

TITLE I
CHAPTER 2
COURTS

Part 1

Establishment and Jurisdiction

1-2-101. Establishment. The judicial power of the Confederated Salish and Kootenai Tribes (hereinafter "the Tribes") is vested in the Tribal Court, and such divisions thereof as the Tribal Council may from time to time authorize by statute, and the Tribal Court of Appeals.

1-2-102. Tribal Court. The Tribal Court may hear and decide cases and controversies as provided by Tribal law, subject to any restrictions imposed by the Constitution, treaties, or laws of the United States. Final decisions and orders of the Tribal Court are subject to review by the Tribal Court of Appeals as provided in Sections 1-2- 816 and 1-2-817 of this Code. Failure to legislate in any particular area shall not be deemed a cession of authority to any other government's jurisdiction.

1-2-103. Criminal jurisdiction The Tribal Court shall have criminal jurisdiction over any Tribal member, American or Canadian Indian, or Alaskan Native found within the Flathead Reservation and accused by the Tribes of the commission, within the Flathead Reservation, of an offense enumerated in Title II, Chapter 1, of this Code.

1-2-104. Civil Jurisdiction. (1) The Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, shall have jurisdiction of all suits wherein the parties are subject to the jurisdiction of this Court, and over all other suits which are brought before the Court by stipulation of parties not otherwise subject to Tribal jurisdiction. In suits brought by non-members against members of the Tribes or other persons subject to the jurisdiction of this Court, the complainant shall stipulate in his or her complaint that he or she is subject to the jurisdiction of the Tribal Court for purposes of any counterclaims which the defendant may have against him or her.

(2) To the fullest extent possible, not inconsistent with federal law, the Tribes may exercise their civil, regulatory and adjudicatory powers. To the fullest extent possible, not inconsistent with federal law, the Tribal Court may exercise subject matter and personal jurisdiction. The jurisdiction over all persons of the Tribal Court may extend to and include, but not by way of limitation, the following:

- (a) All persons found within the Reservation.
- (b) All persons subject to the jurisdiction of the Tribal Court and involved directly or indirectly in:
 - (i) The transaction of any business within the Reservation;
 - (ii) The ownership, use or possession of any property, or interest therein, situated within the Reservation;
 - (iii) The entering into of any type of contract within the Reservation or wherein any aspect of any contract is performed within the Reservation;
 - (iv) The injury or damage to property of the Tribes or a Tribal member.

(3) As used in this section, "person" means an individual, organization, corporation, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial activity. Nothing in this chapter waives any aspect of the Tribes sovereign immunity or related privileges.

(4) The Confederated Salish and Kootenai Tribes shall adopt appropriate laws and regulations governing conduct of Tribal members exercising Treaty rights within the open and unclaimed aboriginal territory outside the Flathead Reservation.

1–2–105. Exclusive and concurrent jurisdiction. The jurisdiction of the Tribal Court, as set out in Sections 1–2–103 and 1–2–104 is exclusive except:

(1) as may be provided otherwise by federal statute or the final order of a federal court, or

(2) where implementation of federal law, by Tribal agreement or otherwise, requires that Tribal Court jurisdiction be concurrent with that of the courts of the State of Montana, and where Tribal statute expressly sets forth such concurrence.

(3) Subject to the conditions and limitations expressed in Section 1–2–104(4), the laws and jurisdiction of the State of Montana, including the judicial system of the State, are hereby extended pursuant to, and subject to the conditions in, the Act of the Montana Legislature of February 27, 1963, Laws of Montana, 1963, Vol. 1, Chap. 81, p. 170, Sections 2–1–301 through 2–1–306, MCA, to Indians within the Flathead Reservation to the extent such laws and jurisdiction relate to the subjects following: (a) compulsory School Attendance; (b) Public Welfare; (c) Domestic Relations (except adoptions); (d) Mental Health, Insanity, Care of the Infirm, Aged and Afflicted, (e) Juvenile Delinquency and Youth Rehabilitation; (f) Adoption Proceedings (with consent of the Tribal Court), (g) Abandoned, Dependent, Neglected, Orphaned or Abused Children; (h) Operation of Motor Vehicles upon Public Streets, Alleys, Roads and Highways, and (i) All Criminal Laws of the State of Montana pertaining to felony offenses (Class E offenses in this Code).

(4) The effectiveness of Subsection (3) above is conditioned upon the following:

(a) Concurrent jurisdiction remains with the Tribal Court and in the Tribal Government (where applicable with Federal Courts) of all matters referred to in Subsection (3); and any matter initiated in either a State or Tribal Court shall be completed and disposed of in that Court, and shall not be subject to re-examination in the Courts of the other jurisdiction.

(b) No person, once convicted of a crime falling within the jurisdiction of the State or the Tribes pursuant to this Ordinance, shall be punished for the identical act in the Courts of the other jurisdiction, but shall be accorded the benefit of the doctrine of former jeopardy as if the separate jurisdictions were one.

(c) Ordinance 40–A (Revised) is subject to possible referendum of the eligible voters of the Confederated Tribes, and if a referendum is authorized and the Ordinance disapproved by a majority under the conditions set forth in Article IX, the Ordinance shall be void and of no effect to transfer jurisdiction to the State of Montana and its judicial system.

(d) All jurisdiction of the Confederated Tribes under its Constitution and Bylaws, and Ordinances enacted pursuant thereto, and of the Federal Government under the United States Criminal Code, and to the extent not expressly transferred by Subsection (3) above, remains in the Confederated Tribes and in the Federal Government respectively to the same extent as if Ordinance 40–A (Revised) had not been adopted.

(e) If any provision of the Act of the Montana Legislature of February 27, 1963, Vol.1, Chap. 81, or of the Ordinance 40–A (Revised) shall be held invalid, or if the Ordinance be held to extend a jurisdiction more extensive that set forth therein, or if any condition herein be not complied with or be invalid or ineffective, then the entire Ordinance 40–A (Revised) shall be held to be void and of no effect from the beginning.

(f) In the event of any alleged violation of the Civil Rights of Tribal members by operation of this Ordinance 40–A (Revised) the Tribal member may seek redress in the Tribal Court system and the Tribal Council reserves the right to conduct an independent investigation of the occurrence and to review the Ordinance upon validation of any such alleged act.

(g) It is further provided that any sentences or convictions, lawfully inflicted under the provisions of the Ordinance 40-A (Revised) shall not be affected by subsequent cancellation or voiding of the Ordinance.

Part 2

Tribal Court Judges

1-2-201. Number, compensation, and duties. (1) The Tribal Court shall be presided over by a Chief Judge and by such Associate Judges, including part-time or temporary Judges, the Tribal Council deems just and necessary to carry out the duties of the Tribal Court.

(2) The Judges shall be compensated by salaries as established in an approved Tribal Council pay plan and as set forth in written contracts signed by both the applicable Judge and the Chairman on behalf of the Tribes.

(3) The term of each judicial contract shall coincide with the term of appointment for that judge. The contract shall specify the Judge's compensation, in accordance with the approved pay plan, along with the Judge's specific duties. Each judicial contract shall be subject to all provisions of this Part. *(Rev. 4-15-03)*

1-2-202. Appointment, staggered terms, and advertisement. (1) Each Tribal Court Judge shall be appointed by a majority of a quorum of the Tribal Council for a term of four years. Any applicable term shall begin on October 1 of the calendar year. The terms of the Tribal Court Judges shall be staggered in relation to each other.

(a) To create the staggered terms, the Tribal Council shall make initial variable term judicial appointments to fill all judicial positions the Tribal Council currently deems appropriate for the Tribal Court. These variable judicial terms shall all begin on October 1, 2000.

(b) The first judicial appointment the Tribal Council makes pursuant to this Part shall be for a term of four years. The second appointment shall be for a term of three years, the third appointment for a term of two years and the fourth appointment for a term of one year. If more than four judges are to be appointed, the Tribal Council may fill more than one vacancy by appointment in any particular year to meet the purpose of this provision.

(c) After these initial variable term judicial appointments are made to create the staggered terms, each judicial appointment the Tribal Council thereafter makes shall be for a period of four years.

(2) At the end of a judicial term, the incumbent Tribal Judge may be eligible for reappointment by the Tribal Council. However, sixty (60) days before the expiration of any particular judicial term, the Tribal Council shall publically advertise that a judicial appointment is to be filled. The Tribal Council shall solicit applications from interested individuals who maintain they are qualified to fill the judicial position. The Tribal Council shall then proceed to fill the judicial position by appointment and contract with an applicant the Tribal Council believes is best qualified to fulfill the judicial duties and responsibilities.

(3) Should a vacancy occur in a judicial position during a judicial term, the balance of the unexpired judicial term shall be filled by the Tribal Council pursuant to the process contained in subsection (2) above.

(4) No judicial appointment shall become effective until the contract as required under Section 1-2-201(2) is signed and entered into by both the applicable Judge and the Tribes.

(5) A person shall be eligible to serve as a Tribal Court Judge only if the person (i) is a member of the Confederated Salish and Kootenai Tribes, and (ii) has never been convicted of a felony, or, within one year then last past, of a misdemeanor, with the exception of minor traffic violations.

(6) No Judge shall be qualified to preside in any case where she or he has any direct, personal interest or where he or she is prejudiced for or against any of the parties in the action. Nor shall any Judge be qualified to act in any case where any relative by marriage or blood in the first or second degree is a party unless all parties to the action waive this provision.

(7) All Tribal Court Judges shall protect and preserve the high standards of the Tribal judiciary and shall abide by the Model Code of Judicial Conduct adopted by the American Bar Association as it now exists and as it may from time to time be amended.

(8) Qualified individuals with judicial experience may from time to time be appointed by the Chief Judge to sit as Tribal Court judges on individual cases where appointment of an outside judge is called for. Such pro tempore appointments need not be Tribal members. *(Rev. 4-15-03)*

1-2-203. Removal of a Judge of the Tribal Court. A Judge of the Tribal Court may be suspended, dismissed or removed for cause by the Tribal Council. Cause shall be defined as malfeasance in office, corruption, neglect of duty, or conviction of a felony or misdemeanor, excluding minor traffic violations. A Judge charged by a majority of a quorum of the Tribal Council with conduct constituting cause for suspension, dismissal, or removal shall be given personal, written notice of the basis for the charge and be given adequate time to prepare a defense. The Judge shall then be given a full hearing before the Tribal Council with an adequate opportunity to present a defense, including the production of witnesses and other evidence in the Judge's behalf and an opportunity to cross-examine witnesses against the charged Judge. An affirmative vote of seven members of the Tribal Council is necessary to suspend, dismiss or remove a Judge from office.

