SAULT STE. MARIE CHIPPEWA TRIBAL COURT

RULES OF COURT

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Chapter I: General Provisions

Rule 1.01 – Purpose.
The Sault Ste. Marie Chippewa Tribal Court Rules of Court govern practice and procedure in all courts established by the Tribal Constitution and the Tribal Code. Rules stated to be applicable only in a specific court or only to a specific type of proceeding apply only to that court or to that type of proceeding and control over general rules.

Rule 1.02 – Title; Citation.
These rules are the "Sault Ste. Marie Chippewa Tribal Court Rules of Court." An individual rule may be referred to as "Tribal Court Rule____," and cited by the symbol TCR ____." For example, this rule may be cited as TCR 1.02.

Rule 1.03 – Definitions.
"Court", unless modified with the term "Appellate" or "of Appeals", shall mean the trial level of the Sault Ste. Marie Chippewa Tribal Court.
"Court Rules" means the Sault Ste. Marie Chippewa Tribal Court Rules of Court.
"Judiciary" means, collectively, all judges and magistrates of the Tribal Court, both at the trial and appellate level, including reserve judges.

Rule 1.04 – Adoption of Court Rules and Amendments.
Any proposed amendment to these Court Rules shall be posted on the Sault Ste. Marie Chippewa Tribal Court webpage. The general public shall have 30 days from the date the proposed amendment is made publicly available online to submit comments via e-mail to the Clerk of Court. The Tribal Court Judiciary must review all comments received during the public comment period and deliberate the merits of all comments prior to the adoption of the proposed amendment(s) to the Court Rules. Following the expiration of the 30-day comment period, the Court may adopt the proposed amendment by a majority vote of the current members of the Tribal Court Judiciary. Following the adoption of the amendment(s), the revised Court Rules shall be made available to the public within 14 days of the Judiciary's adoption of the amendment. At the same time that the revised Court Rules are made available to the public, the Judiciary shall also release a written response to any comments received regarding the amendment.

Rule 1.05 – Computation of Time.
In computing a period of time prescribed or allowed by these rules, by court order, or Tribal Code, the following rules apply:

(A) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the

next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order.

(B) If a period is measured by a number of weeks, the last day of the period is the same day of the week as the day on which the period began.

(C) If a period is measured by months or years, the last day of the period is the same day of the month as the day on which the period began. If what would otherwise be the final month does not include that day, the last day of the period is the last day of that month. For example, "2 months" after January 31 is March 31, and "3 months" after January 31 is April 30.

Rule 1.06 – Public Recording of Court Proceedings.

No person may record any court proceedings, whether in a video or audio fashion, without first requesting permission of the court and the court expressly granting such permission as a matter of discretion. If permission is granted, the court may place specific conditions on the recording and its dissemination.

Chapter II: Rules of Ethics for Tribal Court Judges

Rule 2.01 – Purpose and Scope.

The purpose of this Chapter is to provide for and guide the professional conduct of judges and officers of the tribal judicial system.

Rule 2.02 – Integrity and Independence of Tribal Judiciary.

An independent and honorable judiciary is indispensable to justice in our Tribal community. A Tribal Court judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the Tribal judiciary will be preserved. A Tribal Court judge should, at all times, consider how his or her behavior and demeanor, inside and outside of the courtroom affects the public image of the Tribe and its courts. Leaders are judged by their speech, actions, dress, appearance, manners, and conduct, and it is important to always project the image of judicial impartiality and independence. To preserve the independence of the Tribal judiciary, no Tribal Court judge shall answer or otherwise respond to any regarding any case other than to supply copies of publicly available court filings, record and any filed written opinions.

Rule 2.03 – Avoidance of Impropriety.

Any Tribal Court judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the Tribal judiciary. A Tribal Court judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A Tribal Court judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Rule 2.04 – Impartiality and Diligence.

A Tribal Court judge shall perform the duties of judicial office impartially, competently, and diligently.

(A) The judicial duties of a Tribal Court judge take precedence over all of the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by Tribal law, custom and tradition.

(B) Adjudicative Responsibilities.

(1) A Tribal Court judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A Tribal Court judge should adhere to the laws, customs, and traditions of the Tribe. He or she should not be swayed by partisan interests, public clamor, political pressure, or by fear of criticism, and should resist influences on the Court by other Tribal officials, governmental officials or any other attempting to improperly influence the Court.

(3) A Tribal Court judge shall require order and decorum in proceedings before the judge.

(4) A Tribal Court judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lay advocates, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's, direction and control.

(5) A Tribal Court judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A Tribal Court judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer or lay advocate, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except as authorized by law.

(7) A Tribal Court judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A Tribal Court judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing, and shall prohibit other Court personnel from making such comment. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(C) Administrative Responsibilities.

(1) A Tribal Court judge shall discharge the judge's administrative responsibilities with a high degree of integrity and diligence.

(2) A Tribal Court judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of integrity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A Tribal Court judge should initiate disciplinary measures against a judge or attorney for nonprofessional conduct of which the judge becomes aware.

(D) Disqualification.

(1) A Tribal Court judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including instances where:

(a) the Tribal Court judge has a personal bias or prejudice concerning a party or a party's lawyer or advocate, or has personal knowledge of disputed evidentiary facts;

(b) the Tribal Court Judge served as lawyer, advocate, or personal representative in the matter before the Court or a person with whom the Judge has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter,

(c) the Tribal Court Judge knows that he or she, individually or as a fiduciary, or a member of the judge's immediate family or household, has an economic interest in the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the Tribal Court judge or the judge's spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:

i. is a party to the proceeding, or an officer, director or trustee of a party;
ii. is acting as a lawyer in the proceeding;
iii. is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or
iv. is, to the judge's knowledge, likely to be a material witness in the proceeding;

Rule 2.05 – Extra-judicial Activities.

A Tribal Court judge shall conduct his or her personal and extra-judicial activities to minimize the risk of conflict with judicial obligations.

Chapter III: Rules of Professional Conduct for Attorneys and Lay Advocates *[reserved]*

Chapter IV: Code of Conduct for Tribal Court Employees

INTRODUCTION

All employees the Tribal Court hold highly visible positions of public trust. We must conduct our business in an environment and in a manner that favorably reflects the ideals consistent with the fundamental values of the Sault Ste. Marie Tribal Court system, as identified by the Sault Ste. Marie Tribe of Chippewa Indians Tribal Code, our Tribal community, and our Tribe's customs and traditions. These values include: respect, fairness, accessibility, accountability, effectiveness, responsiveness and independence. Our actions at all times should uphold and increase the tribal community's trust and confidence in the judicial branch, reflect the highest degree of integrity, and demonstrate commitment to each principle embodied in this code.

Rule 4.01: I will avoid activities that could cause an adverse reflection on my position or Tribal Court.

Court employees are highly visible and should conduct themselves in a way that instills community trust and confidence. Their actions reflect not only on themselves, but the court as well. Improper behavior or the appearance of improper behavior may compromise the integrity of the court. Activities an employee engages in that are improper or may be perceived as improper include, but are not limited to:

- Violating Tribal, federal, state, or local laws and regulations
- Engaging in illegal drug use or frequent excessive alcohol consumption in public
- Engaging in harassing or threatening conduct

Rule 4.02: I will not use or attempt to use my position to secure unwarranted privileges for myself or others.

Tribal Court employees may not use the real or apparent power of their position within the Court to personally benefit themselves or anyone else. Court employees should never use their position to solicit or accept, or appear to solicit or accept, any gift, favor, or anything of value. Generally, this would include special considerations given by others to the employee specifically because of his or her position as a Tribal Court

employee. The solicitation or acceptance of a gift, favor, or additional compensation can give the impression that something will be done in return for the donor.

