

# OMAHA TRIBAL CODE (2013)

## TITLE 2. RULES OF CIVIL PROCEDURE

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## TITLE 2. RULES OF CIVIL PROCEDURE

### CHAPTER 1. GENERAL PROVISIONS

#### RULE 1. Scope of Rules.

(a) **Scope.** Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in the tribal and appellate courts of the Tribe in all actions, suits and proceedings of a civil nature, in all proceedings established by law, and in criminal matters to the extent no different rule is specified.

(b) **Construction.** These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

(c) **One form of Action.** There shall be one form of action known, except in criminal or juvenile proceedings, as a "civil action".

(d) **Collateral References.** Any procedures or matters not specifically set forth herein shall be handled in accordance with the Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules, and with general principles of fairness and justice as prescribed and interpreted by the Court.

### CHAPTER 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

#### RULE 2. Commencement of Action; Service of Process.

(a) **Commencement of Action.** A civil action is commenced by filing a written complaint with the Clerk of the Tribal Court. The court shall have jurisdiction from such time as both the complaint is filed and a summons and copy of the complaint are properly served upon the defendant and a return of service is filed with the Clerk.

(b) **Service of Process.** Service of process shall consist of delivering to the party served a copy of the complaint along with a summons (in a form provided by the Clerk), which need not be issued by the Judge or Clerk, which advises the defendant that he is required to answer the complaint within thirty (30) days or a default judgment will be entered against him.

(1) The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the Clerk.

(2) Service may be made on a party by delivery of the required papers to the party himself or upon some person of suitable age and discretion over 14 years old at the party's house or principal place of business, or an officer, managing agent, employee, or partner of a non-individual party.

(3) Service by publication may be made upon order of the court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four weeks and by leaving an extra copy of the complaint or paper with the court for the party.

(4) Service may be made by any law enforcement officer or tribal member who is a resident of the Tribe, not a party, 18 years of age or older.

(5) Service upon a resident otherwise subject to the jurisdiction of the Tribal Court may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Tribal reservation.

(6) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers serviced.

(c) All papers required to be filed shall be served as this rule or, except for the complaint, may be served on the counselor or attorney of a party. Service of all papers except the complaint may be made by

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mail, First Class postage pre-paid and properly addressed.

### RULE 3. Time.

(a) **Computation.** In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.

(b) **Enlargement.** The court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

(c) **Notice of Motions.** Written motions and notice of hearing therein, other than one which may be heard ex parte, shall be served not later than five (5) days prior to the time specified for hearing.

(d) **Service by Mail.** Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such additional time shall not cause Saturdays, Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

### RULE 4. Pleadings, Motions and Orders.

(a) **Pleadings.** There shall be a complaint and an answer plus a responsive pleading shall be allowed whenever, by cross-claim, counterclaim or otherwise, a party is first claimed against unless the court shall otherwise order. The court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

(b) **Motions and Orders.**

(1) **Motions.** An application to the court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefore stated with particularity. A motion and notice of motion may be set forth together.

(2) **Orders.** An order includes every direction of the court whether included in a judgment or not, and may not be made without notice to adverse parties nor vacated or modified without notice, except as provided herein.

(3) **Hearings on Motions and Orders.** A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

(4) No court order in any civil matter shall issue unless a civil action has been commenced as provided in Rule 2(a).

### RULE 5. General Rules of Pleading.

(a) **Claims for relief.** A pleading which sets forth a claim for affirmative relief shall contain:

(1) A short, plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction over the matter.

(2) A short, plain statement of the claim showing that the pleader is entitled to relief; and

(3) A demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

(b) **Defenses and Denials.** A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him, 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. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered

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thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied, if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

(c) **General Content of Claims and Defenses.** Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

(d) **Affirmative Defenses.** Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the court may treat the pleading as if it had been properly designated if justice so requires.

(e) **Construction of Pleadings.** All pleadings shall be construed so as to do substantial justice.

