



Court of Indian Offenses of the Western Region

LOCAL COURT RULES

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PART I. THE COURTS

TITLE I. GENERAL PROVISIONS

Rule 1.1. Title and Citation. These Rules shall be known as the Local Rules of the Court of Indian Offenses for the Western Region (“Court”).

Rule 1.2. Application and Judicial Waiver. These Rules supersede all previous Rules and apply in all proceedings. However, a Magistrate may waive, supplement or modify any Rule when the administration of justice so requires.

Rule 1.3 Scope of Rules. These Rules shall govern the procedure in the Court of Indian Offenses for the Western Region in all actions, suits and proceedings of civil nature and in criminal matters to the extent no different rule is specified. These Rules shall be liberally construed to secure a just, speedy and inexpensive determination of every action. Any procedures or matters not specifically set forth herein, shall be handled in accordance with the Federal Rules of Civil Procedure as well as the Federal Rules of Criminal Procedure inasmuch as such are not inconsistent with these Rules.

Rule 1.4. Location of the Court. The Court of Indian Offenses for the Western Region (CFR) shall be located at the Bureau of Indian Affairs, Eastern Nevada Agency in Elko, Nevada. The Appellate Court of the Western Region shall be at the Court of Indian Offenses for the Southern Plains Region, Anadarko, Oklahoma.

Rule 1.5. Jurisdiction. The Court operates exclusively from the Code of Federal Regulations (CFR), Title 25, Part 11, and the properly approved Constitutions, Laws, Ordinances, Resolutions and Customs adopted by the Indian Nations/Tribes within the jurisdiction of the Bureau of Indian Affairs (BIA).

(a) Civil Jurisdiction. Except as otherwise provided in Title 25 CFR Part 11, the Court of Indian offenses has jurisdiction over any civil action arising within the territorial jurisdiction of the Court, provided:

- (1) The defendant is an Indian; or
- (2) Other claims, provided at least one party is an Indian; and
- (3) The action is filed within three (3) years after the right of action first accrues.

(b) Criminal Jurisdiction. Except as otherwise provided in Title 25 CFR Part 11, the Court of Indian Offenses has jurisdiction over any action by an Indian that is made a criminal offense under Title 25 CFR Part 11 and that occurred within the Indian country subject to the Court’s jurisdiction, provided:

- (1) No person may be prosecuted, tried or punished for any offense unless the complaint is filed within five (5) years after the offense is committed.

Rule 1.6. Authority of the Court. The Court shall have, but not be limited to, the following authority:

- (a) To punish for contempt, any of its officers or other persons present at judicial proceedings;
- (b) To compel witnesses to attend and testify and to produce documents or other tangible objects to be used as evidence, provided, that a defendant in a criminal trial may not be compelled to be a witness against himself;
- (c) To adopt rules of pleading, practice and procedure applicable to any or all proceedings in the Court. In addition, the Court may adopt uniform rules for the admission of evidence and may require the use of standard forms for pleadings, motions and other documents filed in the Court by litigants, as well as for judgments, writs and court orders;
- (d) In any proceeding where there is no applicable rule of procedure, the Magistrate may prescribe same for the duration of that proceeding; and
- (e) Request the Bureau of Indian Affairs, Western Regional Director furnish an opinion when the Court is in doubt as to the meaning of any law, treaty, or regulation.

Rules 1.7. Officers of the Court. Officers of the Court shall include:

- (a) Appointed Magistrates;
- (b) Court Clerks and Interpreters;
- (c) Prosecutors/Presenting Officers;
- (d) Public Defenders/Court appointed Counsel;
- (e) Law enforcement officers/bailiffs/Probation Officers;
- (f) Attorneys/Lay Advocates; and
- (g) Social Workers/Child Welfare Workers.

Rule 1.8. Court Officers Not Sureties. No officer of the Court may act as a surety on any bond or undertaking in any proceeding before the Court.

Rule 1.9. Transfer of Cases. Whenever in any civil or criminal proceeding the Magistrate finds that the convenience of parties or witnesses, and in the interest of justice, will be served by transferring the action to another Court, the Magistrate may order such transfer.

Rule 1.10. Alternative Venue Allowed. Upon a finding of convenience of the parties, and in the interests of justice, the Magistrate may order the parties to appear at an alternative courtroom or Agency within the Western Region.

TITLE II. COURT CLERK'S OFFICE

Rule 2.1 Court Clerks. An individual shall be employed to serve at the Court Clerk. Additional clerks may be necessary, and shall be known as Deputy Court Clerk(s). The Clerk of the Court, in addition to all other lawful power and authority shall be authorized to administer oaths and attest signatures and shall have all powers necessary and proper for carrying out his/her lawful duties which shall include, but not be limited to, the following:

- (a) Assist in the issuing of complaints, subpoenas, warrants, writs, notice of hearings or other orders of the Court;
- (b) Maintain records on behalf of the Court;
- (c) Collect and account for monies received into the Court, including but not limited to bonds, fees, costs and fines;
- (d) Collect and ensure the appropriate care and protection is provided for property taken into custody by the Court;
- (e) Filing of all pleadings;
- (f) Certification of all records;
- (g) Issuing subpoenas;
- (h) Assembling a jury pool; and
- (i) Distributing communications on behalf of the Court to all interested parties.

Rules 2.2 Prohibition Against Providing Legal Advice. The Court Clerk shall not provide legal advice to litigants, nor assist in the preparation of pleadings.

Rule 2.3 Filing and Maintenance of Records. All proceedings, civil and criminal, shall be assigned a case number and original documents shall be maintained in the Court Clerk's office. The Court Clerk shall use an official stamp to file all pleadings. Nothing shall be removed therefrom except upon order of the Chief Magistrate.

Rule 2.4 Fees and Costs. The Court Clerk shall collect fees and costs consistent with the Court's Uniform Fee Schedule, except in instances where the Court has ordered otherwise, or a litigant has been allowed to proceed in forma pauperis.

TITLE III. LAW ENFORCEMENT

Rule 3.1 Bailiff. The Magistrate may appoint a bailiff from Bureau of Indian Affairs Law Enforcement or Tribal Law Enforcement to assist the Magistrate in maintaining order in the courtroom.

Rule 3.2 Authority of the Bailiff. The Bailiff, in addition to all other lawful power and authority, shall have the power to administer oaths, and subject to the direction of the Magistrate, shall maintain the order and dignity of the court. He/she shall have all necessary and proper powers for carrying out his/her lawful duties. The Bailiff or other appointed Court Security shall have the authority to search any and all persons who attend Court proceedings. The least intrusive method of search shall be employed unless cause exists for a more thorough search to be conducted.

Rule 3.3 Disclosure of Information to Public. Law Enforcement officers may not disclose information regarding criminal cases except as follows:

- (a) The names and birthdates of the defendant;
- (b) The charge(s);
- (c) The age of the defendant, his/her usual occupation and family status;
- (d) The fact that the defendant has pled not guilty and denies the charge(s);
- (e) The circumstances and facts associated with the arrest of the defendant;
- (f) The identity of the arresting officer and agency;
- (g) If an individual charged is at-large, additional information may be released to include the defendant's physical description, any alias used and similar information as may be necessary to protect the public welfare or to assist in apprehension of the defendant; and

Rule 3.4 Prohibition Against Disclosure of Juvenile Information. There shall be no disclosure of information relating to juveniles without the express authorization of the Court.

TITLE IV. ATTORNEYS

Rule 4.1 Eligibility. The following persons shall be permitted to practice before the Court:

- (a) Any person licensed to practice law by the highest Court of any state of the United States or any Federal Court;
- (b) Any person employed as an attorney by the United States;
- (c) Any member of a federal recognized Indian tribe who has graduated from an American Bar Association Accredited Law School;
- (d) Any member of a federally recognized Indian tribe who is a member of the bar of any Tribal Court of a federally recognized Indian tribe;
- (e) Any person who has been issued an internship license (limited license to practice law) by the Supreme Court of the state in which the Court sits for so long a period as said license is valid;

Rule 4.2 Ethics. Individuals who practice before the Court and the Magistrates thereof shall be governed by the American Bar Association's Canons of Ethics and Canons of Judicial Ethics.

Rule 4.3 Appearance of Counsel. An attorney appearing for a party shall enter an appearance by filing an Entry of Appearance. In the event a party should change counsel or add additional counsel, the new or additional counsel for said party shall enter an appearance by filing an Entry of Appearance.

Rule 4.4 Withdrawal. When a client violates his/her obligations to his/her counsel or fails to cooperate with his/her counsel, counsel may withdraw after notice to all involved, so long as such is without prejudice to any scheduled hearing or trial and with approval of the Court. If such request is denied because of the pendency of a hearing or trial and the granting of such would prejudice the other party or the Court in its docketing and disposition of cases, the request to withdraw may be renewed as soon as the scheduled hearing or trial is completed. Counsel may withdraw any time another attorney is ready and able to take over without delay.

Rule 4.5 Courtroom Decorum. The Canons of Professional Ethics as adopted by the American Bar Association are adopted as a general guide for professional conduct. Attorneys and Advocates are expected to conduct themselves according to the Canons of Professional Ethics as well as common law decisions, statutes, regulations and the usages and customs of the Court. In addition to all other requirements, lawyers appearing in this Court shall:

- (a) Always be punctual in attendance at Court;
- (b) Refrain from addressing one another in Court by their first names;
- (c) Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been first obtained;
- (d) See that only one of them is on his/her feet at a time, unless an objection is being made;
- (e) Refrain from approaching jurors who have completed a case unless authorized by the Court;
- (f) Refrain from applying dilatory tactics;

- (g) Hand all papers intended for the Court to see to the Bailiff or Court Clerk, who, in turn will pass them up to the Magistrate;
- (h) Hand to the Bailiff or Court Clerk, any exhibits to be marked which have not previously been identified;
- (i) Advise clients, witnesses, and others concerning rules of decorum to be observed in Court;
- (j) Stand when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose;
- (k) Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument what has been previously admitted in evidence;
- (l) Avoid disparaging personal remarks or acrimony toward opposing counsel;
- (m) Rise when addressing, or being addressed by, the Magistrate;
- (n) Any attorney who appears in court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt; and
- (o) When presenting a matter to the Court, it shall be the responsibility of the attorneys to ensure the Magistrates are provided with, or have access to, all tribal, federal and state laws and regulations of the Bureau of Indian Affairs applicable to the conduct of persons within the boundaries of the Court's jurisdiction.

Rule 4.6 Prohibition Against Recording Devices. No person of the public, attorney/advocate, or a party, shall be allowed to record any portion of this Court's proceedings, and no recording devices shall be permitted in the Courtroom without express permission of the presiding Magistrate. This Rule includes, telephones, video cameras, electronic voice recorders and other similar devices.

TITLE V. LAY ADVOCATES

5.1 Lay Advocates. Any lay person demonstrating experience or education and knowledge of the laws applicable to the Court of Indian Offenses may be registered to practice before the Court, upon filing a written application for admission, signed by the applicant and approved by the Court.

5.2 Roll of Lay Advocates. The Court Clerk shall maintain a registry of Lay Advocates admitted to practice before the Court.

