

**Dry Creek Rancheria  
Band of Pomo Indians**

Judicial Code

**TITLE 2. RULES OF CIVIL PROCEDURE**

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**CHAPTER 1. INTRODUCTION TO THE RULES**

**RULE 101. Establishment**

These rules shall be known and cited as the **Dry Creek Rancheria Rules of Civil Procedure**.

**RULE 102. Authority and Purpose**

(A) The Dry Creek Rancheria Articles of Association, authorizes the Dry Creek Rancheria (“Tribe”) to establish written rules for the Judiciary.

(B) This Act governs the procedure in Dry Creek Rancheria Tribal Court in all suits of a civil nature whether cognizable as cases at law or in equity except where a law or ordinance of the Tribe specifies a different procedure. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

**RULE 103. Definitions**

Unless a different meaning is clearly apparent from the context, the term:

- (A) “Chairperson” shall mean the Chairperson of the Dry Creek Rancheria.
- (B) “Clerk” and “Clerk of the Court” means the clerk of the Tribal Court, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this Title.
- (C) “Court of Appeals” means the Dry Creek Rancheria Court of Appeals duly authorized to hear all appeals of the Trial Court.
- (D) “Judge” means the presiding judge of the Dry Creek Rancheria Tribal Court.
- (E) “Other Indian Tribe” shall mean any Federally recognized Indian tribe other than this Tribe.
- (F) “Dry Creek Rancheria Tribal Court” means any tribal court established by the Dry Creek Rancheria’s Judicial Code, and any Court which is vested with the jurisdiction of the Dry Creek Rancheria.
- (G) “Public Officer” shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office;
- (H) “Real property” or “non-trust interest in real property” shall mean any interest in real property within the Tribe’s jurisdiction other than the Indian trust title held by the United States for the use of any Indian or Indian Tribe, or the fee title to any land held by any Indian or Indian Tribe which is subject to a restriction upon alienation imposed by the United States. Nothing in this Act shall be construed as affecting or attempting to affect the trust or restricted title to trust or restricted Indian land.
- (I) “Rancheria” means the recognized territorial boundaries of the Dry Creek Rancheria.
- (J) “Service of process” means the manner in which parties are informed of the Complaint and of the opportunity to answer. Personal service is preferred; however, service by registered U.S. mail (return receipt requested) at the person’s home or usual place of business or employment are equally acceptable and effective. Other methods of service may be employed when, in the Court’s discretion, they are most likely to result in actual notification of the parties.

(K) "Summons" means the official notice to the party informing him/her that he/she is identified as a party to an action or is being sued, that an Answer is due in thirty (30) calendar days and that a Default Judgment may be entered against them if they do not file an Answer in the prescribed time. It shall also include the name and location of the Court, the case number, and the names of the parties. The Summons shall be issued by the Clerk of Court and shall be served with a copy of the filed Complaint attached.

(L) "Trial Court" means the Tribal Court established by the Dry Creek Rancheria's Judicial Code, that is the Court of first impression.

(M) "Tribal Jurisdiction" means all Indian Country as defined in 18 U.S.C. § 1151 whether within or without the Rancheria which is subject to the jurisdiction of the Tribe.

(N) "Undue hardship or extreme inconvenience" as a basis for excuse from immediate jury service under this Title, means great distance, either in miles or travel times, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror.

#### **RULE 104. Forms**

Sample forms are available through the Trial Court of the Dry Creek Rancheria and are intended to indicate the simplicity and brevity of statements contemplated by these rules. In the interests of furthering justice, the Court may create mandatory forms to expedite the court process.

#### **RULE 105. No Effect Upon Tribal Sovereign Immunity**

Nothing in this Code shall be construed to be a waiver of the sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions or to provide consent to any suit beyond the limits now or hereafter specifically stated by Tribal law.

### **CHAPTER 2. GENERAL PROVISIONS**

#### **RULE 201. Procedure to be Applied**

(A) Compliance with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or the California Code of Civil Procedure is NOT required in Tribal Court proceedings.

(B) Federal or State rules and Federal or State case law may be cited to as persuasive argument for purposes of analysis in areas where Federal or State rules are analogous to Tribal rules and Tribal case law, but will not be relied upon as precedent requiring that the Court adopt additional rules that are not a part of this Code.