### **RULE 6. Form of Pleadings.**

(a) **Caption.** Every pleading shall contain a caption heading, the name of the court, the title of the action, the court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name of the first party on each side may be used on all pleadings after the complaint.

(b) **Paragraphs.** All averments of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(c) **Exhibits; Adoption by Reference.** 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 that is an exhibit to a pleading is a part thereof for all purposes.

(d) **Paper Used in Pleadings.** Insofar as is possible, pleadings and other papers filed in any action shall be on 8 1/2" x 11" paper, double spaced, contain at least a 2-inch top margin and a 1-inch left side margin, and contain the court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

### **RULE 7. Defenses and Objections.**

(a) **When Presented.** 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.

(b) **Motions.** 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.

### **RULE 8. Counterclaim or Cross-claim.**

(a) **Counterclaim.** A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims shall be resolved at trial.

(b) **Cross-claim.** A party against whom a claim is made may assert any claim he has against a co-party and have such claim resolved at trial.

(c) **Third-Party Claim.** A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

### **RULE 9. Amendment of Pleadings.**

(a) **Amendment Before Trial.** A party may amend his pleadings once before the opposing party has replied if no reply is required, not less than 20 days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date may be rescheduled, if necessary. Other amendments shall be allowed only upon motion and order of the Court.

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(b) **At Trial.** 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 10. Parties.**

(a) **Real Party in Interest.** 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.

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

(c) **Joinder of Parties.** To the greatest extent possible given the jurisdiction of the Tribal 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; otherwise, the failure to join a party may be taken into account to assure that justice is done.

### **RULE 11. 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 or a question of law or fact common to a claim of his may be litigated.

### **RULE 12. 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.

### **RULE 13. Discovery.**

(a) **Interrogatories.** A party may submit written interrogatories to any other party who must answer them in writing, under oath, within 35 days of receipt of such.

(b) **Depositions.** A party may take the oral deposition of an adverse party or non-party witness under oath upon not less than 10 days notice, specifying the time and place on the reservation where such will occur.

(c) **Production, Entry or Inspection.** A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within 35 days reply as to whether or not such will be allowed without further court order and if not, why not.

(d) **Scope of Discovery.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

(e) **Protective Order.** 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.

(f) **Failure to Make Discovery.** If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the court may award costs to the nondefaulting party. If a party fails to perform 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 in an aggravated case.

(g) **Use of Discovery.** Answers to interrogatories and depositions may be used in a motion, hearing or

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at trial to impeach or contradict the testimony of the person discovered. The answers to interrogatories and depositions of an adverse party may be used by any other party for any purpose.

### RULE 14. Jury Trials.

(a) **When Allowed.** Trials of all civil actions shall be to the court without a jury unless a party to the action files a request for a jury trial with his complaint or answer or other initial responsive pleading in the action. A judge may, upon good cause shown, waive pre-payment of the required fee.

(b) **Issues Triable.** Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury, and any other party may specify, not less than 15 days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all the parties.

(c) **Designation by Judge.**

(1) A judge may, upon his 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) A judge may, upon motion of any party or its 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) A judge may hear and decide an issue or issues 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 issues.

### RULE 15. Assigning Cases for Trial.

(a) **Assignment of Judge and Date.** The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

(b) **Postponement.** Upon motion of a party, the court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

### RULE 16. Dismissal of Actions.

(a) **Voluntary Dismissal.** Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, 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 and proper given the stage of the proceedings, provided, however, if a cross-claim or counterclaim has been filed against the moving party, the judge 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.

(b) **Involuntary Dismissal.** 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:

(1) Failure of the adverse party to prosecute his claim;

(2) Failure of the adverse party to comply substantially with these rules;

(3) Failure of the adverse party to comply with an order of the court;

(4) At the close of the presentation of the other party's evidence and without prejudicing 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

(5) Whenever dismissal appears proper based upon a failure to prove a claim.