5.3 Procedure for Admission. Every applicant to the Lay Advocate Registry shall file a written application for admission on a form prescribed by the Court and signed by the applicant. Upon receipt of the Lay Advocate Application for admission, the Court Clerk shall transmit the application to the Chief Magistrate who will conduct an investigation as to the fitness and qualifications of the applicant.

Rule 5.4 Fees and Dues. Every Lay Advocate, approved for admission, shall pay a fee of \$25.00 prior to making an appearance in the Court. The fee of \$25.00 shall be due and payable annually on the 1st business day of the year. The Magistrate may waive this fee for good cause shown.

Rule 5.5 Appearance of Lay Advocate. A Lay Advocate appearing for a party shall enter an appearance by filing an Entry of Appearance. Said Entry of Appearance shall state the individual seeks to provide representation as a Lay Advocate. In the event a party should change counsel or add additional counsel, the new or additional counsel for said party shall enter an appearance by filing an Entry of Appearance.

Rule 5.6 Lay Advocate Withdrawal From Case. In civil cases, Lay Advocates of record shall not be allowed to withdraw from a case, absent leave of the Court and upon reasonable notice to the client and all other interested parties. Leave to withdraw may be granted subject to the conditions stated by the presiding Magistrate. If leave to withdraw is denied because of the pendency of a hearing or trial and the granting of such would prejudice the other party or the Court in its docketing and disposition of cases, the request to withdraw may be renewed as soon as the scheduled hearing or trial is completed. Lay Advocates may withdraw any time an attorney is ready and able to take over without delay.

Rule 5.7 Lay Advocates held to Standards of Licensed Attorneys. Lay Advocates who practice before the Court shall be governed by the American Bar Association's Canons of Ethics and Rule 4.5 of Title IV of these Rules.

Rule 5.8 Discipline by the Court. Lay advocates shall be subject to discipline of the Court as follows:

- (a) Any Lay Advocate registered with the Court guilty of violating the prescribed oath of office, or of a violation of the Rules of Professional Conduct, or of any conduct unbecoming a court advocate, shall be subject to reprimand, suspension, termination of privilege to practice as a Lay Advocate, or other discipline which the Court deems appropriate;
- (b) Sanctions. Discipline by the Court may include fines, loss of privilege to practice as a Lay Advocate, suspension from practice for a specified time, or other discipline which the Court deems proper; and
- (c) Unauthorized Practice. Any person who before admission as a Lay Advocate of the Court or who during the suspension or loss of privilege, exercises any of the privileges bestowed upon members of the Lay Advocate Registry or who pretends to be entitled to such privileges shall be guilty of contempt of court and shall be subject to the punishment of contempt, and shall be subject to such other disciplinary actions as the Court may impose.

Rule 5.9 Lay Advocates Shall Not Charge a Fee. Lay Advocates are prohibited from charging a fee for representation. Lay Advocates who charge a fee shall be in contempt of court and subject to the punishment of contempt, and immediately suspended indefinitely from practicing in the Court of Indian Offenses.

Rule 5.10 Statement by Litigant. Prior to a Lay Advocate accepting the obligation to represent a litigant in the Court of Indian Offenses, the litigant must submit a verified statement that he/she understands that the Lay Advocate is not a trained lawyer licensed to practice before this Court, that the Lay Advocate is prohibited from accepting payment, and that the litigant understands a Lay Advocate is held to the standards of expertise as a trained, licensed lawyer and further, may be subject to malpractice claims.

PART II. RULES OF CIVIL AND CRIMINAL PROCEDURE

TITLE I. COMMENCEMENT OF ACTION.

Rule 1.1 Commencement of Action. All civil and criminal actions are commenced by filing a complaint or petition. The Court shall have civil jurisdiction from such time as the petition is filed and properly served upon the defendant and a return of service is filed with the Court Clerk.

Rule 1.2 Criminal Complaints. Criminal complaints shall contain a statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the Court by a BIA/Tribal Law Enforcement Officer and/or Prosecutor. Complaints shall contain:

- (a) The signature of the complaining witness, or witnesses, sworn before the Magistrate, Court Clerk, Prosecutor, or any law enforcement officer;
- (b) A written statement by the complaining witness or witnesses having personal knowledge of the violation, describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained;
- (c) The name or description of the person alleged to have committed the offense;
- (d) A description of the offense charged and the section of the code allegedly violated.

Rule 1.3 Assignment of Numbers to Cases. A case number shall be assigned by the Court Clerk in accordance with established procedures and shall be noted on the initial pleading.

Rule 1.4 Pauper's Affidavit. A litigant seeking to proceed on a pauper's affidavit shall appear in person before the Magistrate of the Court and, under oath, support a condition of poverty before presenting any other documents for filing.

Rule 1.5 Service of Process. Service of process shall consist of delivering to the party served, a copy of the petition along with summons, issued by a Magistrate or Court Clerk, which advises the defendant that he is required to answer the petition within thirty (30) days or a default judgment will be entered against him. All documents required to be filed shall be served as under this rule, and except for the complaint, may be served on the attorney of a party. A civil action is deemed commenced by filing in the Court Clerk's Office a petition and by the Court Clerk's issuance of summons thereon.

Rule 1.6 Service by Publication or Mail.

- (1) Where service by publication is proper, the action shall be deemed commenced at the date notice of publication is published.
- (2) Service of all papers, except a criminal complaint may be made by mail. Where service is sought to be effected by mailing, the action shall be deemed commenced when the envelope containing summons, addressed to the defendant or to the service agent if one has been

appointed, is deposited in the United States mail with postage prepaid for forwarding by certified mail with a request for a return receipt from addressee only.

Rule 1.7 Service on Minor. When the defendant is a minor, under the age of eighteen (18) years, the service must be made upon the guardian or parent.

Rule 1.8 Return of Service. The return of service shall be endorsed with the name of the person making service, the date, time, and place of service, and shall be filed with the Court Clerk.

TITLE II. PARTIES

Rule 2.1 Parties.

(1) Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

(2) When an infant, or insane, or incompetent person who has not had a guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

(3) To the greatest extent possible given the jurisdiction of the Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party.

Rule 2.2 Intervention. A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected by the action.

Rule 2.3 Substitution of Parties. If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

TITLE III. PLEADINGS AND MOTIONS

Rule 3.1 Form of Pleadings.

(1) All pleadings or instruments filed should contain a heading, a case number and be on 8 1/2 x 11 inch white paper, double spaced and substantially conform to the requirements of the Court. The Court Clerk's office may develop forms for use by the litigants. Documents prepared by hand shall be neat and legible. Substantial compliance with this rule will be sufficient for all parties not represented by counsel or a Lay Advocate.

(2) Every pleading shall contain a caption heading, the name of the Court, the title of the action, the case file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties.

(3) All statements of claim or defense shall be set forth in separate numbered paragraphs. (4) Statements in a pleading may be adopted by reference in a different part of the same pleading or

in another pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 3.2 Pleadings to be Signed. All pleadings shall be signed by a party, or their attorney/advocate, and shall contain the printed name, mailing address and telephone number or email (if any), of said person. Any pleading which fails to comply with this Rule shall be deemed inadmissible by the Court.

Rule 3.3 Copies of Pleadings and Filings. Copies of all pleadings filed subsequent to filing of the petition shall be delivered or mailed at the time of filing to counsel for other parties in the case and to all unrepresented parties. A statement as to delivery or mailing shall be made with the pleading filed.

Rule 3.4 Originals to be Filed.

(1) The original of any pleading or other instrument shall be filed with the Court Clerk. Pleadings may be filed with the Court Clerk via hand delivery, telephonic facsimiles, or electronic mail. Facsimiles and electronic mail received by the Court Clerk's Office after regular business hours will be filed the next business day. The filing fee shall be paid within five (5) business days of receiving the facsimile or electronic mail filing. If the filing fee and the original of any pleading are not received by the Court Clerk's Office within five (5) days of the filing of the facsimile or electronic mail, the Court Clerk shall disallow the filing and so note on the pleadings.

(2) Parties filing actions by facsimile or electronic mail, do so at their own risk. It is incumbent upon the party to ensure the facsimile or electronic mail was properly received by the Court Clerk. The Clerk shall not be responsible for lost, untimely received, or unreceived facsimile or electronic mail filings.

Rule 3.5 Respect for Courts. No pleading filed in this Court shall contain language showing disrespect for the Court or any Magistrate thereof. Violations of this rule may be punishable in accordance with Court Rules.

Rule 3.6 Types of Pleadings. There shall be a complaint or petition by the plaintiff and an answer by the defendant. If the defendant presents a counterclaim, the plaintiff shall file a response. The Court may grant additional leave to plead further in the interest of narrowing and defining issues or as justice may require.

Rule 3.7 Claims for Relief. A pleading which sets forth a claim for affirmative relief shall contain:

- (a) A short, plain statement of the grounds upon which the Court's jurisdiction depends;
- (b) A short, plain statement of the claim showing that the pleader is entitled to relief; and
- (c) A demand for judgment for the relief. Such claim for relief can be in the alternative or for several types of relief.

Rule 3.8 Defenses and Objections.

(1) A defendant or other party against whom a claim has been made for affirmative relief shall have thirty (30) days from the date of service upon him to answer or respond to the claim.

(2) Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until ten (10) days after the disposition of the motion by the Court.

(3) Failure to challenge the assertion of personal jurisdiction of the Court over any defendant shall constitute consent to personal jurisdiction of the Court. The defense of lack of jurisdiction shall be raised as an affirmative defense or in a motion to dismiss filed before the answer is due, through a special appearance.

(4) A party shall state the grounds upon which he bases his defense to claims pleaded against him/her, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. A claim to which a responsive pleading is required shall be deemed admitted unless denied; if no responsive pleading is required the claims of the adverse party shall be deemed denied.

Rule 3.9 Alternative Pleadings of Claims and Defenses. Claims and defenses may be simply stated and may be pled in the alternative or hypothetical form, on one or several counts or defenses. Claims and defenses need not be consistent with one another, and may be based on legal or equitable grounds, or both.

Rule 3.10 Affirmative Defenses. Matters constituting a defense or avoidance shall be affirmatively set forth.

Rule 3.11 Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

Rule 3.12 Filing an Appearance - Effect. Within the time to answer as set forth in the summons, a defendant may file an appearance which shall extend the time to plead or answer an additional twenty (20) days from the time to answer as set forth in the summons. The filing of such an appearance waives all objections to the service of process and the venue of the action.

Rule 3.13 Counterclaim. A party against whom a claim is made may assert in his answer any claims he/she has against the party claiming against him/her and both claims shall be resolved at trial.

Rule 3.14 Amendment of Pleadings.

(1) A party may amend his/her pleadings once before the opposing party has replied, or if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date may be delayed if necessary.

(2) When issues or evidence not raised in the pleadings are heard at trial, the judgment may

conform to such issues or evidence without the necessity of amending the pleadings.

Rule 3.15 Motions.

- (1) An application to the Court for an order shall be made by written motion, unless made orally during a hearing or trial, and shall set forth the relief sought and the grounds shall be stated with particularity.
- (2) The presiding Magistrate, for good cause shown, may enlarge the prescribed period of time within which any required response may be done.
- (3) Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served on all parties to the case.