1-2-204. Substitution of Judges. (1) Each party to a proceeding is entitled to substitution of a judge without asserting cause for the substitution, if the motion is made within ten days of the party receiving notice of the judge's assignment to the case. (2) Where cause exists, a party to a proceeding may make a timely and sufficient affidavit that the assigned Judge has a personal bias or prejudice either against the party or in favor of any adverse party. Such Judge shall proceed no further therein. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed at the earliest opportunity, and not less than ten days before the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The Chief Judge shall review the affidavit and upon finding cause shall assign another Judge to hear such proceeding. *(Rev. 1-27-00)*

Part 3

Court Administration

1–2–301. Duties of the Chief Judge. (1) The Chief Judge shall designate one Judge to preside over the Small Claims division of Tribal Court, one Judge to preside over the Traffic Court division of Tribal Court, and one Judge to preside over the Youth Court division of Tribal Court. The same Judge may be designated to preside over more than one subdivision.

(2) The Chief Judge shall establish and maintain a system of assignment of cases, other than Small Claims and Youth Court cases, among the Judges. In the event of disqualification, recusal or other inability of a Judge assigned to a case to serve, the next Judge who would have been assigned in the system established by the Chief Judge shall hear and decide the case. However, if no full-time Judge is qualified or able to hear the case, the Chief Judge may select a temporary or part-time Judge as replacement Judge, as provided in Section 1–2–201.

(3) In all criminal proceedings and in civil matters that require assistance, the Chief Judge shall appoint a bailiff, who, within the context of the proceeding, shall have the authority of a Tribal law enforcement officer to keep the peace and shall have such other courtroom duties as the Chief Judge may prescribe. A bailiff may be an employee of the Court or of the Law Enforcement Department and may be appointed on a case-by-case basis or for a regular term.

(4) Except as provided in Section 1–2–302, the Chief Judge oversees general administration of the Tribal Court, including management of caseload, expenditures, library, records management, and the presentation of an annual budget proposal to the Tribal Council. In consultation with the Clerk of Court, Court administrative and research tasks may be delegated by the Chief Judge to one or more Court employees and, within the limits of the Court's budget and with the approval of the Tribal Council, consultants may be employed by the Chief Judge by written contract.

(5) The Chief Judge may seek and, with the approval of the Tribal Council, accept funds made available through gift, grant, or contract to assist, improve, or enhance Tribal court operations.

1–2–302. Appointment and duties of Clerk of Court. (1) There is established the office of Clerk of Court, which shall be filled by appointment to a four-year term by a majority of a quorum of the Tribal Council in accordance with policies, rules, and classifications of the Tribal Personnel system.

(2) As the budget for administering the Court may permit, the Clerk of Court may employ, in accordance with the Tribal Personnel System, such deputies and court reporters as may be required to assist in fulfilling the duties of the Clerk.

(3) The Clerk shall collect fees and fines paid to the Court and deposit the same within a week of collection with the Executive Treasurer. The Clerk shall make a certified accounting of the same annually to the Tribal Council. The clerk shall be bonded in an amount sufficient to cover the average annual revenues derived from fees and fines paid to the Court.

(4) As required by statute or otherwise where appropriate, the Clerk shall prepare and make available to unrepresented parties forms, approved by the Chief Judge, for pleadings and service of process.

(5) The Clerk shall prepare all documents and ledgers incidental to the functions of the Tribal Court and, upon request and payment of a reasonable fee, shall certify copies of the public record of proceedings as true and accurate representations of the official Court record.

(6) The Clerk, or the Clerk's designee, shall attend all proceedings of the Court and keep a record of the same. Unless a court reporter is present to record the proceedings, the Clerk, the Clerk's designee, or the Court shall tape record, maintain, and archive the recordings of all criminal and civil actions. However, proceedings in the Tribal

traffic and small claims courts shall be tape recorded and maintained for a period of only 20 days after entry of judgment unless a timely appeal is filed in the manner provided in this Code.

(7) The Clerk shall keep a current docket numbering system and shall preserve and protect the original, official records of all Court proceedings.

(8) The Clerk shall keep, compile, and submit records of Court proceedings to the Bureau of Indian Affairs at such times and in such detail as may be required by federal law.

(9) The Clerk shall make available for inspection and, for a reasonable fee, provide copies of all records of Court proceedings not designated confidential by law. *(Rev. 4-15-03)*

Part 4.

Representation by Counsel

1-2-401. Declaration of Policy. (1) Every person appearing as a party before Tribal Court, except as otherwise provided for proceedings associated with Small Claims, has a right to be represented by an attorney or other person admitted to practice before the Court at the person's own expense.

(2) An indigent defendant accused of a criminal offense punishable by imprisonment has a right to representation by the Tribal Defender's Office.

(3) Other persons are entitled to representation by the Tribal Defenders Office pursuant to the policies of that Office as approved by the Tribal Council.

1-2-402. Indigence Defined. An individual accused by the Tribes of a criminal offense shall be determined to be indigent if he or she presents to the Tribal Defenders Office a statement documenting that his or her income is less than 200% of the current standard for poverty contained in the Federal Poverty Income Guidelines. If the individual's income is between 200% and 300% of that standard, he or she may elect to have the Tribal Defenders Office represent them for a fee to be determined by the Tribal Defenders Office and approved by the Tribal Council, but shall not be entitled to representation by that Office in the absence of making that election. If the individual's income is over 300% of the current standard for poverty contained in the Federal Poverty Income Guidelines then he or she shall be responsible for retaining and paying their own attorney or advocate, and shall not be entitled to representation by the Tribal Defenders Office.

Part 5.

Admission to Practice in Tribal Court

1-2-501. Attorneys. (1) An attorney in good standing who is admitted to practice before the Montana Supreme Court shall be admitted to practice before the Tribal Court and the Tribal Appellate Court upon submission of an application for admission to practice and payment of an annual fee set by the Chief Judge and due by January 1st of each year. Application for admission to practice will be made on a form provided by the Clerk of Court and will include the applying attorney's agreement to act as an officer of the Tribal Court in any action or proceeding in which the attorney appears, and to conduct legal practice in accord with the Rules of Professional Conduct as adopted by the Tribal Council.

(2) An attorney not admitted to practice in Montana and not previously admitted to practice before the Tribal Court, but admitted to practice and in good standing before the courts of another state, may be admitted to practice before the Tribal Court, for the purposes of a single case or controversy, upon:

(a) association in that case with an attorney who is admitted to practice before the Tribal Court;

(b) certification by the admitted attorney of the qualifications of the attorney from out-of-state and of association for purposes of the specified case or controversy; and

(c) submission of an application and fee, as provided in (1) above.

(3) An attorney employed by the Tribes shall be admitted to practice before the Tribal Court and Tribal Appellate Court without filing an application or paying a fee.

(4) All attorneys admitted to practice before the Tribal Court and Tribal Appellate Court shall be subject to disciplinary action for violations of the Rules of Professional Conduct or other professional standards. *(Rev. 4-15-03)*

1-2-502. Law Students. A student enrolled in an accredited School of Law in the United States may be admitted to practice before the Tribal Court if an attorney admitted to practice before the Tribal Court requests the admission in writing and agrees to supervise and assume responsibility for the student's practice.

1-2-503. Admission Required Prior to Filing Papers. No pleading, motion, brief, or other paper in any action or proceeding or appeal will be accepted for filing by the Clerk of Court from an attorney or law student who has not been first admitted to practice before the Tribal Court.

1-2-504. Tribal Court Advocates. An individual employed by the Confederated Salish and Kootenai Tribes as a Tribal Court advocate (hereafter "advocate") shall be admitted to practice before the Tribal Court upon employment and certification by a Tribal attorney that the advocate is qualified to represent individuals in actions and proceedings before the Tribal Court.

1-2-505. Child Support Investigators. A Child Support Investigator for the Tribes or the State of Montana may file papers and appear in Tribal Court for the limited purposes of seeking a Child Support Order, having a Foreign Judgment recognized, or applying for a Writ of Execution or Garnishment.

1-2-506. Pro Se and Tribal Member Representation. (1) Any adult, who has not been adjudged incompetent, and who wishes to commence an action or who is a named party to an action or proceeding in Tribal Court, may represent himself or herself in person. A corporation, firm, association, or other organized entity, except a partnership, may be represented by its chief executive officer or by an employee who has been authorized in writing by the chief executive officer to represent the entity in an action or proceeding. A partnership may be represented by a general partner or by an employee who has been authorized in writing by a general partner to represent the partnership. A person representing a corporation, firm, association, other organized entity, or a

partnership pursuant to this section shall file such written authorization with the Court along with its first pleading and shall serve a copy of the same upon the opposing party or such party's counsel of record.

(2) An adult Tribal member who wishes to commence an action or who is a named party to an action or proceeding may be represented without remuneration by another Tribal member who is neither an attorney nor an advocate and who has not been convicted of a felony nor been adjudged incompetent. The party enlisting such representation shall so inform the Court in writing and shall acknowledge sole responsibility for all pleadings, motions, and other papers submitted on the party's behalf and for the timeliness thereof and shall acknowledge that all notices incident to the proceedings will be sent to the party and not to the Tribal member representative. *(Rev. 4-15-03)*

Part 6.

Juries and Witnesses

1-2-601. Composition of venire. The Tribal Council each year shall prepare a list of eligible jurors. Such eligible jurors shall be residents of the Flathead Reservation and enrolled members of the Tribes who are qualified to vote in elections of the Council.

1-2-602. Selection of jury panels. (1) By October 1st of each year, the Tribal Records Manager shall provide the Clerk of Court with the names of all Tribal members eligible for jury duty. The Clerk of Court shall randomly select 1,000 names from the list. The Clerk shall send juror questionnaires to each one and this group shall comprise the jury pool for the next calendar year. The Clerk shall notify each person of his or her selection and of grounds and methods for the person's excuse from the jury pool. By December 15th, the Clerk of Court shall randomly select 50 names from the pool to serve as the jury panel for January trials. This procedure shall be followed in subsequent months. Each month the Clerk of Court shall make available to counsel involved in jury trials scheduled for that month the questionnaires of the 50 persons selected for that month's panel. The Court shall by Rule of Court specify grounds and procedures for excuse from jury duty.

(2) The Court may summon a panel for purposes of selecting a jury for a particular case or to provide for the availability of a jury in several cases to be tried within a specified period of time, not to exceed one month.

(Rev. 1-27-00)

1-2-603. Composition of a jury for a civil action. (1) A jury shall consist of six persons and an alternate selected from a summoned panel. The Clerk of Court shall notify parties to a case to be tried to a jury of the names and addresses of the summoned panel no later than 10 days prior to the commencement of the trial.

2) Each party to a case is entitled to three peremptory challenges and one peremptory challenge in the event that an alternate juror is selected, unless a lesser number is agreed to by the parties in writing.