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(c) Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the court shall, for good cause shown, order otherwise. The court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

(d) The court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

### **RULE 17. Consolidation; Separate Trials.**

(a) **Consolidation.** The court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

(b) **Separate Trials.** The court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

### **RULE 18. Evidence.**

The rules of evidence applicable to criminal trials set out at Rule 3 of the Tribal Rules of Criminal Procedure (T.R.Cr.P.) shall also be applicable to criminal proceedings, provided that the constitutional right of confrontation applicable to criminal trials shall not be applicable to civil trials.

### **RULE 19. Subpoenas.**

(a) **Issuance.** Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in this Code.

(b) **Failure to Appear.** A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court.

(c) **Subpoena Unnecessary.** A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

### **RULE 20. Jurors.**

(a) **Number of Jurors; Alternate.** There shall be six jurors chosen to hear a case plus the Court may allow one additional juror to be chosen as an alternate juror. 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.

(b) **Examination of Jurors.** The court shall permit the parties or their counsel (but not both) to conduct the examination of prospective jurors and may itself examine the jurors.

#### **(c) Challenges.**

(1) A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.

(2) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.

(3) Challenge for cause shall be made against potential jurors on the grounds that they are not entitled or qualified to be jurors, they are familiar with the case, have formed opinions regarding the case, or if for any other reason it appears likely or reasonably possible that they will not be able to render a fair, impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

(d) **Selection of Jury.** The clerk shall draw lots to determine potential jurors and shall replace jurors for whom a challenge for cause is sustained until a full panel is passed for cause. Upon exercise of peremptory challenges the clerk shall administer the oath to the jurors selected for the trial, the form of which shall be prescribed by rule of the court.

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(e) **Discharge of Jurors.** If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is not alternate juror the parties may agree to complete the action with the other jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.

(f) **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.

(g) **Separation of the Jury.** Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge 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.

(h) **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 called the bailiff, who shall remain outside of the jury room and who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

(i) **Things Taken by Jury.** The jury may take with them when deliberating any of the following:

- (1) the Court's instructions;
- (2) papers or things received in evidence as exhibits;
- (3) notes taken by the jurors themselves, but not notes taken by non-jurors.

(j) **Additional Instructions.** If after the jury retires, there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

(k) **No Verdict.** If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retired.

(l) **Declaration of the Verdict.** When all or at least five of the six jury members agree on a verdict, they shall so inform the bailiff who shall notify the court. The jury shall be conducted into the courtroom and the Clerk shall call the jury roll; the verdict shall be given in writing to the clerk and then read by the clerk to the court; inquiry shall be made by the court to the jury foreman as to whether such is their verdict. 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. If the verdict is read or recorded incorrectly by the clerk or foreman, the jury shall retire to correct the verdict.

### **RULE 21. Special Verdicts and Interrogatories.**

The court may in its discretion require the jury to return their verdict in the form of specific findings or specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

### **RULE 22. Instructions to the Jury; Arguments.**

(a) **Instructions.** At the close of the evidence at such earlier time as the Court may direct, any party may file written requested instructions for the court to give to the jury. 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.

(b) **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, if it should restate any of the evidence, it shall inform the jury that they are the sole judges of the facts.

### **RULE 23. Motions for Directed Verdict and for Judgment Notwithstanding the Verdict.**

(a) **Motion for a Directed Verdict.** A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that



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the motion is denied. A motion for directed verdict shall state the grounds therefor and may be granted by the court without the assent of the jury.

(b) **Motion for Judgment Notwithstanding The Verdict.** A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted, may, within ten (10) days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been verdict, the party may so move within ten (10) days after the jury has been discharged. A motion for a new trial may be made in the alternative. The court shall enter judgment or make any orders consistent with its decision on the motions.

### **RULE 24. Finding by the Court.**

In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the court in support of all final judgments. Upon its own motion or the motion of any party within ten days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

### **RULE 25. Judgments; Costs.**

(a) **Definition.** A judgment includes any order finally and conclusively determining the rights of the parties.

(b) **Judgment on Multiple Claims.** 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 specific 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.

#### (c) **Demand for Judgment.**

(1) **Generally.** Except in the case of 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. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate right of the parties on each side as between or among themselves.

