

## **CHAPTER 1: GENERAL PROVISIONS**

### **RULE 1 TITLE, EFFECTIVE DATE**

These rules shall be known and cited as the Rules of the Hoopa Valley Tribal Court. These rules shall take effect on SEPTEMBER 8, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the amended rules take effect would not be feasible or would work injustice, in which the former procedure applies.

### **RULE 2 APPLICABILITY**

These rules are applicable to all proceedings relating to the Constitution and Bylaws of the Hoopa Valley Tribe; Law and Order Code of the Hoopa Valley Tribe; other statutes, motions, and resolutions passed by the Hoopa Valley Tribal Council; policies, procedures and actions taken by tribal entities; and the common law and the traditional law of the Hoopa Valley Tribe.

[See Tribal case law for precedent. FRCP 81 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

### **RULE 3 GOVERNING PRINCIPLES**

These Rules of Court are intended to provide for the just determination of every proceeding and shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense or delay. They shall be interpreted so as to be consistent with other provisions of Tribal law.

### **RULE 4 SCOPE OF RULES**

These Rules govern the administration and procedures of the Hoopa Valley Tribal Court. The Rules are subject to change by the Court with notice, but such changes cannot be interpreted so as to prejudice the rights of parties in pending cases. This Title is a part of the Hoopa Valley Tribal Code and copies shall be maintained therein. Copies of these Rules shall be kept in the office of the Clerk of the Court. Any person intending to file an action in Tribal Court may request a copy of the Rules of Court during normal business hours. The Court reserves the right to impose reasonable charges for providing such copies.

### **RULE 5 LOCATION OF COURT**

- (a) The Clerk's office is located at :
- Hoopa Valley Tribal Court
  - Tribal Court Building
  - Hoopa Shopping Center
  - Hoopa, California, 95546

(b) Court sessions are held at:  
Hoopa Valley Tribal Court  
Tribal Court Building  
Hoopa Shopping Center  
Hoopa, California, 95546

Or at such other place in Hoopa as may be determined by the Court.

(c) The hours of the Court are from 8:00 a.m. to 5:00 p.m., Monday through Friday, and closed on all Tribal Holidays.

## **CHAPTER 2: COURT ADMINISTRATION**

### **RULE 6 TRIBAL COURT CLERK**

#### **(a) Designation and Supervision**

A Court Clerk shall be appointed by the Chief Judge to work under the supervision of the Chief Judge. The Clerk before assuming his or her duties must be bonded at Tribal expense in an amount determined by the Tribal Council. The Clerk shall be responsible for the following:

#### **(1) Books and Records Kept By the Clerk and Entries Therein.**

The Clerk shall keep a book known as a "civil docket" and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been ordered the Clerk shall enter the "jury" on the folio assigned to that action. The recordkeeping requirement of this rule can be satisfied by the clerk's use of case management software.

#### **(2) Dismissal Calendar.**

The Clerk will maintain a dismissal or status conference calendar. Unless the Chief Judge otherwise orders, semiannually each year the Clerk shall set an order to show cause hearing as to whether a case should be dismissed for lack of prosecution in of all civil cases which have been pending for more than six months and in which the plaintiff has failed to take action for six months. In the discretion of the Judge, civil cases may be added to or deleted from the call of cases on the dismissal calendar. This Rule does not impair the right of a party to move for dismissal under the provisions of Rules 35 or 38.

(4) Indices.

The clerk shall keep an index of the civil docket and an index of every civil judgment and order referred to in subdivision (3) of this rule.

(5) Notice of Hearings

The clerk shall send out notices of the next court date and time to all parties at the last known address listed in the case file. The notice of hearing shall include all of the following: the date of the court hearing, the time of the court hearing, and the type of hearing.

(6) Other Duties:

Other duties include, but are not limited to, receiving and maintaining documents filed with the Court, issuing notices and summons to appear, recording hearings, marking evidence, maintaining the Court calendar, mailing Court decisions, and clerical support. The Court Clerk shall maintain a record of all proceedings before the Court, administer the oaths to witnesses, and perform such other duties as the Chief Judge may designate.

(A) Filing of Documents

The court clerk cannot refuse to accept a document for filing merely because the time to respond has expired. Whenever a document is filed late according to statutory or court ordered timelines, the clerk shall make a notation of the late filing on the document.

(B) Copy Charge

The court clerk shall charge a fee for any documents copied by court staff. Copies shall be free of charge for Petitioners in domestic violence protection order cases.

(b) Prohibition on Providing Legal Advice.

The Clerk shall answer questions on Court procedure, but shall not provide legal advice.

(c) Oath of Office.

Before taking office the Court Clerk shall take the following oath:

"I, \_\_\_\_\_, do solemnly swear:

- 1) I shall uphold the Law and order Code of the Hoopa Valley Tribe to the best of my ability;
- 2) I shall perform the Clerk's duties faithfully and honestly;
- 3) I shall not let personal views and relationships affect the performance of the Clerk's duties;
- 4) I shall not attempt to influence the course of any Court proceedings;
- 5) I shall not reveal any confidential matters which I learn in the course of official duties."

"Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_."

RULE 7 DROP BOX FOR FILING DOCUMENTS

(a) Use of drop box

Whenever a clerk's office filing counter is closed at any time between 8:00 a.m. and 5:00 p.m. on a court day, the court must provide a drop box for depositing documents to be filed with the clerk. A court may provide a drop box during other times.

(b) Documents deemed filed on day of deposit

Any document deposited in a court's drop box up to and including 5:00 p.m. on a court day is deemed to have been deposited for filing on that day. A court may provide for same-day filing of a document deposited in its drop box after 5:00 p.m. on a court day. If so, the court must give notice of the deadline for same-day filing of a document deposited in its drop box.

(c) Documents Deemed Filed on Next Court Day

Any document deposited in a court's drop box is deemed to have been deposited for filing on the next court day if:

- (1) It is deposited on a court day after 5:00 p.m. or after the deadline for same-day filing if a court provides for a later time; or
- (2) It is deposited on a judicial holiday.

(d) Date and Time Documents Deposited

A court must have a means of determining whether a document was deposited in the drop box by 5:00 p.m., or after the deadline for same-day filing if a court provides for a later time, on a court day.

RULE 8 COURT RECORDS

(a) Record Keeping Requirements

The Tribal Court shall keep for its own information, and for inspection by duly authorized and qualified officials, a record of all proceedings of the Court. This record shall include the title of the case; the names of the parties; the substance of the complaint; the names and addresses of all witnesses; the date of the hearing or trial; the name of the trial or hearing judge; the findings of the court or jury; and the judgment, together with any other facts or circumstances deemed of importance to the case. These court records shall be securely kept in the Court Clerk's Office. Unless the case is a confidential juvenile matter, or sealed by court order, all records of the tribal court are public records and open to inspection by anyone. Confidential juvenile records and sealed records shall be open to inspection only by order of the Hoopa Valley Tribal Court.

(b) Removal of Papers

Only the clerk may remove and replace papers in the court's files. Unless otherwise ordered by the court, filed papers may only be inspected by the public in the office of the clerk and released to a court officer or attaché for

use in a court facility. No original papers filed with the clerk may be used in any location other than a court facility, unless so ordered by the Chief Judge.

(c) Return of Exhibits

The clerk must not release any exhibit except on order of the court. The clerk must require a signed receipt for a released exhibit.

(d) Publication of Decisions

The Chief Judge shall designate decisions of the Court and the Court of Appeals to be published in the Hoopa Valley Tribal Court Reporter.

RULE 9 PUBLIC ACCESS TO CASE LAW AND CODES

(a) Copies of Law.

The Tribal Court shall maintain current copies of the Constitution and By Laws of the Hoopa Valley Tribe, the Tribal Code, all pertinent resolution, ordinances, or enactments of the Tribal Council, Title 25 of the Code of Federal regulations, and such regulations as may be applicable to the conduct of the business of the Court.

(b) Court Library.

A complete Indian Law Library will be of high priority of the Tribal Court. This library shall include all law described under subdivision (a), as well as any other relevant Tribal or Federal material reasonably available to the Court. The Court Library shall be open to any tribal member, party to a case, or Tribal bar member, however the needs of the Tribal Court take precedence over all others use of the material. No materials can be taken from the Tribal Court office without prior approval. Each item must be signed out by an authorized court employee who shall assign a return date for the item. The Court shall set a fine schedule for overdue items, and may require the delinquent user to pay the current replacement cost for any item more than 30 days overdue.

CHAPTER 3: TRIBAL BAR

RULE 10 TRIBAL BAR ADMISSION

(a) Requirement of Bar Membership

Any person who does any of the following within the exterior boundaries of the Hoopa Valley Reservation, must be a member of the Tribal Bar:

- (1) offers legal analysis to another;
- (2) offers legal advice to another;
- (3) represents another in a court proceeding.

(b) Types of Membership

A person may be admitted to the Hoopa Valley Tribal Bar either as an attorney or a spokesperson.

(1) Attorney Members

Anyone licensed to practice law in any of the fifty states shall be admitted as an attorney to the Hoopa Valley Tribal Bar, provided s/he has satisfied the admission requirements.

(2) Spokesperson members

Anyone who is not licensed to practice law in any of the fifty states shall be admitted to the bar as a spokesperson, provided s/he has satisfied the admission requirements.

(c) Verification of Eligibility

The court administrator shall verify the eligibility of bar member applicants and issue bar cards to all applicants who meet the requirements set out in this rule.

RULE 11 RIGHT TO LEGAL REPRESENTATION

Any person appearing in Tribal Court has the right to be represented by a spokesperson or attorney at his or her own expense, provided that the legal representative has been admitted to the Tribal Court Bar.

RULE 12 PERSONS PROHIBITED FROM REPRESENTING OTHERS

Members of the Tribal Council, employees of the Tribal Court, and of the Tribal Police are prohibited from performing any of the tribal bar member duties for another, but may represent themselves in their own cases. This prohibition does not prevent a Tribal Police officer from acting as a presenting officer as authorized by statute.

