



NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

Court Rules of Civil Procedure Chapter 5

Table of Contents

Section 1: Purpose.....	3
Section 2: Definitions	3
Section 3: How to Start an Action	4
Section 4: Summons	5
Section 5: Service of Process	6
Section 6: Date of Pretrial Hearing.....	9
Section 7: Pleadings	9
Section 8: Hearing Procedure	11
Section 9: Adding Parties to the Case.....	12
Section 10: Signatures of Attorneys and Parties, Verification; Effect; Sanctions.....	12
Section 11: Appearance by Attorney	13
Section 12: Amendments to Pleadings	13
Section 13: Joinder.....	14
Section 14: Interpleader	15
Section 15: Substitution of Parties.....	16
Section 16: Discovery	16
Section 17: Pretrial Procedures; Conferences; Scheduling Orders.....	28
Section 18: Alternative Dispute Resolution.....	29
Section 19: Witnesses	29

Section 20: Jury Trial.....	29
Section 21: View.....	29
Section 22: Instructions to a Jury.....	29
Section 23: Motion for Directed Verdict	30
Section 24: Verdicts	30
Section 25: Judgment.....	32
Section 26: Default Judgment.....	32
Section 27: Summary Judgment	33
Section 28: Declaratory Judgments	35
Section 29: Entry of Judgments	35
Section 30: New Trials.....	35
Section 31: Motion to Alter or Amend a Judgment.....	36
Section 32: Relief from Judgment or Order.....	36
Section 33: Stay of Proceedings to Enforce Judgment	37
Section 34: Satisfaction of Judgment.....	37
Section 35: Citation Form.....	37
CERTIFICATE OF ADOPTION.....	38

Court Rules of Civil Procedure Chapter 5

Section 1: Purpose

The purpose of this Chapter of Court Rules is to provide the judges, practitioners, and the community with a uniform guide for the fair and efficient processing of a civil case in the Tribal Court.

Section 2: Definitions

The following words and terms are defined as follows:

- A. “*Attachment*” means the legal process of seizing another’s property in accordance with a judicial order for the purpose of securing satisfaction of judgment.
- B. “*Attorney*” and “*Counselor*” and “*Lawyer*” are synonymous and mean an individual admitted to practice, and in good standing, before the courts of any state and is admitted to practice before the Nottawaseppi Huron Band of the Potawatomi Tribal Courts.
- C. “*Band*” and “*Nation*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi.
- D. “*Complaint*” or “*Petition*” means a written statement of facts that asserts a claim against a party, made voluntarily, and signed by the party.
- E. “*Court*” and “*Tribal Court*” are synonymous and mean the trial level court of the Nottawaseppi Huron Band of the Potawatomi Tribal Court.
- F. “*Court Clerk*” refers to the Tribal Court Administrator or person designated to perform such duties by the Chief Judge or the Tribal Court Administrator.
- G. “*Day*” means a calendar day.
- H. “*Defendant*” or “*Respondent*” means the party against whom relief or recovery is sought in an action or suit.
- I. “*Deponent*” refers to an individual who, under oath or affirmation, gives out-of-
- J. “*Garnishment*” means the legal process for a third party, such as an employer, to collect and pay a monetary judgment against a respondent.
- K. “*Immediate Family Member*” means: domestic partners; parents; grandparents; children; step-children; foster children; grand children; siblings; mother-in-law; father-in-law; sisters-in-law; brothers-in-law.

- L. “*Interrogatories*” are written questions submitted to an opposing party during a lawsuit that must be answered in writing and under oath.
- M. “*Joinder*” refers to the process of joining two (2) or more legal issues together to be heard in one (1) hearing or trial so that it helps the Court avoid hearing the same facts multiple times or seeing parties separately when the incident(s) surrounding the case involve the same parties and to make the process more efficient or just.
- N. “*Judgment*” means a decision of the Court resolving a particular dispute or disputed issue and determining the rights and obligations of the parties. “*Juror*” means a person selected and confirmed by the Tribal Court to sit as the fact finder in a civil case in the Tribal Court.
- O. “*Jury*” refers to a collection of jurors selected and confirmed by the Tribal Court to collectively be the fact finder in a civil case in the Tribal Court.
- P. “*Jury Panel*” refers to the group of jurors selected at random from which a jury will be selected.
- Q. “*Party*” means a person or entity who is either the plaintiff or respondent in a civil case.
- R. “*Plaintiff*” or “*Petitioner*” means the person who brings an action; the party who complains or sues in a civil action.
- S. “*Pleading*” means a formal written statement submitted by the parties.
- T. “*Stipulation*” means an agreement between the parties and submitted to the Court.
- U. “*Summons*” refers to the document that tells a respondent that he or she is being sued and asserts the power of the court to hear and determine the case.

Section 3: How to Start an Action

A civil action starts by filing a complaint with the Court. A complaint shall be labeled as a complaint or a petition.

- A. **Filing Required.** A complaint must be filed, along with the payment of the filing fee unless the fee is waived by the Court, to initiate the action.
- B. **Contents of the Complaint.** The complaint must contain the following:
 1. The name of the Plaintiff; or Petitioner;
 2. Whether the plaintiff is a corporation, a partnership, sole proprietorship, or individual, if known;

3. If the plaintiff was acting under an assumed name or business name at the time the claim arose, the assumed name or business name shall also be given;
4. The name of the Respondent;
5. Whether the respondent is a corporation, partnership, sole proprietorship, or individual, if known;
6. If the respondent was acting under an assumed name or business name at the time claim arose, the assumed name or business name shall also be given;
7. The date that the claim arose;
8. The location where the claim arose;
9. A statement of the facts providing the basis for the claim;
10. The amount of the claim; and
11. Relief sought.

Section 4: Summons

In order to proceed with a civil action, the plaintiff must notify the respondent of the pending action.

A. Summons. A summons shall:

1. Be signed by the Clerk of the Court;
2. Contain the name of the Court and address of the Court;
3. Contain the names and addresses of the parties;
4. Be directed to the respondent;
5. Show the docket number;
6. Show the date on which the summons was issued;
7. Show the expiration date of the summons;
8. State the time by which the respondent to answer the complaint; and
9. Notify respondent that if the respondent fails to answer the complaint, a judgment by default may be entered against them.

B. A copy of the complaint and summons shall be prepared for each respondent.

C. The summons and complaint shall be served together. The plaintiff is responsible for making service upon the respondent and shall provide the person making service with necessary copies. Service attempts shall be made in the following order:

1. Personal Service
2. Certified Mail, return receipt requested.

If a summons is returned without being served, or if it has been lost, the Court Clerk shall issue a substitute summons.