3) Each party shall have unlimited challenges for cause, on the basis of lack of qualifications, partiality, or otherwise acceptable reasons, which include the following:

a) having a family relationship within the first or second degree to any party, or to the person allegedly injured;

(b) standing, in relation to a party or person injured, as guardian, ward, employer, employee, debtor, creditor, attorney, client, or being a member of the family of either party, person insured, shareholder, partner, trustor, trustee, or beneficiary;

(c) having been a party adverse to another party in a prior civil action or having complained against or been accused by a party in a criminal prosecution;

(d) having served as a juror or been a witness in a previous trial between the same parties;

(e) having an interest in the event of the action, or in the main question involved in the action;

(f) having a pre-existing opinion or belief as to the merits of the action; or

(g) having a state of mind evincing bias against or in favor of either party or the person injured.

Whether or not cause exists shall be determined by the presiding Judge.

(4) Each challenge must be tried and determined by the Court at the time the challenge is made.

1-2-604. Civil verdicts. After all parties have rested their cases, the Judge shall instruct the jury in the law governing the case and the jury shall bring in a verdict for the plaintiff or the defendant in a civil case. The jury shall be instructed by the Judge in all civil cases that they are to find for the party who has established the position she or he alleges by the burden of proof established by law. The Judge shall render judgment in accordance with the verdict and the existing law. If a jury is unable to reach a unanimous verdict, the Judge may authorize a verdict by a majority vote.

1-2-605. Jurors' compensation and reimbursement. (1) Each juror and alternate juror selected shall be paid the sum of \$50.00 plus mileage to and from the Court for each day, or part-day, spent in the business of the Court at the Tribal Complex at Pablo, Montana. Each panel member summoned and appearing but not selected as a juror or alternate shall be paid their mileage to and from the Court.

(2) Each panel member summoned for selection as a juror and each juror and alternate shall be reimbursed for meals and for mileage traveled within the reservation in connection with the service, unless meals and transportation are provided by the Court, at its option. *(Rev. 4-15-03)*

1-2-606. Juries in civil cases. (1) In actions at law or in any civil case where monetary damages are prayed for and may be awarded by law, except a matter filed as a small claim, a party may demand a jury trial. Such demand must be made to the presiding Judge, with notification to the other party or parties, no later than 15 working days prior to the time set for trial.

(2) Costs of a jury trial in a civil matter shall be reimbursed to the Court by the party demanding the jury trial. Such costs may be a part of the award if the demanding party prevails. Payment shall be made upon presentation of a statement by the Clerk setting forth said costs, including the cost of summoning a panel, the cost of compensation to panel members, jurors, and alternates, and the costs of meals and mileage of panel members, jurors, and alternates. Taking into consideration the resources of the demanding party and whether there is a reasonable likelihood that the demanding party will prevail, the presiding Judge may require that the demanding party post a bond guaranteeing payment to the Court in an amount not to exceed \$5,000 in the event that the demanding party is not the prevailing party.

1-2-607. Power to subpoena witnesses. A Judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena.

1-2-608. Compensation of witnesses. (1) Each witness, except an expert witness, answering a subpoena to appear in a civil trial shall be paid by the party requesting the subpoena, or by the Court if the subpoena was issued on its own motion, the sum of \$50.00 for each day, or part-day, that his or her presence is required in Court or at any deposition location and for transportation costs to and from Court or the deposition location, at the same rate as that established for jurors in Section 1-2-606, or, if travel by air is necessary, at the lowest practicable rate then available for airfare.

(2) An expert witness may be paid a reasonable fee by the party calling the expert. If the Court, on its own motion, finds it necessary in the interests of justice to call an expert witness, it shall pay the witness a reasonable fee, not to exceed the expert's regular hourly rate for such service, and assure that the expert is available for interview by the parties prior to any testimony by the expert.

(3) If attorney's fees and costs are permitted by statute or by agreement of the parties to be awarded to the prevailing party, the Court may also order the award of witness fees and transportation costs to the prevailing party.

1-2-609. Service of subpoenas. Service of subpoena shall be made by a competent person who is at least 18 years of age and not a party to the action. Proof of service of subpoena shall be filed with the Clerk of Court by noting on the subpoena the return date, time and place that it was served.

1-2-610. Effect of failure to obey a subpoena. If a witness fails to obey a subpoena, an order to show cause why the person should not be found in contempt of Court shall immediately issue.

1-2-611. Privileged confidentiality in certain relations. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following enumerated cases:

- (1) Spousal privilege. A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other.
- (2) Attorney-client privilege. (a) An attorney or Court advocate cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given to the client in the course of professional employment.

(b) A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or Court advocate or the advice given to him by his attorney or Court advocate in the course of the attorney's or Court advocate's professional employment.
- (3) Confessions made to member of clergy. A clergyman, priest, or traditional spiritual advisor, cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.
- (4) Doctor-patient privilege. Except as provided in Rule 35, Federal Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.
- (5) Speech-language pathologist, audiologist-client privilege. A speech-language pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him.
- (6) Psychologist-client privilege. The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in any act of the Tribal Council shall be construed to require such privileged communications to be disclosed.
- (7) Information gathered by psychology teachers and observers. Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.
- (8) Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.
- (9) Mediator privilege. Except as otherwise provided by law, a person acting as a mediator in a mediation cannot, without the consent of the parties to the mediation, be examined in a civil action as to any communication made by a party to him during the course of the mediation.
- (10) Media Confidentiality. Extent of privilege.

(a) Without his or its consent no person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment or its business.

(b) A person described in subsection (a) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his or its business.

(11) Licensed Social Workers. A licensee may not disclose any information acquired from clients consulting in the licensee's professional capacity except:

(a) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(b) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(c) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(d) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(e) to the extent that the privilege is otherwise waived by the client; and

(f) as may otherwise be required by law.

(12) Public Accountants.

(a) Except by permission of the client, person, firm, or corporation engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, firm, or corporation and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee thereof may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(b) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

(13) Interpreters. Any information that an interpreter gathers pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such person desires that such information be communicated to other persons. *(Rev. 4-15-03)*

1-2-612. Waiver of privilege. (1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of Section 1-2-611.

(2) If the person claiming the privilege testifies, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he does not waive the provisions of Section 1-2-611 unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of his testimony. Except as provided in this subsection, the provisions of Section 1-2-611 may not be waived.

Part 7

Rules of Practice in Actions and Proceedings Before the Tribal Court

Rule 1. Application. Except as otherwise provided herein, the following rules apply in all actions and proceedings before the Tribal Court as follows:

(1) Rules 1 through 19 apply, according to their terms, in all actions and proceedings where any party is represented by an attorney or by a Tribal Court Advocate.

(2) Compliance with Rules 6(1), 7, 11(2), 13(3) and Rules 14 through 19 is not required when all parties represent themselves or are represented by a Tribal member who is not an attorney or a Tribal Court Advocate.

Rule 2. Assignment of Judges.

(1) Assignment of Trial Judge. A judge will be assigned to each docketed case by the Chief Judge of Tribal Court or by the Clerk of Court, if the Chief Judge so directs. A judge may recuse himself or herself for good cause. The Chief Judge may excuse a judge from one or more assignments for reasons of efficient judicial administration. If the Chief Judge determines, on the basis of the pleadings before trial, that the interests of justice would best be served by the appointment of a visiting judge with experience in the legal areas to be litigated, the Chief Judge may substitute such appointment for any assignment already made.

(2) Presiding Judge. Once assigned and unless recused, excused, disqualified, or replaced by a visiting judge, a judge will preside over all proceedings in a case. Pretrial proceedings will be calendered by the Clerk of Court for the presiding judge and the cause will be set for trial as provided by Rule 3.

Rule 3. Trial Scheduling.

(1) Civil Trial Scheduling. The Clerk of Court shall keep a trial calendar upon which all civil causes shall be entered. Within 30 days of the filing of last required responsive pleading, Plaintiff's counsel or the Plaintiff, if unrepresented, shall prepare and serve on opposing counsel and any unrepresented parties and file with the Court a proposed scheduling order. Along with the proposed scheduling order, Plaintiff's counsel or the Plaintiff, if unrepresented, shall certify to the Court that reasonable efforts have been made to consult with all opposing counsel or unrepresented parties concerning the proposed schedule and shall indicate whether or not opposing counsel and/or the unrepresented parties, if any, have agreed to the proposed schedule. Opposing counsel or unrepresented parties shall have 10 days after service of the proposed scheduling order in which to file objections thereto and to submit a counter proposed scheduling order stating the reasons why Plaintiff's proposed schedule is unacceptable. Such objections and counter proposed scheduling order shall be served upon Plaintiff's counsel or the Plaintiff, if unrepresented. Plaintiff's counsel or the Plaintiff, if unrepresented, shall have 10 days after service of the objections and counter proposed schedule in which to respond to the objections and counter proposed scheduling order setting forth the reasons why Defendant's counter proposed schedule is unacceptable. If no objections or counter proposed scheduling order are timely filed, the presiding judge shall enter a scheduling order adopting the Plaintiff's proposed schedule. If objections and a counter proposed scheduling order are timely filed and Plaintiff's counsel or the Plaintiff, if unrepresented, fails to file a timely response thereto, the presiding judge shall enter a scheduling order adopting the counter proposed schedule. If Plaintiff's counsel or the Plaintiff, if unrepresented, files a timely response to the objections and counter proposed scheduling order, the presiding judge may enter a scheduling order on its own or may elect to order a scheduling conference. Any proposed schedule filed pursuant to this Rule shall set forth dates for joinder of necessary parties and amendments to the pleadings, for pretrial conferences, if any, for closing discovery, for exchanging lists of witnesses and exhibits, for filing pretrial motions, and, if the matter is set for a jury trial, for filing jury instructions, or, if the matter is set for a bench trial, filing proposed findings of fact and conclusions of law pursuant to Rule 19 of these Rules of Practice. In addition, the proposed schedule shall indicate the estimated length of the trial and shall include a blank date for commencing the trial to be filled in by the presiding judge. The presiding judge may modify the scheduling order

upon a showing of good cause. In the event that no counsel or unrepresented party files a proposed scheduling order within 60 days of the last required responsive pleading, the presiding judge may issue an order to show cause why the case should not be dismissed without prejudice. A party submitting a proposed scheduling order may do so in a form substantially similar to the following form:

The Honorable _____
Judge of Tribal Court
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo MT 59855

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, PABLO, MONTANA

<p>_____, Plaintiff, -vs- _____, Defendant.</p>	<p>-----</p>	<p>CAUSE NO. _____</p> <p>SCHEDULING ORDER</p>
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CERTIFICATE OF PARTY PROPOSING SCHEDULE

The Undersigned hereby certifies to the Court that he/she is the Plaintiff/Defendant in the above-entitled case or is legal counsel for the Plaintiff/Defendant and that the Undersigned has made reasonable efforts to contact each opposing party or their counsel of record regarding the following proposed schedule. The opposing party or counsel ___ does/ ___ does not agree with the proposed schedule or ___ the opposing party’s position regarding the proposed schedule is unknown because no contact has been made despite reasonable efforts to do so. The undersigned further certifies that a copy of this proposed Scheduling Order has been sent to the opposing party or counsel by U.S. Mail on the date and to the address specified below or has been personally served.