RULE 13 ADMISSION REQUIREMENTS

(a) Age and Character

(1) All Tribal Bar Applicants

To be eligible for admission to the Tribal Court Bar, a person must meet all of the following requirements:

- (A) be at least eighteen years of age;
- (B) must not have been convicted of a felony; and
- (C) and must not have been convicted of a misdemeanor involving moral turpitude

(2) Attorney Applicants

In addition to the requirements listed in subsection (1), any attorney applying for tribal bar membership must currently be in good standing in all jurisdictions to which s/he is admitted to practice law, and have no serious disciplinary record.

(b) Procedural Requirements

To be admitted to the Tribal Court Bar, a person must apply for Bar membership, pass a Tribal Bar examination, pay annual bar dues, and sign the Tribal Bar Member Oath.

(1) Bar Exam

The Bar Exam fee is \$50.00, to be paid prior to the clerk providing a copy of the exam. The exam is a take home test, and the applicant may refer to Hoopa Valley Tribal statutes while taking the exam.

(2) Bar Dues

Bar dues are \$50.00 annually. Billing will occur in the preceding December, to be paid by the following January 31. There will be only one billing per year. Failure to pay the bar dues by the due date shall result in removal from the Tribal Court Bar. If a bar member is removed from the bar for nonpayment of dues, the former member must re-take the tribal bar exam and pay the annual dues in full prior to re-admission.

(3) Hoopa Valley Tribal Bar Oath.

The following oath must be sworn by all persons seeking membership in the Hoopa Valley Tribal Bar.

**"HOOPA TRIBAL BAR MEMBER'S OATH"**

"I, (state your name) , do solemnly swear that:

1. I have read, and am competent in my knowledge of, the Rules of Court;
2. I shall respect and obey the Constitution and Bylaws of the Hoopa Valley Tribe in all respects;
3. I shall abide by the Rules established by the Hoopa Valley Tribal Court;
4. I shall, at all times, maintain the respect due the Hoopa Valley Tribal Court and its officers;
5. I shall not counsel or speak for any suit or proceedings which appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Tribe;
6. I shall employ such means only as are consistent with truth and honor and shall never seek to mislead a judge or jury by any false statement;
7. I shall abstain from all offensive conduct in the Hoopa Valley Tribal Court."
8. As a spokesperson or attorney, I shall attend all scheduled hearings on behalf of the person or person's that I represent and shall be prepared to represent their best interests at all times during all hearings. I understand that failing to appear and failing to diligently carry out my duties as a spokesperson or attorney are grounds for disbarment.
9. I shall comply with all orders of the court, and counsel my client or clients to do the same.

"Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_."

\_\_\_\_\_  
Judge or Clerk

**RULE 14 TRIBAL COURT BAR ROSTER**

The Clerk of the Tribal Court shall maintain a roster of all tribal bar members admitted to practice before the Tribal Court, which shall be available to the

public. The Clerk shall also keep on file the signed oaths of all such persons and the expiration date of each oath.

#### RULE 15 TRIBAL COURT BAR DISBARMENT

##### (a) Disbarment

Any tribal bar member who violates the Hoopa Valley Tribal Bar Member's oath, or the Hoopa Valley Court Code of Ethics, or who fails to diligently or competently represent the party that he represents, shall be subject to disbarment. The wronged party or the trial judge shall prepare, in writing, a complaint against the Tribal Bar Member, including the reasons for disbarment. Within twenty (20) days of receipt of such complaint, the trial judge shall hold a hearing at which time the spokesperson involved may present witnesses and a defense of his/her actions.

##### (b) Appeal.

###### (1) Denial of Admission to Tribal Bar

Any person denied admission to the Tribal Court Bar must be notified in writing of the reasons for the denial of admission. Any person denied admission to the Tribal Court Bar may file a written appeal with the Tribal Court. The decision of the Tribal Court Judge is final, and there is no appeal.

###### (2) Appeal of Disciplinary Action

Any person subject to discipline, including disbarment, by the trial judge may appeal the disciplinary action to the appellate court within 10 days of receiving the written decision, if personally served with the decision, or fifteen days if served with the decision by mail. The cost of appeal shall be \$150.00. The decision of a majority of the appellate panel shall be final.

### **CHAPTER 4: DUTY OF ALL PERSONS APPEARING BEFORE COURT**

#### RULE 16 SERVICE AND FILING OF NOTICE OF CHANGE OF ADDRESS

A party or attorney whose address changes while an action is pending must serve on all parties and file with the court a written notice of the change of address.

#### RULE 17 DUTY TO READ AND COMPLY WITH TRIBAL CODES

##### (a) Familiarity with Tribal Codes

All persons appearing before the court, whether representing themselves or someone else, must familiarize themselves with the tribal codes; and any other applicable law in order to competently present their case to the judge or jury.

##### (b) Sanctions

All persons appearing before the court, whether representing themselves or someone else, may be sanctioned for any of the following:

(1) Failure to Participate in Good Faith at a Pretrial Conference

If a party, or a party's legal representative, fails to obey a scheduling or pre-trial order; is substantially unprepared to participate in the conference; fails to participate in good faith; or where no appearance is made on behalf of a party; the court on its own motion or a motion of a party, may make such orders as are just to address the non-compliant actions, including refusing to allow the disobedient party to support or oppose designated claims or defenses; prohibiting the disobedient party for introducing designated matters into evidence; striking out pleadings in whole or in part; staying further proceedings until the order is obeyed; dismissing the action in whole or in part; rendering a judgment by default against the disobedient party; and/or, finding the disobedient party in contempt of court.

[See Tribal case law for precedent. FRCP 16 (f) may be looked to, and cases pertaining to this rule may be cited as persuasive argument]

(2) Failure to Disclose; False or Misleading Disclosure.

A party, or their legal representative, who without substantial justice fails to disclose information shall not, unless the failure is harmless, be permitted to use at trial, at a hearing, or in a motion, any witness or information previously not disclosed. In addition to, or in lieu of this sanction, the court, on its own motion or a motion of a party may require the non-disclosing party to pay reasonable expenses, including attorney's fees; and may inform the jury of the party's failure to make the disclosure.

(3) Refusal to Admit.

If a party, or their legal representative, fails to admit the genuineness of any document or the truth of any matter, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, the court on its own motion or a motion of the requesting may require the non-admitting party pay reasonable expenses, including attorney's fees incurred in making that proof, and may order any of the sanctions available under subdivision (1) of this subsection. The court shall order attorneys fees or other sanctions unless it finds that (A) the request was held objectionable pursuant to Title 2, § 2.4.20, or (B) the admission sought was of not substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(4) Failure to Participate in the Framing of a Discovery Plan; Discovery.

If a party or their legal representative fails to participate in good faith in development and submission of a discovery plan pursuant to Title 2§ 2.4.08, or fails to cooperate in discovery pursuant to Title 2, §§ 2.4.9 et seq., the court may after opportunity for a hearing, require such party or their legal representative to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure; and may impose any sanctions listed under subdivision (1) of this subsection.

(5) Non-Compliance by Tribal Bar Member

If a failure to comply with an applicable rule is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.

(6) Notice and Procedure

Sanctions must not be imposed under this rule except on noticed motion by the party seeking sanctions or on the court's own motion after the court has provided notice and an opportunity to be heard. Any motion for sanctions must: (1) state the applicable rule that has been violated, (2) describe the specific conduct that is alleged to have violated the rule, and (3) identify the attorney, law firm, party, witness, or other person against whom sanctions are sought.

(7) Award of expenses

In addition to the sanctions awardable under subsection (b) of this rule, the court may order the person who has violated an applicable rule to pay to the party aggrieved by the violation that party's reasonable expenses, including reasonable attorney's fees and costs, incurred in connection with the motion for sanctions or the order to show cause.

(8) Order

An order imposing sanctions must be in writing and must recite in detail the conduct or circumstances justifying the order.

**RULE 18 PROHIBITED EX PARTE COMMUNICATIONS**

(a) Prohibition

Except as otherwise authorized by Hoopa Valley Tribal law, a party, or their legal representative must not directly or indirectly communicate with, or argue to, a judge upon the merits of a contested matter pending before such judge or judicial officer, except:

- (1) In open court; or
- (2) With the written consent of all other parties in the matter; or
- (3) In the presence of all other parties in the matter; or
- (4) In writing with a copy furnished to the other parties in the matter.

(b) Contempt of Court

Parties who engage or attempt to engage in prohibited ex parte communications with a judge are subject to the inherent judicial power of contempt as set forth in Chapter 14 of this title.

(d) Obligation of Court Staff to Screen for Ex Parte Contacts

Court staff shall screen telephone calls and visitors requesting to meet with a judge, to determine if the request is for the purpose of a prohibited ex parte communication. Court staff shall refuse access to the judge if they believe it likely that a prohibited ex parte communication will occur.

(e) Grounds for Disqualification

Any party who believes a judge has engaged in ex parte communications with another party, and as a result of that communication has been biased as to the substantive issues in the case, may move for disqualification of the judge under subsections (2) and/or (3) of 1 HVTC § 1.2.09.

**CHAPTER 5: PRELIMINARY PROVISIONS**

RULE 19 SUBSTANTIVE LAW TO BE APPLIED

(a) Tribal Law; Federal Law.

The Court shall apply the laws of the Hoopa Valley Tribe in each case filed with the Court unless the Court's jurisdiction over a matter is subject to Federal law or is established by an intertribal agreement entered into pursuant to Title I, § 1.2.15. Where jurisdiction is established by intertribal agreement, the Court will apply the laws of the participating tribe. Hoopa Valley Tribal case law shall be the controlling precedent in all cases, except for the following situations:

- (1) The case is being decided under Hoopa Valley Tribal traditional law;
- or
- (2) the issue is subject to federal law or regulation; or
- (3) an intertribal agreement exists which requires the application of another jurisdiction's case law.

(b) Precedent

Appellate decisions shall have precedent over the decisions of the trial court. The Court shall look to prior judicial precedent consistent with this Rule in deciding cases before it.

(c) Applicability

In no situation shall any legislation or other act of the Tribal Council apply to extinguish the substantive right of a party to have a previously filed case decided in court.

RULE 20 FEES

(a) Filing

Unless waived by statute or by grant of a court fee waiver, any party filing any document listed in the Hoopa Valley Tribal Court Fee Schedule, shall pay the listed fee before the court clerk's office will accept the document for filing.