D. A summons may be amended upon motion of the plaintiff for good cause and by permission of the Court.

E. A summons expires ninety-one (91) days after the complaint is filed. An expiration date may be extended at the discretion of the Court upon motion by the plaintiff for good cause and a showing of due diligence in trying to serve the respondent. An extension may not be extended more than one (1) year from the date the complaint was filed.

F. An action is dismissed without prejudice by the Court if not served by the expiration of the summons.

G. The Court Clerk shall close the case if the summons has expired.

H. The Court may set aside a dismissal if:

1. The parties submit a written stipulation to set aside the dismissal; or
2. The plaintiff provides proof to the Court that the respondent was actually served before the summons expired.

Section 5: Service of Process

A. Who May Make Personal Service of Process?

1. A Nottawaseppi Huron Band of the Potawatomi Tribal Police Officer; or
2. Any legally competent adult who is over the age of eighteen (18) and not a party or legal counsel in the action.

B. Who May Be Served?

1. The following persons or entities may be served:
 - a. Generally. By delivering a copy of the summons and the complaint to:
 - i. The opposing party personally; or

- ii. To an agent authorized by appointment or by law to receive service of process, such as the opposing party's attorney; or
 - iii. By leaving copies at the opposing parties place of residence with some person sixteen (16) years of age or older who is living at the opposing party's residence; or
- b. Minors. Individuals under the age of sixteen (16) may not receive service of process.
 - c. Incompetent. A person who has been judicially declared to be mentally incompetent may not receive service of process.

C. Incarcerated Parties.

1. A party bringing an action against a person incarcerated in a county jail, tribal jail, state prison or federal prison shall:
 - a. Contact the police department or institution to confirm the incarceration and the incarcerated party's prison number and location;
 - b. Serve the incarcerated person and file proof with the Court that the papers were served; and
 - c. File with the Court that the party is incarcerated, including the party's prison number and location.
2. Once the Court receives the notification, the Court shall issue an order requesting the department or the facility where the party is located if it is not a department facility, to allow that party to participate with the Court or its designee by way of a non-collect and unmonitored telephone call in a hearing or conference. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the Court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.
3. The Court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

D. Notice by Posting or Publication.

1. Upon motion by the plaintiff and a showing that personal service is not possible, the Court may permit notice by posting or publication.

2. The Court shall designate all manners for posting including, but not limited to:
 - a. The Courthouse;
 - b. The Turtle Press;
 - c. The local newspaper in the city and/or county where the respondent was last known to reside; and
 - d. Any other location the Court deems necessary.
3. The notice shall run for not less than three (3) consecutive weeks in all publications required by the Court.
4. The plaintiff shall file a proof of service including all locations where the publication ran and the dates.

E. Time.

1. Calculation. The time of service is calculated from the day the complaint is filed. The expiration date is ninety-one (91) days after the complaint is filed, unless the expiration date is a Saturday, Sunday, or a holiday, then the next day the Court is open.
2. Extension of Time. Extensions of time can only be provided by a special motion to the Court.
3. Additional Time after Service by Mail. Whenever service by mail is allowed, five (5) days shall be added to number of days allowed for the party served by mail to respond.
4. Dismissal of Action. An action shall be dismissed without prejudice if service of process is not completed after ninety-one (91) days from the date of the filing of the complaint, unless an extension has been granted by the Court.

F. Proof of Service.

1. Except as otherwise provided in these Rules, proof of service may be by written acknowledgement of service, affidavit of the person making the service, or other proof satisfactory to the Court. The proof of service may be included at the end of the paper as filed.

Section 6: Date of Pretrial Hearing

The date of the hearing shall be set no sooner than fourteen (14) days or later than thirty-five (35) days after the date of service.

Section 7: Pleadings

A. Pleadings Allowed:

1. Claims for Relief. Claims for relief allowed by these Rules are original claims or complaints, counterclaims, cross-claims and third-party complaints.
2. Answers. Answers shall be filed to an original claim or complaint, a counterclaim, a cross-claim and a third-party complaint.
3. Motions.
 - a. An application to the Court for an order after the action is commenced shall be by written motion, unless made during a hearing or trial.
 - b. All motions shall be accompanied by a memorandum containing a statement of the relief requested, the factual or legal grounds supporting the motion, efforts made to resolve the issue with the opposing party, such as the dates the moving party called the opposing party to discuss resolving the issue without appearing before the Court, and any other matters in support of the motion which are relevant. Briefs may be ordered at the discretion of the Court.
 - c. Oral arguments must be requested in the written motion and are at the discretion of the Court.

B. General Rules of Pleading.

1. Claims for Relief. A pleading which sets forth a claim for relief, including an original complaint, counterclaim, cross-claim or third-party claim, shall contain:
 - a. A short and plain statement of the Court's jurisdiction, unless the Court's jurisdiction is established by prior pleadings;
 - b. A short and plain statement of the facts giving rise to the action;
 - c. A short and plain statement of the claim showing that the individual filing the action is entitled to relief; and
 - d. A request for relief. Relief in the alternative may be requested.
2. Defense; Forms of Denials. An answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the statements in the claim for

relief. The party filing the answer may deny a part of a statement and admit the rest. Any claim which is not admitted shall be considered denied. If no responsive pleading is required, statements in the claim for relief shall be deemed denied. The party filing the answer has a duty to admit what they know is true.

3. Affirmative Defenses.

a. These affirmative defenses must be pled at the time an answer is filed:

- i. Release or settlement.
- ii. Assumption of the risk, contributory or comparative negligence, discharge in bankruptcy, and statute of limitations.

If these affirmative defenses not pled at the time an answer is filed, they shall be deemed waived.

b. These affirmative defenses may be pled at the time an answer is filed:

- i. Duress.
- ii. Failure of consideration.
- iii. No consideration.
- iv. Fraud.
- v. Illegality.
- vi. Waiver and any other avoidance or affirmative defense.

If these affirmative defenses are not pled at the time the answer is filed, they may be asserted by permission of the Court upon written motion to amend the pleadings.

C. How Pleadings Must Be Made.

- 1. Caption; Number of Parties. Every pleading shall contain a caption setting forth the name of the Court, the title of the action, and the case number. In the complaint, the title of the action shall include the names of all the parties, but in subsequent pleadings, the names of the first party on each side may be state followed by the designation “et al.”
- 2. Paragraph; Separate Statement. All statements of a claim or defense shall be made in numbered paragraphs. Each paragraph shall be limited to a statement of facts that concerns a single subject, and a paragraph may be referred to by number in all succeeding pleadings.