#### **RULE 202. Standard of Proof**

The complainant in a civil case shall have the burden of proving its case by the preponderance of the evidence, i.e., the greater weight of evidence, except in such cases where it is established by ordinance that the burden of proving his/her case is by clear and convincing evidence.

#### **RULE 203. Course of Proceedings**

(A) Court of Tribal Custom. The Tribal Court shall follow the Tribal Rules of Civil Procedure unless the party's stipulate to resolving the complaint by the Court of Tribal Custom. The parties must first stipulate:

- (1) To what they believe to be the traditional custom of settling disputes is;
- (2) What the traditional law governing the dispute is; and
- (3) Must agree to abide by the decision rendered by the person or persons that they determine to be the traditional finder or finders of law and fact.

(B) The Tribal Court Judge may act as a mediator in such a proceeding if all the parties request that the Judge do so. The parties may also stipulate to a mediator of their choosing.

(C) Tribal Court Procedure. If the parties do not stipulate to a traditional custom for settling disputes but still agree that the dispute is governed by traditional law, the Court will follow Tribal Court procedure as set forth in these Rules.

(D) Development of Tribal Common Law. As to matters beyond the scope of applicable Tribal, federal and state law, the Tribal Court is hereby authorized to develop a body of Tribal common law, consistent with established principles of judicial restraint and the purposes of this Code.

**RULE 204. Statute of Limitations**

The Court shall have no jurisdiction and no complaint shall be filed in a civil action over any action brought more than three (3) years after the cause of action arose, except that no statute of limitation shall bar an action commenced by the Tribe.

**RULE 205. Liberal Construction.**

These rules shall be liberally construed to secure a just and speedy determination of every action.

**RULE 206. Evidence**

The Court shall be guided but not bound by the Federal Rules of Evidence.

**CHAPTER 3. CUSTOMS AND TRADITIONS**

**RULE 301. Traditional Tribal Law**

(A) The traditional law of the Dry Creek Rancheria is the common law of the Tribe tantamount to the written law of the Tribe and will be applied in all situations where it is relevant to the issues raised in an action before the Court. The Court will first look to the laws adopted by the Tribe and to the Articles of the Dry Creek Rancheria. If no written Tribal law applies to a cause of action or the issues involved in an action, the Court will look to the Tribe's traditional law and if it finds the traditional law to be applicable in settling the dispute, will base it's decision on traditional Tribal law.

(B) These Rules shall be interpreted pursuant to the traditions and customs of the Dry Creek Rancheria. Where any doubt arises as to these traditions and customs, the Court may request the advice of elders as counselors whom are familiar with these traditions and customs in the manner set forth in this Ordinance. If no such tradition or custom exists, then the Court may use applicable tribal, federal, and state case law and statutory law, adopting those principles and procedures not in conflict with these Rules, the Articles, other Tribal law, or customs and traditions of the Tribe.

**RULE 302. Requests to Transfer a Case to Tribal Court**

Whenever a party or parties have a right to be heard by the Tribal Court, a party may request to appear before the Tribal Court on matters related to custom and tradition of the Dry Creek Rancheria. All parties involved in the dispute must voluntarily consent to appear before the Tribal Court and to be bound by its decision. A party or parties

which bring an action before the Tribal Court may elect to appear before the Tribal Court at any time.

**RULE 303. Requests for Assistance on Matters of Custom and Tradition**

Upon a motion of the Court or by a party, the Trial Court may request assistance from the Board of Directors or appointed Tribal members on matters relating to custom and tradition of the Tribe.

**RULE 304. Determination of Tribal Common Law**

(A) The Traditional Custom Process may be used to facilitate a traditional form of dispute resolution, akin to a mediated settlement. The parties may identify a mediator, to mediate between the parties until a stipulated agreement is reached. The Tribal Court will then issue an order containing the stipulated agreement.

(B) Where the parties choose to follow the procedures of this Section, in any dispute, claim, or action, in which a party asserts that traditional Tribal law governs the outcome, the Court must first determine what the traditional law is. If the traditional Tribal law has been acknowledged by a legal writing of the Tribe the Court will apply the written law.

(C) Evidence that a traditional law is written includes written reference to a traditional law, right, or custom in a Tribal resolution, motion, order, ordinance or other document acted upon by the Board of Directors. Anthropological writings or publications, and personal writings are not evidence that the traditional law is written, but may be presented as persuasive or supporting evidence that the traditional law or custom exists.