DATED this ____ day of _____, 200__.

Plaintiff/Defendant or Counsel for _____

SCHEDULING ORDER

The Court hereby enters the following Scheduling Order and it is hereby **ORDERED** that the schedule set forth below shall govern these proceedings except upon motion of the parties and for good cause:

_____ All amendments to the pleadings shall be filed and other necessary parties shall be joined.

_____ Discovery shall close.

_____ The parties shall exchange copies of exhibits and lists of witnesses. All pretrial motions other than motions in limine shall be filed and briefing shall take place according to the Rules of Civil Procedure. Any party desiring a hearing upon any motion shall file a written request with the Court requesting such hearing no later than the due date for the reply brief on the motion. Absent such a written request for hearing all motions will be deemed submitted on the briefs.

_____ The Final Pretrial Conference shall be held at _____ o'clock ____m.

The parties shall file a Pre-Trial Order with the Court no later than ten (10) days prior to trial. All motions in limine shall be filed no later than ten (10) days prior to trial. If the case is set for a jury trial, the parties shall file jury instructions and serve the same upon all adverse parties as provided by Tribal Law no later than ten (10) days prior to trial. If the case is set for a Bench trial, the parties shall file proposed Findings of Fact and Conclusions of Law with the Court and serve a copy of the same upon all adverse parties no later than five (5) days prior to trial.

It is estimated that the trial of the case will take _____ days.

_____ The case is set for trial before the Court ____ with/ ____ without a jury. Trial shall commence at nine o'clock (9:00) a.m. unless otherwise ordered by the Court.

ENTERED this _____ day of _____, 200__.

Tribal Court Judge

CERTIFICATE OF SERVICE

I do hereby certify that on the ____ day of _____, 200__ a true and correct copy of the foregoing "SCHEDULING ORDER" was served upon the following persons by depositing the same in the U.S. Mail, postage prepaid and addressed as follows, or by hand delivery:

CLERK OF THE TRIBAL COURT

By _____
Assistant/Deputy Clerk of Tribal Court

(2) Criminal Trial Scheduling. The Clerk of Court shall keep a trial calendar upon which all criminal causes shall be entered. The Tribal Prosecutor and Defense counsel shall jointly prepare and file a proposed pretrial memorandum and order for approval and issuance by the presiding judge. (Rev. 4-15-03)

Rule 4. Court Records.

(1) Definition. Court records consist of all papers and documents filed with the Clerk of Court in connection with any action or proceeding, as well as the minutes and transcripts constituting the record of any trial or hearing. A judge's work papers, including without limitation notes, drafts, and research done at the judge's request, and papers or documents relating solely to Court administration are not Court records within the meaning of this rule.

(2) Public Records. Except as provided in (3) below, Court records are public records and are available for inspection and for copying upon payment of the established copying charge.

(3) Confidential Records. Records and files identified as confidential may not be opened except by order of the Court.

(4) No Withdrawal of Records. No Court records may be withdrawn from the custody of the Clerk of Court.

Rule 5. Computation of Time. Except with regard to criminal sentencing or unless the context plainly requires otherwise, whenever time limitations are expressed in days under Tribal law, the day of service and Saturdays, Sundays, and Tribal legal holidays are excluded from the computation. If a time for answer falls on a Saturday, Sunday, or Tribal legal holiday, the time is extended to the next succeeding Tribal workday. No additional time is allowed for delivery by mail or otherwise except by permission of the presiding judge. (Rev. 4-15-03)

Rule 6. Copies and Filing Fees.

(1) Provision of Copies to Court. Parties shall furnish to the Clerk of Court all necessary copies of any pleadings or other papers constituting or containing a notice to other parties which must, by law or rule, be given by the Court in the context of an action or proceeding.

(2) Payment of Filing Fee. Except as may be otherwise provided, no complaint, petition, motion, application, or other legal paper or document shall be filed by the Clerk of Court without being accompanied by the appropriate filing fee; provided, however, that the Chief Judge or acting Chief Judge of Tribal Court may waive the filing fee upon a well-documented showing of grave need by an applicant. Tribal attorneys and advocates and other attorneys appearing pro bono need not pay filing fees.

(3) Filing Fee Schedule. The current filing fee and copying fee schedule as set by Order of the Chief Judge of Tribal Court is published separately and is available from the Clerk of Court.

Rule 7. Format of Papers Presented for Filing. (1) Nonconforming papers may not be accepted for filing.

(2) "Papers" means all pleadings, motions, briefs, other documents, and copies, except exhibits.

(3) All papers shall be:

(a) typewritten, printed, or the equivalent in a typeface or letter size not smaller than pica;

(b) on standard quality unglazed white paper, 8 & 1/2 X 11 inches in size;

(c) printed on only one side;

(d) with lines unnumbered or numbered consecutively from the top;

(e) double spaced;

(f) with pages numbered consecutively at the bottom and bound firmly at the top.

(4) Matters such as property descriptions or direct quotes may be single spaced.

(5) Extraneous documents in the above format and not readily conformable may be filed in their original form and length.

(6) Additions, deletions, or interlineations shall be initialed by the Clerk of Court or by a judge at the time of filing.

(7) All copies served shall conform to the original as filed.

(8) The first page of all papers shall conform to the following illustration:

Name of counsel
Complete mailing address
Telephone number

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI
TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA

_____ ,)	Cause No. _____
Plaintiff,)	
)	
vs.)	COMPLAINT
)	(or other pleading or motion,
_____ ,)	completely titled)
Defendant.)	

Rule 8. Commencement of Civil Actions. (1) A civil action shall be commenced in Tribal Court by the filing of a statement of claim which shall be in ordinary language and state the grievance for which relief is requested and the nature of the relief requested. A complaint shall be signed by the plaintiff or his or her attorney or Tribal representative.

(2) Upon the filing of a complaint, the Clerk of Court shall issue a summons, to which shall be attached a copy of the complaint, directing the defendant to answer the complaint or otherwise appear and defend. The summons shall notify the defendant that failure to answer or otherwise appear and defend may cause judgment by default to be rendered against the defendant for the relief demanded in the complaint.

Rule 9. Service of Process in Civil Actions. (1) A plaintiff is responsible for service of the complaint and summons upon the named defendant(s). A plaintiff is also responsible for filing a return of service with the Clerk of Court. Whenever possible, the complaint and summons shall be served on the defendant by personal service. Personal service may be made by a law enforcement officer or by any adult who is not a party to the action or counsel.

(2) If, after diligent search and inquiry, the defendant can not be personally served, process may be served by mail. Service by mail shall be by registered or certified mail with return receipt requested. All service by mail shall be confirmed by the Court at the time of trial or at the time of the entering of a default judgment, and shall be supported by affidavit from the plaintiff. The affidavit shall include the original return receipt signed by the defendant, a description of documents served on the defendant, and a statement that a diligent search and inquiry was made in an effort to serve the defendant personally.

(3) If, after diligent search and inquiry, the defendant can not be personally served or served by mail, process may be served by publication in the following actions: dissolution, child custody, child support, change of name, eviction, or civil suit brought by the Tribes or a Tribal organization for the collection of an established debt. In such cases, the plaintiff shall file an affidavit with the Clerk of Court prior to any service by publication. The affidavit shall include a statement that the plaintiff has, after diligent search and inquiry, been unable to effect service of process on the defendant. After receiving such an affidavit, the Clerk of Court shall issue a Summons by Publication authorizing service by publication. The Summons by Publication shall be valid for 40 days from the date of issuance, and thereafter void. The other requirements for service by publication are as follows:

(a) The Summons by Publication shall be published in two consecutive issues of the Tribal newspaper and in at least one other newspaper published within the exterior boundaries of the Flathead Reservation at least once each week for three consecutive weeks. The Summons by Publication shall: contain the name of the Court and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's counsel, if any,

otherwise the plaintiff's address; state that the defendant has 15 days from the last date of publication in which to answer and defend; inform the defendant that failure to answer and defend will result in judgment by default; explain the object of the complaint; and, in an action in which the title to or any interest in or lien upon real property is involved, the publication shall also contain a general or legal description of the property involved.

(b) Service by publication is complete on the date of the last publication of the summons. A copy of each publication of service, certified by the publisher as to date and accuracy of publication, shall be filed by the plaintiff with the Clerk of Court.

(c) At the time of trial or entering of default judgment, the plaintiff shall submit evidence to the Court that the foregoing service by publication procedures were satisfied.

(4) Where service upon a defendant can not be made within the Flathead Reservation, service of process outside the Reservation may be made personally, by mail, or by publication as described in this section with the same force and effect as though service was made within the Reservation. In such cases, the Summons by Publication shall be published in two consecutive issues of the Tribal newspaper and in the newspaper published within the area where the defendant was last known to be found at least once each week for three consecutive weeks. *(Rev. 1-27-00) (Rev. 4-15-03)*

Rule 10. Pleading in Civil Actions. Except as provided in Section 4-2-601 and following, there shall be a complaint and an answer, and other pleadings deemed necessary. A defendant shall file an answer within 15 days of receiving service of the complaint and summons unless the time is extended in the discretion of the Court. Upon filing of an answer, the defendant shall serve a copy of the answer upon the plaintiff by depositing same in the U.S. Mail, postage prepaid, addressed according to the address contained in the complaint. The same timing and procedures shall apply to a plaintiff against whom a counterclaim is asserted and to any party against whom a cross-claim is asserted, with the time calculated from service upon such plaintiff or defendant of the answer asserting the counterclaim or cross-claim. *(Rev. 4-15-03)*

Rule 11. Jurisdictional Allegations and Defenses in Civil Actions.

(1) Complaint.

(a) Subject to the exception in (b) below, a complaint shall contain a statement of jurisdictional facts. Such statement shall set forth, at a minimum, the status of the parties as to Tribal membership or Indian descent if individuals, or Indian ownership if a business, the place of residence or principal place of business of each party, the place where the cause of action accrued, the status and location of any indispensable parties, and other facts tending to show a relationship of the cause of action to the interests of the Tribes or Tribal members. If the plaintiff is not a Tribal member, the complaint shall also contain plaintiff's consent to the personal jurisdiction of the Tribal Court for purposes of any counterclaim or cross-claim that may be asserted in the context of the filed action.

(b) A complaint need not include a statement of jurisdictional facts if all parties are enrolled members of the Confederated Salish and Kootenai Tribes residing within the external boundaries of the Flathead Reservation, or are legal entities organized under Tribal law, and the cause of action arose within the exterior boundaries of the Flathead Reservation.

