

Rule 6.429 Correction and Appeal of Sentence.

(A) Authority to Modify Sentence. The court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law.

(B) Time for Filing Motion.
(1) A motion for resentencing may be filed within 21 days after entry of the judgment.
(2) If a claim of appeal has been filed, a motion for resentencing may only be filed in accordance with the Tribal rules of appellate procedure.

(C) Preservation of Issues Concerning Information Considered in Sentencing. A party shall not raise on appeal an issue challenging the accuracy of information relied upon in determining a sentence unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

Rule 6.430 Correcting Mistakes.

(A) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party, and after notice if the court orders it.

(B) Substantive Mistakes. After giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous.

(C) Correction of Record. If a dispute arises as to whether the record accurately reflects what occurred in the trial court, the court, after giving the parties the opportunity to be heard, must resolve the dispute and, if necessary, order the record to be corrected.

(D) Correction During Appeal. If a claim of appeal has been filed or leave to appeal granted in the case, corrections under this rule are subject to the Tribal Rules of Appellate Procedure.

Rule 6.440 Probation Revocation.

(A) Issuance of Summons; Warrant. On finding probable cause to believe that a probationer has violated a condition of probation, the court may
(1) issue a summons in accordance with Rule 6.103(B) and (C) for the probationer to appear for

arraignment on the alleged violation, or
(2) issue a warrant for the arrest and detention of the probationer.

Unless good cause is demonstrated, arraignment must occur without unnecessary delay after the probationer is detained.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must:
(1) ensure that the probationer receives written notice of the alleged violation;
(2) advise the probationer that
(a) the probationer has a right to contest the charge at a hearing, and
(b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint an attorney if the defendant requests one and is financially unable to retain one (see Rule 6.005);
(3) determine what form of release, if any, is appropriate; and
(4) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing.

Upon advisement of his/her rights, the court shall ask the probationer to either admit or deny the specific allegation(s) of violation of the terms and conditions of probation. If the probationer knowing and willingly admits to a violation of terms and conditions of probation, the court may immediately impose sanctions or in its discretion schedule a sanctioning hearing. If the probationer denies the allegation(s), the court shall schedule an evidentiary hearing pursuant to subrules (C) and (D) below.

(C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within 10 days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) The Violation Hearing.
(1) Conduct of the Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses and to remain silent. The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The Tribe has the burden of proving a violation by a preponderance of the evidence.
(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with Rule 6.403.

(E) Pleas of Guilty. With the consent of the court that granted probation, the probationer may at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer’s response, must
(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing,
(2) advise the probationer of the maximum possible jail or prison sentence for the offense,
(3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and
(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(F) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period for a period not to exceed the total sentencing period, or revoke probation and impose a sentence of incarceration or impose sanctions pursuant to the appropriate remedies for contempt of court. If the probationer is on probation under a suspended sentence or in a diversionary program, probation or diversion may be immediately revoked upon entry of an admission to violation of terms and conditions of probation.