3. Inclusion by Reference; Exhibits. Statements in a pleading may be included by reference in a different part of the same pleading or in another pleading or in a motion. A copy of a writing which is an exhibit to a pleading becomes a part of the pleading. An exhibit attached to a pleading remains subject to the Rules of Evidence.
4. Method of Preparation and Filing.
 - a. Court Documents: Form.
 - i. Size of paper. All pleadings submitted to the Court for filing shall be on paper 8 ½ inches wide by 11 inches long. The document must be double spaced.
 - ii. Form and Content of Pleading. The following information must be contained on the first page of every pleading, and such information may be single-spaced:
 - a) The name, address and telephone number of counsel representing the party, and whether the counsel appears for the plaintiff, respondent, or other party must be typewritten or printed in the space to the left of the center of the paper and beginning at the first line typed or printed on the page. The space to the right of the center is reserved for filing information.
 - b) The title of the Court will be centered and begin below the counsel and party identifying information.
 - c) Below the title of the Court, the title of the action must be placed to the left of the center of the paper. In the space to the right of the center, there must be the docket number of the action and the title of the pleading or document.
 - b. Court Documents: Filing. The Court Clerk may reject any pleading or document where the party fails to offer a required court form for filing or where the party fails to comply with a statute or rule requiring particular information or copies of certain documents.

Section 8: Hearing Procedure

In all hearings commenced within the Court;

- A. The witnesses shall be sworn; and
- B. The Judge shall conduct the hearing in a manner so as to do substantial justice between the parties according to the rules of substantive and procedural law and in harmony with the traditional values of the Nation.

Section 9: Adding Parties to the Case

A. Third-Party Complaint. At any time after the commencement of the action, a respondent may bring in a person not a party to the action who is or may be liable to the respondent for all or part of plaintiff's claim against the respondent.

B. Types of Third-Party Pleadings.

1. Any party may move to strike the third-party claim, or for its severance, or for a separate trial.
2. A third-party respondent may proceed under this Rule against any person not a party to the action who is or may be liable to respondent for all or part of the claim made in the action against the third-party respondent.

C. Service to a Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may bring in a third-party under this Rule.

Section 10: Signatures of Attorneys and Parties, Verification; Effect; Sanctions.

A. Applicability. The rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules.

B. Verification.

1. Except when required by rule or statute, a document does not need to be verified or accompanied by an affidavit.
2. If a document is required or permitted to be verified, it must include the following statement:
 - a. "I declare that the statements above are true to the best of my information, knowledge, and belief."
3. In addition to the sanctions provided in this Rule, a person who knowingly makes a false declaration under this rule may be found in contempt of court.

C. Signature.

1. Every document of a party represented by an attorney shall be signed by at least one (1) attorney of record. A party who is not represented by an attorney must sign the document.
2. If a document is not signed, it shall be stricken unless it is signed promptly after the failure to sign is called to the attention of the party.

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

1. He or she has read the document;

2. To the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
3. The purpose of the document is not to harass or to cause unnecessary delay or needless increase in the cost of litigation.

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

F. Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this Rule, a party pleading a frivolous claim or defense is subject to costs.

Section 11: Appearance by Attorney

A. In General. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party. All notices required by these rules may be served upon the attorney.

B. Notice of Appearance. An attorney must file with the Court an appearance which includes the name of the case, the case number, the party the attorney is representing, the attorney's address, and the attorney's phone number.

C. Appearance by Law Firm. The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the Court to conduct a court ordered conference or trial and submit an application for the NHBP Tribal Bar.

D. Duration of Appearance by Attorney.

1. Unless otherwise stated or ordered by the Court, an attorney's appearance applies until a final judgment is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed.
2. An attorney who has entered an appearance may withdraw from the action or be substituted only upon order of the Court.

Section 12: Amendments to Pleadings

A. Amendments.

1. A party may amend their pleading once at any time before a responsive pleading from the opposing party is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, they may amend it at any time within twenty (20) days after it is served. Otherwise a party may

amend their pleading only by permission of the court or by written consent of the opposing party except for defenses. Permission to amend shall be freely given by the Court when justice requires.

2. A party must submit a response to an amended pleading within the time remaining for responding to the original pleading or within ten (10) days after service of the amended pleading, whichever period is longer, unless the Court otherwise orders.

B. Relation Back of Amendments.

1. Whenever the claim or defenses asserted in the amended pleading arose out of the action, incident or occurrence set forth or attempted to be set forth in the original pleading, the Court will consider that it relates back to the date of the original pleading.

C. Supplemental Pleadings.

1. Upon motion of a party the Court may, upon reasonable notice, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the original pleading.

Section 13: Joinder

A. Compulsory Joinder. If feasible, a person must be made a party in an action if:

1. Complete relief cannot be given to those already parties unless such person is made a party; or
2. The person claims an interest relating to the subject of the action and deciding the action without the party may:
 - a. Impair or impede the ability to protect that interest; or
 - b. Leave any of the parties at a substantial risk to be held legally responsible in multiple situations or in a way inconsistent with the resolution of the case because of the claimed interest.

B. Permissible Joinder.

1. All persons may join in one (1) action as plaintiffs if:
 - a. They assert any right to relief jointly, severally, or in the alternative; and
 - b. The claims are in respect to or arise out of the same transaction or occurrence, or series of transactions or occurrences; and
 - c. Any question of law or fact common to all persons will arise in the action.
2. All persons may be joined as respondents in an action if:
 - a. Relief is asserted against them jointly, severally, or in the alternative; and

- b. The claims against them are in respect to or arise out of the same transaction or occurrence, or series of transactions or occurrences; and
 - c. Any question of law or fact common to all defendants will arise in the action.
3. Discretion of the Court.
- a. Judgment may be entered in accordance with the respective rights and legal responsibilities of the parties.
 - b. Separate Trials. The Court may order separate trials or make other orders to prevent delay or prejudice.
 - c. Misjoinder and Nonjoinder of Parties. Misjoinder of parties is not grounds for dismissal of an action.
 - d. Parties may be dropped or added by order of the Court on motion of any party, or on its own order, at any stage of the action on such terms as are just.
 - e. Any claim against a party may be severed and proceeded with separately.

Section 14: Interpleader

A. Interpleader. Persons having claims against the Plaintiff may be joined as respondents and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. A respondent exposed to similar liability may obtain such interpleader by way of cross-claim.

1. The plaintiff must deposit the disputed funds or property or the amount of the instrument or obligation with the Court.
2. The Court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any other tribal, state or United States court affecting the property instrument or obligation involved in the interpleader action until further order of the Court.

B. Objections. The following will not defeat joinder in an interpleader action:

1. The claims or the titles upon which the claims depend do not have a common origin or are not identical.
2. The claims or the titles upon which the claims depend are adverse to and independent of one another.
3. The plaintiff alleges that he or she is not liable in whole or in part to any or all of the claimants.