(2) Answer or Other First Responsive Pleading.

(a) If the defendant wishes to deny jurisdictional facts alleged by the plaintiff or to allege different or additional facts, such allegations shall be made by way of an answer or other first responsive pleading.

(b) A defense of lack of personal jurisdiction must be raised by a defendant in the answer or other first responsive pleading or it is waived.

Rule 12. Defenses and Objections in Civil Actions. The Federal Rules of Civil Procedure shall apply to the defenses and objections allowed and the manner of presenting same to the Court; however, the judges shall not be limited to these defenses and objections if in the judge's discretion it is deemed that the interests of justice would be better served by allowing otherwise.

Rule 13. Ex Parte Matters.

(1) Application for Orders. Extensions of time to further plead, file briefs, continue a hearing on a motion, and other permissible ex parte matters may be granted by order of the Court upon written application, stating the grounds for the extension, proposing an early date certain for filing or the hearing and certifying the notice to opposing parties as provided in (2) below.

(2) Certificate of Notice. Prior to the issuance of an ex parte order, the counsel or unrepresented party seeking such order must file a written certification with the Court declaring that opposing counsel and any unrepresented party has been contacted, or that a diligent effort has been made to contact said counsel or unrepresented party, to give reasonable notice of:

- (a) the time and place of the ex parte conference or meeting, and
- (b) the substance of the order sought.

Such certification shall also include information as to whether opposing counsel or any unrepresented adverse party opposes the motion.

(3) Form of Order. All requests for extension of time or continuance or other ex parte matters shall be accompanied by an appropriate form of order.

(4) Emergency Orders. Nothing in this Rule limits the equitable powers of the Court to issue, upon petition, such emergency orders as may be necessary to preserve the status quo or to maintain law and order in the context of a civil case or controversy until the earliest time that the matter may be heard. No emergency or temporary ex parte order shall relieve the party seeking such order of the burden of proof of allegations made in the application or pleading except in those matters where the burden of proof is expressly transferred by Tribal law or by the general rules of law governing the exercise of a court's equitable or extra ordinary powers.

(5) Counseling. Nothing in this Rule precludes any judge from counseling with any Tribal member with respect to individual problems which are not the subject of a pending action or proceeding in Tribal Court. If an action or proceeding involving the same subject matter and persons as those discussed during counseling is later filed, the judge shall recuse himself or herself from the action or proceeding.

Rule 14. Motions.

(1) Form and Content. Unless otherwise approved by the presiding judge, all motions shall be in writing and shall indicate the precise nature of the relief requested.

(2) Motion to Dismiss a Civil Action for Failure to State a Claim. If not supported by a brief within 5 days of filing, a motion to dismiss a civil action for failure to state a claim upon which relief may be granted shall be summarily denied and an additional 15 days granted in which to further plead.

(3) Briefs. Upon filing a motion or within 5 days thereafter, the moving party shall file a supporting brief indicating, at a minimum, the precise legal points, statutes, and other authorities relied upon, and citing the specifically relevant portions or pages of the statute or other authority. The brief may be accompanied by supporting affidavits or other documents. Within 10 days after the filing of a brief by a moving party, an adverse party shall file an answering brief, which may also be accompanied by appropriate supporting affidavits or other documents. Within 5 days thereafter, the moving party may file a reply brief which shall be directed only to issues

raised in the answering brief. All motions and briefs shall be served upon all parties to the action at the time of filing. For the presiding judge's reference, complete copies of key authority asserted to be dispositive upon an issue shall be attached to all briefs filed with the court.

(4) **Effect of Failure to File Briefs.** Failure to file a brief may subject the motion to summary ruling. Failure to file a brief within 5 days of the filing of a motion shall be deemed an admission that the motion is without merit. Failure to file an answering brief by the adverse party within 10 days shall be deemed an admission that the motion is well taken. Reply briefs by the moving party are optional. In cases where no reply brief is filed, the moving party shall notify the Clerk of Court that the matter is submitted and ready for decision or for argument.

(5) **Oral Argument.**

(a) The presiding judge may order oral argument or a hearing on a motion upon a request by a party or on the Court's own motion. The judge may limit the amount of time permitted for oral argument.

(b) All motions shall be deemed submitted on briefs unless, within 10 days from the filing of the last responsive brief, the motion is noticed for hearing. At least 5 days' notice shall be given for any hearing on a motion.

(6) **Motions to Alter or Amend, for New Trial, or for Relief From Judgment or Order.** A motion to alter or amend a judgment or order, a motion for a new trial, or a motion for relief from a judgment or order shall be deemed denied if the Court fails to rule upon the motion within 40 days from the date the motion is filed. *(Rev. 4-15-03)*

Rule 15. Pretrial Conference and Pretrial Memorandum And Order. Unless otherwise ordered by the presiding judge, a pretrial conference shall be held in all contested cases. Plaintiff's counsel shall convene a conference of all counsel, not later than 5 days prior to the pretrial conference deadline, for the purpose of preparing a pretrial memorandum and order. If counsel can agree upon and file a pretrial memorandum and order before the deadline for the pretrial conference, the scheduled pretrial conference will be vacated. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pretrial conference.

Rule 16. Discovery in Civil Actions. (1) Unless otherwise limited by order of the Court, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.

(2) Parties may obtain discovery according to the applicable Federal Rules of Civil Procedure, except Rule 26(a)(1)-(4), or in whatever manner and scope the presiding judge deems most appropriate.

(3) Depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, and answers and responses thereto will not be routinely filed. If a party or any interested person submits an ex parte request that any of the named documents be filed, the Court may order filing of the documents. When any motion is filed making reference to discovery, the moving party shall submit all relevant unfiled documents with the motion.

Rule 17. Change of Counsel (1) Counsel representing a party in any action or proceeding may be changed at any time upon:

(a) the written consent of both the party and counsel filed with the Clerk of Court and entered in the minutes, or

(b) an order of the Court which may be granted upon written application by either the party or counsel if the applicant has given notice of the application.

(2) Timely written notice of a change of counsel shall be given to the adverse party.

Rule 18. Jury Instructions and Verdict Forms.

(1) Submission. All proposed jury instructions and verdict forms shall be filed and a copy served upon opposing parties at the time set forth in the pretrial order. Thereafter, additional instructions may be allowed to prevent manifest injustice.

(2) Citation of Authorities. Each proposed jury instruction shall be submitted in two forms. One form of each proposed jury instruction shall contain citation of authority supporting the statement of law therein and the other form of each shall be presented without any citation.

(3) Form. All proposed jury instructions and verdict forms shall be on 8 & ½ X 11 inch paper and shall indicate the party on whose behalf it is requested. Each instruction shall be numbered consecutively. Only the jury instructions containing citation of authority may be firmly bound.

(4) Request for Special Findings by Jury. Whenever a party requests special findings by a jury, counsel shall file the requested findings in proper form for submission to the jury and serve a copy upon opposing parties.

Rule 19. Findings of Fact and Conclusions of Law. In civil cases where the Court is the trier of fact, counsel for the parties and any unrepresented party shall submit proposed findings of fact and conclusions of law no later than 5 days prior to trial and shall serve a copy of the same upon all counsel of record and any unrepresented party. *(Rev. 4-15-03)*

Rule 20. Orders, Judgments or Decrees.

(1) Presentation of Order, Judgment or Decree. It is the duty of any counsel or unrepresented party seeking an order, judgment, or decree to file a proposed form of the order, judgment, or decree at the time of applying for same. A proposed judgment or decree may be combined with proposed findings of fact and conclusions of law in cases where the Court shall sit as the trier of fact.

(2) Filing. Whenever an order, judgment, or decree is signed by the presiding judge, it shall be delivered to the Clerk of Court and immediately issued and filed in the records of the Court.

(3) Cancellation and Filing of Instrument. In all cases in which a judgment is entered upon a written instrument, such as, without limitation, a promissory note or a contract, the instrument must be presented to the Clerk of Court at the time judgment is granted. The Clerk shall note in ink across the face of the instrument the fact of the entry of judgment and its date. The Clerk shall sign the entry and cancel and file the instrument. The instrument shall not be removed from Court records except by order of the Court in writing setting forth the facts of such removal. *(Rev. 4-15-03)*

Rule 21. Exceptions Unnecessary. Formal exceptions to rulings or orders of the Tribal Court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor. If a party has no opportunity to object to a ruling or order at the time it is made and can satisfy the Court of Appeals as to this fact, the absence of an objection does not thereafter prejudice the party. *(Rev. 4-15-03)*

Part 8

Court of Appeals

1-2-801. Establishment and Composition. (1) There is established a Court of Appeals to hear and decide appeals on the law taken from judgments, orders, or rulings of the Tribal Court or original proceedings as provided in Section 1-2-815 of this Code. The Court of Appeals is comprised of a Chief Justice and four Associate Justices

(2) Unless a request for a rehearing en banc is made and granted as provided in Rule 21 of the Rules of Appellate Procedure, an appeal or an original proceeding in the Court of Appeals will be heard and decided by a panel of three Justices, two of whom will be attorneys. The panel members will be chosen by rotation, unless another method of selection is prescribed by Court rule. A vacancy on a panel will be filled by appointment by the Chief Justice from among the remaining Justices or if, for reason of recusement, disqualification, or other unavoidable absence, no Justice is available, by appointment of a visiting judge or judges with qualifications corresponding to those of the absent member(s) of the panel.

1-2-802. Administration. (1) The Chief Justice is responsible for the administrative and fiscal management of the Court of Appeals and for the presentation of its annual budget proposal to the Tribal Council. In connection with such management, the Chief Justice may, on behalf of the Court of Appeals, apply for grants and contracts to provide supplementary funding. If such applications require Tribal matching funds for their implementation, prior approval of the Tribal Council is required.

(2) There is an office of Appellate Administration, comprised of an Appellate Administrator and such other personnel as may, from time to time, be approved by the Tribal Council in connection with its approval of the Court's budget. The Appellate Administrator is appointed by the Tribal Council, which shall determine whether the position is full-time or part time on the basis of the workload of the Court and which shall establish the Administrator's compensation. If the workload is insufficient to occupy the Administrator's full time, the Council may combine the Office with another Tribal administrative function and the Administrator may perform such other function in addition to the duties prescribed herein or assigned by the Chief Justice. The Administrator is subject to the direction and supervision of the Chief Justice in the performance of duties herein assigned and such other responsibilities as may be delegated or assigned to the Administrator by the Chief Justice.

(3) Permanent records of proceedings and decisions of the Court of Appeals will be maintained by the Appellate Administrator. Records of proceedings and decisions of the Court of Appeals will be compiled chronologically, indexed by subject matter, docket number, and caption, and made available to the public by the Appellate Administrator. The Chief Justice may order the periodic publication of the decisions of the Court of Appeals and provide for the distribution of the same to law libraries, other appropriate repositories, and subscribers.