Court employees must also avoid conflicts of interest or the appearance of conflicts of interest in the performance of their official duties. a conflict of interest exists when the employee's ability to perform his or her duty is impaired or when the court employee, his or her family, or business would derive some benefit as a result of his or her position within the court system. Employees are obligated to perform their duties in a fair, impartial and objective manner. It is, therefore, required that employees avoid situations that would impair their ability to fulfill that obligation.

Examples of conduct that consists or may appear to be abuse of position and/or a conflict of interest include, but are not limited to:

- obtaining concert tickets for free or trying to get into a concert for free because you work for the Court
- accepting a gift certificate or money from a court patron who has a current court case
- processing a case file in which you or a family member are a party

Rule 4.03: I will provide impartial treatment to all persons interacting with Tribal Court.

The official actions of a Tribal Court employee should not be affected or appear to be affected by kinship, rank, position, or influence of any party or person involved in the Court system. Court employees may not discriminate against or otherwise give special treatment or anything of value to any person, whether or not for compensation, or permit family, social, or other relationships to influence or appear to influence their official conduct or judgment. Personal relationships may place temptation upon the employee to provide special service or non-service. However, differential treatment in any of these situations undermines the integrity of the employee and the judicial system. Employees need to be able to provide impartial and understandable answers to the tribal community's questions in an efficient manner, without providing legal advice. Court employees must resist the temptation to answer the many questions asked by users of Tribal Court which call for legal advice. In situations where an employee may appear to be favoring a relative or influential person, an employee could advise and seek counsel from their supervisor. An employee could also make sure another employee participates in the transactions so that appearance of special unilateral action is eliminated. Employee conduct that may be considered to be partial includes, but is not limited to:

- allowing a childhood friend on your probation caseload to violate their probation
- placing a phone call to a relative to give them "a head's up" that a petition has been filed against them
- providing advice when a Court patron describes a factual situation and asks what they should or should not do, or what the judge will or will not do

Rule 4.04: I will use the resources, property, and funds of the Tribal Court judiciously and solely in accordance with prescribed procedures.

Court employees are stewards of public resources placed at their disposal. A court employee shall use the resources, property, and funds judiciously and solely in accordance with prescribed procedures. Examples of improper use of public resources include, but are not limited to:

- taking frequent personal telephone calls at work – whether on the Court's phone line or personal cellular phone
- personal use of Tribal Court property, such as paper, printers, computers, vehicles, etc.
- allowing non-employees to use the Court's resources

Rule 4.05: I will not disclose confidential or discretionary information gained through my court employment to any unauthorized person.

Some court records are nonpublic and can not be released. Court employees need to understand the types of cases and documents that are considered confidential. Confidential information should never be disclosed to any unauthorized person for any purpose. Even when the information becomes public, court employees should exercise a great deal of discretion. Sometimes breaches of confidentiality do not involve

intentional disclosures of official court records. Some are the result of innocent and casual remarks about pending or closed cases, about participants in litigation or about juries which could give attorneys, litigants, reporters, and the community confidential information. Such remarks can seriously compromise a case or a person's standing in the community. Court staff should discuss cases only for legitimate reasons, and should handle sensational or sensitive cases with great care and discretion. Examples or confidentiality issues are not limited to cases. Personnel, probation and LEIN issues all have confidential limitations. Court staff should guard against being overheard when discussing legitimate confidential information. Conduct that could be considered as disclosing confidential information includes, but is not limited to:

- commenting on a person's completion of Gwaiak Miicon in a public setting
- letting the aunt of a minor child who is the subject of child welfare case know when the next hearing in the case is
- discussing one probationer's progress with another probationer

Rule 4.06: I am free to participate in political activities during non-working hours as long as such activity does not use or appear to use my position or the Court in connection with such activities.

A Tribal Court employee's ability to participate in the democratic process by working for a political cause, party, or candidate should not be hampered by his or her employment if done outside of working hours. This participation includes, but is not limited to, holding party membership, holding public office, making speeches, and making contributions of time and/or money to candidates, political parties or other groups engaged in political activity. This participation in political activity should not transcend into the workplace by the displaying of political material (i.e., literature, badges, signs or other material advertising a political cause, party or candidate), soliciting signatures for political candidacy, and soliciting or receiving funds for political purposes. In addition no government equipment or resources of any kind are to be used for promoting political activity in the workplace before, during, or after work hours. This participation in political activity should not transcend into the workplace by the displaying of political material (i.e., literature, badges, signs or other material advertising a political cause, party or candidate), soliciting signatures for political candidacy, and soliciting or receiving funds for political purposes. In addition no government equipment or resources of any kind are to be used for promoting political activity in the workplace before, during, or after work hours. In addition, Tribal Court employees shall not discriminate in favor of or against any employee or applicant for employment because of his or her political contributions or political activities.

Rule 4.07: I will carry out my responsibilities to litigants, co-workers, and all others interacting with the Court in a timely, diligent, professional and courteous manner.

For the Tribal Court to be an effective institution, its employees must reflect a high level of professionalism as they faithfully carry out all assigned duties and enforce the rules/orders provided by the Court. Tribal Court employees are not to inappropriately destroy, alter, falsify, mutilate, backdate, or fail to make required entries on any court records. Essential to the administration of justice is allowing equal access and treatment for all. Every day court employees are called upon to assist people, and it is their responsibility to provide these customers with the utmost service, regardless of the individual's race, religion, gender, national origin, etc. Discrimination can come in varying forms (speech, conduct, etc.), yet court employees should be aware that no form of discrimination is acceptable and when discovered should be exposed and discouraged. By enforcing the orders given by the court, employees encourage a shared level of understanding and efficiency. Disregarding rules/orders provided by the court allows for confusion and a decline in overall productivity that compromises the concept of professionalism.

Tribal Court employees are highly visible and that their actions reflect upon not only themselves, but the court as well. Improper behavior or the appearance thereof may compromise an employee's professional integrity. Before partaking in a particular action, court employees should consider its propriety. Employees should conduct themselves in a manner that instills public trust and confidence. Examples of conduct that may compromise an employee's professional integrity include but are not limited to:

- Falsifying the date a Complaint was filed with the Court
- Not meeting with probationers as often as is appropriate

- Failing to complete a pre-sentence investigation and report
- Engaging in discussions with probationers or former clients in recovery regarding drinking and partying

Rule 4.08: I will actively pursue educational opportunities to improve my professional knowledge, skills, and abilities in order to provide quality service to Tribal Court and the tribal community.

When working within the court, laws and rules of operation are continually changing due to legislation, higher court decisions, technology, etc. Therefore, court employees are encouraged to take advantage of educational opportunities that will advance their understanding and allow for better service.

Chapter V: Civil Matters Generally *[reserved]*

Chapter VI: Criminal Matters Generally

SUBCHAPTER 6.00 GENERAL Provisions

6.001 – Purpose, Scope & Applicability.

(A) Purpose and Construction. The rules in this chapter are intended to promote a just determination of every criminal proceeding in Tribal Court. Practitioners shall construe them in a manner to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

(B) Scope. The rules in this Chapter shall govern matters of procedure in criminal cases before the Tribal Court.

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

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

Depositions and other discovery proceedings under Chapter V may not be taken for the purposes of discovery in criminal cases before the Tribal Court.

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

6.002 – Definitions.

For purposes of this chapter,

(A) "Party" includes the attorney or lay advocate representing the party.
(B) "Defendant's attorney" includes a self-represented defendant proceeding without an attorney.
(C) "Prosecutor" means any attorney prosecuting the case.
(D) "Court reporter" means the court staff person or contracted individual who is recording or reporting the proceeding.
(E) "Judicial Officer" includes a judge or magistrate
(F) "Violent felony" means a felony, an element of which involves a violent act or threat of a violent act against any other person.