(D) In any dispute, claim or action, in which a party asserts that traditional Tribal law governs the outcome, and the Court finds that the traditional law is unwritten, the Court will hold a hearing to determine what the traditional law is.

(1) The parties may stipulate to what the traditional law to be applied is. If the parties stipulate to the traditional Tribal law, the Court will then hold an evidentiary hearing to determine the facts of the case.

(2) If the parties do not stipulate to the traditional Tribal law, the parties may stipulate to a list of neutral Tribal members to act as expert witnesses, whose testimony will be relied upon to determine the traditional Tribal law.

(3) The Court may, but is not required to, accept recommendations of the parties before determining the neutral and impartial expert witnesses that

will testify before the Court. The Court will determine how many neutral and impartial witnesses may testify except that the number will not exceed the number of witnesses that each party will be allowed to call as expert witnesses. A party may object to any question submitted by an opposing party. The Court will then determine which questions will be asked of each of the expert witnesses. The Court shall have the discretion to ask its own questions of the expert witnesses.

(E) After hearing the expert witnesses testimony the Court will issue a Conclusion of Law in which the Court will state what it has found to be the traditional Tribal law of the case. If either of the party's object to the Court's conclusion, the Court will meet in closed session with all of the expert witnesses. The Court will then call for a discussion of the Conclusion of Law by the expert witnesses. Following this discussion, the Court may re-issue or amend and reissue the Conclusion of Law.

(F) Once the Court has determined what the traditional law to be applied is, the Court will set a date for a conference hearing pursuant these Rules.

(G) The customs and traditions of the Tribe, to be known as the Tribal Common Law, as modified by the Tribal Articles and statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect with the Tribal jurisdiction in like force with any statute of the Tribe insofar as the common law is not so modified, but all Tribal statutes shall be liberally construed to promote their object.

#### **CHAPTER 4. COMMENCEMENT OF ACTION AND SERVICE OF PROCESS**

##### **RULE 401. Complaints; Form and Content**

(A) General. A civil action begins by filing a written Complaint with the Clerk of Court and paying the appropriate fees.

(B) The Complaint shall contain a concise written statement of the essential elements constituting the claim which includes:

(1) The full names and addresses of all parties and any counsel, as well as a telephone number at which the Complainant may be contacted. The Complaint shall be signed by the filing party or his/her counsel, if any.

(2) A short, plain statement of the grounds upon which the Court's jurisdiction depends;

(3) The facts and circumstances giving rise to the action; and

(4) A demand for any and all relief that the party is seeking. Relief should include, but is not limited to the dollar amount that the party is requesting. When the demand for relief by the plaintiff is the recovery of property, such property shall be fully described and, if money is demanded, the amount asked for shall be stated.

##### **RULE 402. Filing**

(A) All civil proceedings shall be commenced by filing a complaint with the Clerk, accompanied by a filing fee of fifty dollars (\$50.00) and the costs of service. Tribal Civil Form No. 1, or its equivalent may be used. The complaint shall be verified before a judge, clerk or assistant clerk, or any notary public.

(B) General. No document will be considered filed until the filing fee is paid or a Motion to Waive Filing Fees is filed. If the Motion to Waive Filing Fees is denied, and the filing fees are paid within ten (10) calendar days of the denial, the Complaint will be considered filed on the date the Motion to Waive Filing Fees was filed.

(C) Fee. The filing fee for a Complaint in the Trial Court of the Dry Creek Rancheria shall be fifty dollars (\$50.00 U.S.). The fee may be waived at the Court's discretion for good cause.

(D) Motion to Waive Filing Fees. A person asking to file their Complaint without paying the fee shall file a Motion stating that they are the complaining party and that they are requesting an order to proceed without paying the filing fee. The Motion shall be accompanied by a Statement of the kind and amount of income earned by their household, household expenses, whether they are represented by a civil legal services program, and any other supporting information which will help the judge understand their situation. The Court may adopt a mandatory form for use. A copy of the Motion and Statement shall be attached to the Complaint. In the event that the Court denies the Motion to Waive Filing Fees, the moving party shall have ten (10) calendar days from the date of denial, oral or written, in which to pay the filing fees. Should the party pay the fees within the ten-day deadline, the Complaint will be considered filed when the Motion to Waive Filing Fees was filed. Should the ten-day deadline elapse, the Court will consider the Complaint as filed on the date the filing fee is received.