(b) Services

The court may charge fees to compensate for the time spent by court staff providing services to parties or completing necessary administrative tasks such as the collection of fees, as well as to cover the costs of non-court services provided by third parties. Any such fees shall be listed in the Hoopa Valley Tribal Fee schedule.

#### RULE 21 CONTINUING JURISDICTION

The court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and a copy of the petition. A general appearance of the defendant or respondent is equivalent to personal service within this jurisdiction of the summons and a copy of the petition upon him or her.

#### RULE 22 APPEARANCE

##### (a) General Appearance

A party is deemed to have appeared in a proceeding when he or she makes a general appearance.

##### (b) Appearance by Filing

Except as provided in subsection (d) of this rule, a party is deemed to have generally appeared in a proceeding when he or she files any of the following documents with the court clerk:

- (1) A petition or Complaint
- (2) A response or answer;
- (2) A notice of motion or motion;
- (3) A written notice of his or her appearance.

##### (c) Appearance at Hearing

A party is deemed to have made a general appearance whenever s/he appears at a scheduled court hearing, other than those described in subsection (d).

##### (d) No Appearance

A respondent or defendant is not deemed to have appeared in a proceeding when he or she only files or appears at a hearing to decide either of the following:

- (1) A motion to dismiss for lack of subject matter jurisdiction; or
- (2) A motion to dismiss for lack of personal jurisdiction.

##### (e) Notice Required After Appearance

After appearance, the respondent or defendant or his or her attorney is entitled to notice of all subsequent proceedings of which notice is required to be given by these rules or in civil actions generally.

#### RULE 23 TELEPHONE APPEARANCE

Parties may appear by telephone at a hearing or conference with the permission of the court. A Party must contact the court as soon as they are aware of the need for a telephonic appearance, and confirm with the court clerk whether a telephone appearance will be allowed in their case. A party must arrange with the clerk of the court for payment of any telephonic appearance fees. The court may require the personal appearance of all parties at any hearing or conference for which the court, in its discretion,

determines that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.

#### RULE 24 COURT PROCEEDINGS: DEFINITIONS

##### (a) Motion Hearings.

A motion hearing is a pretrial proceeding that takes place when a party has asked the Court to order something to be done in connection with a pending case. Hearings on motions are not automatic and shall be set only when oral argument or resolution of evidentiary issues will be helpful to the court and on the request of one of the parties or the Court's own motion. Motions must be filed to request any action from the court. Typical motions include motions to continue a court date; to set an order to show cause as to why the other party should not be held in contempt of court for failing to comply with a court order; to request a temporary court order; to modify a prior court order; to request a court order requiring the other party to comply with a discovery request; to request a summary judgment order from the court on a matter of law in the absence of material disputed fact.

##### (b) Pre-Trial Conference Hearings.

Pre-trial conference hearings may be scheduled on a written request from one of the parties, or on the Court's own initiative. The purpose of a conference hearing is to simplify the resolution of the case, to discourage wasteful pretrial activities, and to resolve procedural and evidentiary matters before trial. The parties must in good faith discuss settlement prospects; facts and issues not in dispute; evidence to be presented, including witnesses; and seek to resolve any ongoing disputes prior to filing pre-trial motions. To encourage honest discussion, nothing said at a conference hearing shall be admitted into evidence. Conference hearings may, at the Court's discretion, on request of a party or on the Court's own motion, be held off the record.

##### (c) Trial.

A trial is a hearing of the case on its merits, after the parties have had a reasonable time to prepare their cases for submission to the Court. Generally, trials will be set on a written request from one or more parties, or at a conference hearing.

### CHAPTER 6: MOTIONS

#### RULE 25 FORM OF MOTIONS

Unless good cause to allow otherwise exists, all requests from parties, other than those made at a noticed hearing, must be submitted in writing for review by a judge and filed with the clerk's office.

#### RULE 26 EX PARTE MOTIONS

(a) Less than Five Days Notice

All motions served by mail less than 5 days in advance of a hearing date shall be considered ex parte, and shall not be accepted for filing unless the motion complies with these rules and any other applicable tribal statutes.

(b) Affirmative Factual Showing Required

An applicant must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte.

(c) Time of Notice

A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice.

RULE 27 CONTENTS OF NOTICE AND DECLARATION REGARDING NOTICE FOR EX PARTE REQUESTS

(a) Contents of Notice

When notice of an ex parte application is given, the person giving notice must:

- (1) State with specificity the nature of the relief to be requested and the date, time, and place for the hearing on the application; and
- (2) Attempt to determine whether the opposing party will appear to oppose the application.

(b) Declaration Regarding Notice

An ex parte application must be accompanied by a declaration regarding notice stating:

- (1) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule, the applicant informed the opposing party where and when the application would be made;
- (2) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or
- (3) That, for reasons specified, the applicant should not be required to inform the opposing party.

(c) Explanation for Shorter Notice

If notice was provided later than 10:00 a.m. the court day before the ex parte appearance, the declaration regarding notice must explain the exceptional circumstances that justify the shorter notice.

#### RULE 28 SERVICE OF PAPERS IN EX PARTE MATTERS

Parties appearing at the ex parte hearing must serve the ex parte application or any written opposition on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing may be conducted unless such service has been made.

#### RULE 29 APPLICATION FOR AN ORDER EXTENDING OR SHORTENING TIME

##### (a) Application-to whom made

An application for an order extending or shortening the time within which any act is required by law to be done must be heard and determined by the judge before whom the matter is pending; provided, however, that in case of the inability, death, or absence of such judge, the application may be heard and determined by another judge of the same court.

##### (b) Contents of Motion

An application for an order extending or shortening time must state in writing the time line under which the act is required by law to be done and the specific reasons, declared under penalty of perjury, that an extension or shortening of time is needed in the current case.

#### RULE 30 FORMAT OF DISCOVERY MOTIONS

##### (a) Separate Statement Required

Any motion involving the content of a discovery request or the responses to such a request must be accompanied by a separate statement. The motions that require a separate statement include a motion:

- (1) To compel further responses to requests for admission;
- (2) To compel further responses to interrogatories;
- (3) To compel further responses to a demand for inspection of documents or tangible things;
- (4) To compel answers at a deposition;
- (5) To compel or to quash the production of documents or tangible things at a deposition;
- (6) For medical examination over objection; and
- (7) For issue or evidentiary sanctions.

##### (b) Separate Statement Not Required

A separate statement is not required when no response has been provided to the request for discovery.

##### (c) Contents of Separate Statement

A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the

full response. Material must not be incorporated into the separate statement by reference. The separate statement must include the following for each discovery request (e.g., each interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested:

- (1) The text of the request, interrogatory, question, or inspection demand;
- (2) The text of each response, answer, or objection, and any further responses or answers;
- (3) A statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute;
- (4) If necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it;
- (5) If the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and
- (6) If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.

(d) Identification of Interrogatories, Demands, or Requests

A motion concerning interrogatories, inspection demands, or admission requests must identify the interrogatories, demands, or requests by set and number.

(e) Sanctions Despite No Opposition

The court may award sanctions in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed.

RULE 31 SERVICE OF MOTION PAPERS ON NONPARTY DEPONENT

A written notice and all moving papers supporting a motion to compel an answer to a deposition question or to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail at an address specified on the deposition record.

RULE 32 MOTION TO AMEND PLEADINGS

(a) Contents of Motion

A motion to amend a pleading before trial must:

- (1) State what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located; and

- (2) State what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located; and
- (3) The effect of the amendment; and
- (4) Why the amendment is necessary and proper; and
- (5) When the facts giving rise to the amended allegations were discovered; and
- (6) The reasons why the request for amendment was not made earlier.

(b) Amendments on Face of Pleading

An amendment to a pleading must not be made by alterations on the face of a pleading except by permission of the court. All alterations must be initialed by the judge or the clerk.

RULE 33 MOTIONS TO STRIKE

A notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the sections sought to be stricken may be clearly identified by description. Examples of clearly identifiable text are entire paragraphs, causes of action, counts, or defenses.

RULE 34 MOTION OR APPLICATION FOR CONTINUANCE OF TRIAL

(a) Trial dates are firm

To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain.

(b) Motion or application

A party seeking a continuance of the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the request for a continuance by a motion with supporting declarations. The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered.

(c) Grounds for Continuance

Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include:

- (1) The unavailability of an essential witness because of death, illness, or other excusable circumstances;
- (2) The unavailability of a party because of death, illness, or other excusable circumstances;
- (3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;
- (4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;
- (5) The addition of a new party if:

- (A) The new party has not had a reasonable opportunity to conduct discovery and prepare for trial; or
- (B) The other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case;

- (6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- (7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.

(d) Other Factors to be Considered

In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination. These may include:

- (1) The proximity of the trial date;
- (2) Whether there was any previous continuance, extension of time, or delay of trial due to any party;
- (3) The length of the continuance requested;
- (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;
- (5) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;
- (7) The court's calendar and the impact of granting a continuance on other pending trials;
- (8) Whether trial counsel is engaged in another trial;
- (9) Whether all parties have stipulated to a continuance;
- (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and
- (11) Any other fact or circumstance relevant to the fair determination of the motion or application.

RULE 35 MOTION TO DISMISS FOR DELAY IN PROSECUTION

(a) Consideration of All Relevant Matters

In ruling on the motion, the court must consider all matters relevant to a proper determination of the motion, including:

- (1) The court's file in the case and the declarations and supporting data submitted by the parties and, where applicable, the availability of the moving party and other essential parties for service of process;
- (2) The diligence in seeking to effect service of process;
- (3) The extent to which the parties engaged in any settlement negotiations or discussions;

- (4) The diligence of the parties in pursuing discovery or other pretrial proceedings, including any extraordinary relief sought by either party;
- (5) The nature and complexity of the case;
- (6) The law applicable to the case, including the pendency of other litigation under a common set of facts or determinative of the legal or factual issues in the case;
- (7) The nature of any extensions of time or other delay attributable to either party;
- (8) The condition of the court's calendar and the availability of an earlier trial date if the matter was ready for trial;
- (9) Whether the interests of justice are best served by dismissal or trial of the case; and
- (10) Any other fact or circumstance relevant to a fair determination of the issue.