6.003 – Speedy Trial.

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

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

(1) the trial of criminal cases must be given preference over the trial of civil cases, except child welfare cases and juvenile offender cases where the juvenile is in custody, and

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

(C) Delay and Recognizance Release. In a felony case in which the defendant has been incarcerated for a period of 180 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, or in misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community. In computing the relevant time period, the court is to exclude:

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

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

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

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

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

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

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

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

6.004 – Right to Assistance of Attorney.

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

(1) of entitlement to effective assistance of counsel, and that the court will postpone the arraignment upon request of defendant to consult with counsel before proceeding,

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

The court must question the defendant to determine whether the defendant wants an attorney and, if so, notify the defendant that he or she must be financially eligible before the court will appoint an attorney and that the defendant is required to submit to the court a financial eligibility form in order for the Court to determine eligibility for court-appointed counsel.

(B) Questioning Defendant about Indigency. The court will appoint an attorney at the Tribe's expense if the court finds that the defendant is indigent or unable to retain counsel without substantial hardship on themselves or their families.

(1) A defendant will be presumed indigent if he or she receives public assistance such as food stamps, aid to families of dependent children, Medicaid, disability insurance, or other similar public assistance.

(2) The determination of indigency must by guided by the following factors:

(a) present employment, earning capacity, and living expenses;

(b) outstanding debts and liabilities, secured and unsecured;

(c) whether the defendant has qualified for and is receiving any form of public assistance;

(d) whether the defendant's disposable income and liquid assets are adequate to cover the cost of retaining private counsel, without undue financial hardship to the defendant and the defendant's family; and

(e) any other circumstances that would impair the ability to pay an attorney's fee as would ordinarily be required to retain competent counsel.

(3) A defendant's ability to post bond for pretrial release does not make the defendant ineligible for appointment of an attorney.

(C) Partial Indigency. If a defendant is able to pay all or part of the cost of an attorney, the court may require partial or full reimbursement to the court of the cost of providing an attorney and may establish a plan for collecting the reimbursement.

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

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

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

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of an attorney, the court must state on the record at each subsequent proceeding (e.g., preliminary examination, arraignment, hearings, trial or sentencing) only that the defendant has the continuing right to the assistance of an attorney (at the Tribe's expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

(1) the defendant must affirm that an attorney's assistance is not wanted; or

(2) if the defendant requests an attorney and is financially unable to retain one, the court must appoint one; or

(3) if the defendant wants to retain an attorney and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one. The court may only refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate attorneys unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained attorney or attorneys associated in the practice of law, the court must inquire into the potential for a conflict of

interest that might jeopardize the right of each defendant to the undivided loyalty of the attorney. The court may not permit the joint representation unless:

(1) the attorney or attorneys state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;

(2) the defendants state on the record after the court's inquiry and the attorney's statement, that they desire to proceed with the same attorney; and

(3) the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding.

(G) Unanticipated Conflict of Interest. If, in a case of joint representation, a conflict of interest arises at any time, including trial, the attorney must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate attorneys. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interests of justice require.

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

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

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

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

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

Rule 6.005 - Video and Audio Proceedings.

(A) Defendant at a Separate Location. The Court may use two-way interactive video technology to conduct the following proceedings between a courtroom and jail, detention facility, or satellite tribal facility: initial arraignments on the warrant or complaint, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, and waivers and adjournments of preliminary examinations.

(B) Defendant in the Courtroom. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, the Court may use telephonic, voice or video conferencing, including two-way interactive video technology, to take testimony from any person not physically present in the courtroom upon a showing of good cause and with the provision of appropriate safeguards.

SUBCHAPTER 6.100 PRELIMINARY PROCEEDINGS

Rule 6.101 – Complaint.

(A) Definition and Form. A complaint is a written accusation that a named or described person has committed a specified criminal offense. The complaint must set forth the substance of the accusation against the defendant and the name, the Tribal Code citation, and penalty of the offense allegedly committed. To Complaint must also describe the nature of the offense committed, including the time and place of the alleged offense.

(B) Signature and Oath. The complaint must be signed and sworn to before a judicial officer.

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

Rule 6.102 – Arrest on a Warrant.

(A) Issuance of Warrant. A judicial officer may issue a warrant if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.

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

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

(1) contain the accused's name, if known, or an identifying name or description, including address;

(2) describe the offense charged in the complaint;

(3) command a peace officer or other person authorized by law to arrest and bring the accused before a judicial officer; and

(4) be signed and dated by the court.

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

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

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

(1) the accused is arrested prior to the expiration date, if any, of the bail provision;

(2) the accused is arrested in the seven-county service area of the Tribe, or in the county in which the accused resides or is employed, and the accused is not wanted on another charge;

(3) the accused is not under the influence of liquor or a controlled substance; and

(4) the condition of the accused or the circumstances at the time of arrest do not otherwise suggest a need for judicial review of the original specification of bail.

Rule 6.103 – Summons Instead of Arrest Warrant.

(A) Issuance of Summons. If the prosecutor does not request an arrest warrant, the court may issue a summons instead of an arrest warrant. If an accused fails to appear in response to a summons, the court, on request, must issue an arrest warrant.

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

(C) Service and Return of Summons. A summons may be served by

(1) delivering a copy to the named individual; or

(2) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or

(3) mailing a copy to the individual's last known address.

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

Rule 6.104 – Arraignment.

(A) Arraignment without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule, or must be arraigned without unnecessary delay by use of two-way interactive video technology in accordance with TCR 6.005(A).

(B) Place of Arraignment. An accused arrested pursuant to a warrant must be taken to the Tribal Court specified in the warrant. If the arrest occurs outside the county in which the Tribal Court is located, the arresting agency must make arrangements with the Court to have the accused promptly transported to the Tribal Court for arraignment in accordance with the provisions of this subrule. In extraordinary situations and with consent of the detaining facility, the prosecutor and court staff may travel to the place of detention to conduct an arraignment. In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology in accordance with TCR 6.005(A).

(C) Arrest Without Warrant. If an accused is arrested without a warrant, a complaint complying with TCR 6.101 must be filed at or before the time of arraignment. On receiving the complaint and on finding probable cause, the court must either issue a warrant or endorse the complaint. Arraignment of the accused may then proceed in accordance with subrule (D)(4).

(D) Arraignment Procedure; Judicial Responsibilities. At the arraignment, the court must:

(1) read the accused the complaint and determine that he understands the complaint and the section of the Tribal Code which he is charged with violating,

(2) inform the accused of maximum possible sentence, and any mandatory minimum sentence required by law;,

(3) advise the accused that:

(a) the accused has the right to remain silent,

(b) anything the accused says or writes can be used against the accused in court,

(c) the accused has the right to an attorney at all proceedings and that the court will postpone the arraignment should the accused desire to consult with counsel,

(d) if the accused cannot afford to hire an attorney, the court will appoint an attorney for them,

(4) if the accused is charged with a felony, set a date within the next 14 days for the accused preliminary examination and inform the accused of the date;

(5) determine what form of pretrial release, if any, is appropriate; and

(6) ensure that the accused has been fingerprinted if required by law.

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

(F) Plan for Judicial Availability. Tribal Court must adopt, and maintain a written copy at the court, a plan for judicial availability for felony matters. The plan shall:

(1) make a judicial officer available for felony arraignments each day of the year, or

(2) make a judicial officer available for setting bail for every person arrested for commission of a felony each day of the year conditioned upon,

(a) the judicial officer being presented a proper complaint and finding probable cause pursuant to TCR 6.102(B), and

(b) the judicial officer having available information to set bail.