Section 15: Substitution of Parties

A. Death of a Party.

1. If a party dies and the claim is not extinguished, the Court may order substitution of the parties upon motion by any party or by the successors or representatives of the deceased party within ninety days (90) of the party's passing. The moving party shall submit proof of death with the motion. Notice of substitution shall be served on the parties.
2. The Court will determine if the action as to the deceased party shall be dismissed if the motion is made more than ninety days (90) after the party passed.

B. Death of Respondent after Action Commenced. In the event the death of one or more of the plaintiffs, or of one or more of the defendants, in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving respondents, the right sought to be enforced survives only to the surviving plaintiffs or respondents. The death shall be entered upon the record and the action shall proceed in favor of or against the surviving parties.

C. Incompetency. If a party becomes incompetent, the Court may allow the action to be continued by or against the party's representative.

Section 16: Discovery

A. Completion. Discovery must be completed according to the date entered by the Court in a Scheduling Order.

B. General Rules of Discovery.

1. Availability of Discovery. After commencement of an action, parties may obtain discovery by any means provided in these Court Rules.
 - a. Discovery is not permitted in actions in the small claims division of the court or in civil infraction actions.
2. Scope of Discovery.
 - a. In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, including the existence, description, nature, custody, condition and locations of tangible items and persons. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought could reasonably lead to the discovery of admissible evidence.

- b. Insurance Agreements. A party may obtain discovery of the existence and contents of an insurance agreement that may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible at trial. For purposes of this subrule, an application for insurance is not part of an insurance agreement.
- c. Trial Preparation; Experts.
 - i. A party may through interrogatories require another party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter about which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
 - ii. A party may take the deposition of a person whom the other party expects to call as an expert witness at trial. The deposition may be taken at any time before trial on reasonable notice to the opposite party, and may be offered as evidence at trial.
- 3. Protective Orders. On motion by a party or by the person from who discovery is sought, and on reasonable notice and for good cause shown, the Court may issue one or more the following orders as justice requires to protect a party or person:
 - a. That discovery not be had;
 - b. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
 - c. That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
 - d. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
 - e. That discovery be conducted with no one present except persons designated by the Court;
 - f. That a deposition, after being sealed, be opened only by order of the Court;
 - g. That a deposition shall be taken only for the purpose of discovery and shall not be admissible in evidence except for the purpose of impeachment;
 - h. That a trade secrete or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

- i. That the parties simultaneously file specified documents or information enclosed in a sealed envelope to be opened as directed by the Court.
4. Timing of Discovery. Unless as otherwise ordered by the Court, discovery may be completed in any sequence and shall not delay the other party's discovery.
5. Stipulations Regarding Discovery Procedure. Unless the Court orders otherwise the parties may, by written stipulation modify the procedures of these rules for other methods of discovery with approval from the Court.
6. Filing and Service of Discovery Materials.
 - a. Unless a particular rule requires filing of discovery materials, requests, responses, depositions, and other discovery materials may not be filed with the Court except as follows:
 - i. If discovery materials are to be used in connection with a motion, they must either be filed separately or be attached to the motion or an accompanying affidavit;
 - ii. If discovery materials are to be used at trial they must be either filed or made an exhibit;
 - iii. The Court may order discovery materials to be filed.
 - b. Copies of discovery materials served under these rules must be served on all parties to the action, unless the Court has ordered otherwise.
 - c. On appeal, only discovery materials that were filed or made exhibits are part of the record on appeal.
 - d. Removal and destruction of discovery materials may result in sanctions including, but not limited to, fines and being held in contempt of Court.

C. Subpoena for Taking Deposition.

1. General Provisions.
 - a. After serving the notice, a party may have a subpoena issued for the person named or described in the notice. Service on a deponent must be made by personal service unless good cause is shown.
 - b. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated documents or other tangible things relevant to the subject matter of the pending action and written within the scope of discovery.

- c. A deposition notice and a subpoena under this rule may provide that the deposition is solely for producing documents or other tangible things for inspection and copying and that the party does not intend to question the deponent.
 - d. Upon a timely motion, the Court may:
 - i. Require the deponent to comply;
 - ii. Quash or modify the subpoena if it is unreasonable or oppressive; or
 - iii. Require prepayment by the person on whose behalf the subpoena is issued of the reasonable cost of producing books, papers, documents, or other tangible things.
 - e. Service of a subpoena is required and a copy of the subpoena must be served on all other parties in the same manner as the deposition notice.
2. Inspection and Copying Documents. A subpoena may command production of documents or other tangible things under the following rules:
- a. The subpoena must be served at least fourteen (14) days before the time for production. Before the date for production, the subpoenaed person may serve a written objection to inspection or copying of some or all of the materials.
 - b. If an objection is made, the party serving the subpoena is not entitled to inspect and copy the materials without an order of the court.
 - c. The party serving the subpoena may, with notice to the deponent, move for an order compelling production of the materials.
3. Petition to Other Courts to Compel Testimony. When the place of examination is in another tribe, the State of Michigan or another state, territory, or country, the party desiring to take the deposition may petition a court of that tribe, state, territory, or country for a subpoena or equivalent process to require the deponent to attend the examination.

D. Depositions on Oral Examination.

- 1. After commencement of the action, a party may take the testimony of a person, including a party, by deposition on oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition before the respondent has had a reasonable time to obtain an attorney. A reasonable time is deemed to have elapsed if:

- a. The respondent has filed an answer;
 - b. The respondent's attorney has filed an appearance;
 - c. The respondent has served notice of the taking of a deposition or has taken other action seeking discovery;
 - d. The respondent has filed a motion; or
 - e. Twenty-eight (28) days have passed after service of the summons and complaint on a respondent.
2. The deposition of a person confined in a jail or prison, or of a patient in a state home, institution or hospital for the mentally ill or mentally handicapped, or any other state hospital, home, or institution, may be taken only by permission of the Court on terms as the Court provides.
 3. A party desiring to take the deposition of a person on oral examination must give reasonable notice in writing to every other party to the action. The notice must state:
 - a. The time and place for taking the deposition, and
 - b. The name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and
 - c. A list of documents or other tangible things, if the subpoena directs the deponent to produce documents or tangible things.
 4. On motion for good cause, the Court may extend or shorten the time for taking the deposition. The Court may regulate the time and order of taking depositions to best serve the convenience of the parties and witnesses and the interests of justice.
 5. The attendance of witnesses may be compelled by subpoena.
 6. The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition.
 7. In a notice and subpoena, a party may name as the deponent a public or private corporation, partnership, association, or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization named must designate one or more officers, directors, or managing agents, or other persons, who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena must advise a nonparty organization of its duty to make the designation. The persons

designated shall testify to matters known or reasonably available to the organization. This subrule does not preclude taking a deposition by another procedure authorized in these rules.

E. Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections.