(E) Other Costs Waived. A person authorized to file their petition without paying a filing fee shall also be entitled to have other costs and expenses deferred until the time of settlement or judgment of the action.

**RULE 403. Notice of Service of Process**

Any time a party files a document other than the Complaint with the Court in relation to a case, the filing party must serve copies on the other parties to the action and provide a Certificate of Service to the Court. Any time the Court issues an Order or Judgment in the context of an active case, the Court must serve copies on all parties. Service of process can be accomplished as outlined in Rule 404.

**RULE 404. Methods of Service of Process**

(A) Long Arm Service. Any person subject to the jurisdiction of the Dry Creek Rancheria Tribal Court may be served outside the territorial jurisdiction of the Court in the manner provided with the same force and effect as if the service had been made within the territorial jurisdiction thereof, if such person:

- (1) Transacts business or does an act leading to a civil action within the Tribe;
- (2) Owns, uses, or possesses any property or interest therein within the Tribe;
- (3) Contracts for services to be rendered or goods to be furnished within the Tribe.

(B) Service of process may be made on a party by any means permitted in sections (1) through (7) below. Service of process may be made on a party by publication as outlined in Rule (B)(5), provided a preponderance of the evidence shows the Court that the party to be served lives in the area where the summons is to be published.

(1) Personal Service. The required papers are delivered to the party in person by a law enforcement officer from any jurisdiction, or any other person not a party to the action who is eighteen (18) years of age or older and of suitable discretion.

(a) Personal Service is required for the initiation of actions in the following:

- (i) Relief requested is over \$5,000.00, excluding the enforcement of foreign child support orders; or
- (ii) Children's custody and/or placement are the subject matter of the proceedings.

(b) Where personal service is required by this rule and the Court or the filing party exercises due diligence in unsuccessfully pursuing personal service of process, the filing party may move for permission to pursue service of process by any means provided for in subsections (3) through (7) of this Rule. The Court will grant the motion where good cause is shown. The Court may also enter such an order sua sponte for good cause shown.

(2) Service Upon A Business, Corporation, or Entity. Service may be made upon an agent of a business, corporation, or governmental agency.

(3) Service Upon An Individual. The required papers are delivered in person to the party's home or usual and current place of business or employment to someone of suitable age and discretion over fourteen (14) years of age.

(4) Service by Mail. Service of process may be accomplished by sending the required papers to a party by registered mail with return receipt requested, except in the instances of Rule 404(B)(1)(a)(1) and (2) as stated above.

(5) Service by Publication. Upon order of the Court for good cause shown, service of process may be accomplished by publishing the contents of the summons. Where service by publication is being made on a member or members of the Dry Creek Rancheria, the contents of the summons may be published in the Tribal newsletter, Tribal newspaper or a newspaper of general circulation in an area where the party is most likely to be made aware of the summons. In the case of non-members of the Dry Creek Rancheria, the contents of the summons may not be published in the Tribal newsletter or Tribal newspaper, but may be published in a newspaper of general circulation in an area where the party is most likely to be made aware of the summons. If publication is sought in the Tribal newsletter or Tribal newspaper, publication must be in two consecutive issues. If publication is sought in a paper of general circulation, publication must be at least, once per week for four consecutive weeks. Proof of publication must be provided to the Clerk of Court.

(6) Notice by Fax. When the parties are notified by fax, a call must be made confirming receipt of the fax. Documentation of the call must be included in the record. Documentation of the call shall include the name of the party confirming receipt of the fax notice, the time of the confirmation call, and a copy of the time-stamped fax.

(7) Notice by Telephone. When the parties are notified by telephone, documentation of the telephone call shall be filed in the record. Documentation of the call shall include who made the call, the name of the

person to whom the Notice was directed, the telephone number called, the date and time of the call, and the name given by the person receiving the call.

**RULE 405. Service Using Regular Mail**

After the first successful service of process, the Court and the parties will then perform all written communications through regular mail at that address. Therefore, each party to an action has an affirmative duty to notify the Court, and all other parties, of a change of address within ten (10) calendar days of such change.

**RULE 406. Using a Process Server or Bailiff**

The Court's bailiff shall be authorized to serve process in any action filed with the Court. In addition, the Court may authorize other persons to serve process when there is an assurance the other person knows how to effect proper service and will make adequate factual inquiries to assure that service is proper. The court may charge a fee to cover the costs of service.