This portion of the plan must provide that the judicial officer shall order the arresting officials to arrange prompt transportation of any accused unable to post bond to the Court for arraignment not later than the next regular business day.

Rule 6.105 – Pretrial Release.

(A) In General. At the defendant's first appearance before the court, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be:

(1) held in custody as provided in subrule (B);

(2) released on personal recognizance or an unsecured appearance bond; or

(3) released conditionally, with or without money bail (ten percent, cash or surety).

(B) Release into Custody.

(1) The court may deny pretrial release to:

(a) a defendant charged with

(i) murder, or

(ii) committing a violent felony and

[A] at the time of the commission of the violent felony, the defendant was on probation, parole, or released pending trial for another violent felony, or

[B] during the 15 years preceding the commission of the violent felony, the defendant had been convicted of 2 or more violent felonies under the laws of the Tribe, or substantially similar laws of any other Tribe(s), the United States, or states arising out of separate incidents,

if the court finds that proof of the defendant's guilt is evident or the presumption great;

(b) a defendant charged with criminal sexual conduct in the first degree, armed robbery, or kidnapping with the intent to extort money or other valuable thing thereby, if the court finds that proof of the defendant's guilt is evident or the presumption great, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person.

(2) if the court determines as provided in subrule (B)(1) that the defendant may not be released, the court must order the defendant held in custody for a period not to exceed 90 days after the date of the order, excluding delays attributable to the defense, within which trial must begin or the court must immediately schedule a hearing and set the amount of bail.

(3) The court must state the reasons for an order of custody on the report and within the written custody order.

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

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

(1) that the defendant will appear as required, will not leave the Tribe's seven-county service area without permission of the court, and will not commit any crime while released, and

(2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to

(a) make reports to a court or agency as are specified by the court or the agency;

(b) not use alcohol or illicitly use any controlled substance;

(c) comply with a substance abuse testing or monitoring program;

(d) participate in a specified treatment program for any physical or mental condition, including substance abuse;

(e) comply with restrictions on personal associations, place of residence, place of employment, or travel;

(f) surrender driver's license or passport;

(g) comply with a specified curfew;

(h) continue to seek employment or maintain employment;

(i) attend school if applicable;

(j) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;

(k) not possess a firearm or other dangerous weapon;

(l) not enter specified premises or areas and not assault, beat, molest or wound a named person or persons;

(m) to have no contact with an alleged victim either directly or through any third parties.

(n) satisfy any injunctive order made a condition of release; or

(o) comply with any other condition, including the requirement of money bail as described in subrule (E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.

(E) Money Bail. If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot otherwise be assured, money bail, with or without conditions described in subrule (D), may be required.

(1) The court may require the defendant to post a bond that is executed by the defendant, or by another, and secured by

(a) a cash deposit, or its equivalent, for the full bond amount, or

(b) a cash deposit of 10 percent of the bond amount, or, with the court's consent,

(c) designated real property

(2) The court may require satisfactory proof of value and interest in property if the court consents to the posting of a bond secured by designated real property.

(F) Decision; Statement of Reasons.

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

(a) defendant's prior criminal records, including juvenile offenses;

(b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution;

(c) defendant's history of substance abuse or addiction;

(d) defendant's mental condition, including character and reputation for dangerousness;

(e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;

(f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;

(g) the availability of responsible members of the community who would vouch for or monitor the defendant;

(h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence, and

(i) any other facts bearing on the risk of nonappearance or danger to the public.

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

(3) Nothing in subrules (C) through (F) may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria.

(G) Custody Hearing.

(1) Entitlement to Hearing. A court having jurisdiction of a defendant may conduct a custody hearing if the defendant is being held in custody pursuant to subrule (B) and a custody hearing is requested by either the defendant or the prosecutor. The purpose of the hearing is to permit the parties to litigate all of the issues relevant to challenging or supporting a custody decision pursuant to subrule (B).

(2) Hearing Procedure.

(a) At the custody hearing, the defendant is entitled to be present and to be represented by an attorney, and the defendant and the prosecutor are entitled to present witnesses and evidence, to proffer information, and to cross-examine each other's witnesses.

(b) The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes the findings required to enter an order under subrule (B)(1), the defendant must be ordered released under subrule (C) or (D). A verbatim record of the hearing must be made.

(H) Appeals; Modification of Release Decision.

(1) Appeals. A party seeking review of a release decision may file a motion in the Appellate Court. There is no filing fee for the motion. The Appellate Court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion in accordance with Tribal Code § 82.124(8).

(2) Modification of Release Decision. The court having jurisdiction of the defendant may, on the motion of a party or its own initiative and on finding there is a substantial reason for doing so, modify a prior release decision or reopen a prior custody hearing. The party seeking modification of a release decision has the burden of going forward.

(3) Emergency Release. If a defendant being held in pretrial custody under this rule is ordered released from custody as a result of a court order or law requiring the release of prisoners to relieve jail conditions, the court ordering the defendant's release may, if appropriate, impose conditions of release in accordance with this rule to ensure the appearance of the defendant as required and to protect the public. If such conditions of release are imposed, the court must inform the defendant of the conditions on the record or by furnishing to the defendant or the defendant's attorney a copy of the release order setting forth the conditions.

(I) Termination of Release Order.

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

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

(a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond.

(b) If the defendant does not appear and surrender to the court within 28 days after the revocation date, the court may continue the revocation order and enter judgment for the Tribe against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, and costs of the court proceedings, or if a surety bond was posted, an amount not to exceed the full amount of the surety bond. If the amount of forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court. If the defendant does not within that period satisfy the court that there was compliance with the conditions of release other than appearance or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the Tribe against the defendant alone for an amount not to exceed the full amount of the bond, and costs of the court proceedings.

(3) If the defendant deposited money on a bail or bond, the money must be first applied to the amount of any fine, costs, or assessments imposed and any balance returned, subject to subrule (I)(1).

Rule 6.106 - Joinder and Severance; Single Defendant.

(A) Charging Joinder. The prosecuting attorney may file a complaint that charges a single defendant with any two or more offenses. Each offense must be stated in a separate count. Two or more complaints against a single defendant may be consolidated for a single trial.

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

(1) the same conduct, or

(2) a series of connected acts constituting part of a single scheme or plan.

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

Rule 6.107 - Joinder and Severance; Multiple Defendants.

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

(1) each defendant is charged with accountability for each offense, or

(2) the offenses are related as defined in Rule 6.106(B).

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

(B) Right of Severance; Unrelated Offenses. On a defendant's motion, the court must sever offenses that are not related as defined in Rule 6.106(B).

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

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

Rule 6.108 – Mental Competency Hearing.

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

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

(C) Order for Examination.

(1) On a showing that the defendant may be incompetent to stand trial, the court must order the defendant to undergo an examination by a certified or licensed examiner of the center for forensic psychiatry or other facility officially certified by the Michigan department of mental health to perform examinations relating to the issue of competence to stand trial.

(2) The defendant must appear for the examination as required by the court.

(3) If the defendant is held in detention pending trial, the examination may be performed in the place of detention or the defendant may be transported by Sault Tribe Law Enforcement or a tribal agency designated by the court to a diagnostic facility for examination.

(4) The court may order commitment to a diagnostic facility for examination if the defendant fails to appear for the examination as required or if commitment is necessary for the performance of the examination.

(5) The defendant must be released from the facility on completion of the examination and, if subrule (C)(3) is applicable, returned to the place of detention.