Rule 3.16 Motions for Temporary Restraining Orders.

- (1) No temporary restraining order shall be granted upon motion in a civil case without notice to the adverse party unless it clearly appears from the facts shown by affidavit that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. A show cause hearing with notice to the adverse party shall be scheduled to be heard on the earliest available court docket. The Magistrate may extend the time hearing only for good cause shown, provided however, no extension shall be granted for more than thirty (30) days without a hearing.
- (2) A restraining order or preliminary injunction shall only be issued upon the giving of security by the applicant in such amount as the Magistrate deems proper for the payment of such costs and damages as may be incurred and suffered by any party who is found to have been wrongfully restrained or enjoined.

Rule 3.17 Preliminary Injunctions.

- (1) No preliminary injunction, following a temporary restraining order granted, shall be issued without notice to the adverse party.
- (2) Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application.

Rule 3.18 Extraordinary Writs. Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining any of the following extraordinary writs which may be granted by the Court in appropriate cases:

- (a) Writ of Prohibition
- (b) Writ of Mandamus
- (c) Writ Quo Warranto
- (d) Writ of Habeas Corpus

Rule 3.19 Habeas Corpus.

- (1) Application for the Habeas Corpus Writ shall be made by petition, signed and verified by the applicant and shall specify:
 - (a) For whom the writ is being sought and the reason he/she is restrained of his/her liberty;
 - (b) The location of all parties, if known;
 - (c) The cause or pretense of the restraint, according to the applicant's best knowledge and belief;
 - (d) If the restraint is alleged to be illegal, the reason for the alleged illegality.
- (2) If filed by a self represented litigant, the petition may be on forms supplied by the Court

Clerk. Writs of Habeas Corpus may be granted by a Magistrate of this Court and upon application the writ shall be considered without delay.

Rule 3.20 Service of Writ of Habeas Corpus.

(1) All writs directed to BIA/Tribal Law Enforcement authorities shall be delivered instanter by the Court Clerk. If a writ be directed to any other person, the writ shall be delivered to the BIA/Tribal Law Enforcement authority to be served upon such person without delay. If the person to whom such writ is directed cannot be found, or shall refuse admittance to the police, the writ may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either at his/her dwelling house or where the party is confined under restraint.

(2) Return of service of the writ shall be made in the Court Clerk's Office in the same manner as required for return of service of other documents issued by the Court.

Rule 3.21 Motions for Summary Judgment. Any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

TITLE IV. HEARINGS AND PRE-TRIAL MATTERS

Rule 4.1 Motion Docket. The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for placing all pending motions on the Motion Docket. Notice of case setting shall be distributed to all parties at least ten (10) days prior to the Motion Docket.

Rule 4.2 Inadvertent Settings. Any civil or criminal matter inadvertently set for hearing on a holiday, weekend or any day when the Court is not in session shall automatically be reassigned to another date. The Court Clerk shall notify the parties of the reassignment.

Rule 4.3 Continuances. No motion, hearing or trial shall be continued upon stipulation of counsel alone, but such continuances may be allowed by order of the Magistrate. Upon receiving an Order of Continuance from the Magistrate, the Court Clerk shall promptly notify the parties of the continuance and of the date set by such order. No continuance shall be allowed but for good cause shown.

Rule 4.4 Limitations on Argument. Arguments to the Magistrate, as well as to the jury, shall be subject to reasonable limitation as to time and number of counsel participating.

Rule 4.5 Evidence Taken at Hearings. At all hearings the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules.

Rule 4.6 Discovery in Civil Cases.

- (1) A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within thirty (30) days of receipt of such.
- (2) A party may take a testimony of any person, including a party, by deposition upon oral examination without leave of court. The attendance of witnesses may be compelled by subpoena.
- (3) A party may request another party to produce any documents or items in his custody or possession for inspection or copying.
- (4) Parties may obtain discovery regarding any matter not privileged that is relevant to the pending action if it would lead to evidence which would be admissible at trial.
- (5) A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.
- (6) If a party fails to respond or appear for discovery after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.
- (7) Answers to interrogatories and depositions may be used in a motion, hearing, or at trial to impeach or contradict the testimony of the person of whom it was obtained, or by an adverse party for any purpose.

Rule 4.7 Subpoenas.

- (1) Upon request of any party, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The Court Clerk may act on behalf of the Court and issue subpoenas which have been

signed either by the Court Clerk or by the Magistrate of the Court and which are to be served within Indian Country over which the Court has jurisdiction.

(2) A subpoena shall bear the signature of the Magistrate of the Court, and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(3) A subpoena may be served at any place, but any subpoena to be served outside of the Indian Country over which the Court has jurisdiction shall be issued personally by the Magistrate of the Court.

(4) A subpoena may be served by any BIA/Tribal Law Enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person eighteen (18) years of age or older who also resides or works there.

(5) Proof of service of the subpoena shall be filed with the Court Clerk by noting on the subpoena the date, time and place that it was served, and the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(6) In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of Court and a bench warrant may be issued for his/her arrest.

Rule 4.8 Witness Fees.

(1) Unless otherwise prescribed by applicable law, each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a) (1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(2) The Court may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(3) If the Court finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the Court for expenditures incurred under this section, and such Order may constitute a judgment upon which execution may levy.

Rule 4.9 Rules of Evidence. Court of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the Court or by the existence of inconsistent tribal rules of evidence.

Rule 4.10 Pretrial Conference. The Magistrate may order a pretrial conference of the parties if it appears that issues in the case can be resolved or clarified by a pretrial conference.

Rule 4.11 Dismissal of Actions. Prior to the beginning of the trial of a case, the party making the claim may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his own claim and the Court shall do so either with or without prejudice as is just. If a counterclaim has been filed against the moving party, the Magistrate shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his claim independently without undue additional hardship.

Rule 4.12 Involuntary Dismissal.

(1) A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:

- (a) Failure of the adverse party to pursue prosecution of his claim; or
 - (b) Failure of the adverse party to comply substantially with these rules; or
 - (c) Failure of the adverse party to comply with an order of the Court; or
 - (d) At the close of the presentation of the other party's evidence and without prejudice to his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or
- (2) Whenever dismissal appears proper based upon failure to prove a claim.

Rule 4.13 Payment of Costs on Dismissal. The Court may order a party whose claim is dismissed to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage.

TITLE V. TRIALS AND JUDGMENT

Rule 5.1 Burdens of Proof Required.

- (1) In civil cases, all issues of fact shall be decided by clear and convincing evidence.
- (2) In criminal cases, the facts establishing the defendant's guilt must be proved beyond a reasonable doubt.
- (3) In juvenile deprived cases where the issue is adjudication, the burden of proof shall be by clear and convincing evidence.
- (4) If termination of parental rights is sought, the burden of proof shall be beyond a reasonable doubt.
- (5) In juvenile delinquency proceedings the burden of proof shall be beyond a reasonable doubt.

Rule 5.2 Jury Trial. A jury trial shall be held if:

- (a) Requested by either party in a civil case with the approval of a Magistrate; or
- (b) Requested by the defendant in a criminal case where imprisonment is a possible penalty for the offense charged; or
- (c) In Indian child welfare cases involving termination of parental rights, a jury trial shall be conducted if requested by a party whose rights are being terminated.

Rule 5.3 Jury Composition.

- (1) Any enrolled member of a tribe/nation within the Court's jurisdiction over the age of eighteen (18) years, not subject to judicial restraint, and who resides within the Court's service area may be listed as an eligible juror, except those persons licensed to practice law before the Court of Indian Offenses.
- (2) In any case, a jury shall consist of six (6) residents of the vicinity in which the trial is held, selected from the list of eligible jurors by the Magistrate by a random selection process.
- (3) Each party shall have the right to challenge an unlimited number of jurors for cause on the basis of lack of qualifications, partiality, or other acceptable reason. Whether or not cause exists shall be determined by the Magistrate in all instances. In addition, each party shall have the right to a maximum of three peremptory challenges for jurors, for which, no reasons need to be given and which the Magistrate may not refuse to grant.

Rule 5.4 Jury Duties.

- (1) The Magistrate shall instruct the jury with regard to applicable law and the jury shall decide all questions of fact on the basis of that law.
- (2) The jury shall deliberate in secret and return a verdict of guilty or not guilty. The Magistrate shall render judgment in accordance with the jury verdict.
- (3) In a criminal proceeding the jury shall render a verdict by unanimous vote. In a civil or Indian child welfare proceeding, the jury may render a verdict by a majority vote.
- (4) Each juror in attendance shall be entitled to a fee as set by the 29 USC 206 for each day his services are required by the Court. The Court may tax all juror costs against the losing party.

Rule 5.5 Requesting A Jury Trial.

- (1) Trials of all actions shall be to the Court without a jury unless a party to the action files a request for a jury trial and a deposit of four-hundred dollars (\$400.00) against the costs of jury fees, not less than twenty-five (25) days prior to the scheduled date of trial. A determination shall be made by the Court whether the matter is proper for trial by jury. A Magistrate may, upon good

cause shown, waive payment of the required fee.

(2) Unless the requesting party specifies otherwise, all factual issues which may be properly heard triable by a jury shall be decided by the jury at trial.

(3) There shall be no deposit required in a jury trial in a criminal case.

(4) Tribal code establishing the jury fee amount shall take precedent over these rules.

Rule 5.6 Jury Dockets.

(1) The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for preparing all civil and criminal jury dockets. The day for sounding a civil and/or criminal jury trial docket shall be set by order of the Court. All cases placed on any jury docket shall be set for a date certain. Notice of the jury trial setting shall be distributed to all counsel of record and parties pro se, at least ten (10) days prior to the commencement of the docket.

(2) Attorneys and Lay Advocates shall keep the Magistrate apprised of the settlement or trial status of their cases on the docket.

(3) Jury trials start promptly at 9:00 a.m., unless otherwise announced.

Rule 5.7 Non-Jury Dockets.

(1) The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for preparing all civil and criminal non-jury dockets. The day for sounding the civil and criminal non-jury docket shall be set by order of the Court. All cases placed on any non-jury docket shall be set for a date certain.

(2) Attorneys and Lay Advocates shall keep the Magistrate apprised of the settlement or trial status of their cases on the docket.

Rule 5.8 Designation of Jury Trial Issues by Magistrate.

(1) The Magistrate may, upon his/her own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.

(2) The Magistrate may, upon motion of any party or his/her own initiative, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.

(3) The Magistrate may hear and decide an issue(s) without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issue(s).

Rule 5.9 Separate Trials. The Court may order a separate trial of a claim or issue to avoid prejudice or in furtherance of convenience.

Rule 5.10 Opening Statements at Trial. Counsel's opening statements shall be limited to a brief, concise summary statement or synopsis of the evidence the party intends to present for the consideration of the Magistrate or jury. There shall be no discussion of the law and no argument of the facts.

Rule 5.11 Examination at Trial.

(1) All examination and cross examination shall be taken under oath, consistent with the following:

(a) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate;

(b) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action;

(c) A party may impeach his own witness; and

(d) Cross examination shall, except with the permission of the Court, be limited to the general scope of direct examination.

(2) Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action.

(3) Official documents or an official law, record, or copy thereof, may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document, or record, or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it supports to be.