**RULE 407. Return of Service**

A return of service shall be endorsed with the name of the person serving and the date, time, and place of service. It shall state the manner in which service was made and shall be filed with the Clerk of Court.

**RULE 408. Effect of Incomplete or Improper Service**

Incomplete or improper service results in a lack of jurisdiction over the person incompletely or improperly served. If a person refuses to accept, service shall be deemed properly performed if the person is informed of the purpose of the service and offered copies of the papers served. If a person intentionally avoids service, the Court may also consider service as properly performed. Upon order of the Court for good cause shown, if the Court or the filing party exercises due diligence in unsuccessfully pursuing service of process, whether personal or otherwise, a Default Judgment may be entered in accordance with Rule 702.

**RULE 409. Time Limit for Service of Process**

A Complaint must be served, and proof of service filed with the Court within one hundred and twenty (120) calendar days of filing, or it will be considered dismissed without prejudice by the Court with notice provided to the filer. Upon order of the Court for good cause shown, a sixty (60) calendar day extension may be ordered in the

event that the Court or the filer exercises due diligence in unsuccessfully providing service of process.

**RULE 410. Emergency Notice**

This Rule governs cases of emergency where the Court may need to conduct a hearing which provides less than forty-eight (48) hours notice to the parties. In cases of emergency, upon motion of a party or sua sponte, the Court can provide notice of a hearing less than forty-eight (48) hours prior to the hearing. In cases of emergency, the Court may provide notice by telephone with written confirmation or by telephone and fax at least forty-eight (48) hours in advance. Documentation of the call or fax shall be included in the record.

**RULE 411. Service of Process Upon the Tribe**

Service of process upon the Tribe, or an officer of the Tribe named as a party defendant, shall be made by delivering a copy of the complaint to the Tribal Chairperson, the tribal attorney, and the officer named in the manner prescribed in Rule 404 above, except that service by publication is not permitted.

**RULE 412. Proof of Service**

(A) The return postal receipt, filed in the case record, shall constitute proof of service by mail.

(B) The affidavit or declaration of service by the person making service, filed in the case record, shall constitute proof of service.

**CHAPTER 5. GENERAL RULES FOR PLEADING**

**RULE 501. Pleadings Allowed**

(A) There shall be a complaint and an answer;

(B) If there is a counterclaim, a reply to the counterclaim;

(C) If a cross-claim, an answer to the cross-claim;

(D) If a third party who is not an original party is summoned, then a third party complaint; and

(E) If the third party is served, then a third party answer.

(F) No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

#### **RULE 502. Form**

(A) All papers presented for filing shall be on white, 8 ½ x 11" paper (letter, not legal size) with at least a one (1) inch margins on all four sides. Typewriting is preferred, but handwritten filings will be accepted provided they are clear and legible and of such quality that legible photocopies can be made. The clerk shall accept all papers presented for filing, but papers not in substantial compliance with these rules may be rejected by the Judge of the Court.

(B) Every pleading will have a caption stating the name of the court, the title of the action, the file number and a designation (i.e., complaint, petition, answer, motion, counterclaim, cross-claim, third party complaint, etc.). The original complaint should name all the parties. Subsequent pleadings need only name the first party on each side with the appropriate indication of other parties.

(C) Each averment made in a pleading shall be simple, concise, and direct. No technical forms of pleading or motions, however are required.

(D) Each claim founded upon a separate transaction or occurrence and each defense shall be stated by the pleader in a separate numbered paragraph whenever a separation facilitates the clear presentation of the matters set forth. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of any written instrument which is an exhibit to a pleading is a part of the pleading for all purposes.

(E) Averments in a pleading to which a responsive pleading is required, are admitted when not denied in the responsive pleading. Responsive pleadings include an answer, a reply, a brief in opposition to a motion, a respondents brief, etc.

#### **RULE 503. Caption**

The first line on the first page of the pleading shall identify the Court where the action is filed. The names of parties to the action, with the complaining party placed first on the left side of the first page beginning on the next line. The title of the pleading (e.g., Complaint, Answer, Motion) and the case or file number shall be placed on the right side of the first page, next to the list of parties. Parties shall always be listed in the same order as the Complaint.

#### **RULE 504. Attachments**

Attachments to pleadings must be specifically identified and referenced to in the pleading and conform to the rules for pleading.