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

(E) Hearing. A competency hearing must be held within 5 days of receipt of the report or on conclusion of the proceedings then before the court, whichever is sooner, unless the court, on a showing of good cause, grants an adjournment.

(F) Motions; Testimony.

(1) A motion made while a defendant is incompetent to stand trial must be heard and decided if the presence of the defendant is not essential for a fair hearing and decision on the motion. No licensed attorney representing an incompetent defendant may be compelled to participate in a hearing held in absentia if the attorney objects in writing or on the record on ethical grounds prior to commencement of such a hearing, pursuant the Michigan Rules of Professional Conduct or these Court Rules.

(2) Testimony may be presented in a pretrial defense motion if the defendant's presence could not assist the defense.

SUBCHAPTER 6.200: DISCOVERY

Rule 6.201 – Discovery

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

(1) the names and addresses of all lay and expert witnesses whom the party intends to call at trial;

(2) any written or recorded statement by a lay witness whom the party intends to call at trial, except that a defendant is not obliged to provide the defendant's own statement;

(3) the curriculum vitae of an expert the party may call at trial and either a report by the expert or a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion.

(4) any criminal record that the party may use at trial to impeach a witness;

(5) a description or list of criminal convictions, known to the defense attorney or prosecuting attorney, of any witness whom the party may call at trial; and

(6) a description of and an opportunity to inspect any tangible physical evidence that the party may introduce at trial, including any document, photograph, or other paper, with copies to be provided upon request. A party may request a hearing regarding any question of costs of reproduction, including the cost of providing copies of electronically recorded statements. On good cause shown, the court may order that a party be given the opportunity to test without destruction any tangible physical evidence.

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

(1) any exculpatory information or evidence known to the prosecuting attorney discovered at any time prior to the conclusion of a case.

(2) any police report concerning the case, except so much of a report as concerns a continuing investigation;

(3) any written or recorded statements by a defendant, codefendant, or accomplice, even if that person is not a prospective witness at trial;

(4) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and

(5) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.

(C) Prohibited Discovery.

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is constitutionally protected from disclosure or protected pursuant to Tribal ordinance or statute, or tribally-recognized privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (C)(2).

(2) If a defendant demonstrates a good-faith belief, grounded in fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in-camera inspection of the records.

(a) If the privilege is absolute, and the privilege holder refuses to waive the privilege to permit an in-camera inspection, the trial court shall suppress or strike the privilege holder's testimony.

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

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

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

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

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

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

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

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

(F) Timing of Discovery. Unless otherwise ordered by the court, the prosecuting attorney and defendant must each comply with the requirements of this rule within 21 days of a request under this rule.

(G) Copies. Except as ordered by the court on good cause shown, a party's obligation to provide a photograph or paper of any kind is satisfied by providing a clear copy; that is, a copy devoid of any additional markings, corrections, or deletions not made upon the original.

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

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

(J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. Parties are encouraged to bring questions of noncompliance before the court at the earliest opportunity. Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate

sanctions by the court. An order of the court under this section is reviewable only for abuse of discretion in accordance with Tribal Code §82.124(8).

(K) Electronically Stored Information. Electronically stored information must be provided in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A party need not produce the same electronically stored information in more than one form.

SUBCHAPTER 6.300: PLEAS.

6.301 – Available Pleas.

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

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

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

Rule 6.302 - Pleas of Guilty and No Contest.

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

(B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:

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

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

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

(a) to be tried by a jury;

(b) to be presumed innocent until the prosecutor proves him or her guilty beyond a reasonable doubt;

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

(d) to question the witnesses against the defendant;

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

(f) to remain silent during the trial and not have that silence used against the defendant; and

(g) to testify at the trial if the defendant wants to testify.

(C) A Voluntary Plea.

(1) The court must ask the prosecutor and the defendant's lawyer whether they have made a plea agreement.

(2) If there is a plea agreement, the court must ask the prosecutor or the defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant.

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

(a) reject the agreement; or

(b) accept the agreement after having considered the pre-sentencing report, in which event it must sentence the defendant to the sentence agreed to or recommended by the prosecutor; or

(c) accept the agreement without having considered the pre-sentencing report; or

(d) take the plea agreement under advisement.

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

(4) The court must ask the defendant:

(a) whether anyone has promised the defendant anything the plea agreement (if applicable), and whether anyone has promised anything beyond what is in the plea agreement;

(b) whether anyone has threatened the defendant; and

(c) whether it is the defendant's own choice to plead guilty.

(D) An Accurate Plea.

(1) If the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading.

(2) If the defendant pleads no contest, the court shall not question him or her about his or her participation in the crime, but shall make the determination on the basis of other available information and shall state why a plea of no contest is appropriate.

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

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

Rule 6.303 – Withdrawal or Vacation of Plea.

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

(B) Withdrawal After Acceptance but Before Sentence.

(1) On the defendant's motion or with the defendant's consent, the court, in the interest of justice and fairness, may permit an accepted plea to be withdrawn before sentence is imposed unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by subrule (C). A defendant who

enters a plea as a condition of participation in a diversionary or special court program, may not withdraw the plea once accepted into the diversionary or special program.

(2) The defendant is entitled to withdraw the plea if the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea.

(C) Motion to Withdraw Plea After Sentence. The defendant may file a motion to withdraw the plea within 6 months after sentence. Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500 of these Court Rules. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

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

(E) Vacation of Plea on Prosecutor's Motion. On the prosecutor's motion, the court may vacate a plea before sentence is imposed if the defendant has failed to comply with the terms of a plea agreement.

Rule 6.304 – Effect of Withdrawal or Vacation of Plea.

If a plea is withdrawn by the defendant or vacated by the trial court or the appellate court, the case may proceed to trial on any charges that had been brought or that could have been brought against the defendant if the plea had not been entered. Any statements or admissions made during a plea or sentencing allocution by a defendant whose plea has been allowed to be withdrawn may not be offered as evidence in the prosecution's case in chief, however any such statements or admissions may be used for purposes of impeachment if the defendant testifies in contradiction of those statements or admissions.

SUBCHAPTER 6.400: TRIALS.

Rule 6.401 - Right to Trial by Judge or Jury.

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

Rule 6.402 – Waiver of Jury Trial by the Defendant.

(A) Time of Waiver. The court may not accept a waiver of trial by jury until after the defendant has been arraigned or has waived an arraignment on the information, and has been offered an opportunity to consult with a lawyer.

(B) Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant

voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Rule 6.403 - Trial by the Judge in Waiver Cases.

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

Rule 6.404 - Jury Trial; Number of Jurors; Unanimous Verdict.

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

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

Rule 6.405 - Additional Jurors.

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

Rule 6.406 – Selection of the Jury.

(A) Juror Personal History Questionnaire.

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

(2) Completion of Questionnaire.

(a) The court clerk, as directed by the chief judge of the tribal court, shall supply each juror drawn for jury service with a questionnaire in the form adopted pursuant to TCR 6.405(A)(1). The court clerk shall direct the juror to complete the questionnaire in the juror's own handwriting before the juror is called for service.

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

(3) Filing the Questionnaire.

(a) On completion, the questionnaire shall be filed with the court, as designated under TCR 6.405(B)(1). The only persons allowed to examine the questionnaire are:

(i) the judges of the court;

(ii) the court clerk and receptionist;

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

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

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

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

(ii) If the procedure selected allows attorneys or parties to receive copies of juror questionnaires, an attorney or party may not release them to any person who would not be entitled to examine them under TCR 6.405(A)(3)(a).

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

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

(B) Impaneling the Jury.

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

(2) Voir Dire of Prospective Jurors.