(b) Court action

The court may grant or deny the motion or, where the facts warrant, the court may continue or defer its ruling on the matter pending performance by either party of any conditions relating to trial or dismissal of the case that may be required by the court to effectuate substantial justice.

RULE 36 MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION

(a) Motion

As used in this rule, "motion" refers to either a motion for summary judgment or a motion for summary adjudication.

(b) Motion for Summary Adjudication

If made in the alternative, a motion for summary adjudication may make reference to and depend on the same evidence submitted in support of the summary judgment motion. If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

(c) Documents in Support of Motion

The motion must include the following documents, separately stapled and titled as shown:

- (1) Separate statement of undisputed material facts in support of *[moving party's]* motion for summary judgment or summary adjudication or both;
- (2) Argument in support of *[moving party's]* motion for summary judgment or summary adjudication or both;
- (3) Evidence in support of *[moving party's]* motion for summary judgment or summary adjudication or both; and

(d) Separate Statement of Undisputed Material Facts in Support of Motion

The Separate Statement of Undisputed Material Facts in support of a motion must separately identify each cause of action, claim, issue of duty, or affirmative defense, and each supporting material fact claimed to be without dispute with respect to the cause of action, claim, issue of duty, or affirmative defense. In a two-column format, the statement must state in numerical sequence the undisputed material facts in the first column and the evidence that establishes those undisputed facts in the second column. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

(e) Documents in opposition to motion

The opposition to a motion must consist of the following documents, separately stapled and titled as shown:

- (1) *[Opposing party's]* Argument in opposition to *[moving party's]* motion for summary judgment or summary adjudication or both;
- (2) *[Opposing party's]* separate statement of undisputed material facts in opposition to *[moving party's]* motion for summary judgment or summary adjudication or both;
- (3) *[Opposing party's]* evidence in opposition to *[moving party's]* motion for summary judgment or summary adjudication or both (if appropriate); and

(f) Opposition to Motion; Content of Separate Statement

Each material fact claimed by the moving party to be undisputed must be set out verbatim on the left side of the page, below which must be set out the evidence said by the moving party to establish that fact, complete with the moving party's references to exhibits. On the right side of the page, directly opposite the recitation of the moving party's statement of material facts and supporting evidence, the response must unequivocally state whether that fact is "disputed" or "undisputed." An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted. That evidence must be supported by citation to exhibit, title, page, and line numbers in the evidence submitted.

(g) Documentary evidence

If evidence in support of or in opposition to a motion exceeds 20 pages, the evidence must be separately bound and must include a table of contents.

(h) Format for separate statements

(1) Summary Judgment

Supporting and opposing separate statements in a motion for summary judgment must follow this format:

Supporting statement:

Undisputed Material Facts:

1. Plaintiff and defendant entered into a written contract for the sale of widgets.
2. No widgets were ever received.

Supporting Evidence:

- Jackson declaration, 2:17-21; contract, Ex. A to Jackson declaration.
- Jackson declaration, 3:7-21.

Opposing statement:

Undisputed Material Facts and Alleged Supporting Evidence: Response and Evidence:

1. Plaintiff and defendant entered into a written contract for the sale of widgets. Jackson declaration, 2:17-21; contract, Ex. A to Jackson declaration. Undisputed.
2. No widgets were ever received. Jackson declaration, 3:7-21. Baygi declaration, 7:2-5. Disputed. The widgets were received in New Zealand on August 31, 2001.

(2) Summary Adjudication

Supporting and opposing separate statements in a motion for summary adjudication must follow this format:

Supporting statement:

ISSUE 1-THE FIRST CAUSE OF ACTION FOR NEGLIGENCE IS BARRED BECAUSE PLAINTIFF EXPRESSLY ASSUMED THE RISK OF INJURY

Undisputed Material Facts:

1. Plaintiff was injured while mountain climbing on a trip with Any Company USA.

Supporting Evidence:

- Plaintiff's deposition, 12:3-4.

2. Before leaving on the mountain climbing trip, plaintiff signed a complete waiver of liability.

Smith declaration, 5:4-5; waiver of liability, Ex. A to Smith declaration.

Opposing statement:

**ISSUE 1-THE FIRST CAUSE OF ACTION FOR NEGLIGENCE IS BARRED BECAUSE PLAINTIFF EXPRESSLY ASSUMED THE RISK OF INJURY**

Undisputed Material Facts and Alleged Supporting Evidence: Response and Evidence:

1. Plaintiff was injured while mountain climbing on a trip with Any Company USA. Plaintiff's deposition, 12:3-4.

Undisputed.

2. Before leaving on the mountain climbing trip, plaintiff signed a complete waiver of liability. Smith declaration, 3:6-7. Ex. A to Smith declaration.

Disputed. Plaintiff did not sign the waiver of liability; the signature on the waiver is forged. Jones declaration, 5:4-5; waiver of liability,

**RULE 37 WRITTEN OBJECTIONS TO EVIDENCE IN SUMMARY JUDGMENT OR ADJUDICATION MOTIONS**

**(a) Time for Filing and Service of Objections**

Unless otherwise excused by the court on a showing of good cause, all written objections to evidence in support of or in opposition to a motion for summary judgment or summary adjudication must be served and filed at the same time as the objecting party's opposition or reply papers are served and filed.

**(b) Format of objections**

All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections on specific evidence may be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement. Each written objection must be numbered consecutively and must:

(1) Identify the name of the document in which the specific material objected to is located;

- (2) State the exhibit, title, page, and line number of the material objected to;
- (3) Quote or set forth the objectionable statement or material; and
- (4) State the grounds for each objection to that statement or material.

Written objections to evidence must follow one of the following two formats:

***(First Format):***

**Objections to Jackson Declaration**

**Objection Number 1**

"Johnson told me that no widgets were ever received." (Jackson declaration, page 3, lines 7-8.)

**Grounds for Objection 1:** Hearsay (Title 2 §2.5.12); lack of personal knowledge (Title 2 § 2.5.02).

**Objection Number 2**

"A lot of people find widgets to be very useful." (Jackson declaration, page 17, line 5.)

**Grounds for Objection 2:** Irrelevant (Title 2 § 2.5.01).

***(Second Format):***

**Objections to Jackson Declaration**

**Material Objected to:**

**Grounds for Objection:**

1. Jackson declaration, page 3, lines 7-8: "Johnson told me that no widgets were ever received."

Hearsay (Title 2 §2.5.12); lack of personal knowledge (Title 2 § 2.5.02).

2. Jackson declaration, page 17, line 5: "A lot of people find widgets to be very useful."

Irrelevant (Title 2 § 2.5.01).

(c) Proposed Order

A party submitting written objections to evidence must submit with the objections a proposed order. The proposed order must include places for the court to indicate whether it has sustained or overruled each objection. It must also include a place for the signature of the judge. The proposed order must be in one of the following two formats:

**(First Format):**

**Objections to Jackson Declaration**

**Objection Number 1**

"Johnson told me that no widgets were ever received." (Jackson declaration, page 3, lines 7-8.)

**Grounds for Objection 1:** Hearsay (Title 2 § 2.5.12); lack of personal knowledge (Title 2 § 2.5.02).

**Court's Ruling on Objection 1:** Sustained: \_\_\_\_\_  
Overruled: \_\_\_\_\_

**Objection Number 2**

"A lot of people find widgets to be very useful." (Jackson declaration, page 17, line 5.)

**Grounds for Objection 2:** Irrelevant (Title 2 § 2.5.01).

**Court's Ruling on Objection 2:** Sustained: \_\_\_\_\_  
Overruled: \_\_\_\_\_

**RULE 38 DISMISSAL OF ACTIONS**

**(a) Voluntary**

An action may be dismissed by the plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first, or by filing a stipulation of dismissal signed by all parties who appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any other court an action based on the same claim.

(b) Involuntary

For failure of the plaintiff to prosecute or to comply with these Rules a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, the dismissal under this subsection, other than any dismissal for lack of jurisdiction, for improper venue, or for failure to join a proper party under Title 2, § 2.2.04, operates as an adjudication on the merits.

(c) Dismissal of Counterclaim, Cross Claim, or Third Party Claim

The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subsection (a) of this rule must be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action.

If a plaintiff who has once dismissed an action in court commences an action based upon or including the same claim against the same defendant, the court may make an order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

[See Tribal case law for precedent. Subsections (a), (c), and (d) of FRCP 41 may be looked to, and cases pertaining to those provisions of the federal rule may be cited to as persuasive argument]

## **CHAPTER 7 FAMILY LAW**

### **RULE 39 BIFURCATION OF ISSUES**

(a) Bifurcation of issues

On noticed motion of a party, the stipulation of the parties, or its own motion, the court may bifurcate one or more issues to be tried separately before other issues are tried. The motion must be heard not later than the trial-setting conference.

(b) When to bifurcate

The court may try separately one or more issues before trial of the other issues if resolution of the bifurcated issue is likely to simplify the determination of the other issues. Issues that may be appropriate to try separately in advance include, but are not limited to:

- (1) Validity of a postnuptial or premarital agreement;
- (2) Date of separation;
- (3) Date to use for valuation of assets;
- (4) Whether property is separate or community;
- (5) How to apportion increase in value of a business; or
- (6) Existence or value of business or professional goodwill.

## RULE 40 FAMILY COURT DUTIES RELATIVE TO DOMESTIC VIOLENCE CASES

### (a) Duties

The family court personnel shall have the following duties:

- (1) Identify cases in Family Court that involve domestic violence; and
- (2) Make reasonable efforts to ensure the safety of victims, children, and other parties when they are participating in Family Court or court ordered services;
- (3) Make appropriate referrals as available such as child custody evaluation, parent education, parent orientation, supervised visitation, child custody mediation, relevant education programs for children, and other services as determined by the court.

### (b) No Negotiation of Violence

Family Court judges and court referred service providers must not negotiate with the parties about using violence with each other, whether either party should or should not obtain or dismiss a restraining order, or whether either party should cooperate with criminal prosecution.

### (c) Domestic Violence Restraining Orders

Notwithstanding the above, in appropriate cases, Family Court judges and court referred service providers may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

### (d) Providing Information

Family Court personnel and court ordered service providers must provide information to families accessing their services about the effects of domestic violence on adults and children. Court ordered service providers must provide information and materials that describe Family Court Services policy and procedures with respect to domestic violence.