1. The person before whom the deposition is to be taken must put the witness under oath. Examination and cross-examination of the witness shall proceed as permitted at trial under the NHBP Tribal Court Rules of Evidence. In lieu of participating in the deposition, a party may send written questions to the person conducting the examination, who shall give them to the witness and record the witness' answers.
2. The person before whom the deposition is taken shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness.
 - a. The testimony must be taken stenographically or recorded by other means in accordance with this sub rule. The testimony need not be transcribed unless requested by one of the parties.
 - b. While the testimony is being taken, a party, as a matter of right, may also make a record of it by non-secret mechanical or electronic means, except that video recording is governed by Rule 5(16)(M). Any use of the recording in court is within the discretion of the Court. A person making such a record must furnish a duplicate of the record to another party if requested. The requesting party shall pay any expenses for the duplicate.
3. The Court may order, or the parties may stipulate, that the testimony at a deposition be recorded by other than stenographic means.
 - a. The order or stipulation must designate the manner of recording and preserving the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A deposition in the form of a recording may be filed with the Court as are other depositions.
 - b. If a deposition is taken by other than stenographic means on order of the Court, a party may still arrange to have a stenographic transcription made at that party's own expense.
 - c. Before a deposition taken by other than stenographic means may be used in Court, it must be transcribed unless the Court enters an order waiving transcription. The costs of transcription are paid by the parties as determined by the Court. This does not apply to video depositions which are governed by Rule 5(16)(M).

4. All objections at the deposition must be noted on the record by the person before whom the deposition is taken. Evidence objected to other than on the grounds of privilege shall be taken subject to the objections.

F. Depositions on Written Questions.

1. Serving Questions; Notice.
 - a. A party may take the testimony of a person, including a party, by deposition on written questions. The attendance of the witnesses may be compelled by the use of a subpoena. A deposition on written questions may be taken of a public or private corporation, partnership, association, or governmental agency in accordance with the provisions of this Rule.
 - b. A party desiring to take a deposition on written questions shall serve them on every other party with a notice stating:
 - i. The name and address of the person who is to answer them, if known, and, if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and
 - ii. The name or descriptive title and address of the person before whom the deposition is to be taken.
 - c. Within fourteen (14) days after the notice and questions are served, a party may serve cross-questions on all other parties. Within seven (7) days after being served with cross-questions, a party may serve redirect questions on all other parties. Within seven (7) days after being served with redirect questions, a party may serve recross-questions on all other parties. The parties, by stipulation in writing, or the Court, for cause shown, may extend or shorten the time requirements.
2. Taking of Responses and Preparation of Record. A copy of the notice, any stipulation, and copies of all questions served must be delivered by the party who proposed the deposition to the person before whom the deposition will be taken as stated in the notice. The person before whom the deposition is to be taken must proceed promptly to take the testimony of the witness in response to the questions, and if requested, to transcribe, certify, and file the deposition, attaching the copy of the notice, the questions, and any stipulations of the parties.

G. Use of Depositions in Court Proceedings.

1. In General. Depositions or portions of depositions shall be admissible at trial or on the hearing of a motion or in an interlocutory proceeding.

2. **Objections to Admissibility.** Deposition evidence issues should be raised at a pre-trial hearing. Objection may be made at trial with the Court's permission.
3. **Effect of Errors or Irregularities in Depositions.**
 - a. **Notice.** Errors or irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving notice.
 - b. **Disqualification of a Person Before Whom Taken.** Objection to taking a deposition because of disqualification of the person before whom it is taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
 - c. **Taking of Deposition**
 - i. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of a deposition, unless the ground of the objection may have been addressed if presented at that time.
 - ii. Errors and irregularities occurring at the deposition in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any other kind which might be cured if promptly presented, are waived unless an objection is made at the taking of the deposition.
 - iii. Objections to the form of written questions are waived unless served in writing on the party presenting them within the time allowed for serving the succeeding cross-questions or other questions and within seven (7) days after service of the last questions authorized.
 - iv. On motion and notice, a party may request a ruling by the Court before trial on an objection made during a deposition.
 - d. **Certification, Transcription, and Filing of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom it was taken are waived unless a motion objecting to the deposition is filed within a reasonable time.
 - e. **Harmless Error.** None of the foregoing errors or irregularities, even when not waived, or any others, preclude or restrict the use of the deposition, unless the

Court finds that the errors substantially destroy the value of the deposition as evidence or render its use unfair or prejudicial.

H. Interrogatories to Parties

1. A party may serve on another party written interrogatories to be answered by the party served or, if the party served is a public or private corporation, partnership, association, or governmental agency, by an officer or agent.
2. Answers and Objections.
 - a. Each interrogatory must be answered separately and fully in writing under oath. If the answering party objects to an interrogatory, the reasons for the objection must be stated instead of an answer.
 - b. The answering party shall repeat each question immediately before the answer to it.
 - c. The answers must be signed by the person making them and the objections signed by the attorney or party if not represented by an attorney.
 - d. The party on whom the interrogatories are served must serve the answers and objections, if any, on all other parties within twenty-eight (28) days after the interrogatories are served. The Court may allow a longer or shorter period of time for good cause shown.
3. The party submitting the interrogatories may move for an order with respect to an objection to or other failure to answer an interrogatory.

I. Entry on Land for Inspection and Other Purposes

1. Definitions. For the purpose of this rule,
 - a. “Documents” includes writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.
 - b. “Entry on land” means entry upon designated land or other property in the possession or control of the person on whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or a designated object or operation on the property.

2. Scope.

a. A party may serve on another party a request:

- i. To produce and permit the requested party, or someone acting for that party to inspect and copy designated documents.
- ii. To produce and permit the requested party, or someone acting for that party to inspect and copy, test, or sample other tangible things that constitute or contain matters within the scope of the action and that there are in the possession, custody of the party on whom the request is served; or
- iii. To permit entry on land.

b. A party may serve on a nonparty a request:

- i. To produce and permit the requesting party or someone acting for that party to inspect and test or sample tangible things that constitute or contain matters within the scope of the action and that are in the possession, custody, or control of the person on whom the request is served; or
- ii. To permit entry on land.

3. Request to a Party.

a. A party may serve on a nonparty a request:

- i. To produce and permit the requesting party or someone acting for that to inspect and test or sample tangible things that constitute or contain matters within the scope of the action and that are in the possession, custody, or control of the person on whom the request is served; or
- ii. To permit entry on land.
- iii. The request may, without leave of Court, be served on the plaintiff after commencement of the action and on the defendant with or after the service of the summons and complaint on that defendant. The request must list the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts.
- iv. The party on whom the request is served must serve a written response within twenty-eight (28) days after service of the request, except that a defendant may serve a response within forty-two (42) days after being served with the summons and complaint. The Court may allow a longer or

shorter time. With respect to each item or category, the response must state that inspection and related activities will be permitted as requested or that the request is objected to, in which event the reasons for objection must be stated. If objection is made to part of an item or category, the part must be specified.