(4) In an action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Magistrate may receive such excluded testimony into the record.

Rule 5.12 Trial Juries.

(1) The Court Clerk shall select and subpoena not less the forty (40) persons from the list of eligible jurors to appear and be available to serve as jurors whenever jury trials are scheduled.

(2) The Court Clerk must prepare separate ballots, containing the names of eligible jurors, which must be folded as nearly alike as possible, so that the name cannot be seen, and deposit them in a box or other sufficient container.

(3) The Court Clerk, under the direction of the Court, must publicly draw the ballots from the container and present same to the Magistrate. The Magistrate will read the name of the prospective juror aloud.

Rule 5.13 Jurors.

(1) There shall be six (6) jurors chosen to hear a case. The Court may allow up to two (2) additional jurors to be chosen as alternate jurors. In the event that an alternate juror is chosen and hears the case, he shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.

(2) The Court may limit the scope of examination of prospective jurors by attorneys. The Court may conduct further examination of jurors as the Court deems just.

Rule 5.14 Discharge of Juror. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror, if any, shall take his place. If there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the Magistrate shall discharge the jury and the case shall be tried with a new jury.

Rule 5.15 View of Jury. The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a disputed or otherwise relevant event.

Rule 5.16 Separation of the Jury. Any time prior to their verdict when the jurors are allowed to leave the courtroom, the Magistrate shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

Rule 5.17 Deliberation. Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have reached a verdict, and the officer of the Court shall prevent others from improperly communicating with the jury.

Rule 5.18 Things Taken by Jury. The jury may take with them when deliberating any of the following:

- (a) Papers or things received in evidence as exhibits;
- (b) Notes taken by the jurors themselves, but not notes taken by a non-juror.

Rule 5.19 No Verdict. If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retried.

Rule 5.20 Declaration of the Verdict.

(1) When the jury members agree on a verdict, they shall so inform the officer of the Court who shall notify the Magistrate in order for him/her to reconvene the Court. The jury shall be convened into the courtroom; the verdict shall be given in writing to the Court Clerk and who in turn will give the written verdict to the Magistrate. Either the Magistrate or the Court Clerk will then read the verdict into the record.

(2) Inquiry shall be made by the Magistrate to the Jury Foreman as to whether such is their verdict.

(3) Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed.

(4) If the verdict is read or recorded incorrectly by the Court or Jury Foreman, the jury shall retire to correct the verdict.

Rule 5.21 Special Verdicts and Interrogatories. Except in criminal cases, the Court may require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict or both. In criminal cases, the jury shall return a unanimous verdict of guilty or not guilty.

Rule 5.22 Instructions to the Jury. Any party may file proposed written instructions for the Court to consider. The Court shall inform the parties or their counsel of the instructions it intends to give and hear argument thereon out of the hearing of the jury prior to giving instructions in any case.

Rule 5.23 Final Arguments. Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case, and shall inform the jury that they are the sole judges of the facts.

Rule 5.24 Motion for a Directed Verdict.

(1) A party may make a motion for a directed verdict at the close of all evidence. The Court shall enter judgment or make any orders consistent with the decision on the motions.

(2) A motion for directed verdict shall state the grounds therefore and may be granted by the Court without the assent of the jury.

Rule 5.25 Judgment.

(1) A judgment is a final order which determines the rights, liabilities, or guilt of a party. No special form of judgment is required.

(2) When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specifically finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

Rule 5.26 Granting of Demand for Relief.

(1) Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings.

(2) The relief granted on a judgment by default shall not be different in kind from, nor exceed in amount, that specifically prayed for in the demand for judgment.

Rule 5.27 Costs. The Court may allow necessary costs and disbursements to the prevailing party or parties as deemed appropriate by the Court. The prevailing party may be required to file with the Court a verified memorandum of his costs and necessary disbursements and serve a copy of such on the opposing party, and if such are not objected to within fifteen (15) days, they shall be deemed to be part of and included in the judgment rendered.

Rule 5.28 Attorney's Fees. The Court shall have the discretion to award attorney's fees as appropriate.

Rule 5.29 Default.

(1) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the Court and judgment granted.

(2) Judgment by default may be entered only by the Court, subsequent to a party's motion and upon receipt of whatever evidence the Court deems necessary to establish the claim.

(3) The Court may for good cause shown, set aside either an entry of default or a default judgment.

(4) No default judgment may be entered in a criminal case or an action to adjudicate a juvenile delinquent.

Rule 5.30 Entry of Judgment.

(1) Judgment upon verdict of a jury is entered when filed by the Court Clerk. All other judgments are entered when signed by the Magistrate and filed with the Court Clerk. Upon entry the Court Clerk shall immediately record the judgment.

(2) If a party dies after a verdict or decision and before judgment, judgment may nevertheless be entered thereon.

(3) A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction.

(4) A Magistrate may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction.

(5) The Court Clerk shall file all satisfactions of judgment.

Rule 5.31 Motion for New Trial or Reconsideration of a Judgment. Any party may file a motion for a new trial or to reconsider, stating the grounds on which it is based, not later than ten (10) days after the entry of judgment.

Rule 5.32 Relief from Judgment or Order. Clerical mistakes in judgments, orders or other parts of the records, and errors therein arising from oversight or omission may be corrected by the Court at any time.

Rule 5.33 Stay of Proceedings to Enforce a Judgment.

(1) Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

(2) In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to reconsider a judgment or of a motion for relief from a judgment or order.

Rule 5.34 Disability of a Magistrate After Trial. If by reason of death, sickness, or other disability, the Magistrate before whom an action has been tried is unable to perform the duties to be performed by the Court under these rules after a verdict is returned or the Magistrate's decision made and entered, then any other Magistrate regularly sitting in or assigned to the Court may perform those duties, or may in his/her discretion, grant a new trial.

Rule 5.35 Execution.

(1) Immediately upon the entry of a judgment awarding money damages, costs and/or attorney's fees against a party, unless such judgment has been properly stayed, the prevailing party may serve interrogatories upon the judgment debtor to inquire as to the status of said person's financial affairs and ability to pay said judgment.

(a) Said interrogatories shall be served either by personal service or by certified mail, return receipt requested, on the judgment debtor.

(b) The original copy of the answers shall be filed with the Court, and a copy shall be served upon the prevailing party.

(c) The judgment debtor shall answer the same in spaces provided on the interrogatories, in writing and under oath, within fifteen (15) days of receipt of the same.

(d) In the event that the judgment debtor fails to respond to the interrogatories in the period specified, or the answers thereto are shown to be false, misleading, or otherwise inadequate, the Court may order that the judgment debtor appear before it to answer concerning his property.

(2) The party upon whom the interrogatories are served may, in the alternative, tender to the prevailing party all amounts then due under the judgment, in which case the prevailing party shall forthwith file a satisfaction of judgment with the Court.

(3) A writ of execution shall be issued by the Court and shall direct BIA/Tribal Law Enforcement Officers to seize as much of the personal property of the judgment debtor as reasonably appears necessary to satisfy the judgment amount.

(a) Sale of the seized property shall be at a public auction conducted by the BIA/Tribal Law Enforcement after giving not less than ten (10) days public notice posted conspicuously in three

(3) public places within the jurisdiction of the Court where the trial was held, and published three (3) times during said ten (10) days in a local newspaper.

(b) Property shall be sold to the highest bidder who shall make payment for the property at the time of sale.

(c) The person conducting the auction may postpone such in his discretion if there is inadequate response to the auction or the bidding, and may re-schedule such upon giving the required notice.

(d) The person conducting the sale shall give a Certificate of Sale to the purchaser and shall make a return to the Court reciting the details of the sale.

(4) The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an unreasonable hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family.

(5) The following property shall be exempt from seizure and sale in execution:

(a) The tools required for the conduct of the debtor's trade or business;

(b) Ceremonial or religious items;

(c) One automobile value not greater than seven thousand five hundred dollars (\$7,500);

(d) Necessary household utensils and/or furnishings;

(e) Real Property (land);

(f) Family heirlooms;

(g) Clothing;

(h) Wedding rings;

(i) Pets, but not including cattle, sheep, pigs, chickens, geese, and more than one (1) horse; and

(j) Food.

TITLE VI. RULES OF CRIMINAL PROCEDURE

Rule 6.1 Commencement of a Criminal Proceeding.

(1) A Criminal Complaint (Complaint) is a written statement of essential facts charging that a named individual has committed a particular offense. A Complaint shall contain:

- (a) The signature of the complaining witness(es), sworn before the Magistrate, Court Clerk, Prosecutor or any Law Enforcement Officer;
- (b) A sworn written statement by the complaining witness(es) having personal knowledge of the violation(s), describing in ordinary language the nature of the offense(s) committed including the time and place as nearly as may be ascertained;
- (c) The name or description of the person(s), along with identification of Tribal membership and date of birth, alleged to have committed the offense(s);
- (d) A description of the alleged offense(s) charged and the section(s) of the Code/Law allegedly violated; and
- (e) Date filed and case number assignment.

(2) Complaints must be submitted without unnecessary delay by a Law Enforcement Officer to the Prosecutor and, if he/she approves, to the Magistrate to determine whether an Arrest Warrant or Summons should be issued.

(3) When an accused has been arrested without a Warrant, a Complaint shall be filed forthwith the Court for review as to whether probable cause exists to hold the Accused, and in no instance shall a Complaint be filed later than at the time of Arraignment.

Rule 6.2 Defendant, Presence Required. The Defendant shall be present at any bail hearing, at the arraignment, at every stage of the trial, including the impaneling of the Jury and the return of the Verdict, and at the imposition of Sentence. However, the Court may proceed in the Defendant's absence if:

- (a) The Defendant is represented by Counsel; and
- (b) The Defendant is on bond and fails to appear; or
- (c) The Court ordered the removal of the Defendant from the courtroom due to continued misconduct.

Rule 6.3 Jail Bonds. A schedule of appearance bonds is provided in the General Jail Bond Schedule.

Rule 6.4 Bondsmen. Reserved

Rule 6.5 Appearance on Bonds. The privilege of making bond prior to formal charging and arraignment incorporates the duty to voluntarily and promptly appear for arraignment.

Defendants must appear for initial appearance or arraignment the next Court day that is scheduled or the date set on their release bond after posting the jail bond with the BIA/Tribal Law Enforcement Services. No other notice is given to the defendant.

Rule 6.6 Arrest Warrants.

The Magistrate of the Court shall have the authority to issue warrants to arrest and such warrants shall be issued only upon a showing of probable cause in sworn written statements. The arrest warrant shall contain the following information:

- (a) Name or description and address, if known, of the person to be arrested;
- (b) Date of issuance of the warrant;
- (c) Description of the offense charged;
- (d) Signature of the issuing Magistrate; and
- (e) Service of such warrants shall be made by a BIA/Tribal Law Enforcement Officer.

Rule 6.7 Notification of Rights. Prior to custodial interrogation, the suspect shall be advised of the following rights:

- (a) That he/she has the right to remain silent;
- (b) That any statements made by him/her may be used against him/her in court;
- (c) That he/she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her;
- (d) That if he/she wishes to answer questions of the police, he/she may have his/her counsel present with him/her and can cease answering questions at any time.