### (e) Separate Sessions

In Family Court cases in which there has been a history of domestic violence between the parties or in which a protective order is in effect, at the request of the party who is alleging domestic violence in a written declaration under penalty of perjury or who is protected by the order, the Court ordered mediator, counselor, evaluator, or investigator must meet with the parties separately and at separate times. When appropriate, arrangements for separate sessions must protect the confidentiality of each party's times of arrival, departure, and meeting with the service provider. Family Court service providers must provide information to the parties regarding their options for separate sessions. If domestic violence is discovered after mediation or evaluation has begun, the Family Court services staff member

assigned to the case must confer with the parties separately regarding safety-related issues and the option of continuing in separate sessions at separate times. Family Court services staff, including support staff, must not respond to a party's request for separate sessions as though it were evidence of his or her lack of cooperation with the court ordered services.

(f) Referrals

Family Court ordered services staff, where applicable, must refer family members to appropriate services, if available. Such services may include but are not limited to programs for perpetrators, counseling and education for children, parent education, services for victims, and legal resources.

**CHAPTER 8: SETTLEMENT**

**RULE 41 OFFER OF JUDGMENT**

(a) Settlement

The parties may settle the case without the consent of the Court, unless a manifest injustice would result.

(b) Timing of Pretrial Offer of Judgment

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued.

(c) Withdrawn or Unaccepted Offers

An offer not accepted within 10 days of its service on the opposing party will be deemed withdrawn and evidence that an offer was made is not admissible except in a proceeding to determine costs.

(d) Costs to Offeror

If the judgment finally obtained by a party is not more favorable than the offer previously made to that party, the party to whom the offer was made must pay the costs incurred after the making of the offer to the party who made the offer, including any tribal bar member's representation fees.

(e) Offer of Judgment as to Liability Amount

When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(f) Notification of Court

Upon reaching an agreement to settle, the parties should write out the settlement in full, and secure the signatures of all parties. The settlement

agreement should clearly set forth whether dismissal or other action of the Court is requested. The Court shall dismiss the action, or enter judgment in accordance with the settlement agreement, as agreed to by the parties, unless it appears to the Court that a manifest injustice would result, in which case the Court shall schedule the matter for hearing. Parties who have settled the case should orally notify the Clerk of the Court as soon as possible.

[See Tribal case law for precedent. FRCP 68 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

#### RULE 42 INFORMAL DISPUTE RESOLUTION

##### (a) Court Ordered

Where the court finds that informal dispute resolution will aid the resolution of the case, and no serious prejudice will be worked against either party by a delay in resolution, the Court may, on its own motion or a motion of a party, order the parties to mediation, negotiation, or some other agreed upon form of informal dispute resolution.

##### (b) Voluntary

Nothing in this Code or in the Rules of the Hoopa Tribal Court prevents persons involved from resolving their dispute through any other lawful means; negotiation, mediation, etc. [Formerly Title 2, § 2.4.07]

##### (c) Costs

The court shall assign any costs for dispute resolution between the parties in a just manner. The court may order that both parties split the costs evenly, or that one party bear more, or all, of the costs.

#### RULE 43 STIPULATION FOR JUDGMENT

##### (a) Content of Stipulation

A stipulation for judgment may be submitted to the court for signature at the time of the hearing on the merits and must contain the exact terms of any judgment proposed to be entered in the case.

##### (b) Effect of Stipulation

A stipulation for judgment must include disposition of all matters subject to the court's jurisdiction for which a party seeks adjudication or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time. A stipulation for judgment constitutes a written agreement between the parties as to all matters covered by the stipulation.

### **CHAPTER 9 TRIAL**

#### RULE 44 TRIAL

All trials upon the merits must be conducted in open court and so far as convenient in a regular court room. Trial shall be held as expeditiously as

possible, taking into account the Court's schedule and the rights of all parties to properly prepare their cases.

[See Tribal case law for precedent. FRCP 77 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

#### Rule 45 CONSOLIDATION; SEPARATE TRIALS

##### (a) Consolidation.

When actions involving a common question of law or fact are pending before this court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

##### (b) Separate Trials.

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

[See Tribal case law for precedent. FRCP 42 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

#### RULE 46 TAKING OF TESTIMONY

##### (a) Form.

In all trials the testimony of witnesses must be taken orally in open court, unless otherwise provided by Tribal Ordinance or these Rules. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

##### (b) Evidence on Motions.

When a motion is based on facts not of record the Court may hear the matter on affidavits presented by the respective parties, but the court may direct the matter be heard wholly or partly on oral testimony or deposition.

[See Tribal case law for precedent. Subsections (a) and (e) of FRCP 43 may be looked to, and cases pertaining to those provisions of the federal rule may be cited to as persuasive argument]

#### RULE 47 COURT REPORTER, STENOGRAPHER; TAPE RECORDING, STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

Whenever the testimony of a witness at a trial or hearing which was recorded or stenographically reported is admissible in evidence at a later trial, it may

be proved by the recording or transcript thereof duly certified by the person who recorded or reported the testimony.

[See Tribal case law for precedent. Subsection (c) of FRCP 80 may be looked to, and cases pertaining to that provision of the federal rule may be cited to as persuasive argument]

#### RULE 48 PROOF OF OFFICIAL RECORD

An official record, or entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by the person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (1) of the attesting person, or (2) of any state, federal, or tribal official whose certification of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness and official position relating to the attestation.

#### RULE 49 DETERMINATION OF FOREIGN LAW

Whenever the Court is applying federal law, or determining whether to enter the judgment of another court, the party who intends to raise an issue concerning the law of another tribe, federal or state law must give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Title 2, Chapter 5, Rules of Evidence.

#### RULE 50 POST TRIAL BRIEFS

The judge may order an issue of law of central importance to the case to be briefed after trial. Due dates for such briefs shall be established by the Court before the conclusion of the trial. Continuances of post trial brief deadlines are disfavored. Judgment may be delayed until after the issue has been briefed.

### **CHAPTER 10: JURIES**

#### RULE 51 RIGHT TO JURY TRIAL

##### (a) Offenses Punishable by confinement.

Any person accused of an offense punishable by confinement has the right to a jury trial upon request, and shall not have to pay the jury fees required under this rule.

##### (b) Civil Actions.

In civil actions, the Court has discretion to allow a jury trial upon the written request of any party at least 20 days before the trial date and upon the party posting a fee or other security in the amount of Four Hundred and Fifty Dollars (\$450.00) to cover costs, disbursements and jury fees in the case.

## RULE 52 JURORS

### (a) Eligible Jurors

A list of the eligible jurors must be prepared by the Tribal Court each year. Any person eighteen (18) years of age or more who is a Tribal member and a resident of the Hoopa Valley Reservation for six (6) months or more is eligible to be a juror. The judge of the Court may excuse a prospective juror, but only on a showing of hardship. Members of the Tribal Council and employees of the Tribal Court and Tribal Police are exempt from jury service during their service in such offices.

### (b) Selection and Number of Jurors.

A jury shall consist of six (6) persons. The names of potential jurors be drawn by lot from the Hoopa Valley Tribe's list of eligible jurors. The Clerk of the Court will randomly select, and notify, thirty (30) persons for service as potential jurors.

## RULE 53 JURY FEES

Every person who is required to attend Court for selection or service as a juror shall be entitled to a fee of Fifteen Dollars (\$15.00) a day for each day his/her services are required by the Court, plus twenty (20) cents a mile for traveling to and from the Court. In cases other than those initiated by the Hoopa Valley Tribe, the party requesting a jury trial, upon granting of the request by the Court and no later than five (5) working days prior to the date set for trial, shall post estimated first day jury fees in the amount of Four Hundred and Fifty (\$450.00) with the Clerk of the Court. The actual total expense of jury fees shall become the responsibility of the losing party and shall be assessed as a cost in the case; however, a losing party who did not request a jury trial may be relieved of this expense by the Court in the interests of justice.

## RULE 54 JURY QUESTIONS. ("VOIR DIRE")

### (a) Voir Dire Opportunity Mandatory

In all jury trial cases the court shall allow the parties or their representatives to question the potential jurors.

### (b) Procedure

The court may permit the parties or their attorneys to ask questions of prospective jurors, or may itself ask questions to the jury pool. If the Court questions the potential jurors, any party may submit proposed questions for prospective jurors to the Court. The court may permit the parties or their representative to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(c) Form and Content of Questions

All jury questions must be in easy to understand terms and must accurately reflect the law applicable to the regulation allegedly violated.

(d) Prohibition on Undue Consumption of Time or Harassment

The Court must control the questioning so as to prevent undue consumption of time and harassment.

(e) Challenges.

Any party to the case may challenge and dismiss without cause not more than three members of the jury pool, but there is no limit to challenges for cause. The judge will decide as to the sufficiency of a challenge for cause.

RULE 55 JURY INSTRUCTION

The judge shall instruct the jury in the laws governing the case, and the jury must decide issues presented to it in conformity with such instructions. The judge shall render judgment in accordance with the verdict and existing law.

(a) Submission of Proposed Jury Instructions

The parties must submit proposed jury instructions to the Court. The Judge will select from the proposed instructions, and supplement them with any additional necessary instructions. The Court shall inform the parties or their legal representatives which jury instructions will be given prior to the closing arguments to the jury.

(b) Form and Content of Instructions

All jury instructions must be in easy to understand terms and must accurately reflect the law and/or custom governing the case.

(c) Judge to Instruct Jury

At the conclusion of trial, the judge shall instruct the jury as to the issues it must decide and the law applicable to those issues. The Court, at its election, may instruct the jury before or after closing argument, or both.

(d) Written Copy of Instructions to Jury

The Court must provide the jury with a written copy of the instructions before jury deliberations begin.

RULE 56 OBJECTIONS TO JURY INSTRUCTIONS

No party may assign as error the giving or the failure to give instruction unless the party objects to the instruction or its absence before the jury retires to consider the verdict. A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

[See Tribal case law for precedent. FRCP 51 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

#### RULE 57 JUROR'S DUTY TO NOT DISCUSS CASE DURING DELIBERATIONS

If the jury are permitted to separate, either during the trial or after the case is submitted to them, the Court must inform them that it is their duty not to converse with, or allow themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express an opinion until the case is finally submitted to them for a decision.