- v. The party submitting the request may move for an order with respect to an objection to or a failure to respond to the request or a part of it, or failure to permit inspection as requested. If the motion is based on a failure to respond to a request, proof of service of the request must be filed with the motion. The motion must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.
- vi. The party to whom the request is submitted may seek a protective order.
- vii. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- viii. Unless otherwise ordered by the Court for good cause, the party producing items for inspection shall bear the cost of assembling them and the party requesting the items shall bear any copying costs.

4. Request to Nonparty.

- a. A request to a nonparty may be served at any time, except that leave of the Court is required if the plaintiff seeks to serve a request before the respondent has filed an answer.
- b. The request must be served through personal service or by registered or certified mail, return receipt requested, with delivery restricted to the addressee.
- c. The request must:
 - i. List the items to be inspected and tested or sampled, either by individual item or by category, and describe each item and category with reasonable particularity,
 - ii. Specify a reasonable time, place, and manner of making the inspection and performing the related acts, and
 - iii. Inform the person to whom it is directed that unless he or she agrees to allow the inspection or entry at a reasonable time and on reasonable conditions, a motion may be made for inspection or entry at a reasonable time and on reasonable conditions, and a motion may be filed seeking a court order to require the inspection or entry.

- d. If the person to whom the request is directed does not permit the inspection or entry within fourteen (14) days after service of the request (or a shorter time if the Court directs), the party seeking the inspection or entry may file a motion to compel the inspection or entry. The motion must include a copy of the request and proof of service of the request. The movant must serve the motion on the person from whom discovery is sought.
- e. The Court may order the party seeking discovery to pay the reasonable expenses incurred in complying with the request by the person from whom discovery is sought.
- f. This rule does not preclude an independent action against a nonparty for production of documents and other things and permission to enter on land or a subpoena to a nonparty.

J. Physical and Mental Examination of Persons. When the mental or physical condition of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court in which the action is pending may order the party to submit to a physical or mental or blood examination by a physician (or other appropriate professional) or to produce for examination the person in the party's custody or legal control.

K. Failure to Provide or to Permit Discovery; Sanctions.

1. A party, on reasonable notice to other parties and all persons affected, may apply for an order compelling discovery.
2. The failure to comply with an order compelling discovery may be considered contempt of court.

L. Discovery of Medical Information Concerning Party.

1. When a mental or physical condition of a party is in controversy, medical information about the condition is subject to discovery under these rules.
2. Medical information subject to discovery includes, but is not limited to, medical records in the possession or control of a physician, hospital, or other custodian, and medical knowledge discoverable by deposition or interrogatories.
3. A party who has a valid privilege may assert the privilege and prevent discovery of medical information relating to his or her mental or physical condition. The privilege must be asserted in the party's written response to a request for production of documents.
4. A physician, hospital, or other custodian of medical information shall comply with a properly authorized request for the medical information within twenty-eight (28) days after the receipt of the request.
5. Medical information concerning persons not parties to the action is not discoverable under this rule.

M. Video Depositions

1. Depositions may be taken by means of simultaneous audio and visual electronic recording without leave of the Court or stipulation of the parties.
2. Procedure.
 - a. A video deposition must be timed by means of a digital clock or clocks capable of displaying the hours, minutes, and seconds.
 - b. A video deposition must begin with a statement on camera of the date, time, and place at which the recording is being made, the title of the action, and the identification of the attorneys and/or parties.
 - c. The person being deposed must be sworn as a witness on camera.
 - d. The parties may make audio recordings while the video deposition is being taken.
3. Custody of Tape and Copies. The person making the video recording must retain possession of it. The video recording must be securely sealed and marked for identification purposes.

Section 17: Pretrial Procedures; Conferences; Scheduling Orders

- A. Scheduling Conference.** Unless the schedule is set by another Court Rule, the Court shall:
 1. Schedule a pretrial conference;
 2. Enter a Scheduling Order following the pretrial conference
 3. The Court may adopt a trial calendar or other method for scheduling trials without the request of a party.
- B. Expedited Trials.** On its own initiative, by motion of a party, or by stipulation of the parties, the Court may shorten the time in which an action will be scheduled for trial, subject to the provisions of these Court Rules and if the Court determines that the expedited matter is in the interest of justice.
- C. Custody Actions.** On its own initiative, by motion of a party, or by stipulation of the parties, the Court may give precedence to actions involving the custody of a minor child(ren).
- D. Notice of Trial.** If a trial date is not agreed upon by the parties and the Court, attorneys and parties shall be given twenty-eight (28) days notice of trial, unless:
 1. A Court Rule or statute provides a different number of days for notice;
 2. It is an adjournment of a previously scheduled trial; or
 3. The Court orders for good cause.

E. Form of Notice of Trial. Notice may be given orally if the parties are before the Court when the matter is scheduled, or by first class mail or delivering copies of the notice to attorneys of record and to any party who appears on his or her own behalf.

F. Scheduling Conflicts.

1. The Court, attorneys, and parties not represented by counsel shall make every attempt to avoid conflicts in the scheduling of trials.
2. When conflicts in scheduled court dates occur, it is the responsibility of the counsel or unrepresented party to notify the Court as soon as the potential conflict becomes clear. In such cases, the Court, counsel and parties shall make every attempt to resolve the conflict in an equitable manner, with due regard for the priorities and time constraints provided by statute or court rule. When counsel or a party cannot resolve conflicts with each other, the Judge shall consult directly to resolve the conflict.
3. Except where a statute, court rule, or other special circumstance dictates otherwise, the Court shall give priority for scheduling the new trial date.

Section 18: Alternative Dispute Resolution

RESERVED.

Section 19: Witnesses

A. All witnesses shall take the following oath as administered by the Court Clerk:

“Do you swear or affirm to tell the truth, the whole truth and nothing but the truth by all you hold sacred?”

B. It is the expectation of the Court that all witnesses will testify truthfully. Failure of a witness to testify truthfully may result in contempt of court and/or criminal prosecution.

Section 20: Jury Trial

A. All aspects of a jury trial are governed by Chapter Eleven (11) of Court Rules except as provided for in this Rule.

Section 21: View

A. By Jury. On motion of either party or on its own initiative, the Court may order an officer to take the jury as a whole to view property or a place where a material event occurred. During the view, no person other than the designated officer may speak to the jury concerning a subject connected with the trial. The Court may order the party requesting a jury view to pay the expenses of the view.

B. By Court. On application of either party or on its own initiative, the Court sitting without a jury may view property or a place where a material event occurred.