Rule 6.8 Summons in Lieu of Warrant. When otherwise authorized to arrest a suspect a BIA/Tribal Law Enforcement Officer or Magistrate may, in lieu of a warrant, issue a Summons commanding the accused to appear before the Court at a stated time and place to answer to the charge. The Summons shall contain the same information as a warrant, except that it may be signed by a BIA/Tribal Law Enforcement Officer. If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.

Rule 6.9 Search Warrants.

- (1) The Magistrate shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation when the premises is located within the Indian country over which the Court has jurisdiction.
- (2) No warrant for search or seizure may be issued unless it is based on a written and signed statement establishing, to the satisfaction of the Magistrate, that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation.
- (3) No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the Magistrate who issued it.
- (4) Warrants may be executed only by a BIA/Tribal Law Enforcement Officer or other official commissioned to enforce the law within the Court's jurisdiction. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

Rule 6.10 Search without a Warrant.

No BIA/Tribal Law Enforcement Officer shall conduct any search without a valid warrant except:

- (a) Incident to making a lawful arrest; or
- (b) With the voluntary consent of the person being searched; or
- (c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property or property otherwise unlawfully possessed.

Rule 6.11 Disposition of Seized Property.

- (1) The officer serving and executing a warrant shall make an inventory of all seized property, and a copy of such inventory shall be left with every person from whom property is seized.
- (2) A hearing shall be held by the Court to determine the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case.
- (3) Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court.

Rule 6.12 Commitments. No person may be detained, jailed or imprisoned under the regulations of this part for longer than forty-eight (48) hours unless the Court issues a commitment bearing the signature of a Magistrate. A temporary commitment shall be issued for each person held before trial. A final commitment shall be issued for each person sentenced to jail after trial.

Rule 6.13 Arraignments.

- (1) Arraignment is the bringing of an accused before the Court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pre-trial release as appropriate.
- (2) Arraignment shall be held in open Court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court.
- (3) Before an accused is required to plead to any criminal charges, the Magistrate shall:
 - (a) Read the complaint to the accused and determine that he or she understands it and the section(s) part of the Code of Federal Regulations or tribal ordinance that he or she is charged with violating, including the maximum authorized penalty, subject to the defendant's right to waive the official reading of the complaint; and
 - (b) Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel (which shall be paid for by the government if the accused is indigent) and that the arraignment will be postponed should he or she desire to consult with counsel.
- (4) The Magistrate shall call upon the defendant to plead to the charge:
 - (a) If the accused pleads "not guilty" to the charge, the Magistrate shall then inform the accused of the trial date and set conditions for release prior to trial;
 - (b) If the accused pleads "guilty" to the charge, the Magistrate shall accept the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The Magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing; or
 - (c) If the accused refuses to plead, the Magistrate shall enter a plea of "not guilty" on his or her behalf.
- (5) The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

Rule 6.14 Bail.

- (1) Each person charged with a criminal offense shall be entitled to release from custody pending trial under whichever one or more of the following conditions are deemed necessary to

reasonably assure the appearance of the person at any time lawfully required:

- (a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times;
 - (b) Release to the custody of a designated person or organization agreeing to assure the accused's appearance;
 - (c) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;
 - (d) Release after deposit of a bond or other sufficient collateral in an amount specified by the Magistrate or a bail schedule;
 - (e) Release after execution of a bail agreement by two responsible members of the community; or
 - (f) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
- (2) Any BIA/Tribal Law Enforcement Officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Court.
- (3) A convicted person may be released from custody pending appeal on such conditions as the Magistrate determines will reasonably assure the appearance of the accused unless the Magistrate determines that release of the accused is likely to pose a danger to the community, the accused, or any other person.
- (4) The Court of Indian Offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

Rule 6.15 Joinder of Criminal Offenses. Two or more offenses may be charged in the same complaint in a separate count for each offense if such offenses are based on the same act or transaction or constitute parts of a common scheme or plan.

Rule 6.16 Pleadings and Motions Before Trial in Criminal Cases.

- (1) Pleadings in criminal proceedings shall consist of the complaint and the pleas of either guilty, not guilty or nolo contendere (no contest). All other pleas and motions shall be made in accordance with these rules.
- (2) Motions raising defenses and objections shall be made as follows:
 - (a) Any defenses or objections which are capable of determination prior to trial must be raised before trial by motion; and
 - (b) Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction of the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any stage of the proceeding.
- (3) Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. The motions will be argued before trial unless the Court directs otherwise. Decision on such motions shall be made by the Magistrate and not by the jury.

Rule 6.17 Discovery and Inspection in Criminal Cases. The BIA/Tribal Law Enforcement Officer and Prosecutor, shall, upon request, permit the defendant or his attorney to inspect and

copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control or reasonably obtainable by the officer or prosecutor. The officer and prosecution shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to the defendant.

Rule 6.18 Dismissal of Complaint.

(1) The prosecutor may move that a complaint be dismissed and upon the Court's granting such motion, the prosecution of that complaint shall cease, and the defendant shall be released and any bail or bail bond exonerated. Such dismissal shall not be made during trial without the consent of the defendant, unless the dismissal is granted with prejudice to the prosecutor re-filing the complaint.

(2) If there is an unreasonable and unnecessary delay in bringing a defendant to trial, the Court may, on motion of the defendant or its own motion, dismiss the complaint with prejudice to the prosecutor re-filing the complaint.

Rule 6.19 Verdicts in Criminal Cases.

(1) If there are two (2) or more defendants, the jury may at any time during its deliberations return a verdict or verdicts with respect to some or all defendants.

(2) The defendant may be found guilty of a lesser included offense or attempt to commit the offense without the necessity of the defendant having been formally charged with such lesser offenses or charged with attempt.

Rule 6.20 Order of Trial in Criminal Cases.

(1) Upon swearing in the jury, the prosecutor shall read the complaint, unless waived by the defendant.

(2) The prosecution shall present an opening statement. The defendant or his counsel may then either make his opening statement or reserve it to be made immediately prior to the presentation of evidence on behalf of the defendant. The prosecution shall then offer its evidence in support of the charge, and the defendant may then offer evidence in his defense. The parties may then respectively offer rebutting testimony, unless the Court, for good reasons, in furtherance of justice, permits them to offer additional new evidence.

(3) When all evidence has been presented, the prosecution may make the first closing argument. The defense may then make a closing argument, and the prosecution may make a final closing argument.

(4) At the end of closing arguments and any motions, the Magistrate shall make his/her findings and decision or, if there is a jury, the jury shall receive its instructions from the Magistrate, hold its deliberation and report the same to the Magistrate.

(5) Upon receiving the deliberations of the jury, the Magistrate shall enter judgment upon the verdict, if any. If the jury is unable to agree, the Court may declare a mistrial.

Rule 6.21 Nature of Sentences. Except as otherwise provided herein, a person found guilty of violating an offense may be sentenced to the penalty provided in such offense. Sentences shall be imposed without unreasonable delay and shall not exceed the maximum penalties provided by law.

Rule 6.22 Restitution. In addition to any prescribed punishments, where the defendant's acts have injured the person or property of another, the Court may order restitution be made to the

injured party(ies) upon the Court's receipt of a memorandum of costs or other sufficient documentation.

Rule 6.23 Sentences of Imprisonment.

(1) A person sentenced to imprisonment may work for the benefit of the tribes or for the benefit of the Western Region. Any work performed shall reduce the sentence at the rate of two (2) days of incarceration for each day of work performed. "Day of work" shall mean at least four (4) hours of work performed in any twenty-four (24) hour period. Any community service performed shall be under the supervision of a person authorized by the Court.

(2) Any sentence of imprisonment shall be reduced by any time spent in jail before judgment was entered.

Rule 6.24 Payment of Fines. Any person sentenced to pay a fine shall pay such fine in cashier's checks or money order. If the full amount of the fine cannot immediately be paid, the Court may provide for the payment of such fine in installments.

Rule 6.25 Commutation of Sentence.

The Magistrate may, at any time that one-half or more of an original sentence of imprisonment has been served, commute such sentence to a lesser period upon proof that the person sentenced served without misconduct.

Rule 6.26 Suspension of Sentence; Probation.

(1) The Magistrate may suspend any sentence upon condition that the Defendant complies with such reasonable terms and conditions as the Court deems necessary.

(2) When considering suspending any sentence, the Court shall consider the prior record of the defendant, background, character, financial condition, family and work obligations, the circumstances of the offense, and attempts at restitution.

Rule 6.27 Violation of Suspended Sentence.

(1) Any person accused of violating the terms or conditions of a suspended sentence shall be afforded a hearing before the sentencing Court to determine the truth of the accusations.

(2) Where, by a preponderance of testimony, a person is found to have violated the terms or conditions of suspended sentence, such person may be ordered to serve the original sentence or any portion thereof.

Rule 6.28 Civil Remedies not Precluded. The imposition or suspension of any penalty, on condition of restitution to one whose person or property has been injured, for the commission of any criminal offense shall not preclude an application for any civil remedy for such injuries.

Rule 6.29 Limitation on Filing Complaints. No complaint shall be filed charging the commission of an offense unless such offense shall have been committed within five (5) years prior to the date of the complaint.

Rule 6.30 Extradition. Any Court of Indian Offenses may order delivery to the proper State, Tribal or BIA Law Enforcement authorities of any person found within the jurisdiction of the court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the court's order in a

hearing before the court.

Rule 6.31 Arrest. Arrest is the taking of a person into BIA/Tribal Law Enforcement custody in order that he may be held to answer for a criminal offense. No BIA/Tribal Law Enforcement Officer shall arrest any person for a criminal offense except when:

- (a) The officer shall have a warrant signed by the Magistrate of the Court commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or
- (b) The offense shall occur in the presence of the arresting officer; or
- (c) The officer shall have probable cause to believe that an offense has been committed and that the person to be arrested has committed an offense.

TITLE VII. GENERAL COURT PROCEDURES

Rule 7.1 Time Computation. In computing any period of time set forth herein, the first day of the period shall not be counted and the last day of the period shall be counted. Any time period which would end on Saturday, Sunday, or legal holiday or any other day when the office of the Court Clerk is not open or does not remain open for business will be deemed to end on the next day which is not Saturday, Sunday, or legal holiday.

Rule 7.2 Extensions of Time. Extensions of time may be allowed by order of the Magistrate upon a showing of good cause. No extensions of time shall be granted upon stipulation of counsel alone, but with a showing of good cause, may be allowed by order of the Magistrate. Once an extension of time is granted, the Magistrate shall promptly notify the Court Clerk's Office of the extension and the new date set. Notice of the extension of time shall be sent to the parties by the Court Clerk.

Rule 7.3 Disqualification of Magistrates.

(1) Magistrates may be disqualified from hearing a case for cause. Disqualification may be accomplished on motion of any party to the proceeding or upon the Court's own motion. Before filing any motion to disqualify the Magistrate, a request shall first be made to the Magistrate to disqualify or to transfer the cause to another Magistrate. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial a motion to disqualify a Magistrate or to transfer a cause to another Magistrate may be filed and a copy delivered to the Magistrate. If the motion is entered by a party, the Magistrate will hear the argument and determine if he should disqualify himself/herself.