(2) **Judgment by Default.** A judgment by default shall not be different in kind from, or exceed in amount that specifically prayed for in the demand for judgment.

(d) **Costs.** Unless the court shall otherwise direct, the court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the court a verified memorandum of his costs and necessary disbursements within five (5) days of the entry of judgment and serve a copy of such on the opposing party. If such are not objected to within ten (10) days, they shall be deemed to be part of and included in the judgment rendered. The appellate court may award costs in a like manner.

(e) **Attorney's Fees.** The court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties which is under dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only or that there was no reasonable expectation of success on the part of the affirmatively claiming party.

### **RULE 26. Default.**

(a) **Entry of Default.** 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 proved by affidavit and judgment upon demand by default granted to the opposing party.

(b) **Judgment by Default.** Judgment by default may be entered by the court if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the reservation. Judgment by default for other relief can be entered only upon receipt of whatever evidence the court deems necessary to establish the claim. Notice of entry of a default judgment shall be served upon the party against whom it is taken.

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(c) **Setting aside Default.** The court may, for good cause shown, set aside either an entry of default or default judgment.

### **RULE 27. Summary Judgment.**

Any time 30 days after commencement of an action, 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. Such motions, which shall be served not less than ten (10) days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties a least five (5) days prior to the hearing.

### **RULE 28. Entry of Judgment.**

(a) **Judgment.** Judgment upon verdict of a jury shall be signed by the clerk and filed. All other judgments shall be signed by the judge and filed with the clerk.

(b) **Effectiveness; Recordation.** A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The clerk shall immediately make a notation of the judgment in the judgment docket.

(c) **Death of a Party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

(d) **Satisfaction of Judgment.** 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 full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

(e) **Effect of Satisfaction; Limitation.** A judgment satisfied in whole with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter extended once more by the same procedure.

### **RULE 29. New Trials; Amendments.**

(a) **Grounds; Time.** Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than ten (10) days after the entry of judgment, for any of the following reasons:

- (1) Error or irregularity which prevented any party from receiving a fair trial;
- (2) Misconduct of the jury or jury members;
- (3) Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial;
- (4) Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice;
- (5) Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or
- (6) Error in law.

(b) **Harmless Error.** A new trial shall not be granted on the basis of error or irregularity that was harmless in that it did not result in a substantial injustice.

(c) **Support for Motion.** Parties may include memoranda or affidavits in support of their motions to

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which reply memoranda and affidavits shall be allowed if desired.

(d) **Court Initiative.** The court may, on its own initiative, not later than ten (10) days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

(e) **Motion to Alter or Amend Judgment.** A motion to alter or amend a judgment shall be served not later than ten (10) days after entry of judgment.

### **RULE 30. Relief from Judgment or Order.**

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice as the court may direct; mistakes may be corrected before an appeal is docketed in the Appellate Court, and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 29(a);
- (3) fraud;
- (4) misrepresentation or other misconduct of an adverse party;
- (5) when, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;
- (6) the judgment is void;
- (7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (8) any other reason justifying relief from the operation of the judgment.

The motion shall be made within reasonable time and for reasons (1), (2), (4), or (5), not more than three (3) months after the judgment, order, or proceeding was entered or taken. Motions based upon reason (3) shall be filed within one (1) year of the judgment or within ninety (90) days of discovery of the fraud, whichever comes later. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

### **RULE 31. Harmless Error.**

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless a refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings shall disregard any error or defect that does not adversely affect the substantial rights or violate the constitutional rights of the aggrieved parties.

### **RULE 32. Stay of Proceedings to Enforce a Judgment.**

(a) **Stay upon Entry of Judgment.** Proceedings to enforce any judgment may be instituted no sooner

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than thirty (30) days after service except as otherwise provided in this Code.

(b) **Injunction Pending Appeal.** When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(c) **Stay Upon Appeal.** When an appeal is taken the appellant by giving a bond in an amount set by the court may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given within ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the court.