#### RULE 58 JURY QUESTIONS DURING DELIBERATIONS

##### (a) Testimony Read Back

If, during deliberations, the jury needs a portion of the testimony read back to them, or has a question of law, the foreman must notify the Court Officer, who will notify the Judge and arrange for the Jury's question to be asked in open Court, in the presence of the parties and their legal representatives. Except for good cause shown, the judge need not be present while testimony previously received into evidence is read to the jury.

##### (b) Questioning of Witnesses

Jurors are allowed to submit written questions directed to witnesses. An opportunity must be given to counsel to object to such questions out of the presence of the jury.

#### RULE 59 OFFICER TO SAFEGUARD DELIBERATIONS

If the jury needs time to decide the case, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or are discharged by the Court. Unless by order of the Court, the officer having them under his charge must not allow any communication to be made to them, or make any himself, except to ask them if they have agreed upon a verdict, and he must not, before their verdict is read in open Court, communicate to any person the state of their deliberations, or the verdict agreed upon.

### **CHAPTER 11: VERDICTS; JUDGMENTS**

#### RULE 60 JURY VERDICT

##### (a) Standards of Proof

A jury verdict, or the jury's inability to reach a verdict, must be announced to the parties in open court. If the verdict is insufficient, the jury may correct it under the advice of the Court, or the jury may be sent out again. A jury verdict is reached in the following situations:

- (1) when at least four of the six jurors agree on a preponderance of the evidence standard;
- (2) When at least five of the six jury members agree on a clear and convincing evidence standard their foreman to the judge in open court;

(3) When all six jurors unanimously agree on a beyond a reasonable doubt standard

(b) General vs. Special Verdicts

The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and those conclusions of fact must be presented so that nothing remains to the Court but to draw from them conclusions of law. Where the Court requires a jury to return only a special verdict in the form of a written finding upon each issue of fact the Court may submit to the jury written questions which require brief answers; or may submit written forms of the several special findings which may properly be made under the pleadings and evidence; or it may use any other appropriate method of submitting the issues and requiring the written findings. The Court must give the jury all necessary explanations and instructions concerning the matter to enable the jury to make its findings upon each issue.

(c) Punitive Damages

In all cases in which the issue of punitive damages is presented to the jury the court must issue a special verdict in writing separating punitive damages from compensatory damages.

RULE 61 JUDGMENTS - - GENERALLY

In all civil cases, judgment consists of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party. In all actions tried upon the facts without a jury the Court must specifically state its factual findings and separately state its conclusions of law. In granting or refusing interlocutory injunctions the court must similarly set forth the findings of fact and conclusions of law which constitute the grounds of its actions. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

(a) Judgment After Court Trial.

In non-jury matters, the Court, after the submission of all evidence, shall enter its judgment in conformity with the evidence in open court, or at the judge's discretion, within 15 days from the time of the end of the presentation of all testimony and evidence.

(b) Judgment After Jury Trial.

After the jury renders its verdict the Court shall enter a judgment in accordance with the verdict. However, upon motion of a party, or on its own

motion, if the Court concludes that the jury verdict is at such variance with the state of the evidence that no reasonable jury could have so found, then the Court may enter a judgment in place of the jury's verdict (judgment notwithstanding the verdict).

RULE 62 JUDGMENT AS A MATTER OF LAW IN ACTION TRIED BY JURY;  
RENEWAL OF MOTION FOR JUDGMENT AFTER TRIAL; ALTERNATIVE MOTION  
FOR NEW TRIAL, CONDITIONAL RULINGS

(a) Judgment as a Matter of Law

(1) Circumstances in which Motion will be Granted

If during a trial by a jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained without a favorable finding on that issue.

(2) Timing of Motion

Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. The motion must specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewing Motion for Judgment After Trial; Alternative Motion for New Trial

If the court does not grant a motion for judgment as a matter of law made under subdivision (a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after the entry of judgment or (if the motion addresses a jury issue not decided by a verdict) no later than 10 days after the jury was discharged. The movant may alternatively request a new trial or join a motion for a new trial under Rule 76.

In ruling on a renewed motion, the court may:

(1) if a verdict was returned:

- (A) allow the judgment to stand,
- (B) order a new trial, or
- (C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:

- (A) order a new trial, or
- (B) direct entry of judgment as a matter of law.

(c) Granting Renewed Motion for Judgment as a Matter of Law; Conditional Rulings; New Trial Motion.

(1) Granting Renewed Motion for Judgment as a Matter of Law; Conditional Rulings

If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) New Trial Motion

Any motion for a new trial under Rule 76 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after entry of the judgment.

(d) Denial of Motion for Judgment as a Matter of Law.

If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

[See Tribal case law for precedent. FRCP 50 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 63 DEFAULT JUDGMENT

(a) Circumstances Allowing Entry of Default

When a party against whom a judgment for relief is sought has failed to plead or otherwise defend as provided by these rules, including failing to appear at a scheduled hearing after having been noticed to appear, and that fact is presented to the Court by sworn declaration or sworn testimony at noticed hearing, the Court shall enter the default pursuant to the provisions of this rule. The provisions of this rule apply 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.

(b) Judgment

(1) Against Party Who has Appeared in Action

If the party against whom judgment by default is sought has appeared in the action, the Court must hold a noticed hearing on the motion for entry of default judgment prior to ruling on the motion. If, in order to enable the Court to enter judgment it is necessary to take an account or determine damages or to establish truth of any averment by evidence or to make an investigation of any matter, the Court may conduct such hearings as it deems proper.

(2) Against Party Who has Not Appeared in Action

If the party against whom judgment by default is sought has not appeared in the action, the Motion for Entry of Default Judgment must be personally served upon the non-appearing party. Unless statute provides for a shorter time period, the non-appearing party will have the time allowed under 2 HVTC § 2.4.03 to respond to the motion. The party against whom a default judgment is sought may file an answer to the complaint and an opposition to the default motion up to the time of the entry of the default judgment, however any late filed documents will be subject to a motion to strike. The court may enter the default judgment without holding a hearing on the matter provided the moving party has provided the court with sufficient information to find for the movant and enter a judgment amount.

(c) Documents to be Submitted

The following must be included in the motion for entry of Default Judgment:

- (1) Except in unlawful detainer cases, a brief summary of the case identifying the parties and the nature of plaintiff's claim;
- (2) Declarations or other admissible evidence in support of the judgment requested;
- (3) Interest computations as necessary;
- (4) A memorandum of costs and disbursements;
- (7) A dismissal of all parties against whom judgment is not sought or an application for separate judgment against specified parties, supported by a showing of grounds for each judgment;
- (8) Exhibits as necessary; and
- (9) A request for legal representation fees if allowed by statute or by the agreement of the parties.

(d) Fee Schedule

The court may establish a schedule of legal representation fees to be in determining the reasonable amount of legal representation fees to be allowed in the case of a default judgment.

(e) Set Aside of Judgment

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 77.

RULE 64 DECLARATORY JUDGMENTS

The Court, upon the filing of an appropriate pleading by a party, may declare the rights and other legal relations of any interested party seeking the declaration, whether or not further relief is or could be sought. Any such declaration has the force and effect of a final judgment or decree and is reviewable as such. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar. Any party may request a jury trial on these issues.

[See Tribal case law for precedent. FRCP 57; 28 U.S.C. § 2201 may be looked to, and cases pertaining to these rules may be cited to as persuasive argument]

RULE 65 FINDINGS BY THE COURT; JUDGMENT IN PARTIAL FINDINGS

(a) Effect. In all actions tried upon the facts without a jury, or with an advisory jury, the Court must specifically state its factual findings and state separately state its conclusions of law. Judgment shall be entered pursuant to Rule 66, Entry of Judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its actions. Findings of fact are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous and due regard shall be given to the trial court's judgment as to the credibility of the witnesses.

(b) Amendment

On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings -- or make additional findings -- and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 77. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) Judgment on Partial Findings

If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained

or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

[See Tribal case law for precedent. FRCP 52 may be looked to, and cases pertaining to that rule may be cited as persuasive argument.]

#### RULE 66 ENTRY OF JUDGMENT

Upon a decision by the Court, or upon a general verdict by a jury, the Court shall enter the judgment. Every judgment must be set forth on a separate document. A judgment is effective only when so set forth and when file stamped and entered into the record. Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except where any party timely files one of the motions listed below, the time of appeal for all parties runs from the entry of the order disposing of the last such motion outstanding.

- (a) A Motion for Renewal of Motion for Judgment after Trial; Alternative Motion for New Trial under Rule 62;
- (b) A Motion to amend or make additional findings of fact under Rule 65, whether or not granting the motions would alter judgment;
- (c) A Motion to Alter or Amend the Judgment under Rule 76;
- (d) A Motion for a New Trial under Rule 76; or
- (e) A Motion for relief under Rule 77 if the motion is filed no later than 10 days after the entry of judgment.

[See Tribal case law for precedent. FRAP 4(a)(4) may be looked to, and cases pertaining to that rule may be cited as persuasive argument]

#### RULE 67 JUDGMENT - COMPENSATION

Where the injury inflicted was the result of carelessness of the defendant, the judgment shall follow any rules of compensation set out in any ordinances or section of this code pursuant to which the action is brought.

#### RULE 68 PUNITIVE DAMAGES

Where the injury was deliberately inflicted, the judgment may award punitive damages to the prevailing party.

#### RULE 69 COSTS OF CIVIL ACTIONS; ATTORNEY'S FEES

##### (a) Costs

The court may award costs to the prevailing party. These costs may include the witness fees for which either party may be responsible under this Code: the jury fees, if any; and any further incidental expenses or fees connected with the procedure required by this code as the Court may direct.

(b) Attorneys Fees

Attorney's fees are not included in the costs of a civil action. An award of Attorney's fees must be requested by motion, and can only be awarded when a statute specifically provides for the award, or when a prevailing defendant proves the plaintiff's case was brought in bad faith. Attorneys fees may not be awarded against the Tribe, unless the requirements of 2 HVTC § 2.6.01(f) have been met.