Section 22: Instructions to a Jury

A. Instructions to Jury; Objections. At the close of the evidence or at any time during the trial as the court directs, any party may file proposed written jury instructions. The Court

shall inform counsel of its decision upon the proposed instructions prior to their arguments to the jury, but the Court shall instruct the jury after arguments are completed. No party may assign as error the giving or the failure to give an instruction, unless objection is made before the jury retires to consider its verdict, stating clearly the instruction objected to or improperly omitted and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

B. Instructions to Jury; Notations; Filing; Transcript.

1. The Court shall either give or refuse the instruction as requested, or shall modify the instruction; indicating the modifications made and give it as modified. On the margin of each instruction requested, the Court shall write the word "given" or "refused" or the words "given as modified," and his initials. The instructions which the court will give may be used in the arguments to the jury.
2. The written instructions shall be filed among the papers in the action and become a part of the record. At the request and cost of either party, the entire instructions given by the court shall be transcribed.

C. Arguments. The party having the burden of proof on the case shall be entitled to open and close the argument. Where there are several parties having several claims or defenses and represented by different counsel, the court shall direct the order of argument among them.

D. Interruption of Counsel during Argument. Interruption of counsel in argument will not be permitted, except for the purpose of raising a question of law. Interruption for commenting on facts not in evidence will be allowed. Interruption for misstatement of facts in evidence will not be allowed.

Section 23: Motion for Directed Verdict

A party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds of the motion. If the motion is not granted, the moving party may offer evidence without having reserved the right to do so, as if the motion had not been made. A motion for a directed verdict that is not a waiver of trial by jury, even though all parties to the action have moved for directed verdicts.

Section 24: Verdicts

A. Jury Verdict.

1. Majority Verdict. A verdict or a finding of a majority of the jurors shall be taken as the verdict or finding of the jury.
2. Sealed Verdict. The Court may direct the jury to return a sealed verdict.
3. Returning the Verdict.
 - a. The jury must return its verdict in open court.

- b. A party may require a poll to be taken by the Court, asking each juror if it is his or her verdict.
 - c. If the number of jurors agreeing is less than required, the jury must be sent out for further deliberation.
- 4. Discharge of Jury. The Court may discharge a jury:
 - a. Because of an accident or disaster requiring it;
 - b. By consent of all the parties;
 - c. Because of a mistrial; or
 - d. Whenever the jurors have deliberated until it appears that they cannot agree.
- 5. New Jury. If a jury is discharged without reaching a verdict, the Court may order another jury to be drawn, and hold the trial again upon motion of the plaintiff.
- 6. Responsibility of Officers.
 - a. All court officers, including trial attorneys, must appear in court during the trial until the verdict is announced.
 - b. A trial attorney may, on request and with permission of the Court, may be released or appoint an associate or other attorney to act for him or her during the deliberations of the jury.

B. Special Verdicts

- 1. Use of Special Verdicts; Form. The Court may require the jury to return a special verdict in the form of a written finding on each issue of fact, rather than a general verdict. If a special verdict is required, the Court shall, in advance of argument and in the absence of the jury, advise the attorneys of this fact and, on the record or in writing, settle the form of the verdict. The Court may submit to the jury:
- 2. Judgment. After a special verdict is returned, the Court shall enter judgment in accordance with the jury's findings.
- 3. Failure to Submit Question; Waiver; Findings by Court. If the Court omits from the special verdict form an issue of fact raised by the pleadings or in the evidence, a party waives the right to a trial by jury of the issue omitted unless before the jury retires the party demands its submission to the jury. The Court may make a finding as to an issue omitted without a demand; or if the Court fails to do so, it is deemed to have made a finding in accord with the judgment on the special verdict.

C. Findings of the Court

1. Effect. In all actions tried without a jury, the Court shall find in writing, the relevant facts and state separately its conclusions of law and enter the appropriate judgment.
2. Amendment. Upon motion of a party filed not later than fifteen (15) days after entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly.
3. Submission on Agreed Statement of Facts. The parties to an action may submit the matter in controversy to the court upon an agreed statement of facts, signed by them and filed with the Court Clerk, and the Court may render a decision and enter judgment accordingly. The agreed statement, approved by the Court to be correct, and the judgment shall constitute the record of the action.

Section 25: Judgment

- A. Judgment. Except for default judgments, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled. A default judgment shall not be different in kind or exceed the amount requested in the prayer for relief.
- B. Multiple Claims or Multiple Parties. During a lawsuit the Court may enter judgments that dispose of fewer than all of the parties or claims. Unless specifically accepted by other rules or by caselaw these are not final judgments from which an appeal lies. Unless a stay is granted, such judgment can be enforced after entry.
- C. Costs. In the judgment the Court may order one or more of the parties to pay the costs. Costs include filing fees costs of service, jury, and witness costs.

Section 26: Default Judgment

- A. If a party fails to answer or file a responsive pleading to a claim for relief within the time provided by these Rules, the Court may enter default against that party.
- B. Motion and Entry of Default.
 1. The party desiring a default judgment shall file a motion for an entry of default showing that the opposing party is in default and attaching proof of service of the claim for relief.
 2. The moving party shall give notice of the motion for entry of default to the party claimed to be in default as follows:
 - a. If the whereabouts of the party is known, a copy of the motion shall be mailed to the party.
 - b. If the party claimed to be in default is known by the requesting party to be represented by counsel in the action, whether or not the counsel has entered an appearance, a copy of the motion shall be sent to the counsel and to the party claimed to be in default, if the whereabouts of the party is known.

- c. If the whereabouts of a party claimed to be in default is unknown, the motion for entry of default shall so state. The Court in its sole discretion may order that notice in some form be addressed to the party.
 3. An entry of default shall not be made until after the hearing.
- C. Judgment by Default.** Judgment by default may be entered after an entry of default has been entered by the court as follows:
 1. By Motion and Hearing. In all other cases default judgment shall be entered as follows:
 - a. The requesting party shall file a motion for default judgment with the Court with notice to the party in default.
 - b. The Court may hear the motion and may take evidence to determine the amount of damages, to establish the truth of any facts upon which the relief is based, or to make an investigation of any matter necessary to the court's determination.
 - c. If a hearing is set, the Court Clerk shall notify the parties of the hearing at least ten (10) days in advance of the hearing date.
 - d. The party in default may appear at the hearing and present evidence as to the amount of damages or the relief to be determined by the Court. The party in default may not present evidence or attempt to respond to other allegations of the complaint or claims to which the party is in default.
- D. Default Judgment against Minor or Incompetent Person.** No default judgment shall be entered against a minor or incompetent person unless represented in the action by a guardian or such other representative that the Court finds appropriate.
- E. Setting Aside Default.** For good cause shown the Court may set aside an entry of default and, if a judgment by default has been entered, may also set aside the judgment.
- F. Plaintiffs; Counterclaimants; CrossClaimants.** This Rule applies whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

Section 27: Summary Judgment

- A. For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the service of process upon the adverse party or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for summary judgment in the party's favor upon all or any part of a claim.
- B. For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for summary judgment in its favor as to all or any part of a claim.