(d) **Stay in Favor of the Tribe, Officer or Agency Thereof.** When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is thought to be stayed, no bond, obligation or other security shall be required from the appellant to obtain a stay.

(e) **Power of Appellate Court Not Limited.** The provisions of this Rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(f) **Stay of Judgment upon Multiple Claims.** When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 25, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(g) **Waiver of Undertaking.** In all cases the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules, a deposit in court in the amount of such undertaking, or such lesser amounts as the court may order, is equivalent to the filing of the undertaking.

(h) **Other Relief.** No stay, injunction, waiver of undertaking or security for costs or any other relief from a judgment or order shall be granted by the court without actual notice and opportunity to be heard on the part of the prevailing party to the action.

### **RULE 33. Disability or Disqualification of a Judge.**

(a) **Disability.** If by reason of death, sickness, or other disability, a judge 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 findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) **Disqualification.** Whenever a party to any action or proceeding, civil or criminal, or his attorney shall make and file an affidavit that the judge before whom such action or proceeding is to be tried or heard has bias or prejudice, either against such party or his attorney or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming him), which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

### **RULE 34. Injunctions; and Restraining Orders.**

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(a) **Preliminary Injunction; Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(b) **Temporary Restraining Order; Notice; Rehearing; Duration.**

(1) No temporary restraining order (TRO) shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.

(2) Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed fifteen (15) days, or as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reason for the extension shall be entered of record.

(3) In case a temporary restraining order is granted without notice, the motion for an injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the injunction and, if he does not do so, the court shall dissolve the temporary restraining order.

(4) On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party bound by the temporary restraining order may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) **Security.** Except as otherwise provided by law, no restraining order or injunction shall issue except upon the giving of security by the applicant, in such sums as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tribe, or of an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage contract.

A surety upon a bond or undertaking under this Rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and Scope of Injunction or Restraining Order; Service.** Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and the attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Grounds for Temporary Restraining Order or Injunction.** A temporary restraining order or injunction may be granted after hearing:

(1) When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists of restraining the commission or continuance of some act complained of, either for a limited period or perpetually; and/or,

(2) When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation could produce great or irreparable injury to the party seeking, injunctive relief; and/or

(3) When it appears during a lawsuit that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the

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subject matter of the action, and tending to render the judgment ineffectual; and/or

(4) In all other cases where an injunction would be proper in equity.

### **RULE 35. Extraordinary Writs.**

(a) **Grounds for Relief.** Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for one of the following reasons:

(1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

(2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

(3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or

(4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

### **RULE 36. Writ of Habeas Corpus.**

(a) Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the court and shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the court shall state its reasons therefor in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff. If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon any one having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

(b) The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state that fact, and to whom, and when, the transfer was made, and the reason or authority therefor. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

(c) The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the court may place such person in the custody of such individual or individuals as may be deemed proper.

(d) No Writ of Habeas Corpus shall issue where the party on whose behalf the writ is sought has been convicted of a criminal offense and has failed or refused to timely file a request for appeal of such conviction, except in cases where all three of the following conditions are met:

(1) The appeals period has run; and

(2) Defendant was not represented by counsel at trial; and,

(3) A sentence in excess of two (2) months was imposed at trial.

(e) Where the party on whose behalf the writ is sought has been convicted of a criminal offense and has filed an appeal of said conviction, no Writ of Habeas Corpus may issue until the Appeals Court has ruled on the appeal, except in cases wherein both of the following conditions are met:

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(1) No appeals court ruling has been made within sixty (60) days of filing of the appeal;

(2) The party on whose behalf the writ is sought has at least ten (10) days remaining on his sentence at the time the Petition for Writ of Habeas Corpus is filed.

(f) **Habeas Corpus; Decision.** In each case, the court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case, provided that where the court uses a "form" order approved by the Chief Judge, no separate findings of fact or conclusions of law shall be required. If the court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to arraignment, retrial, custody, bail, or discharge as the court may deem just and proper in the case.