[See Tribal case law for precedent. FRCP 54 (attorneys fees excluded) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 70 PREJUDGMENT COSTS

(a) Claiming costs

(1) Trial costs

A prevailing party who claims costs must serve and file a memorandum of costs within twenty (20) days from the entry of a final judgment. The memorandum of costs must be verified by a statement of the party, attorney, or spokesperson that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case.

(2) Costs on default

A party seeking a default judgment who claims costs must request costs at the time of applying for the judgment.

(b) Contesting costs

(1) Striking and taxing costs

Any notice of motion to strike or to tax costs must be served and filed 15 days after personal service of the cost memorandum or 19 days after service by mail of the cost memorandum.

(2) Form of Motion

Unless objection is made to the entire cost memorandum, the motion to strike or tax costs must refer to each item objected to by the same number and appear in the same order as the corresponding cost item claimed on the memorandum of costs and must state why the item is objectionable.

(3) Extensions of time

The party claiming costs and the party contesting costs may agree to extend the time for serving and filing the cost memorandum and a motion to strike or tax costs. This agreement must be confirmed in writing, specify the extended date for service, and be filed with the clerk. In the absence of an agreement, the court may extend the times for serving and filing the cost memorandum or the notice of motion to strike or tax costs for a period not to exceed 30 days.

(4) Entry of Costs

After the time has passed for a motion to strike or tax costs or for determination of that motion, the clerk must immediately enter the costs on the judgment.

RULE 71 CLAIMING ATTORNEY'S OR SPOKESPERSON'S FEES

(a) Time for Motion

(1) At Trial Court Level

A notice of motion to claim attorney's or spokesperson's fees for services up to and including the rendition of judgment in the trial court-including attorney's or spokesperson's fees on an appeal before the rendition of judgment in the trial court- must be served and filed within the time for filing a notice of appeal.

(2) Attorney's fees on appeal

A notice of motion to claim attorney's or spokesperson's fees on appeal under a statute or contract requiring the court to determine entitlement to the fees, the amount of the fees, or both, must be served and filed within the time for serving and filing the memorandum of costs under rule 70.

(b) Extensions

The parties may stipulate to an extension of the time for filing a motion for attorney or spokesperson's fees for a period not to exceed 60 days. For good cause, the trial judge may extend the time for filing a motion for attorney's or spokesperson's fees in the absence of a stipulation or for a longer period than allowed by stipulation.

RULE 73 INCLUSION OF INTEREST IN JUDGMENT

The judgment shall include any interest awarded by the court and the interest accrued since the entry of the verdict.

RULE 74 PAYMENT OF JUDGMENTS - - TRIBAL MEMBERS

Whenever the Hoopa Tribal Court has ordered payment of money damages to an injured party and the losing party refuses to make such payment, within the time set for payment by the Court, and when losing party has sufficient funds to his/her credit to pay all or part of such judgment, the Chairperson shall certify the record of the case and the amount of the available funds. If the Tribal Council so directs, the disbursing agent must pay over to the Tribal Council the amount of the judgment, or such lesser amount as may be specified by the Tribal Council, from the account of the delinquent party.

RULE 75 JUDGMENTS AND DEFENDANT'S ESTATES

A judgment shall be considered a lawful debt in all proceedings by the Department of Interior or by the Court to distribute decedent's estates.

## RULE 76 NEW TRIALS; AMENDMENTS OF JUDGMENT

### (a) New Trial

#### (1) Jury Trial

A new trial may be granted to all of the parties and on all or part of the issues in an action decided by a jury for any of the reasons for which new trials may be granted in actions at law.

#### (2) Court Trial

A new trial may be granted to all of the parties and on all or part of the issues in an action tried without a jury, for any of the reasons for which rehearing may be granted in suits in equity. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

#### (3) Time for Motion.

A motion for a new trial must be served no later than 10 days after the entry of judgment.

#### (4) On Initiative of the Court.

No later than 10 days after entry of judgment the court on its own initiative may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either case, the court must specify in the order the grounds thereof.

### (b) Motion to Alter or Amend a Judgment.

On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings -- or make additional findings -- and may amend the judgment accordingly. The motion may accompany a motion for a new trial. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not at trial the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

[See Tribal case law for precedent. FRCP 52 (b) and 59 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

## RULE 77 RELIEF FROM JUDGMENT OR ORDER

### (a) Clerical Mistakes.

Clerical mistakes in judgment, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

(1) Grounds

On motion and upon terms that are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (i) mistake, inadvertence, surprise, or excusable neglect;
- (ii) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 76;
- (iii) fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (iv) the judgment is void;
- (v) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been vacated, or it is no longer equitable that the judgment should have prospective application; or
- (vi) any other reason justifying relief from the operation of the judgment.

(2) Timing

The motion must be made no later than 10 days after judgment for reason (i); and for reasons (ii) and (iii), not more than one year after entry of judgment, order, or proceeding was entered or taken.

(3) Finality of Judgment

A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

(4) Fraud Upon the Court

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.

[See Tribal case law for precedent. FRCP 60 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 78 HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is grounds for granting a new trial or for setting aside a verdict or vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such actions appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

[See Tribal case law for precedent. FRCP 61 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

## **CHAPTER 12: ENFORCEMENT OF JUDGMENTS**

### **RULE 79 AUTOMATIC STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT**

#### **(a) Judgments**

Unless provided by Tribal ordinance or stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.

#### **(b) Injunctions and Receiverships**

An injunction or receivership action shall not be automatically stayed during the period after it's entry and until appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

[See Tribal case law for precedent. FRCP 63 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

### **RULE 80 EXECUTION**

#### **(a) Writ of Execution**

The Process to enforce a judgment for the payment of money is a writ of execution, unless the court directs otherwise. In aid of the judgment or execution, the judgment creditor or a successor in interest, may obtain discovery from any person, including the judgment debtor, in the manner provided in Title Two.

[See Tribal case law for precedent. FRCP 64, 69 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

### **RULE 81 ENFORCEMENT REMEDIES**

#### **(a) Judgment Debtor Exam**

If, after the time for appeal has run, it is proven that the judgment debtor has not paid the judgment amount in full or is not making payment in a manner agreed to by the parties, the Court shall order the judgment debtor to appear before it and answer under oath regarding all his/her personal property. The court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to seize as much of such property as reasonably appears necessary to pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the court may proceed without such appearance. [Formerly Title 2, § 2.6.01]

#### **(b) Other Remedies**

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are

available under the circumstances and in the manner provided by the existing law of the Hoopa Valley Tribe at the time the remedy is sought. The available remedies include attachment, garnishment, replevin, sequestration and other corresponding or equivalent remedies however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

(c) Sale of Property.

(1) Notice of Sale

Sale of the seized property shall be at a public auction conducted by the Tribal Police after giving at least 30 days public notice by posting notice of the sale in at least three public places on the reservation. Property shall be sold in a commercially reasonable manner to the highest bidder who shall make payment for the property at the time of the sale.

(2) Proceeds from Sale

If the sale results in a higher price than the debt, plus expenses of the sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale.

(3) Mandatory Escrow Period

After sale, a 60 day escrow period will be provided for the debtor to comply with the order of the Court. After the escrow period expires, the sale shall be final. [Formerly Title 2, § 2.6.02]

(4) Record of Sale.

A complete and accurate record of the sale shall be kept including receipts and descriptions of property and any other information as deemed necessary. [Formerly Title 2, § 2.6.03]

(c) Other Enforcement Remedies

Other available remedies include attachment, garnishment, and other corresponding or equivalent remedies however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

[See Tribal case law for precedent. FRCP 64 may be looked to as to subsection (b) of this rule, and cases pertaining to the federal rule may be cited to as persuasive argument]

RULE 82 JUDGMENT OF SPECIFIC ACTS

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court. On application of the party entitled to performance, the Court shall issue a writ of attachment or sequestration against the property of the

disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the disobedient party in contempt.

[See Tribal case law for precedent. FRCP 70 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

#### **RULE 83 EXEMPTION FROM EXECUTION**

The Court shall only order seizure and sale of such property of the judgment debtor the loss of which shall not impose an immediate and substantial hardship on the immediate family of the judgment debtor. Ceremonial regalia, basketry, and other traditional items used for cultural or religious purposes are exempt from seizure. Only property of the judgment debtor him/herself may be subject to execution and not property of his/her family. [Formerly Title 2, § 2.6.04]

#### **RULE 84 PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES**

When an order is made in favor of a person not a party to the action, that person may enforce obedience to the order by the same process as if a party. Also, when obedience to an order may be lawfully enforced against a person not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

[See Tribal case law for precedent. FRCP 71 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

### **CHAPTER 13: RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS**

#### **RULE 85 AUTHORITY; PROOF REQUIRED; STANDARDS**

##### **(a) Court's Discretion to Recognize**

The Court's discretion regarding recognition and enforcement of foreign judgments is subject to any statutorily enacted provisions of Tribal law. The Court shall not recognize and enforce any foreign judgment unless the proponent of the foreign judgment:

- (1) Complies with the procedure set forth in Title 2; the jurisdiction of the Court;
- (2) Submits proof that the foreign court had personal jurisdiction over the defendant;
- (3) Submits proof that the foreign judgment is based on valid subject matter jurisdiction; and
- (4) Submits proof that the foreign judgment is final and that no appeal is pending.

##### **(b) Factors Weighing Against Recognition**

The Court need not recognize a foreign judgment if:

- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to allow him to defend;

- (2) The foreign judgment, decree or order violates the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301-1301;
- (3) The foreign judgment was obtained by fraud;
- (4) The foreign judgment would require the Hoopa Valley Tribe to waive its sovereign immunity from actions seeking money judgments, violate any Tribal law, violate any federal law, or the law of the foreign jurisdiction which the judgment was obtained;
- (5) The causes of action on which the judgment is based is contrary to the general welfare of the Hoopa Valley Tribe or its members.

#### RULE 86 FILING PROCEDURES

Any person may apply to the Tribal Court by written application for an order accepting a civil judgment from another tribal court or a state or federal court as a judgment of the Hoopa Tribal Court.

##### (a) Timing

A foreign judgment may be filed with the court at any time during which it is legally enforceable in the issuing jurisdiction.