(2) Any interested party who deems himself aggrieved by the refusal of the Magistrate to grant a motion to disqualify or transfer a cause to another Magistrate may appeal to the Appellate Court for review of the decision.

(3) Such appeal will be filed in the Court Clerk's Office. A three (3) Magistrate panel shall be appointed to hear such appeal.

Rule 7.4 Orders. An order includes every direction of the Court, whether or not included in a judgment, and may not be made, vacated, or modified without notice to adverse parties and for good cause shown.

Rule 7.5 Contempt of Court.

(1) Direct contempt shall consist of disorderly or insolent behavior committed during the session of the Court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for.

(2) Indirect contempt of Court shall consist of willful disobedience of any process or order lawfully issued or made by Court; resistance willfully offered by any person to the execution of a lawful order or process of a Court.

Rule 7.6 Contempt Proceedings.

(1) Punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding five hundred dollars (\$500.00) or by imprisonment in the city/county jail not

exceeding six (6) months, or by both, at the discretion of the Court.

(2) Direct Contempt: The Magistrate has the power to cite for contempt anyone who, in his/her presence in open court, willfully obstructs judicial proceedings. If necessary, the Magistrate may punish a person cited for contempt after an opportunity to be heard has been given. Censure shall be imposed by the Magistrate only if:

(a) It is clear from the identity of the offender and the character of his acts that disruptive conduct is willfully contemptuous; or

(b) The conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

(3) The Magistrate, as soon as practicable after he/she is satisfied that courtroom misconduct requires contempt proceedings, should inform the alleged offender of his/her intention to institute said proceedings.

(4) Before imposing any punishment for contempt, the Magistrate shall give the offender notice of the charges and an opportunity to adduce evidence or argument relevant to guilt or punishment.

(5) The Magistrate before whom courtroom misconduct occurs may impose appropriate sanctions including punishment for contempt. If the Magistrate's conduct was so integrated with the contempt that he contributed to it or was otherwise involved or his objectivity can reasonably be questioned, the matter shall be referred to another Magistrate.

(6) Indirect Contempt: In all cases of indirect contempt the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury.

(a) In the event the party so charged shall demand a trial by jury, the Court shall thereupon set the case for trial at the next jury term of said Court, unless such time is waived by the party so charged, in which event the case shall be set for trial at a time determined by the Court. The Court shall fix the amount of an appearance bond to be posted by said party charged. The party charged may deposit with the Court Clerk a money order or cashier's check equal to the amount of the appearance bond.

(b) In a case of indirect contempt, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the indirect contempt is seeking a cash bond. If a cash bond is not being requested, the Court Clerk shall, upon request, notify the party alleging the indirect contempt of the date of the trial.

Rule 7.7 Cooperation by Federal Employees.

(1) No field employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the Courts or influence such functions in any manner except as permitted by the regulations or in response to a request for advice or information from the Court.

(2) Employees of the Bureau of Indian Affairs, particularly those engaged in social, health, or education services, shall assist the Courts upon their request in the preparation and presentation of the facts in the case and in the proper treatment of individual offenders.

Rule 7.8 Right of Appeal.

(1) An appeal must be taken 15 days from the judgment appealed from by filing a written notice of appeal with the Court Clerk.

(2) The notice of appeal shall specify the party or parties taking the appeal, shall designate the

judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The Court Clerk shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(3) In civil cases, other parties shall have 15 days to respond to the notice of appeal.

(4) In civil cases, the appellant may request the trial division to stay the judgment pending action on the notice of appeal, and, if the appeal is allowed, either party may request the trial division to grant or stay an injunction pending appeal. The trial division may condition a stay or injunction pending appeal on the depositing of cash or bond sufficient to cover damages awarded by the Court together with interest.

PART III. JUVENILE COURT

TITLE I. ESTABLISHMENT AND DEFINITIONS

Rule 1.1 Children's Court Established. When conducting proceedings under this part, the Court of Indian Offenses shall be known as the "Children's Court."

Rule 1.2 Definitions. For purposes of sections pertaining to the Children's Court:

Abandon means the leaving of a minor without communication or failing to support a minor for a period of one year or more with no indication of the parents' willingness to assume a parental role.

Adult means a person eighteen (18) years or older.

Counsel means an attorney admitted to the bar of a state or a Lay Advocate admitted to practice before the Court.

Custodian means one who has physical custody of a minor and who is providing food, shelter and supervision to the minor.

Custody means the power to control the day-to-day activities of the minor.

Delinquent act means an act which, if committed by an adult, would be designated a crime under this part or under an ordinance of the tribe.

Detention means the placement of a minor in a physically restrictive facility.

Guardian means a person other than the minor's parent who is by law responsible for the care of the minor.

Guardian ad Litem means a person appointed by the Court to represent the minor's interests before the Court.

Juvenile offender means a person who commits a delinquent act prior to his or her eighteenth birthday.

Minor means: A person under eighteen (18) years of age; A person eighteen (18) years of age or older concerning whom proceedings are commenced in the Children's Court prior to his or her eighteenth birthday; or A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Children's Court.

Minor-in-need-of-care means a minor who: Has no parent or guardian available and willing to take care of him or her; Is unwilling to allow his or her parent to take care of him or her; Has suffered or is likely to suffer a physical or emotional injury, inflicted by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or emotional health; Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian; Has been sexually abused; Has been committing delinquent acts as a result of parental pressure; or Has been committing status offenses;

Status offense means an act which, if committed by an adult, would not be designated a crime under this part or under an ordinance of the tribe.

Rule 1.3 Non-Criminal Proceedings. No adjudication upon the status of any minor in the jurisdiction of the Children's Court shall be deemed criminal or be deemed a conviction of a crime, unless the Children's Court refers the matter to the Court. Neither the disposition nor evidence given before the Children's Court shall be admissible as evidence against the child in any proceeding in another Court.

Rule 1.4 Guardian Ad Litem. The Children's Court, under any proceeding authorized by this part shall appoint, for the purposes of the proceeding, a guardian ad litem for a minor, where the Court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship, or where the parent, guardian, or custodian has been accused of abusing or neglecting the minor. The Court may, in the Court's discretion, appoint a guardian ad litem when the Court deems it is in the best interest of the child(ren).

Rule 1.5 Jurisdiction.

- (1) The Children's Court has exclusive, original jurisdiction of the following proceedings:
- (a) Proceedings in which a minor who resides in a community for which the Court is established is alleged to be a juvenile offender, unless the Children's Court transfers jurisdiction to the Court of Indian Offenses pursuant to Rule 1.7; and
 - (b) Proceedings in which a minor who resides in a community for which the Court is established is alleged to be a minor-in-need-of-care.

Rule 1.6 Rights of Parties.

- (1) In all hearings and proceedings under these Rules the following rights will be observed unless modified by the particular section describing a hearing or proceeding. Notice of the hearing or proceeding shall be given to the minor, his or her parents, guardian or custodian and their counsel. The notice shall be delivered by certified mail, personal service or actual notice in court hearings. The notice shall contain:
- (a) The name of the Court;
 - (b) The title of the proceeding; and
 - (c) The date, time and place of the proceeding.
- (2) The Children's Court Magistrate shall inform the minor and his or her parents, guardian or custodian of their right to retain counsel. In juvenile delinquency proceedings, the Court shall inform the minor charged with an offense, as follows: "You have a right to have a lawyer or other person represent you at this proceeding. If you cannot afford to hire counsel, the Court will appoint counsel for you."
- (3) If the Children's Court Magistrate believes there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian with respect to legal representation, the Court shall appoint another person to act as counsel for the minor.
- (4) The minor need not be a witness against, nor otherwise incriminate, himself or herself.
- (5) The Children's Court shall give the minor, and the minor's parent, guardian or custodian the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

Rule 1.7 Transfer to Court of Indian Offenses.

- (1) The presenting officer or the minor may file a petition requesting the Children's Court to transfer the minor to the Court of Indian Offenses if the minor is fourteen (14) years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.
- (2) The Children's Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Court of Indian Offenses. The transfer hearing shall be held no more than thirty (30) days after the petition is filed. Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least seventy-two (72) hours prior to the hearing. All the rights listed in Rule 1.6 shall be afforded the parties at the transfer hearing.

- (3) The following factors shall be considered when determining whether to transfer jurisdiction of the minor to the Court of Indian Offenses:
- (a) The nature and seriousness of the offense with which the minor is charged;
 - (b) The nature and condition of the minor, as evidenced by his or her age;
 - (c) Mental and physical condition;
 - (d) Past record of offenses; and
 - (e) Responses to past Children's Court efforts at rehabilitation.
- (4) The Children's Court may transfer jurisdiction of the minor to the Court of Indian Offenses if the Children's Court finds clear and convincing evidence that both of the following circumstances exist:
- (a) There are no reasonable prospects for rehabilitating the minor through resources available to the Children's Court; and
 - (b) The offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.
- (5) When a minor is transferred to the Court of Indian Offenses, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

Rule 1.8 Court Records.

- (1) A record of all hearings conducted in Children's Court shall be made and preserved.
- (2) All Children's Court records shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the Children's Court.

Rule 1.9 Law Enforcement Records.

- (1) BIA/Tribal Law Enforcement records and files concerning a minor shall be kept separate from the records and files of adults.
- (2) All BIA/Tribal Law Enforcement records and files shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by Order of the Children's Court.

Rule 1.10 Expungement. When a minor who has been the subject of any proceeding before the Children's Court attains his or her twenty-first (21) birthday, the minor may petition the Court for an expungement of his/her records.

Rule 1.11 Appeal.

- (1) For purposes of appeal, a record of the proceedings shall be made available to the minor and parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.
- (2) Any party to a Children's Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Children's Court within thirty (30) days of the final order of disposition.
- (3) All appeals shall be conducted in accordance with this part.

Rule 1.12 Contempt of Court. Any willful disobedience or interference with any order of the Children's Court constitutes contempt of Court.

Rule 1.13 Complaint.

(1) A complaint must be filed by a Law Enforcement Officer or by the Prosecutor and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness, and shall contain:

- (a) A citation to the specific section(s) of this part which gives the Children's Court jurisdiction of the proceedings;
- (b) A citation to the section(s) of this part which the minor is alleged to have violated;
- (c) The name, age, and address of the minor who is the subject of the complaint, if known; and
- (d) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

Rule 1.14 Warrant. The Children's Court may issue a warrant directing that a minor be taken into custody if the Court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

Rule 1.15 Custody.

(1) A minor may be taken into custody by a BIA/Tribal Law Enforcement Officer if:

- (a) The officer observes the minor committing a delinquent act; or
- (b) The officer has reasonable grounds to believe a delinquent act has been committed that would be a crime if committed by an adult, and that the minor has committed the delinquent act; or
- (c) A warrant pursuant to Rule 1.14 has been issued for the minor.

Rule 1.16 Law Enforcement Officer's Duties.

(1) A BIA/Tribal Law Enforcement officer who takes a minor into custody pursuant to Rule 1.13 shall give the following warnings to any minor taken into custody prior to any questioning:

- (a) The minor has a right to remain silent;
- (b) Anything the minor says can be used against the minor in Court;
- (c) The minor has the right to the presence of counsel during questioning; and
- (d) If he or she cannot afford counsel, the Court will appoint one.