1-2-803. Time and format of decision. A decision, order, or judgment of the Court of Appeals shall be rendered in writing by a majority of the Justices hearing the appeal or special proceeding and filed with the Appellate Administrator within 60 days of the date of oral argument or of stipulation by the parties that the matter will be decided on briefs, without oral argument. A Justice who concurs in the result of the majority decision, but not in its reasoning, may file a concurring opinion simultaneously with the majority opinion. A Justice who dissents from the result of the decision may file a simultaneous dissenting opinion. Copies of a ruling and opinion by the Court of Appeals shall be delivered to the parties by the Appellate Administrator within one working day of its filing. Delivery may be made personally or by depositing a copy in the U.S. Mail, first class postage prepaid.

1-2-804. Basis of decision. Every decision shall be based on the record established in the court below and on the law.

1-2-805. Effect of decision. A decision by a simple majority of a panel of the Court of Appeals (or of the full Court upon rehearing en banc) is final and binding upon the parties as to all issues and claims that were raised or might have been raised at trial or upon appeal.

1-2-806. Times of convening. The Court of Appeals will convene in regular session to hear and decide appeals for four weeks a year, which shall be the second week of February, April, June, and October. As necessary, the Chief Justice may call a special session of the Court of Appeals, schedule and assign opinion preparation, and adjourn a regular or special session when the business of the Court is concluded.

1-2-807. Rules of Court. To supplement the Rules of Appellate Procedure at Title I, Chapter 2, Part 9, the Court of Appeals, with the approval of the Tribal Council, may adopt such rules of practice, procedure, and administration as may improve or facilitate Court operations.

1-2-808. Appointment of Justices. One Chief Justice and four Associate Justices of the Court of Appeals shall be appointed by the Tribal Council.

1-2-809. Term and oath of office. The Chief Justice shall be appointed for a four year term, and each Associate Justice shall be appointed for a three year term. Prior to assuming his or her duties, each Justice shall, at the next regular Tribal Council meeting after appointment, take the oath of office prescribed by Article I, Section 6 of the Bylaws of the Confederated Salish and Kootenai Tribes.

1-2-810. Qualifications. (1) Three Justices, including the Chief Justice, shall be attorneys at law, qualified to practice before the Tribal Court, with not less than 5 years' experience in the practice of law or on the bench, or a combination or the equivalent thereof. Indian preference will be applied in the selection of these Justices.

(2) Two Justices shall be enrolled Tribal members who have relevant education or experience in law or a law-related field, and who are familiar with Tribal law, customs and tradition and with legal research and writing.

(3) A Justice may not simultaneously serve in another position within the Tribal justice system. Otherwise, a person is not disqualified from appointment to the Court of Appeals for the reason that he or she is otherwise employed, provided that the nature of the employment does not interfere with judicial duties and is neither inherently prejudicial to the exercise of the appellate function nor likely to give rise to an appearance of impropriety.

1-2-811. Vacancies and removal. (1) In the event that a Justice, by reason of resignation or otherwise, fails or is unable to complete an appointed term, the Tribal Council shall fill the vacancy by appointment for the balance of the unexpired term. If necessary, pending such appointment, the Chief Justice may designate a substitute judge as provided in Section 1-2-813. Pending Council appointment, a vacancy in the office of Chief Justice will be filled by an Acting Chief Justice selected from among the Associate Justices by their majority vote.

(2) A Justice may be removed from office during his or her appointed term, after adequate notice to the Justice and an opportunity to be heard, by an affirmative vote of seven members of the Tribal Council, for reasons of misconduct in office, persistent neglect of judicial duties, mental or physical incapacity, or conviction by a court of competent jurisdiction of a felony or misdemeanor, excluding minor traffic offenses.

1-2-812. Additional powers and duties of Justices. (1) In addition to the powers and duties expressed in or necessarily implied from this Part and the Rules of Appellate Procedure,

(a) each Justice has the emergency powers, pending review by the full Court of Appeals,

(i) upon the Justice's own motion or that of a party, to issue a citation for criminal or civil contempt of court or other sanction as may be appropriate in the circumstances to a person appearing before the Court whose conduct is disruptive, contemptuous, or otherwise sanctionable, or to a person disobeying an order of the Court,

(ii) to order the Tribal police to provide for and to maintain the order and security of the courtroom,

(iii) to stay execution of a trial court sentence, judgment, or imposition of sanctions pending appeal, and

(iv) to issue a writ of habeas corpus.

(b) Each Justice has the duty

(i) if a lay Justice, to participate in inservice instruction, training, or consultation with other Justices of the Court and with organizations offering short courses in appellate work. Topics of such in-service education shall include, but are not limited to, such matters as appellate court jurisdiction and procedures, procedures for original or special proceedings in the Court of Appeals, limitations on the appealability of issues of law and fact, remedies, and options for disposition of matters heard,

(ii) if an attorney Justice, to assist with the in-service training of lay Justices,

(iii) to attend bench conferences dealing with the cases to which the Justice is assigned and to prepare or to oversee the preparation of bench memoranda as assigned, and

(iv) to protect and preserve the high standards of the Tribal judiciary, and to abide by the Model Canons of Judicial Ethics of the American Bar Association.

(2) A bench memorandum of law shall be prepared, prior to a bench conference, for each appeal taken. Such memorandum shall be produced in a timely fashion by a Justice who is an attorney and a member of the panel assigned to the case. If sufficient funds are available, the responsible Justice may delegate the preparation of a memorandum of law to an individual or firm qualified to provide legal research assistance.

1-2-813. Disqualification, recusement, and unavoidable absence. (1) (a) Within 10 days of the time a party to a proceeding is notified by the Appellate Administrator of the membership of the panel that is assigned to determine the matter, the party may move the Court of Appeals for the disqualification of a Justice so assigned. One such motion shall be granted as a matter of right for each party to the proceeding.

(b) A party may move at any time that one or more Justices be disqualified from a panel for bias or other good cause shown. Such motion shall be supported by an affidavit and, if opposed by a party or a Justice, shall be heard by a panel of Justices other than those sought to be disqualified.

(c) A Justice shall disclose on the record information that the Justice believes the parties or their lawyers might consider relevant to the question of disqualification, even if the Justice believes there is no real basis for disqualification.

(d) A Justice shall disqualify himself or herself in a proceeding in which the Justice's impartiality might reasonably be questioned, including, but not limited to instances where

(i) the Justice has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the Justice individually or as a fiduciary, or the Justice's spouse, parent or child wherever residing, or any other member of the Justice's family residing in the Justice's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other than a de minimis interest that could be substantially affected by the proceeding;

(iii) the Justice or the Justice's spouse, or a person related to the Justice in the first or second degree of consanguinity or affinity

(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 Justice to have a more than de minimis interest that could be substantially affected by the proceeding;

(D) has been, or to the Justice's knowledge is likely to be, a material witness in the proceeding.

(E) A Justice disqualified by the terms of subsection (d) above may disclose on the record the basis of the disqualification and may ask the parties and their lawyers to consider, out of the presence of the Justice, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the Justice, all agree that the Justice should not be disqualified, and the Justice is willing to participate, the Justice may participate in the proceedings. The agreement shall be incorporated in the record of the proceeding.

(2) (a) Upon the disqualification, recusal, or unavoidable absence of a Justice other than the Chief Justice, the Chief Justice shall fill the vacancy

(i) by appointment of a Justice with qualifications corresponding to those of the absent Justice, or

(ii) if no Justice is available, by appointment of a substitute judge with corresponding qualifications.

(b) A substitute judge may be a trial judge of the Tribal Court who had no contact with the case below, or a visiting judge.

(c) In the event that the Chief Justice is disqualified, unavoidably absent, or has recused himself or herself from a proceeding, a substitute Justice or judge, as conditioned in subsection (2)(a)(i) and (ii), shall be appointed by a majority vote of the Associate Justices to serve as Acting Chief Justice for purposes of the proceeding and any associated administration or management of the Court of Appeals.

1-2-814. Compensation. (1) The base retainer salary to be paid to each Justice of the Court of Appeals shall not be less than \$10,000 per year for the Chief Justice or \$5,000 per year for each Associate Justice. This sum may be increased from time to time by the Tribal Council upon the recommendation of the Chief Justice in connection with the Council's approval of an annual budget for the Court of Appeals. The base retainer salary will compensate Justices for services associated with regular sessions of the Court of Appeals, and the Chief Justice for administrative oversight of Court operations.

(2) A Justice may be additionally compensated for work, such as research and writing, associated with special sessions of the Court or generated by complex cases in regular sessions and assigned by the Chief Justice, at an hourly rate, to be established annually in connection with the Court budget. Eight hours of each day spent in travel or training time or in attendance at national or regional judges' conferences will be compensated at half the hourly rate established by the Council for extra hours of work.

(3) Justices may be reimbursed for off-Reservation travel or training necessitated by their judicial duties and approved by the Chief Justice at the regular Tribal mileage and per diem rates.

(4) A visiting judge, designated by the Chief Justice, or selected as provided in Section 1-2-813, to hear a case or cases in the absence of a Justice or a vacancy on the bench, may be compensated and reimbursed as provided in subsections (2) and (3) above.

(5) One-fourth of the base retainer salary for each Justice will be paid quarterly (in April, June, September, and December). Any additional compensation and reimbursement for expenses incurred for travel or training will be paid to a Justice or a visiting judge within 30 days of submission to the Appellate Administrator of a billing statement and receipts for expenses paid.

1-2-815. Original jurisdiction. (1) The Court of Appeals is an appellate court, but it is empowered to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its

jurisdiction. The institution of such original proceedings in the Court of Appeals is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the Tribal Court and due appeal to the Court of Appeals an inadequate remedy, or when supervision of the trial court other than by appeal is deemed necessary or proper.

(2) The Court of Appeals shall have original and exclusive jurisdiction over all matters involving extraordinary writs of habeas corpus, mandamus, and prohibition.

1-2-816. Scope of appeal in criminal cases. (1) Except as otherwise specifically authorized, the Tribal prosecutor may not appeal a criminal case. The Tribal prosecutor may appeal from any Tribal Court order or judgment which results in

- (a) the dismissal of a case,
- (b) any modification of a jury verdict,
- (c) granting a new trial,
- (d) quashing an arrest or search warrant,
- (e) the suppression of evidence,
- (f) the suppression of a confession or admission, or
- (g) imposing a sentence that is contrary to law.

(2) The defendant may take an appeal only from a final judgment of conviction and order after judgment which affects the substantial rights of the defendant.

(3) On appeal from a judgment, the Court of Appeals may review the verdict or decision and any alleged error objected to which involves the merits or necessarily affects the judgment.