#### **RULE 505. Signatures of Parties and Counsel; Special Appearances**

(A) The Complaint and Answer shall be signed by the party or his/her counsel. The signature means the statements in the pleading are made in good faith, are believed to be true and accurate, and are based upon adequate research or investigation. The Court may impose sanctions if it finds statements in a pleading are not made in good faith, contain intentional misstatements, or are not based upon adequate research or investigation. This includes omitting material facts or law which the person knew, or should have reasonably known, was relevant to the action. Sanctions may include removing issues from consideration in the action, imposing costs and counsel fees, and any other relief which may be appropriate under the circumstances.

(B) Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by this code, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(C) Representations to Court. By presenting to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.



(D) The Complaint must contain the full names of all parties and any counsel. The Answer must be signed by the party and his/her or her counsel and contain their full names and addresses, as well as a telephone number at which they may be contacted.

**RULE 506. Court's Discretion to Strike Information**

The Court may, upon motion, or at any time in its discretion, and upon terms it deems proper:

- (A) Strike out any irrelevant, false, or improper matter inserted in any pleading;
- (B) Strike out all or any part of any pleading not drawn or filed in conformity with these rules.

**CHAPTER 6. SUBSTANTIVE CONTENTS OF PLEADINGS**

**RULE 601. Complaint**

A complaint is a pleading which sets forth a claim for relief and shall contain:

- (A) A short and plain statement of the grounds upon which the Court's jurisdiction depends, a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for judgment for relief the pleader seeks; or
- (B) Be accompanied by a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.

**RULE 602. Answering a Complaint**

- (A) An answer to a complaint shall be filed within thirty (30) days after service of the summons and complaint.
- (B) The answer shall contain:
  - (1) A short and plain statement to admit, admit in part, or deny each statement in the complaint;
  - (2) A general or specific denial of each material allegation of the complaint or petition denied by the defendant;

(3) A statement of any new matter constituting a defense, counterclaim, or set-off, in ordinary and concise language and without repetition; and

(4) Assert any and all claims against other parties arising from the same facts or circumstances as the Complaint and state any defenses to the Complaint.

(C) An answer may also contain a statement that:

- (1) The facts stated do not constitute a cause of action;
- (2) There is another action pending between the same parties for the same cause;
- (3) That the plaintiff has no legal right to sue; or
- (4) The action was not started within the period of three (3) years following the acts complained of and for which relief is sought.

(D) An Answer shall be served on other parties and may be served by mail. A Certificate of Service shall be filed as required by Rule 404.

**RULE 603. Counterclaim and Cross-Claim**

- (A) A party may counterclaim any claim the party has against an opposing party arising out of the same transaction or occurrence that is the subject of the opposing party's claim and does not require the presence of third parties of whom the Court cannot acquire jurisdiction. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original claim, counterclaim or any property that is the subject matter of the transaction.
- (B) The defendant may make a counterclaim in his/her answer to the charge in the complaint and in that event the plaintiff shall have ten (10) days in which to answer and file a copy of his/her reply with the Clerk of the Court.
- (C) If the defendant files a cross-claim against a third party defendant, the third party defendant shall be served in the same manner as set forth in this Rule for service of process and shall have ten (10) days to answer the cross-claim.
- (D) When a pleader fails to make a counter-claim or cross-claim, the pleader may by leave of court set up the counterclaim, or cross-claim by amendment.

#### **RULE 604. Amended and Supplemental Pleadings**

(A) A party may amend his/her or her pleading at any time before a responsive pleading is served or, where no responsive pleading is permitted and the action has not been placed on the calendar the party may amend at any time within twenty (20) days after it is served.

(B) Otherwise a party may amend the party's pleading only by leave of court or by written consent of the opposing party; and leave may be given when justice so requires.

### **CHAPTER 7. TIME**

#### **RULE 701. Computation of Time**

(A) Computation of time originates with the actual Court file stamped date of the document and not the date the notice or the document is received by the party.

(B) "Days" means calendar days unless a rule specifically states otherwise.

(C) Whenever a Rule or an order of Court requires that an action be taken within a certain number of days, the computation does not include the day the order is given, but begins as of the next following day and runs until the last day specified. For example, if a Complaint is filed on the first day of a month and the Answer is due in twenty (20) days, then the date the Answer is due will be the twenty-first day of the month. If the time limit identified in these rules is less than seven (7) calendar days, then Saturdays, Sundays, and legal holidays are not counted in the time limit. Legal Holidays are defined as those recognized by the Dry Creek Rancheria.