(a) Scope and Purpose. The scope of voir dire examination of prospective jurors is within the discretion of the court. It should be conducted for the purposes of discovering grounds for challenges for cause and of gaining knowledge to facilitate an intelligent exercise of peremptory challenges. The court should confine the examination to these purposes and prevent abuse of the examination process.

(b) Conduct of the Examination. The court may conduct the examination of prospective jurors or permit the lawyers to do so. If the court conducts the examination, it may permit the lawyers to supplement the examination by direct questioning or by submitting questions for the court to ask. On its own initiative or on the motion of a party, the court may provide for a prospective juror or jurors to be questioned out of the presence of the other jurors.

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

(a) is not qualified to be a juror;

(b) has been convicted of a felony;

(c) is significantly biased for or against a party or attorney;

(d) shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;

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

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

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

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

(i) is related to one of the attorneys or parties to a degree that casts into significant doubt whether the juror would be fair or impartial;

(j) is the guardian, conservator, ward, landlord, tenant, employer, employee, partner, or client of a party or attorney;

(k) is or has been a party adverse to the challenging party or attorney in a civil action, or has complained of or has been accused by that party in a criminal prosecution;

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

(m) is interested in a question like the issue to be tried.

(4) Peremptory Challenges.

(a) Each defendant is entitled to 3 peremptory challenges. The prosecutor is entitled to the same number of peremptory challenges as a defendant being tried alone, or, in the case of jointly tried defendants, the total number of peremptory challenges to which all the defendants are entitled.

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

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

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

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

(C) Oath After Selection. After the jury is selected and before trial begins, the court must have the jurors sworn.

Rule 6.407 - Conduct of Jury Trial.

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

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

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

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

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

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

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

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

Rule 6.408- Presentation of Evidence.

Subject to the rules in this chapter and to the rules of evidence adopted by the Court pursuant to Tribal Code § 70.125(2), each party has discretion in deciding what witnesses and evidence to present.

Rule 6.409 - Motion for Directed Verdict for Acquittal.

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

(B) After Jury Verdict. After a jury verdict, the defendant may file an original or renewed motion for directed verdict of acquittal in the same manner as provided by TCR 6.414 for filing a motion for a new trial.

(C) Bench Trial. In an action tried without a jury, after the prosecutor has rested the prosecution's case-in-chief, the defendant, without waiving the right to offer evidence if the motion is not granted, may move for acquittal on the ground that a reasonable doubt exists. The court may then determine the facts and render a verdict of acquittal, or may decline to render judgment until the close of all the evidence. If the court renders a verdict of acquittal, the court shall make findings of fact.

(D) Conditional New Trial Ruling. If the court grants a directed verdict of acquittal after the jury has returned a guilty verdict, it must also conditionally rule on any motion for a new trial by determining whether it would grant the motion if the directed verdict of acquittal is vacated or reversed.

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

Rule 6.410 – Verdict.

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

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

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

Rule 6.411 – Sentencing.

(A) Presentence Report, Contents.

(1) Prior to sentencing, if the Court refers the defendant to the probation department, the probation officer must investigate the defendant's background and character, verify material information, and report in writing the results of the investigation to the court at least 3 days prior to sentencing. The report must be succinct, and depending on the circumstances, include:

(a) a description of the defendant's prior criminal convictions and juvenile adjudications if publicly available,

(b) a complete description of the offense and the circumstances surrounding it,

(c) a brief description of the defendant's vocational background and work history, including military record and present employment status,

(d) a brief social history of the defendant, including marital status, financial status, length of residence in the community, educational background, and other pertinent data,

(e) the defendant's medical history, substance abuse history, and, if indicated by the court, a current psychological or psychiatrist report,

(f) information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim,

(g) if provided and requested by the victim, a written victim's impact statement as provided by Tribal Code §75.114,

(h) any statement the defendant wishes to make,

(i) a statement prepared by the prosecutor on the applicability of any consecutive sentencing provision,

(j) an evaluation of and prognosis for the defendant's adjustment in the community based on factual information in the report,

(k) a specific recommendation for disposition, and

(l) any other information that may aid the court in sentencing.

(2) A presentence investigation report shall not include any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

Upon request, any other address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness shall be exempted from disclosure unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

(B) Presentence Report, Disclosure Before Sentencing. The court must provide copies of the presentence report to the prosecutor, and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days, before the day of sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review.

(C) Presentence Report, Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, or the defendant not represented by a lawyer, with a copy of the presentence report and any attachments to it. The court must exempt from disclosure any information the sentencing court exempted from disclosure pursuant to TCR 6.411 (B).

(D) Sentencing Procedure.

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

(a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the presentence report,

(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the pre-sentence report, and resolve any challenges in accordance with the procedure set forth in subrule (D)(2),

(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,

(d) state the sentence being imposed, including the minimum and maximum sentence if applicable, together with any credit for time served to which the defendant is entitled, and

(e) if a victim of the crime has suffered harm and the court does not order restitution as provided by law or orders only partial restitution, state the reasons for its action.

(2) Resolution of Challenges. If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(a) correct or delete the challenged information in the report, whichever is appropriate, and

(b) provide defendant's lawyer with an opportunity to review the corrected report.

(E) Advice Concerning the Right to Appeal; Appointment of Counsel.

(1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant on the record, that

(a) the defendant is entitled to appellate review of the conviction and sentence,

(b) the notice of appeal must be filed within 30 days from the date of the entry of the order or judgment;

(c) if the defendant is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and

(d) the request for a lawyer must be made within 21 days after sentencing.

(2) In a case involving a conviction following a plea of guilty or no contest, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a) the defendant is entitled to file an application for leave to appeal,

(b) the notice of appeal must be filed within 30 days from the date of the entry of the order or judgment;

(c) if the defendant is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal,

and

(d) the request for a lawyer must be made within 21 days after sentencing.

(3) The court must also give the defendant a request for counsel form containing an instruction informing the defendant that the form must be completed and returned to the court within 21 days after sentencing if the defendant wants the court to appoint a lawyer.

(F) Appointment of a Lawyer; Trial Court Responsibilities in Connection with Appeal.

(1) Appointment of a Lawyer.

(a) Unless there is a postjudgment motion pending, the court must rule on a defendant's request for a lawyer within 5 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court's disposition of the pending motion and within 5 days after that disposition.

(b) In a case involving a conviction following a trial, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 21 days after sentencing or within the time for filing an appeal of right. The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal.

(c) In a case involving a conviction following a plea of guilty or no contest, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 21 days after sentencing.

(d) Scope of Appellate Lawyer's Responsibilities. The responsibilities of the appellate lawyer appointed to represent the defendant include representing the defendant

(i) in available trial court postconviction proceedings the lawyer deems appropriate,

(ii) in postconviction proceedings in the Court of Appeals,

(iii) as appellee in relation to any postconviction appeal taken by the prosecutor.

(2) Order to Prepare Transcript. The appointment order also must

(a) direct the court reporter to prepare and file within the time limits specified in Tribal Code Section 82.119,

(i) the trial or plea proceeding transcript,

(ii) the sentencing transcript, and

(iii) such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request, and

(b) provide for the payment of the reporter's fees.

The court must promptly serve a copy of the order on the prosecutor, the defendant, and the appointed lawyer. If the appointed lawyer timely requests additional transcripts, the trial court shall order such transcripts within 14 days after receiving the request.

(3) Order and Notice of Appeal. The Order described in subrules (F)(1) and (F)(2) must be attached to the defendants Notice of Appeal, and the court must immediately sent them together with a copy of the judgment being appealed to the Chief Judge of the Appellate Court. The court must also file in the Court of Appeals proof of having made service or the order as required in subrule (F)(2).

Rule 6.412 – Judgment.