1-2-817. Scope of jurisdiction in civil cases. The Court of Appeals has exclusive jurisdiction over appeals by an aggrieved party from a judgment or order in the following cases:

- (1) From a final judgment entered in an action or special proceeding commenced in the Tribal Court or brought into the Tribal Court from another court or administrative body;
- (2) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders in actions involving the custody, guardianship, or conservatorship of minors or incompetent persons as may determine permanently, and not on an emergency or temporary basis pending further proceedings, the rights, interests and responsibilities of the respective parties and direct the disposition of the person or property of the minor or incompetent person in accordance with the determination;
- (3) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance to a spouse or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor or administrator or guardian; or refusing, allowing, or directing the distribution of any estate, or the payment of a debt, claim, legacy, or distributive share.

1–2–818. Commencement and conduct of original proceedings. Proceedings to obtain a writ of habeas corpus, mandate, or prohibition or other remedial writs or orders shall be commenced originally in the Court of Appeals and conducted as provided in this Part. All papers filed shall conform to the requirements of Rule 12 of the Rules of Appellate Procedure.

(1) **Notice to trial judge.** If an application for a writ or an order is directed against a ruling of a trial judge, the application and all further documents relating to the ruling must be served upon the judge. Such application shall, in its title, contain the name of the judge who issued the ruling.

(2) **Filing of applications.** An original application may be made to the Court of Appeals at any time. The moving party's application and all supporting documents shall be filed with the Appellate Administrator.

(3) **Contents of application.** The application for the issuance of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated to be raised in the proceeding and also the fact which renders it necessary and proper that the writ should issue originally from the Court of Appeals. Each application shall also set forth as exhibits a copy of each judgment, order, notice, pleading, document, proceeding, or court minute referred to in the application, or which is necessary to make out a prima facie case or to substantiate the application or conclusion or legal effect. A memorandum of authorities must be filed with the application. Counsel shall file with the Appellate Administrator the original court file, unless for some reason the same is not available.

(4) **Court consideration.** (a) A panel of three Justices, as provided in Section 1–2–801(2) of this Code, shall consider whether to accept jurisdiction of an extraordinary writ at a bench conference, which may be held by telephone, within 5 days of the receipt of the application.

(b) As promptly as possible thereafter, the panel shall, on the basis of the application, dismiss the application for want of jurisdiction, accept jurisdiction, or order a response reserving the question of jurisdiction.

(c) Only in extraordinary cases will the Court grant oral argument to determine the necessity and propriety of accepting jurisdiction.

(d) Unless oral argument is ordered by the Court in order to establish jurisdiction, the court will enter an appropriate order forthwith. Such order may dismiss the application, grant the relief requested, order a hearing on the application, or issue any other writ or order deemed appropriate in the circumstances.

(5) **Adversary hearing.** When ordered by the Court, an adversary hearing on the application shall be held at the time fixed by the order. The oral argument shall be conducted in the same manner as in the argument of appeals, with the same time limits for presentation, and with the applicant opening and closing the argument. Each party shall serve and file briefs in full conformance with Rules of Appellate Procedure 12 and 15 and according to the time schedule set forth in the order, in no event later than 24 hours prior to the time fixed for oral argument.

1–2–819 Writs of mandamus and prohibition.

(1) **Definitions.**

(a) **Mandamus.** A writ of mandamus or mandate may be issued to any lower tribunal, corporation, board, or person to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right to which the party is entitled and from which the party is unlawfully precluded by the lower tribunal, corporation, board, or person.

(b) **Prohibition.** The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, board, corporation, or person.

(2) Application of rules of procedure. Except as otherwise provided in this Ordinance or inconsistent herewith, the federal rules of evidence and civil procedure relative to new trials and the Rules of Appellate Procedure herein apply to the proceedings mentioned in this Part.

(3) Procedure for obtaining, serving, and enforcing writ.

(a) A writ of mandamus or of prohibition must be issued upon affidavit, on the application of the party beneficially interested.

(b) A writ of prohibition may be issued by the Court of Appeals to any lower tribunal or to a corporation, board, or person in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law.

(c) The writ may be either alternative or peremptory. The alternative writ must be first issued if no 10-day (or shorter, if the Court so allows) notice of the application is given by the applicant to the adverse party. If the application is upon due notice, a peremptory writ may be issued in the first instance.

(d) An alternative writ of mandamus or prohibition must state generally the allegation against the party to whom it is directed and,

(i) if mandamus, command such party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court at a specified time and place, why he or she has not done so, or

(ii) if prohibition, command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the Court of Appeals and to show cause before such Court, at a specified time and place, why such party should not be absolutely restrained from further proceedings in such action or matter.

(e) A peremptory writ must be in similar form to an alternative writ, except that the words requiring the party to show cause why he should not be absolutely commanded to do the act or to be restrained, etc., must be omitted and a return day inserted.

(f) The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court of Appeals.

(g) When a peremptory mandate or prohibition has been issued and directed to any lower tribunal, corporation, board, or person upon whom and writ has been personally served has, without just excuse refused or neglect to obey the writ, the Court may, upon motion, impose a fine not exceeding \$10,000. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.

1-2-820. Procedure upon return of writ of mandate or prohibition.

(1) Time for return and hearing. Writs of mandate or of prohibition issued by the Court of Appeals may, in the discretion of the Court, be made returnable and hearing thereon may be heard at any time.

(2) Answer of adverse party. On the return of the alternative or on the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

(3) When jury trial may be had. (a) If an answer is made which raises a question of fact essential to the determination of the matter and affecting the substantial rights of the parties or the supposed truth of the allegation upon which the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly

stated in the order for trial. The order may also direct the jury to assess any damages which the applicant may have sustained if it finds for him or her. At trial, the applicant is not precluded by the answer from any valid objection to its sufficiency and may contradict it by proof, either in direct denial or by way of avoidance.

(b) If a jury is required, the jury is to be selected by the Appellate Administrator in the same manner in which a jury is selected in the Tribal Court. The conduct of the trial must be the same as in Tribal Court, and the Appellate Administrator has the same authority to issue process and enter orders and judgments as the Clerk of the Tribal Court.

(c) If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements not affecting the substantial right of the parties, the Court must proceed to hear or fix a day for hearing the argument of the case.

1-2-821. Judgment on writs of prohibition and mandate.

(1) Default not permitted. Neither a writ of prohibition nor a writ of mandate may be granted by default. The case must be heard by a panel of the Court of Appeals whether the adverse party appears or not.

(2) Judgment for applicant. If judgment is given for the applicant:

(a) the applicant may recover the damages which he or she has sustained, as found by the Court or by the jury, together with costs;

(b) an execution may issue for such damages and costs; and

(c) a peremptory mandate must be awarded without delay.

1-2-822. Writ of Habeas Corpus.

(1) Availability of writ. (a) Except as provided in subsection (1)(b), every person within the jurisdiction of the Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(b) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(c) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(2) Issuance of writ.

(a) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or be some person on the petitioner's behalf. It must specify:

(i) that the petitioner is unlawfully imprisoned or restrained of liberty;

(ii) why the imprisonment or restraint is unlawful; and

(iii) where or by whom the petitioner is confined or restrained.

(b) All parties must be named if they are known or otherwise described so that they may be identified.

(c) The petition must be verified by the oath or affirmation of the party making the application.

(3) Granting of the writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(4) Time of issuance and requirements for service. (a) A writ of habeas corpus or any associated process may be issued and served on any day, at any time.

(b) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal prosecutor.

(c) The writ must be served by a Tribal policeman, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice or the Court.

(5) Return of the writ, hearing, appeal. (a) Return. (i) The person upon whom the writ is served shall make a return and state in that return:

(A) whether the petitioner is in that person's custody or under that person's power of restraint; and

(B) if the petitioner is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(c) if the petitioner has been transferred to the custody of or otherwise restrained by another, to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

(ii) The return must be signed and verified by oath unless the person making the return is a sworn Tribal officer making a return in an official capacity.

(b) Appearance and hearing.

(i) The person commanded by the writ shall bring the petitioner before the Court as commanded by the writ unless the petitioner cannot be brought before the court without danger to the petitioner's health. Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner. If the Court is satisfied with the truth of the affidavit, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present.

(ii) Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(c) Refusal to obey the writ is contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(d) Disposition of petitioner. If the Court finds in favor of the petitioner; an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

Part 9

Rules of Appellate Procedure

Rule 1. Notice of Appeal. (1) An appeal shall be taken by filing a notice of appeal with the Appellate Administrator, with a copy to the Clerk of the Tribal Court within 20 days of the date of the final judgment or order of the trial court. Failure of an appellant to timely file a notice of appeal is ground for dismissal of the appeal.

(2) Appeals may be consolidated by order of the Court of Appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(3) The notice of appeal shall specify the party or parties taking the appeal, and shall designate the judgment, order, or part of either appealed from.

(4) The Appellate Administrator shall serve notice of the filing of a notice of appeal by mailing a copy thereof, together with a copy of the Rules of Appellate Procedure to counsel of record for each party other than the appellant, or, if a party is not represented by counsel to the party at his last known address. The Administrator shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, such counsel shall provide the Administrator with sufficient copies of the notice of appeal to permit the Administrator to comply with the requirements of this rule. Failure of the Administrator to serve notice shall not affect the validity of the appeal. The Administrator shall note in the appellate docket the names of the parties to whom copies have been mailed, with the date of mailing.

Rule 2. Stay of Judgment or Order Pending Appeal. (1) When a criminal defendant files a notice of appeal, any order or judgment resulting in:

(a) imprisonment;

(b) payment of a fine or restitution; or

(c) probation shall be stayed by the trial court pending the posting of reasonable bond as ordered by the Court of Appeals.

(2) The filing of a notice of appeal by the Tribal prosecutor in a criminal case does not stay any order or judgment of the trial court pending decision of the Court of Appeals.

(3) In a civil matter, upon the filing of a notice of appeal, a party may apply to the Chief Justice ex parte for a stay of execution of the judgment or order. The Chief Justice may grant said stay for such period of time and under such conditions as the Chief Justice deems proper, including restraining a party from disposing of, encumbering, or concealing property. The Chief Justice may also order the applicant to provide to the court a surety bond, conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if the appeal is dismissed or if the judgment is affirmed.

Rule 3. Record on Appeal. (1) The original papers and exhibits filed in the Tribal Court, any transcript of the proceedings, and a certified copy of the minute entries prepared by the Clerk of Court shall constitute the record on appeal in all cases.