- C. Motion and Proceedings.** Upon timely request by any party, the Court shall set a time for hearing of the motion. If no request is made, the Court may, in its discretion, set a time for such hearing. A party opposing the motion must file affidavits, memoranda or both, within fifteen (15) days after service of the motion. The moving party shall have five (5) days thereafter in which to serve reply memoranda and affidavits. The foregoing time periods may be shortened or enlarged by the court or by agreement of the parties; The judgment sought shall be rendered if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.
- D. Case Not Fully Adjudicated on Motion.** If on motion under this Rule, judgment is not entered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and proceed as is just. Upon the trial of the action the facts so specified shall be deemed established and the trial shall be conducted accordingly.
- E. Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts referred to in an affidavit shall be attached and served. The court may permit affidavits to be supplemented or opposed by depositions answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of his pleading; but the response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. Otherwise, summary judgment, if appropriate, shall be entered.
- F. When Affidavits Are Unavailable.** When it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated, present by affidavit facts essential to justify an opposition, the court may refuse the motion for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make other orders.
- G. Affidavits Made in Bad Faith.** When any affidavits presented under this Rule are presented in bad faith or solely for the purpose of delay, the court shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or counsel may be held in contempt.

Section 28: Declaratory Judgments

The procedure for obtaining a declaratory judgment shall be in accordance with these Rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Section 29: Entry of Judgments

All judgments shall be in writing and signed by the judge who heard the case. The signing of the judgment constitutes entry of judgment. The clerk of the court must make every attempt to forward the judgment to the parties immediately after entry. The judgment is not effective before entry, except that for circumstances and on notice as justice may require.

Section 30: New Trials

A. Grounds. A verdict, decision, or judgment may be set aside and a new trial granted on the following grounds:

1. Irregularity in the proceedings of the Court, jury or prevailing party, or any order or abuse of discretion, whereby the moving party was denied a fair trial.
2. Misconduct of the jury or of the prevailing party.
3. Accident or surprise which could not have been prevented by the use ordinary care.
4. Newly discovered evidence that, with reasonable diligence, could not have been produced at trial.
5. Excessive or inadequate damages appearing to have been influenced by passion or prejudice
6. A verdict clearly or grossly inadequate or excessive.
7. Error in the admission or rejection of evidence, error in the instructions to the jury, or in refusing instructions requested or other errors of law occurring at the trial or during the progress of the trial. Error will not be reviewed under this section unless objection was made at trial.

B. On a motion for a new trial in an action tried without a jury, the Court may:

1. Set aside the judgment if one has been entered;
2. Take additional testimony;
3. Amend findings of fact and conclusions of law; or
4. Make new findings and conclusions and direct the entry of a new judgment.

C. Time for a Motion for a New Trial. A motion for a new trial or to alter or amend a judgment must be filed and served within twenty-one (21) days after entry of the judgment.

D. On Initiative of the Court. Within twenty-one (21) days after entry of a judgment, the Court on its own initiative may order a new trial for a reason for which it would have granted a new trial on motion of a party. The order must specify the grounds on which it is based.

Section 31: Motion to Alter or Amend a Judgment

Within fourteen (14) days after the entry of judgment in a non-jury case an aggrieved party may file and serve a motion to alter or amend the judgment on the grounds that the findings of fact and conclusions of law are erroneous based upon the record (including sufficiency of the evidence) and the law. A motion to alter or amend shall be subject to the same requirements and procedures as a motion for a new trial.

Section 32: Relief from Judgment or Order

A. Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and similar errors arising from oversight or omission may be corrected by the Court at any time on its own motion or on motion of any party and after notice, if the Court orders. During pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the NHBP Supreme Court, and thereafter while the appeal is pending, mistakes may be corrected with leave of the Supreme Court.

B. Correction of Error in Record of Judgment.

1. When a mistake in a judgment is corrected by the Court, the execution shall conform to the judgment as corrected.
2. Where there is a mistake, miscalculation or incorrect presentation of a sum of money, or of a name, or of a census number and there is in the record a verdict or instrument of writing to which the judgment may be conformed, the Court shall on motion and, after notice, correct the judgment accordingly.
3. Mistake; Inadvertence; Surprise; Excusable Neglect; Newly Discovered Evidence; and Fraud. On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; or (3) fraud, misrepresentation or other misconduct of an adverse party. The motion shall be filed no later than six (6) months after the judgment or order was entered. A motion under this Rule does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the Court.
4. Void Judgment; Satisfied, Released or Discharged Judgment; and Requested Relief. On motion and upon such terms as are just, the Court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons: (1) the judgment is void; (2) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it

is no longer equitable that the judgment should have prospective application; or (3) any other reason justifying relief from the enforcement of the judgment. The motion shall be filed within twenty-eight (28) days after the judgment or order was entered. A motion under this Rule does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the Court.

5. **Reversed Judgment of Foreign Jurisdiction.** When a judgment has been entered upon the judgment of a foreign jurisdiction, and the foreign judgment is later reversed or set aside by a court of such jurisdiction, the Court in which judgment was entered shall set aside, vacate and annul its judgment.

Section 33: Stay of Proceedings to Enforce Judgment

- A. Stay on Motion for a New Trial or for Judgment or for Relief from Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made, of a motion for relief from a judgment or order, of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings, or when justice so requires.
- B. Stay Pending Appeal.** Stay on Appeal is governed by Chapter Nine (9), Court Rules of Appellate Procedure.

Section 34: Satisfaction of Judgment

- A.** A judgment may be shown satisfied of record in whole or in part by:
 1. Filing with the Tribal Court Administrator a satisfaction signed and acknowledged by the party or parties in whose favor the judgment was rendered or their attorneys of record;
 2. Payment to the Tribal Court Administrator of the judgment, interest, and costs, if a money judgment only; or
 3. Filing a motion for entry of an order that the judgment has been satisfied
- B.** The Court shall hear proofs to determine whether the order should be entered. The Tribal Court Administrator must, in each instance, indicate in the court records that the judgment is satisfied in whole or in part.

Section 35: Citation Form

The abbreviated citation form for this Chapter of Court Rules is NHBPCR, Chapter 5.

CERTIFICATE OF ADOPTION

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules on
August 1, 2012.

8/1/2012
Dated

Melissa L. Pope
Melissa L. Pope, Chief Tribal Court Judge