### **RULE 37. Execution.**

(a) **Time.** If within thirty (30) days after entry of a judgment awarding money damages and/or costs against a party, or within thirty (30) days after final resolution of an appeal to the appellate court from such a judgment it is made to appear to the court that the judgment debtor has been served notice of entry of judgment and not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall, upon motion of the judgment creditor, heard *ex parte*, order the Tribal Police to execute on the personal property of the judgment debtor as provided herein.

(b) **Procedure.** The court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court. Sale of the seized property shall be at a public auction conducted by the Tribal Police after giving at least 10 days public notice posted in at least three conspicuous public places on the reservation. Property shall be sold to the highest bidder who shall make payment for property in cash at the time of the sale. The person conducting the auction may postpone such in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. 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.

(c) **Exemption from Execution.** 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 immediate substantial 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, except property conveyed to the debtor's family in contemplation of the judgment being entered against him or gifts.

(d) **Redemption from Sale.** At any time within six (6) months after sale under this Rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight (8) percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

### **RULE 38. Appeal in Civil Cases.**

(a) **Appellate Court.** All appeals from the Tribal or Juvenile Court shall be heard by the Tribal Appellate Court.

(b) **Right to Appeal.** Any party who is aggrieved by any final order, commitment or judgment of the trial court may appeal in the manner prescribed by this Rule.

(c) **Procedure on Appeal.** The procedure governing appeals in civil cases shall be as provided in Title 4, Rules of Appellate Procedure.

### **RULE 39. Exhaustion of Administrative Remedies.**

(a) No court of the Omaha Tribe of Nebraska, or established pursuant to 25 C.F.R. § 11.1 *et seq.*, on

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the Omaha Indian Reservation, shall have jurisdiction to entertain any civil suit or action, or any privately initiated criminal complaint, against the Omaha Tribe of Nebraska, the Tribal Council, a Tribal Government agency or instrumentality, or any Tribal Official or employee complaining of the official conduct thereof unless the plaintiff in such actoin has first exhausted Tribal administrative remedies in an effort to correct the matter complained of.

(b) To exhaust administrative remedies under this section a petitioner, plaintiff or complaining witness must:

(1) make a good-faith effort to invoke and comply with all then existing, reasonable administrative procedures for handling disputes, grievances or complaints applicable to the office or department in which the matter arose, and

(2) upon compliance with Subsection (1) above, file a written complaint with the Tribal Chairman setting out the basis for the complaint and the administrative remedies pursued to correct the matter complained of.

(c) If the Tribal Chairman's final action on the complaint does not satisfy the complaining party, or if the Tribal Chairman has taken no action on the complaint within sixty (60) days of the date it was filed, the complaining party shall be deemed to have exhausted administrative remedies for purposes of this section.

(d) Any complaint in the Tribal Court against the Omaha Tribe of Nebraska, the Tribal Council, a government agency or instrumentality or any tribal official or employee complaining of the official conduct thereof which fails to demonstrate on its face that the filing party has complied with the requirements of this section shall be dismissed by the court without prejudice to that party's right to file the suit again when and if these requirements have been met.

(e) Notwithstanding the above, the court has jurisdiction to entertain an application for a temporary restraining order against the Omaha Tribe of Nebraska, the Tribal Council, a Tribal Government agency, or instrumentality, or any Tribal Official or employee after hearing, where petitioner demonstrates compliance with Rule 34, Rules of Civil Procedure, and where the failure to issue such temporary restraining order for the minimum time necessary to exhaust remedies under this section would produce irreparable injury, loss or damage to petitioner and where the issuance of said temporary restraining order would not cause undue loss or inconvenience to defendant.

(f) Nothing in this Rule constitutes a waiver of the Omaha Tribe of Nebraska sovereign immunity from suit in civil actions or the comparable immunities and defenses of any officer, agency or instrumentality thereof.

*History:* Omaha Tribal Council Resolution No. 80-03 (10-24-79) originally enacted Title 28, Civil Procedure, of the United States Code before amending the rules to their current form.