##### (b) Filing Requirements

A properly filed foreign judgment shall be docketed and recorded in the Court in the same manner as other cases pursuant to Title 2, §2.3.02. Proper filing of a foreign judgment with the Court is accomplished when the proponent has filed with the Court Clerk:

- (1) A certified copy of the foreign judgment showing the date of its entry in the foreign court;
- (2) The record of any subsequent entries affecting it, such as levies of execution and payments in partial satisfaction; and
- (3) A motion requesting that the Court recognize and enforce the foreign judgment. The motion must be accompanied by supporting affidavit stating that the documents filed are what they are purport to be.

##### (c) Summons

Upon proper filing of a foreign judgment with the Court, the Court shall issue a summons directing the defendant to appear on a date not more than 30 days from the date of service and respond to the motion requesting the Court to recognize and enforce the foreign judgment. Such a summons must be served on the defendant pursuant to Title 2, §§ 2.3.03; 2.3.04.

##### (d) Garnishment or Attachment

Where the proponent of the foreign judgment seeks enforcement of same through garnishment or attachment, the Wage Garnishment Ordinance, Title 45, also applies.

##### (e) Failure to Appear or Respond

Failure to appear as directed by summons or failure to respond to the motion requesting the Court to recognize and enforce the foreign judgment once

personal jurisdiction over the defendant has been obtained shall not prevent the Court from ruling on the motion.

#### RULE 87 REVIEW BY COURT

The Court shall hold a hearing to determine whether to grant or deny the motion to recognize and enforce the foreign judgment. After hearing oral argument and reviewing all relevant evidence the Court will decide whether or not to enter the foreign judgment as a Hoopa Valley Tribal Court judgment, and shall issue an Order granting or denying the motion. Such an order is a final judgment of the Court in favor of either the plaintiff or the defendant to the foreign judgment and is enforceable as such. [Formerly Title 2, §2.7.02]

#### RULE 88 PAYMENT OF JUDGMENT

Upon the entry of the Order declaring the other Court's judgment to be a judgment of the Hoopa Valley Tribal Court, the provisions of this Code regarding payment of judgments and execution apply. [Formerly Title 2, § 2.7.03]

### **CHAPTER 14: CONTEMPT OF COURT**

#### RULE 89 CONTEMPT OF COURT

The Hoopa Valley Tribal Court has the inherent power to adjudge persons to be in civil contempt of court. The judgment and orders of the court or judge made in case of contempt are final and conclusive.

#### RULE 90 ACTS OR OMISSIONS CONSTITUTING CONTEMPT

The following acts or omissions in respect to the tribal court or tribal court proceedings are contemptuous of the authority of the court:

- (1) Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a judicial proceeding.
- (2) A breach of peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a judicial proceeding.
- (3) Using obscenity or insulting language in referring to the Judge or discussing the Judge's decision in your case while in the court building and with knowledge that the Judge is in hearing range of the comments.
- (4) Misbehavior or willful neglect or violation of duty by a spokesperson or other person in the performance of a judicial service.
- (5) Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court.
- (6) Disobedience of any lawful judgment, order, or process of the court.
- (7) Unlawfully detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.
- (8) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
- (9) Engaging in Belligerent or abusive behavior toward a member of the court staff because the staff is complying with Rule 9 of this title.

(10) Any other unlawful interference with the process or proceedings of a court.

#### RULE 91 CONTEMPT PROCEEDINGS

##### (a) Contempt Committed in the Presence of the Court

If a contempt is committed in the presence of the court or of the judge in chambers or in the clerk's office, it may be penalized summarily. An order of contempt shall be made reciting the facts as occurring, a finding of civil contempt, and the penalty imposed.

##### (b) Contempt Committed Outside the Presence of the Court

If a contempt is not committed in the presence of the court or of the judge in chambers or in the clerk's office, a contempt proceeding must be based on an affidavit of the facts constituting the contempt presented to the court and an order to show cause and notice of hearing must issue and be personally served on the alleged offending person. The order to show cause and notice of hearing may be made by means of certified mail, return receipt requested only if personal service is not possible or if the alleged offending person resides outside the exterior boundaries of the Hoopa Valley Indian Reservation.

#### RULE 92 PENALTIES FOR CIVIL CONTEMPT

##### (a) Penalties

The court may impose a fine not to exceed \$500 against a person adjudged to be in Contempt; may file a complaint with whatever bar association a legal representative belongs to; and may, where appropriate, refer the matter to the Humboldt County District Attorney's office for a criminal complaint filing.

##### (b) Enforcement

Contempt judgments may be enforced in the same manner as other Tribal Court judgments. This enforcement includes: If a person adjudged to be in contempt fail to pay the fine when due and is a tribal member, the court may order assignment of that person's per capita payments. If a person adjudged to be in contempt fails to pay the fine when due and is an employee of the Hoopa Valley Tribe, the court may order wage garnishment.

### **CHAPTER 15: APPEALS**

#### RULE 93 APPELLATE FILINGS

##### (a) Location

The Location for filing all appellate paperwork is the Hoopa Valley Tribal Court Clerk's Office.

##### (b) Number of Copies

Any party filing appellate paperwork must provide **four** copies of each document to be filed with the Appellate Court.

## RULE 94 STAY OF EXECUTION

### (a) Automatic

In any case where a party has perfected his/her right of appeal as established under Tribal Law and these Rules of Court, a stay of execution of judgment shall be granted automatically upon the payment of any ordered bond or security by the appellee, and the sentence will not be carried out unless affirmed by the Court of Appeals; except for the following orders:

- (1) a prohibitory or mandatory injunction, either preliminary or permanent against pollution discharge issued under Title 37 § 3.4
- (2) a clean up and removal order of illegally dumped materials against the party found to be responsible where the materials are hazardous or otherwise pose a health problem; an injunction, either preliminary or permanent, against the illegal dumping of materials under 49 HVTC §49.7.3;
- (3) those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any dependency action under Title 14 or any civil action under Titles 14a. However, the trial court may in its discretion stay execution of these provisions pending review on appeal or for any other period or periods that it may deem appropriate.

### (b) Upon Motion of a Party

#### (1) In Trial Court

A party may file a Motion Requesting a Stay of any Order on Appeal. The Motion must include the reasons for granting the relief requested and the facts relied on for the request. The court may condition relief on a party's filing a bond or other appropriate security to cover all or part of the Judgment on Appeal

#### (2) In Appellate Court

A party may file a Motion Requesting a Stay of any Order on Appeal if the Motion was previously filed in the Trial Court, and denied. The Motion must include any reasons given by the trial court for its denial of the prior Motion, the reasons for granting the relief requested and the facts relied on; originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and relevant parts of the record. The court may condition relief on a party's filing a bond or other appropriate security to cover all or part of the Judgment on Appeal

### (c) Trial Court's Jurisdiction During Stay

When there is a stay of proceedings other than the enforcement of the judgment, the trial court shall have jurisdiction of proceedings related to the enforcement of the judgment as well as any other matter embraced in the action and not affected by the judgment or order appealed from.

#### RULE 95 APPELLATE HEARING

Within 45 days from the date of written notice of appeal, the appellate court must convene unless delay is warranted by good cause, to hear the case on appeal at such place and time as may be designated.

#### RULE 96 EVIDENCE

The same record and evidence that was used in the Trial Court shall be used in the appellate proceedings. Only in extreme and rare circumstances which would affect the proper application of justice and the rights of the appellate will any additional evidence be allowed in the appellate proceedings.

#### RULE 97 TAX APPEAL

Any party contesting the assessment of any taxes owed to the Hoopa Valley Tribe, or any appealing a judgment for taxes owed or a judgment for any other remedy provided under any tax ordinance of the Tribe, must pay the assessed tax or judgment, or provided security equal to the amount of such taxes or judgment, before he/she may appeal under this Chapter. Upon the payment of such taxes and upon posting of a \$100 bond for costs, the appealing party may be granted a stay of execution as to the part of the judgment other than the taxes found to be owing, and that of the judgment shall not be carried out unless and until affirmed by the Court of Appeals. Any forfeiture of seized goods shall be stayed pending the appeal, and the Court must hold the goods seized in a safe place until the final resolution of the case. If the goods are perishable or subject to sharp decline in value, the Court may sell such goods in a commercially reasonable manner and hold the amount realized until the final resolution of the case.

### **CHAPTER 16: MISCELLANEOUS**

#### RULE 98 NET SEIZURE

Where Tribal Law Enforcement has seized a net pursuant to the provisions of Title 16 of this Code, and has filed a citation with the Tribal Court, the Clerk must arrange for publication of Notice of Citation in the Hoopa Valley People Newspaper. Publication of such notice must actually occur at least once before the Tribal Court may act upon the citation. In addition, the Notice of Citation must be posted by the Court Clerk on the bulletin boards at the Neighborhood Facility Building, and as Ray's Market in Hoopa.

#### RULE 99 WORKER'S COMPENSATION FORMS

The Hoopa Valley Tribe and/or the Third Party Administrator must approve forms for use in Worker's Compensation cases. If no forms have been officially sanctioned, then a person may use any form, including one of their own creation, provided it includes the necessary information to put the Tribe and/or Third party Administrator on notice as to the facts of the claim.

RULE 100 ISSUANCE OF ORDERS IN THE INTEREST OF SUBSTANTIAL JUSTICE

(a) Unaddressed Questions

Where Tribal statutes and these rules do not expressly address a question, the Court may issue any order to accomplish substantial justice.

(b) Merits of the Case.

Absent bad faith or willful misconduct of a party, it is in the interests of substantial justice to rule on the merits of a case.

(c) Non Represented Parties

It is in the interests of substantial justice to allow some leniency for non-represented parties who fail to strictly comply with procedural rules of law, however, in deciding whether or not to extend this leniency, the court must weigh the prejudice to the other party; whether or not the Tribal Codes explicitly address the procedural issue; whether or not the non-represented party has been previously noticed by the court of their non-compliance, and if the non-represented has made any good faith efforts to remedy their non-compliance. This court has the discretion to construe any and all documents filed in the court by pro se litigants in a liberal manner so as to provide for the just determination of the issues, secure simplicity in procedure, fairness in administration and/or the elimination of unjustifiable expense or delay.

RULE 101 SAVINGS CLAUSE

If any provision of this Title is declared to be invalid, the remaining provisions shall not be affected.

Dated: August 15, 2008

*Richard C. Blake*

Richard C. Blake  
Chief Judge