(2) Within 5 days after filing the notice of appeal, the appellant shall order from the court reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary for inclusion in the record. The transcript shall be filed and certified with the Clerk of the Tribal Court as part of the record on appeal within 20 days of the filing of the notice of appeal. In all cases where the appellant intends to urge insufficiency of evidence to support the order or judgment appealed from, it shall be the duty of the appellant to order the entire transcript of the evidence and proceedings. Whenever the appellant appeals a specific finding of fact by the trial court on the

ground of insufficiency of evidence, the appellant shall be under a duty to include in the transcript all evidence relevant to such finding. Unless the entire transcript is to be provided, the appellant shall, within the 5-day period, file and serve on the respondent a description of the parts of the transcript which he or she intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall, within 5 days after such filing and service, order such parts from the reporter or procure an order from the Chief Justice requiring the appellant to do so. The cost of producing the transcript shall be borne by the appellant unless the chief Justice waives the transcript cost by granting leave to proceed in forma pauperis or for other good cause shown. In the event of such a waiver, the Tribal Court shall provide the transcript. Costs of a transcript are among the costs of appeal that may be awarded by the Court of Appeals to a prevailing party as provided in Rule 21, and if a prevailing appellant's costs have been waived by the Chief Justice, the award will be applied to the transcript costs borne by the Tribal Court.

(3) If no record of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days of the hearing or trial or such time extended as the Chief Justice may allow, prepare a statement of the evidence or proceedings from the best available means, including his or her recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the trial judge, and as settled and approved shall be included by the Clerk of the Court in the record on appeal.

Rule 4. Transmission of the Record on Appeal. (1) The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the Appellate Administrator within 30 days after the filing of the notice of appeal unless the time is extended to a date certain for good cause shown by the Chief Justice upon application of a party.

(2) When the record is complete for purposes of the appeal, the Clerk of Court shall transmit a certified copy to the Appellate Administrator. The Appellate Administrator shall immediately transmit a complete copy of the record to each Justice who will hear the appeal and to any visiting or substitute judge. Documents in bulky containers and physical exhibits will not be transmitted, although a party may move the Chief Justice to make such materials available to the Court at the time when the appeal is first considered at a bench conference by the panel of Justices who will hear the appeal.

Rule 5. Docketing the Appeal and Filing the Record. (1) At the time of filing the notice of appeal, the appellant shall pay to the Clerk of the Tribal Court a fee of \$25 for filing and transmitting the record on appeal, unless the fee is waived by the Chief Justice upon the granting of leave to proceed in forma pauperis or for other good cause shown. Failure to pay the filing fee, unless waived, is ground for dismissal of the appeal.

(2) On the date on which the record on appeal is transmitted to the Court of Appeals, the Appellate Administrator will docket the appeal and file the record in a repository. An appeal shall be docketed and filed under the title given to the action in the trial court with such addition as necessary to indicate the identity of the appellant. The Appellate Administrator shall immediately give notice to all parties of the date on which the record was filed and the appeal docketed.

Rule 6. Effect of Dismissal. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly made without prejudice to another appeal.

Rule 7. Harmless Error. No judgment or order shall be reversed upon appeal by reason of any error committed by the trial court affecting the interests of the appellant where the record shows that the same result would have been attained had the trial court not committed an error or errors.

Rule 8. Ruling against Respondent May Be Reviewed. Whenever the record on appeal in a civil case shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting the respondent's substantial rights on the appeal of said cause, the Court of Appeals shall consider such orders, rulings, or

proceedings, and shall reverse or affirm the cause on appeal according to the substantial rights of the respective parties, as shown upon the record.

Rule 9. Remedial Powers of the Court of Appeals in Civil Cases. In a civil case, where the proceedings were not stayed, and when the judgment or order is reversed or modified, the Court of Appeals may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment.

Rule 10. Certification of Judgment to Clerk of the Tribal Court. When judgment is rendered upon the appeal, it must be certified by the Appellate Administrator to the Clerk of the Tribal Court. The Clerk of Court shall enter the certificate into the records of the Tribal Court. Also, in cases of appeal from a judgment, the Clerk must enter a minute of the judgment of the Court of Appeals on the docket against the original entry; and in cases of appeal from an order, the Clerk must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the Court of Appeals on appeal.

Rule 11. Appeals in Forma Pauperis. An indigent party who desires to proceed on appeal in forma pauperis shall file with the Appellate Administrator a motion for leave so to proceed together with an affidavit showing the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted the Chief Justice may waive the payment of fees or costs or the giving of security therefor.

Rule 12. Filing and Service. (1) Papers required or permitted to be filed with the Court of Appeals must be placed in the custody of the Appellate Administrator within the time fixed for filing. The Administrator shall note upon each such paper or document the time of filing and transmit the same to the Justices and any substitute judge designated to hear the matter.

(2) Copies of all papers filed by any party shall, at or before the time of filing, be served by the party or a person acting for him or her on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. Papers presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

(3) Except as otherwise provided in these rules, a signed original and three copies of all papers shall be filed with the Appellate Administrator.

Rule 13. Motions. Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The Court of Appeals may authorize disposition of motions by a single Justice. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the Court may direct.

Rule 14. Computation and Extension of Time. In computing any period of time prescribed by these rules,

(1) Saturdays, Sundays, and Tribal legal holidays are excluded from the computation, and

(2) the day from which the designated period of time begins to run shall not be included, but the last day of the period is included.

For good cause shown, the Chief Justice may order an extension of the time prescribed by these rules. All motions or orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

Rule 15. Briefs. (1) An appellant's brief shall be filed and served within 20 days of the date the record is filed and transmitted. The brief will contain under appropriate headings in the order indicated:

- (a) A table of contents and a table of laws, decisions, and other authorities cited, with references to the pages of the brief where they are cited;
- (b) A statement of the legal issues presented for review;
- (c) A statement of the nature of the case and of the judgment or order appealed from;
- (d) A legal argument, which shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, together with citations to the authorities and pages of the record relied on;
- (e) A short conclusion, stating the precise relief sought; and
- (f) A copy of the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any.

(2) Respondent's brief shall be filed and served within 20 days after service of the appellant's brief and shall conform to the requirements of subsection (1)(a) through (d) of this rule. A statement of the issues or of the case need not be made if the respondent is satisfied with the statements of the appellant.

(3) Within 14 days of service of the Respondent's brief, the appellant may file a reply brief. Any reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of the Chief Justice.

(4) Except by permission of the Chief Justice, briefs shall not exceed 50 pages, double spaced, on 8 ½ x 11 inch paper, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, etc.

(5) A signed original and three copies (except as otherwise provided in these rules) of each brief shall be filed with the Appellate Administrator. The brief will contain a certification of service to each party separately represented, and will not be accepted for filing absent such certification.

(6) If an appellant fails to file a brief within the time provided by this rule, or within the time extended, the respondent may move for dismissal of the appeal. If a respondent fails to file a brief, he or she will not be heard at oral argument except by permission of the court.

Rule 16. Oral Arguments. (1) Except in the case of an extraordinary writ or other special or emergency proceeding when the Chief Justice may schedule a special session of the Court, the Chief Justice will set the time and place at which oral argument will be heard during the next regular convening of the appellate bench after the time for filing and service of appellant's reply brief has expired. The Appellate Administrator shall advise all parties of the time and place of hearing. Any request for postponement of the hearing must be made by motion to the chief Justice no later than 10 days prior to the time scheduled for hearing and may be granted for good cause shown.

(2) At oral argument, 45 minutes will be allowed appellant and 35 minutes to respondent. Arguments of multiple parties or amici curiae for appellant or respondent shall be allocated by the parties to conform to these limits. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(3) The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument.

(4) If counsel for a party fails to appear, the court may hear arguments on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appears for any party, the case will be decided on the briefs.

(5) By agreement of the parties, a case may be submitted for decision on the briefs.

Rule 17. Return and Remand. (1) A judgment on appeal shall be entered in full by the Appellate Administrator in the appellate records and transmitted to the Clerk of Court for entry in the records of the case in the trial court.

(2) When a judgment on appeal includes a remand to the court below for further findings of fact, conclusions, or amendment of the trial court judgment or order in keeping with the decision of the Court of Appeals, trial court jurisdiction over the matter is reinstated for the purpose of such further proceedings as may be appropriate. Any party may appeal any amended or modified judgment of the trial court on remand that is not in accord with the appellate decision or instructions or that incorporates new findings or conclusions alleged to be in error.

Rule 18. Entry and Notice of Appellate Orders, Judgments, or Decisions. A notation of an order, judgment or decision of the Court of Appeals in its docket constitutes entry thereof. Upon entry, the Appellate Administrator shall promptly mail to all parties a copy of the order, judgment, or decision, and notice of the date of entry.

Rule 19. Interest on Civil Judgments. If a judgment for money is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered in the trial court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the mandate shall contain instructions with respect to interest.

Rule 20. Costs on Appeal. (1) If not otherwise provided by the Court in its decision, costs on appeal and in original proceedings will automatically be awarded to the successful party against the other party; provided however, that costs awarded to plaintiff or relator in special proceedings to review trial court rulings, orders, or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the trial court's action, rather than against the Tribes or the trial judge.

(2) Costs incurred in the printing or producing of briefs and appendices, in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for the cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taken by the Appellate Administrator as costs of the appeal in favor of the party entitled to costs under this rule.

(3) The Appellate Administrator shall, in all civil cases, include in the order of judgment of affirmance, reversal, or modification on appeal or for the issuance of a writ in an original or special proceeding, and in remand, peremptory writ, or judgment, a clause awarding the costs in accordance with this rule or the special order of the Court of Appeals to be recovered by claim as provided by law; and the Administrator shall also furnish therewith an itemized statement of such costs as have been paid by the Administrator or by the Tribal Court.

Rule 21. Petitions for Rehearing en Banc. (1) Except as otherwise provided in this rule, a petition for rehearing before all five Justices may be filed within 10 days after the appellate decision has been rendered by filing an original and five copies of the petition with the Appellate Administrator. The adverse party will have 7 days thereafter in which to serve and file an original and five copies of any objections to rehearing en banc.

(2) No rehearing is allowed for an original proceeding where the entire Court considered the application and participated in the issuance of the order, judgment, or writ.

(3) A petition for rehearing en banc may be presented on the following grounds and no others:

(a) that some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court;

(b) that the decision is in conflict with an express statute or controlling decision; or

(c) that the Court employed inappropriate procedures or considered facts outside the record on appeal.

(4) Within 15 days after receipt of the petition and any objections and upon consultation with his or her colleagues, the Chief Justice may grant or deny the petition for rehearing en banc. If granted, the parties shall submit briefs as provided in Rule 17 on the issues permitted to be raised and the matter will be scheduled for argument unless the parties agree that the matter will be decided on briefs.

Rule 22. Voluntary Dismissal. If the parties sign and file with the Appellate Administrator an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and whatever fees are due, the Administrator shall enter the case dismissed, and shall give to each party a copy of the agreement filed. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the Chief Justice.