(2) BIA/Tribal Law Enforcement shall release the minor to the minor's parent, guardian, or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care or detention is necessary. If the minor is not released, the officer shall make immediate and recurring efforts to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the Court.

Rule 1.17 Detention and Shelter Care. (1) A minor alleged to be a juvenile offender may be detained, pending a Court hearing, in the following places:

- (a) A foster care facility approved by the tribe;
 - (b) A detention facility approved by the tribe; or
 - (c) A private family home approved by the tribe;
- (2) A minor who is sixteen (16) years of age or older may be detained in a jail facility used for the detention of adults only if:
- (a) An adequate detention facility for juveniles is not available or would not assure adequate supervision of the minor;
 - (b) The minor is housed in a separate room from the detained adults; and
 - (c) Routine inspection of the room where the minor is housed is conducted every thirty (30)

minutes to assure his or her safety and welfare.

Rule 1.18 Preliminary inquiry.

- (1) If a minor is placed in detention or shelter care, the Children's Court shall conduct a preliminary inquiry within forty-eight (48) hours for the purpose of determining:
 - (a) Whether probable cause exist to believe the minor committed the alleged delinquent act; and
 - (b) Whether continued detention or shelter care is necessary pending further proceedings.
- (2) If a minor has been released to the parents, guardian or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.
- (3) If the minor's parents, guardian or custodian are not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the Children's Court shall recess for no more than seventy-two 72 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian.
- (4) All the rights listed in Rule 1.6 shall be afforded the parties in a preliminary inquiry.
- (5) The Children's Court shall hear testimony concerning:
 - (a) The circumstances that gave rise to the complaint or the taking of the minor into custody; and
 - (b) the need for detention or shelter care.
- (6) If the Children's Court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing unless:
 - (a) The act is serious enough to warrant continued detention or shelter care;
 - (b) There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or
 - (c) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.
- (7) The Children's Court may release a minor pursuant to Rule 1.17 of this section to a relative or other responsible adult if the parent, guardian, or custodian of the minor consents to the release.
- (8) If the minor is Fourteen (14) years of age or older, the minor and the parents, guardian or custodian must both consent to the release.
- (9) Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

Rule 1.19 Investigation by the Prosecutor or presenting officer.

- (1) The Prosecutor or presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:
 - (a) Determine that no further action be taken;
 - (b) Begin transfer proceedings to the Court; or
 - (c) File a petition to initiate further proceedings.
- (2) If the Prosecutor or presenting officer determines the necessity to file a petition, same shall

be filed within seventy-two (72) hours of the preliminary inquiry if the minor is in detention or shelter care. If the minor has been previously released to his or her parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten (10) days of the preliminary inquiry.

Rule 1.20 Petition.

(1) Proceedings under this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

- (a) The name, birth date, and residence of the minor;
- (b) The names and residences of the minor's parents, guardian or custodian;
- (c) A citation to the specific section(s) which gives the Children's Court jurisdiction of the proceedings;
- (d) A citation to the section(s) which the minor is alleged to have violated; and
- (e) If the minor is in detention or shelter care, the time the minor was taken into custody.

Rule 1.21 Date of hearing.

(1) Upon receipt of the petition, the Children's Court shall set a date for the hearing which shall not be more than fifteen (15) days after the Children's Court receives the petition from the presenting officer. If the adjudication hearing is not held within fifteen (15) days after filing of the petition, the petition shall be dismissed and cannot be filed again, unless;

- (a) The hearing is continued upon motion of the minor; or
- (b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available; or
- (c) The hearing is continued by the Court upon a finding by the Court for good cause.

Rule 1.22 Summons.

(1) At least five (5) working days prior to the adjudicatory hearing, the Children's Court shall issue summons to:

- (a) The minor;
- (b) Any person the Children's Court or the minor believes necessary for the adjudication of the hearing.

(2) The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a BIA/Tribal Law Enforcement Officer or appointee of the Children's Court. If the summons cannot be delivered personally or by certified mail, publication notice may be substituted by Order of the Court.

Rule 1.23 Adjudicatory Hearing.

(1) The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.

(2) All the rights listed in Rule 1.6 shall be afforded the parties at the adjudicatory hearing. The notice requirements of Rule 1.6 are met by a summons issued pursuant to Rule 1.22.

(3) If the minor admits the allegations of the petition, the Children's Court shall proceed to the dispositional stage only if the Children's Court finds that:

- (a) The minor fully understands his or her rights and fully understands the potential consequences of admitting the allegations;
- (b) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis;
- (c) The minor has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
- (4) The Children's Court shall hear testimony concerning the circumstances which gave rise to the complaint.
- (5) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.
- (6) A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

Rule 1.24 Dispositional Hearing.

- (1) A dispositional hearing shall take place not more than fifteen (15) days after the adjudicatory hearing. The time period may be extended for good cause shown or if waived by the parties.
- (2) At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.
- (3) All the rights listed in Rule 1.6 shall be afforded the parties in the dispositional hearing.
- (4) At the dispositional hearing, the Children's Court shall consider any predisposition report, physician's report or social study it may have ordered and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Children's Court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.
- (5) The dispositional order constitutes a final order for purposes of appeal.

Rule 1.25 Dispositional Alternatives.

- (1) If a minor has been adjudicated a juvenile offender, the Children's Court may make the following disposition:
 - (a) Place the minor on probation subject to conditions set by the Children's Court;
 - (b) Place the minor in an agency or institution designated by the Children's Court; and/or
 - (c) Order restitution to the aggrieved party.
- (2) The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order may continue after the minor reaches eighteen (18) years of age, unless the dispositional order was made within six (6) months of the minor's eighteenth birthday or after the minor had reached eighteen (18) years of age, in which case the disposition may not continue for more than six (6) months.
- (3) The dispositional order is to be reviewed at the Children's Court discretion, but at least once every six (6) months.

Rule 1.26 Modification of Dispositional Order.

- (1) A dispositional order of the Children's Court may be modified upon a showing of a change of circumstances.
- (2) The Children's Court may modify a dispositional order at any time upon the motion of the minor, the minor's parents, guardian or custodian or the Prosecutor or presenting officer.
- (3) If the modification involves a change of custody, the Children's Court shall conduct a hearing pursuant to Rule 1.21 of this section.

- (4) A hearing to review a dispositional order shall be conducted as follows:
- (a) All the rights listed in Rule 1.6 shall be afforded the parties in the hearing to review the dispositional order;
 - (b) The notice required shall be given at least forty-eight (48) hours before the hearing; and
 - (c) The Children's Court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.
- (5) If the request for review of disposition is based upon an alleged violation of a Court order, the Children's Court shall not modify its dispositional order unless it finds evidence of the violation by a preponderance of the evidence.

Rule 1.27 Medical Examination. The Children's Court may order a medical examination for a minor who is alleged to be a juvenile offender.

TITLE II. MINOR-IN-NEED-OF-CARE PROCEDURE

Rule 2.1 Complaint (also referred to as Petition).

(1) A complaint must be filed by a BIA/Tribal Law Enforcement Officer or by the Prosecutor or presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness and shall contain:

- (a) A citation to the specific section of this part which gives the Children's Court jurisdiction of the proceedings;
- (b) The name, age and address of the minor who is the subject of the complaint, if known; and
- (c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

Rule 2.2 Warrant (also referred to as Pick Up Order). The Children's Court may issue a warrant, directing that a minor be taken into custody if the Children's Court finds there is probable cause to believe the minor is a minor-in-need-of-care.

Rule 2.3 Custody.

(1) A minor may be taken into custody by a BIA/Tribal Law Enforcement Officer if:

- (a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his or her surroundings and that removal is necessary; or
- (b) A warrant has been issued for the minor.

Rule 2.4 Law Enforcement Officer's Duties. Upon taking a minor into custody the officer shall release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary. If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the Children's Court.

Rule 2.5 Shelter Care.

(1) A minor alleged to be a minor-in-need-of-care may be detained, pending a Court hearing, in the following places:

- (a) A foster care facility authorized under tribal or state law to provide foster care, group care or protective residence;
- (b) A private family home approved by the tribe; or
- (c) A shelter care facility operated by a licensed child welfare services agency and approved by the tribe.

(2) A minor alleged to be a minor-in-need-of-care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders, and routine inspection of the room where the minor is detained must be conducted every thirty (30) minutes to assure his or her safety and welfare.

Rule 2.6 Preliminary Inquiry.

- (1) If a minor is placed in shelter care, the Children's Court shall conduct a preliminary inquiry with seventy-two (72) hours for the purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of care, and whether continued shelter care is necessary pending further proceedings.
- (2) If a minor has been released to the parents, guardian or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of care. The Court may extend the time for preliminary inquiry for good cause shown but shall set the hearing at the earliest possible date.
- (3) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Children's Court shall recess for no more than seventy-two (72) hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.
- (4) All the rights listed in Rule 1.6 of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the Court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.
- (5) The Children's Court shall hear testimony concerning the circumstances that gave rise to the complaint or the taking of the minor into custody, and the need for shelter care.
- (6) If the Children's Court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless there is reasonable cause to believe that the minor:
 - (a) Will run away and be unavailable for further proceedings;
 - (b) Is in immediate danger from parents, guardian or custodian and that removal from them is necessary; or
 - (c) Will commit a serious act causing damage to person or property.
- (7) The Children's Court may release the minor pursuant to paragraph six (6) of this Rule of this section to a relative or other responsible adult if the parents, guardian or custodian of the minor consent to the release. If the minor is fourteen (14) years of age or older, the minor and the parents, guardian or custodian must both consent to the release.
- (8) Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

Rule 2.7 Investigation by the Prosecutor or Presenting Officer.

- (1) The Prosecutor or Presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may determine:
 - (a) That no further action be taken; or
 - (b) That filing a petition in the Children's Court to initiate further proceedings is necessary.
- (2) The petition shall be filed within seventy-two (72) hours of the preliminary inquiry if the minor is in shelter care. If the minor has been previously released to the parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten (10) days of the

preliminary inquiry.

Rule 2.8 Petition.

(1) Proceedings under Rules 2.1 and 2.2 of this section shall be instituted by a petition filed by the Prosecutor or Presenting officer on behalf of the tribe and the interests of the minor. The petition shall state:

- (a) The name, birth date, and residence of the minor;
- (b) The names and residences of the minor's parents, guardian or custodian;
- (c) A citation to the specific section of this part which gives the Children's Court jurisdiction of the proceedings; and
- (d) If the minor is in shelter care, the place of shelter care and the time he or she was taken into custody.

Rule 2.9 Date of Hearing.

(1) Upon receipt of the minor-in-need-of-care petition, the Children's Court shall set a date for the hearing which shall not be more than twenty (20) days after the Children's Court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 20 days after the filing of the petition, it shall be dismissed unless;

- (a) The hearing is continued upon motion of the minor; or
- (b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the Prosecutor or Presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available; or
- (c) The hearing is continued by the Court upon a finding by the Court for good cause shown.

Rule 2.10 Summons.