Within seven (7) days after sentencing, the court must date and sign a written judgment of sentence that includes:

(1) the title and file number of the case;

(2) the defendant's name;

(3) the crime for which the defendant was convicted;

(4) the defendant's plea;

(5) the name of the defendant's attorney if one appeared;

(6) the jury's verdict or the finding of guilt by the court;

(7) the term of the sentence;

(8) the place of detention;

(9) the conditions incident to the sentence; and

(10) whether the conviction is reportable to the State of Michigan Secretary of State and, if so, the defendant's Michigan driver's license number.

If the defendant was found not guilty or for any other reason is entitled to be discharged, the court must enter judgment accordingly. The date a judgment is signed is its entry date.

Rule 6.413 - Correction and Appeal of Sentence.

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

(B) Time For Filing Motion.

(1) A motion for resentencing may be filed within 28 days after entry of the judgment.

(2) If a claim of appeal has been filed, a motion for resentencing may only be filed in accordance with the Tribal rules of appellate procedure.

(3) If the defendant fails to file a timely claim of appeal, the defendant may file a motion for resentencing within the time for filing an application for leave to appeal.

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

Rule 6.414 - New Trial.

(A) Time for Making Motion.

(1) A motion for a new trial may be filed before the filing of a timely notice of appeal.

(2) If a notice of appeal has been filed, a motion for a new trial may only be filed in accordance with any procedure set forth in the rules of appellate procedure.

(3) If the defendant fails to file a timely notice of appeal, the defendant may file a motion for a new trial within the time for filing an application for leave to appeal.

(B) Reasons for Granting. On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

(C) Trial Without Jury. If the court tried the case without a jury, it may, on granting a new trial and with the defendant's consent, vacate any judgment it has entered, take additional testimony, amend its findings of fact and conclusions of law, and order the entry of a new judgment.

(D) Inclusion of Motion for Judgment of Acquittal. The court must consider a motion for a new trial challenging the weight or sufficiency of the evidence as including a motion for a directed verdict of acquittal.

Rule 6.415 – Documents for Postconviction Proceedings.

(A) Appeals of Right. A defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that he or she is required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents, and, unless the transcript has already been ordered must order the preparation of the transcript. The Court may require the defendant to reimburse the court for the cost of copies and/or the transcript, and may require the defendant to pay a deposit against said costs in accordance with Tribal Court policy.

(B) Appeals by Leave. A defendant who may file an application for leave to appeal may obtain copies of transcripts and other documents as provided in this subrule.

(1) The defendant must make a written request to the sentencing court for specified documents

or transcripts indicating that they are required to prepare an application for leave to appeal.

(2) If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.

(3) If the request includes the transcript of a proceeding that has not been transcribed, the court must order the materials transcribed and filed with court. After the transcript has been prepared, court clerk must provide a copy to the defendant.

(B) Other Post Conviction Proceedings. A defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in this subrule.

(1) The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue post conviction remedies in a tribal or federal court and are not otherwise available to the defendant.

(2) If the documents or transcripts have been filed with the court, the clerk must provide the defendant with copies of such materials.

(3) The court may order the transcription of additional proceedings if it finds that there is good cause for doing so. After such a transcript has been prepared, the clerk must provide a copy to the defendant.

Rule 6.416 - Correction of Mistakes.

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

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

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

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

Rule 6.417 - Disability of Judge.

(A) During Jury Trial. If, by reason of death, sickness, or other disability, the judge before whom a jury trial has commenced is unable to continue with the trial, another judge regularly sitting in or assigned to the court, on certification of having become familiar with the record of the trial, may proceed with and complete the trial.

(B) During Bench Trial. If a judge becomes disabled during a trial without a jury, another judge may be substituted for the disabled judge, but only if

(1) both parties consent in writing to the substitution, and

(2) the judge certifies having become familiar with the record of the trial, including the testimony previously given.

(C) After Verdict. If, after a verdict is returned or findings of fact and conclusions of law are filed, the trial judge because of disability becomes unable to perform the remaining duties the court must perform, another judge regularly sitting in or assigned to the court may perform those duties; but if that judge is not satisfied of an ability to perform those duties because of not having presided at the trial or determines that it is appropriate for any other reason, the judge may grant the defendant a new trial.

Rule 6.418 - Probation Revocation.

(A) Issuance of Summons; Warrant. On finding probable cause to believe that a probationer has violated a condition of probation, the Court may:

(1) issue a summons in accordance with TCR 6.13 for the probationer to appear for arraignment on the alleged violation, or

(2) issue a warrant for the arrest of the probationer.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) ensure that the probationer receives written notice of the alleged violation,

(2) advise the probationer that

(a) the probationer has a right to contest the charge at a hearing, and

(b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one,

(3) if requested and appropriate, appoint a lawyer,

(4) determine what form of release, if any, is appropriate, and

(5) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing

(C) Scheduling or Postponement of a Hearing. The hearing of a probationer held in custody for an alleged probation violation must be held within 14 days after the arraignment or the court must order

the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) Continuing Duty to Advise of Right to Assistance of Lawyer. Even though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in TCR 6.04(E).

(E) The Violation Hearing.

(1) The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses and to remain silent. The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The Tribe has the burden of proving a violation by a preponderance of the evidence.

(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with Rule 6.42.

(F) Pleas of Guilty. With the consent of the court that granted probation, the probationer may at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing,

(2) advise the probationer of the maximum possible jail or prison sentence for the offense,

(3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

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

(H) Review.

(1) In a case involving a sentence of incarceration under TCR 6.418(G) above, the court must advise the probationer on the record, immediately after imposing sentence, that

(a) the probationer has a right to appeal, if the underlying conviction occurred as a result of a trial, or

(b) the probationer is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or no contest.

(2) In a case that involves a sentence other than incarceration under TCR 6.418(G) above, the court must advise the probationer on the record, immediately after imposing sentence, that the probationer is entitled to file an application for leave to appeal.

Chapter VII: Landlord-Tenant Actions

Rule 7.01 – Complaint.

The complaint must

(1) comply with the general pleading requirements in Tribal Code §§81.207 and 83.701;

(2) have attached to it a copy of any written instrument on which occupancy was or is based;

(3) have attached to it copies of any notice to quit and any demand for possession (the copies must show when and how they were served);

(4) if rent or other money is due and unpaid, the complaint must show

(a) the rental period and rate,

(b) the amount due and unpaid when the complaint was filed; and

(c) the date or dates the payments became due.

Rule 7.02 – Summons.

(1) The summons must comply with Tribal Code §81.203(2).

(2) The summons must also include the following advice to the defendant:

(a) The defendant has the right to employ an attorney or lay advocate to assist in answering the complaint and in preparing defenses.

(b) The defendant may request from the Court a list of attorneys and lay advocates admitted to practice in the Court, as well as contact information for local legal aid offices.

(c) The defendant has a right to a jury trial. The defendant will lose that right unless he or she demands it in their first response, written or oral. The jury trial fee must be paid when the demand is made, unless payment of fees is waived or suspended by the Court.

Rule 7.03 – Service of Process.

(1) A copy of the summons and complaint and all attachments must be served on the defendant by

(a) certified mail, return receipt requested.

(b) by delivering the papers at the premises to a member of the defendant's household who is

(i) of suitable age

(ii) informed of the contents; and

(iii) asked to deliver the papers to the defendant; or

(c) After diligent, meaning at least three (3), attempts at personal service have been made, by securely attaching the papers to the main entrance of the tenant's dwelling unit. A return of service made under this subrule must list the attempts at personal service. Service under this subrule is effective only if a return of service is filed showing that, after diligent attempts, personal service could not be made.

(2) A summons issued in a landlord-tenant matter shall be served not less than 3 days before the date set for trial. If a summons issued under this section is not served within the time provided above, additional summons may be issued at the plaintiff's request in the same manner and with the same effect as the original summons.

Rule 7.04 – Appearance and Answer.

(1) Appearance and Answer. The defendant or the defendant's attorney or lay advocate must appear and answer the complaint by the date on the summons. Appearance and answer may be made as follows:

(a) By filing a written answer or a motion for a more definite statement, and serving a copy on the plaintiff or the plaintiff's attorney or lay advocate. If proof of the service is not filed before the hearing, the defendant or the defendant's attorney or lay advocate may attest to service on the record.

(b) By orally answering each allegation in the complaint on the record at the hearing.

(2) Right to an Attorney or Lay Advocate. If either party appears in person without an attorney or lay advocate, the court must inform that party of the right to retain an attorney or be represented by a lay advocate. The court must also inform the party about legal aid assistance when it is available.

(3) Default. If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment. The default judgment must be mailed to the defendant by the court and must inform the defendant that:

(a) he or she may be evicted from the premises; and/or

(b) he or she may be liable for a money judgment;

If the plaintiff fails to appear, a default judgment as to costs may be entered for the defendant.

Rule 7.05 – Trial.

When the defendant appears, the court may try the action, or, if good cause is shown, may adjourn trial up to 56 days. The parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court. At trial, the court must first decide pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.

Rule 7.06 – Judgment.

(1) Requirements. A judgment for the plaintiff must:

(a) comply with Tribal Code §83.707;

(b) state when, and under what conditions, if any, an order of eviction will issue;

(c) separately state possession and money awards;

(d) advise the defendant of the right to appeal or file a postjudgment motion within 30 days.

(2) Injunctions. The judgment may award injunctive relief

(a) to prevent the person in possession from damaging the property; or

(b) to prevent the person seeking possession from rendering the premises untenantable, or from suffering the premises to remain untenantable.

(3) Partial Payment. The judgment may provide that acceptance of partial payment of an amount due under the judgment will not prevent issuance of an order of eviction.

(4) Costs. The judgment may include actual costs incurred, including but not limited to, the filing fee, service of process, and costs of litigating the action.

(5) Notice. The court must mail or deliver a copy of the judgment to the parties. The time period for applying for the order of eviction does not begin to run until the judgment is mailed or delivered.

Rule 7.07 – Order of Eviction.

(1) When the time stated in the judgment expires, a party awarded possession may apply for an order of eviction. The application must:

(a) be written;

(b) be verified by a person having knowledge of the facts stated;

(c) if any money has been paid after entry of the judgment, show the conditions under which it was accepted; and

(d) state whether the party awarded judgment has complied with its terms.

(2) Issuance and Delivery of Order. Subject to the provisions below, the order of eviction shall be delivered to the person serving the order for service within 7 days after the order is filed.

(3) The court may issue an order of eviction immediately on entering the judgment if:

(a) the plaintiff can establish, by clear and convincing evidence, that the tenant has abandoned the unit; or

(b) the defendant was given notice, before the judgment, of a request for immediate issuance of the order.

Chapter VIII: Personal Protection Orders *[reserved]*

Chapter IX: Child Welfare Matters *[reserved]*

Chapter X: Juvenile Delinquency Matters *[reserved]*

Chapter XI: Adult Guardianships

Rule 11.01 – Attorney Guardian Ad Litem

The court shall appoint an attorney guardian ad litem for the proposed ward or ward upon the filing of a petition for guardianship. The duties of the attorney guardian ad litem are to visit the alleged incapacitated individual or ward, inform the individual of the nature, purpose and effects of a legal guardianship, inform the individual of their rights in the hearing procedure, report to the court, and take such other action as directed by the court.

Rule 11.02 – Letters of Authority

When the guardian files an acceptance of appointment and bond, if required, the Court shall issue letters of authority. Any restriction or limitation of the powers of a guardian must be set forth in the letters of authority.

Rule 11.03 – Proceedings on Temporary Guardianship

A petition for a temporary guardian for an alleged incapacitated individual shall specify in detail the emergency situation requiring the temporary guardianship. For the purpose of an emergency hearing, the court shall appoint an investigator guardian ad litem unless such appointment would cause delay and the alleged incapacitated individual would likely suffer serious harm if immediate action is not taken. The duties of the investigator are to visit the alleged incapacitated individual, report to the court and take such other action as directed by the court.

Rule 11.04 – Medical Examinations & Reports.

(A) Medical Evaluation. If necessary, the court may order that an alleged incapacitated individual be examined by a physician or mental health professional appointed by the court, who shall submit a report in writing at least 3 days prior to the hearing on the petition. A report prepared pursuant to these proceedings shall not be part of the public record, but shall be available to the court, to the petitioner, to the alleged incapacitated individual, the attorney guardian ad litem, and any other persons that the court directs.

(B) Report of Physician or Mental Health Professional. The court may receive into evidence without testimony the written report of a physician or mental health professional who examined an individual alleged to be incapacitated, provided that a copy of the report is filed with the court three days before the hearing. Any such report, whether ordered by the court or offered by the respondent, may be used in the proceedings without any regard to any privilege.

Rule 11.05 - Rights of Alleged Incapacitated Individual.

The alleged incapacitated individual is entitled to be present at the hearing, and to see or hearing all evidence bearing upon the individual's condition. The individual is entitled to be represented by an attorney guardian ad litem, to cross-examine witnesses, and to trial by judge.

Rule 11.06 – Hearings at Site Other Than Courtroom

When hearings are not held in the courtroom or other Tribal facilities where the court ordinarily sits, the court shall ensure a quiet and dignified setting that permits an undisturbed proceeding and inspires the participants' confidence in the integrity of the judicial process.

Rule 11.07 – Review of Guardianships of Legally Incapacitated Individuals.

(A) Periodic Review. The court shall review a guardianship not more than 1 year after the guardian's appointment and each year thereafter. The court may appoint an attorney guardian ad litem to represent the ward at the review hearing.

(B) Investigation. The court may appoint a person to investigate the guardianship and report to the court by a date set by the court prior to the review hearing. The person appointed must visit the legally incapacitated individual or include in the report to the court an explanation why a visit was not practical. The report shall include a recommendation on whether the guardianship should be modified. The court shall send a copy of the investigator's report to the ward and the guardian.

Rule 11.08 – Modification of Guardianship of Legally Incapacitated Individual.

If a request for modification comes from the ward or any other party, and the ward does not have an attorney, the court shall immediately appoint an attorney guardian ad litem.

Rule 11.09 – Guardian's Report.

A guardian shall file a written report on the ward's condition annually on the anniversary date of the appointment and at other times as the court may order. Reports must be substantially in the form approved by the court. The court shall make the report available to interested parties upon request.

Rule 11.10 – Inventory.

At the time the Court appoints a guardian over the estate, if the court determines that there are sufficient assets under the control of the guardian, the Court shall require the guardian to file an inventory. The guardian shall have 30 days from the date of the issuance of the letters of authority to file the completed inventory with the court. The court shall make the inventory available to interested parties upon request.

Rule 11.11 – Accounting

A guardian of the estate must file an accounting annually and at other times as the court may order. The accounting period ends on the anniversary date of the issuance of the letters of authority and the accounting is due 30 days thereafter. Reports must be substantially in the form approved by the court. The court shall make the accountings available to interested parties upon request.

Rule 11.12 – Death of Ward.
If a ward subject to a guardianship dies, the guardian must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 60 days of the date of death.

Chapter XII: Minor Guardianships *[reserved]*

Chapter XIII: Full Faith and Credit *[reserved]*

Chapter XIV: Rules of Appellate Procedure