(1) At least five (5) working days prior to the adjudicatory hearing for a minor-in-need-of-care, the Children's Court shall issue summons to:

- (a) The minor;
- (b) The minor's parents, guardian or custodian; and
- (c) Any person the Children's Court or the minor believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the Court; the title of the proceedings, and the date, time and place of the hearing. A copy of the petition shall be attached to the summons.

(3) The summons shall be delivered personally by a BIA/Tribal Law Enforcement Officer or appointee of the Children's Court. If the summons cannot be delivered personally or by certified mail, service may be obtained by publication notice with leave of the Court.

Rule 2.11 Minor-In-Need-of-Care Adjudicatory Hearing.

(1) The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

(2) All the rights listed in Rule 1.6 of this part shall be afforded the parties in the adjudicatory hearing, except that the Court may not appoint counsel if the parties cannot afford one.

(3) The Children's Court shall hear testimony concerning the circumstances which gave rise to the complaint.

(4) If the circumstances of the petition are sustained by clear and convincing evidence, the

Children's Court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

(5) A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

Rule 2.12 Minor-In-Need-of-Care Dispositional Hearing.

(1) No later than twenty (20) days after the adjudicatory hearing or on the next available docket, a dispositional hearing shall take place to hear evidence on the question of proper disposition.

(2) All the rights listed in Rule 1.6 of this part shall be afforded the parties in the dispositional hearing except the right to free Court-appointed counsel. Notice of the hearing shall be given to the parties at least forty-eight (48) hours before the hearing.

(3) At the dispositional hearing the Children's Court shall consider any predisposition report or other study it may have ordered and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The Children's Court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(4) The dispositional order constitutes a final order for purposes of appeal.

Rule 2.13 Dispositional Alternatives.

(1) If a minor has been adjudicated a minor-in-need-of-care, the Children's Court may:

(a) Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the Court may prescribe; or, if reasonable efforts to have the minor return or remain in his or her own home are unsuccessful, the Children's Court may make whichever of the following dispositions is in the best interest of the minor;

(i) Place the minor with a relative subject to such limitations and conditions as the Court may prescribe;

(ii) Place the minor in a foster home which has been approved by the tribe subject to such limitations and conditions as the Court may prescribe;

(iii) Place the minor in shelter care facilities designated by the Court;

(iv) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility, the Court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the Court upon order of the Court.

(2) The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order may continue after the minor reaches eighteen (18) years of age, unless the dispositional order was made within six (6) months of the minor's eighteenth (18th) birthday, in which case the disposition may not continue for more than six (6) months.

(3) The dispositional orders are to be reviewed at the Children's Court discretion, but at least once every six (6) months to determine the continuing need for and appropriateness of placement, to determine the extent of progress made, and to assess the probability of the minor's return to his or her home.

(4) A permanency planning hearing must be held within eighteen (18) months after the original placement and every six (6) months thereafter to determine the future status of the minor except when the minor is returned to his or her home and Court supervision ceases.

Rule 2.14 Modification of Dispositional Order.

- (1) A dispositional order of the Children's Court may be modified upon a showing of a change of circumstances.
- (2) Modification of a dispositional order may be granted at any time upon motion of the minor or the minor's parents, guardian or custodian or the Prosecutor or presenting officer.
- (3) If the modification involves a change of custody, the Children's Court shall conduct a hearing pursuant to Rule 2.6 of this section to review the dispositional order. A hearing to review a dispositional order shall be conducted as follows:
 - (a) All the rights listed in Rule 1.6 of this part shall be afforded the parties in the review of the disposition hearing except the right to free court-appointed counsel;
 - (b) Notice of the hearing shall be given the parties at least forty-eight (48) hours before the hearing; and
 - (c) The Children's Court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.
- (4) If the request for review of disposition is based upon an alleged violation of a Court order, the Children's Court shall not modify its dispositional order unless it finds by a preponderance of the evidence that a violation has occurred.

Rule 2.15 Termination.

- (1) Parental rights to a child may be terminated by the Children's Court according to the procedures in this section.
- (2) Proceedings to terminate parental rights shall be instituted by a petition filed by the Prosecutor or presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:
 - (a) The name, birth date, and residence of the minor;
 - (b) The names and residences of the minor's parents, guardian or custodian;
 - (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and
 - (d) The reasons for the petition.
- (3) Upon receipt of the petition, the Children's Court shall set a date for the termination hearing which shall not be more than fifteen (15) days after the Children's Court receives the petition from the presenting officer. The hearing may be continued:
 - (a) On motion of the minor's parents, guardian or custodian;
 - (b) Upon motion of the Prosecutor or presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available; or
 - (c) Upon order of the Court for good cause shown.

Rule 2.16 Summons.

- (1) At least five (5) working days prior to the termination hearing, the Children's Court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the Court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing. The summons shall contain:
 - (a) The name of the Court;
 - (b) The title of the proceedings; and
 - (c) The date, time and place of the hearing.

(2) A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a BIA/Tribal Law Enforcement Officer or by certified mail. If personal service cannot be obtained, service by publication notice may be authorized by the Court.

(3) The Children's Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed. All the rights listed in Rule 1.6 shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents may not be compelled to be witnesses against, nor otherwise incriminate themselves.

(4) The Children's Court shall hear testimony concerning the circumstances that gave rise to the petition, and the need for termination of parental rights.

(5) The Children's Court may terminate parental rights if, following efforts to prevent or eliminate the need to remove the minor, it finds such efforts to have been unsuccessful, and it finds beyond a reasonable doubt that:

(a) The child has been abandoned;

(b) The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;

(c) The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;

(d) The minor has suffered serious emotional or mental harm due to the act of the parent(s); or

(e) The voluntary written consent of both parents has been acknowledged before the Court.

Rule 2.17 Dispositional alternatives.

(1) If parental rights to a child are terminated, the Children's Court shall place the minor in a foster care or shelter care facility which has been approved by the tribe, and follow the adoption procedures of the tribe, or, in their absence, the adoption procedures of the state within which it is located.

(2) If parental rights to a child are not terminated, the Children's Court shall set a disposition hearing. The termination order constitutes a final order for purposes of appeal.

(3) No adjudication or termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

PART IV. CHILD PROTECTION AND DOMESTIC VIOLENCE PROCEDURES

TITLE I. PROCEDURES FOR OBTAINING AN ORDER OF PROTECTION

Rule 1.1 Definitions for purposes of this subpart:

Domestic violence means to inflict physical or emotional harm, bodily injury, or sexual assault, or the fear of imminent physical harm, bodily injury, or sexual assault on a family member.

Family member means any of the following:

A spouse; A former spouse; A person related by blood; A person related by existing or prior marriage; A person who resides or resided with the defendant; A person with whom the defendant has a child in common; or A person with whom the defendant is or was in a dating or intimate relationship.

Parent means persons who have a child in common, regardless of whether they have been married or have lived together at any time.

Rule 1.2 How to Petition for Order of Protection.

(1) A victim of domestic violence, or the parent or guardian of a victim, or a concerned adult may petition the Court under this subpart for an order of protection:

(2) The petition must be made under oath or accompanied by a sworn affidavit setting out specific facts describing the act of domestic violence.

(3) The petitioner is not required to file for annulment, separation, or divorce in order to obtain an order of protection. However, the petition should state whether any legal action is pending between the petitioner and the respondent.

(4) The Court may develop simplified petition forms with instructions for completion and make them available to petitioners not represented by counsel. Law enforcement agencies may keep the forms on hand and make them available upon request to victims of domestic violence.

Rule 1.3 Obtaining an Emergency Order of Protection.

(1) When a victim files a petition for an order of protection, the Court may immediately grant an ex parte emergency order of protection if the petition clearly shows that an act of domestic violence has occurred.

(2) If the Court does not immediately grant an emergency order of protection, the Court must either:

(a) Within seventy-two (72) hours after the victim files a petition, serve notice to appear upon both parties; and

(b) Hold a hearing on the petition for order of protection; or

(c) If a notice of hearing cannot be served within seventy-two (72) hours, issue an emergency order of protection.

(3) If the Court issues an ex parte emergency order of protection, it must within ten (10) days hold a hearing on the question of continuing the order. If notice of hearing cannot be served within ten (10) days. The emergency order of protection is automatically extended for ten (10) days; and

(4) If after the ten (10) day extension, notice to appear cannot be served, the emergency order of protection expires.

(5) If the Court issues an ex parte emergency order of protection, it must cause the order to be served on the person alleged to have committed a family violence act and seek to hold a hearing

as soon as possible. If a hearing cannot be held within ten (10) days, the petitioner may ask the Court to renew the emergency protection order.

Rule 1.4 Obtaining a Regular (Non-Emergency) Order of Protection.

(1) Following a hearing and finding that an act of domestic violence occurred, the Court may issue an order of protection. Either party may request a review hearing to amend or vacate the order of protection. The order of protection must do all of the following:

- (a) Specifically describe in clear language the behavior the Court has ordered he or she do or refrain from doing;
- (b) Give notice that violation of any provision of the order of protection constitutes contempt of Court and may result in a fine or imprisonment, or both; and
- (c) Indicate whether the order of protection supersedes or alters prior orders pertaining to matters between the parties.

(2) The order of protection may do any of the following:

- (a) Order the person who committed the act of domestic violence to refrain from acts or threats of violence against the petitioner or any other family member;
- (b) Order that the person who committed the act of domestic violence be removed from the home of the petitioner;
- (c) Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective, or order the person who has committed an act of domestic violence to provide temporary suitable alternative housing for the petitioner and other family members to whom the respondent owes a legal obligation of support;
- (d) Award temporary custody of any children involved when appropriate and provide for visitation rights, child support, and temporary support for the petitioner on a basis which gives primary consideration to the safety of the petitioner and other household members;
- (e) Order the person who is found to have committed an act of domestic violence not to initiate contact with the petitioner;
- (f) Restrain the parties from transferring, concealing, encumbering, or otherwise disposing of one another's property or the joint property of the parties except in the usual course of business or for the necessities of life, and order the parties to account to the Court for all such transferring, encumbrances, and expenditures made after the order is served or communicated; and
- (g) Order other injunctive relief as the Court deems necessary for the protection of the petitioner, including orders to law enforcement agencies as provided by this subpart.

Rule 1.5 Service of the Protection Order.

(1) When an order of protection is granted under this subpart:

- (a) The petitioner must file it with the Court Clerk;
- (b) The Court Clerk must send a copy to a law enforcement agency with jurisdiction over the area in which the Court is located;
- (c) The Order must be personally served upon the respondent, unless the respondent or his or her attorney was present at the time the order was issued; and
- (d) If the Court finds the petitioner unable to pay Court costs, the order will be served without cost to the petitioner.

Rule 1.6 Duration and Renewal of a Regular Protection Order. An order of protection granted by the Court is effective for a fixed period of time up to a maximum of three (3) years.

Rule 1.7 Consequences of Disobedience or Interference. Any willful disobedience or interference with any Court order constitutes contempt of Court which may result in a fine or imprisonment, or both, in accordance with this part.

Rule 1.8 Relationship to Other Remedies. The remedies provided in this subpart are in addition to the other civil or criminal remedies available to the petitioner.