(D) If the last day falls on a weekend or a Tribal Holiday or on a day when the Court is closed due to inclement weather or other unforeseen circumstances, then the due date is the next Court work day.

#### **RULE 702. Service of Complaint**

A complaint shall be served upon the defendant within one-hundred twenty days (120) of the date of Filing.

#### **RULE 703. Time for Response to Complaint**

An answer or other response to a complaint or cross-complaint is to be filed, and copies served on all other parties, within thirty (30) days of service.

#### **RULE 704. Motions**

(A) Motions may be filed by a party with any pleading or at any time after their first pleading has been filed. A copy of all written Motions shall be delivered or mailed to other parties at least five (5) calendar days before the time specified for a hearing on the Motion. A proof of service must be filed with the notice of motion stating that copies of the same were mailed or delivered to the opposing party.

(B) Motions for Extension of Time and More Definite Statement may be filed before the initial pleading.

#### **RULE 705. Response to a Motion**

(A) Responses. A Response to a written Motion must be filed at least one (1) day before the hearing. If no hearing is scheduled, the Response must be filed with the Court and served on the other parties within fourteen (14) calendar days of the date the Motion was filed plus five additional days if service is by mail. The party filing the Motion must file any Reply within three (3) calendar days.

(B) Motions for Expedited Consideration. Any Motion which requires action within five (5) calendar days shall be accompanied by a Motion for Expedited Consideration. The Motion for Expedited Consideration shall state the reasons why the Accompanying Motion should be heard prior to the normal time period, and what efforts the party has made to resolve the issue with the opposing party prior to filing the Motion for Expedited Consideration.

#### **RULE 706. Notice of Hearing or Trial**

(A) Notice of hearing and trial is to be provided at least five (5) days in advance if the parties are personally served, and ten (10) days if notice is delivered by mail.

(B) When a time limit counted from the time that notice is delivered to a person by mail, it shall be presumed that delivery takes place five days after notice is mailed.

### **CHAPTER 8. MOTION PRACTICE**

#### **RULE 801. Motion Defined**

(A) A motion is a request to the Court for an order, which shall be made by written motion before trial wherever possible. A motion made verbally may be allowed at trial and at the discretion of the court if the court finds that in the interest of justice it is proper to do so.

(B) The motion shall specifically state what order is sought, and the reasons why the Court should grant the request. A written memorandum of legal authority in support of the motion is encouraged but is not required.

(C) A request to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds for the motion, and state the relief or order sought. The requirement of writing is fulfilled if the motion is stated in the written notice of the hearing of the motion. Motions must be in the proper form as provided for by this Chapter and must be signed in accordance with Rule 505.

#### **RULE 802. Proof of Service**

A proof of service must be filed with the notice of motion stating that copies of the same were mailed or delivered to the opposing party.

#### **RULE 803. Time for Opposition**

The opposing party shall have fourteen (14) days from service in which to respond to the motion, plus five additional days if service is by mail.

#### **RULE 804. Default Judgment**

A Default Judgment may be entered against a party who fails to answer if the party was personally served in accordance with Chapter 4 or obtained judicial authorization to pursue other means of service such as publication or if a party fails to appear at a hearing, conference or trial for which he/she was given proper notice. A Default Judgment shall not award relief different in kind from, or exceed the amount stated in the request for relief. A Default Judgment may be set aside by the Court only upon a timely showing of good cause.

#### **RULE 805. Summary Judgment**

Any time after the date an Answer is due or filed, a party may file a Motion for Summary Judgment on any or all of the issues presented in the action. The Court will render summary judgment in favor of the moving party if there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law.

#### **RULE 806. Judgment on the Pleadings**

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

#### **RULE 807. Motion for Reconsideration**

Upon motion of the Court or by motion of a party made not later than ten (10) calendar days after entry of judgment, the Court may amend its findings or conclusions or make additional findings or conclusions, amending the judgment accordingly. The motion may be made with a motion for a new trial. If the Court amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the Court denies a motion filed under this rule, the time for initiating an appeal from the judgment commences when the Court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within thirty (30) days after the filing of such motion, and the Court does not decide a motion under this Rule or the judge does not sign an order denying the motion, the motion is considered denied. The time for initiating an appeal from judgment commences in accordance with the Rules of Appellate Procedure.

#### **RULE 808. Motions Hearing Defined**

(A) A motion hearing is a pretrial proceeding that takes place when a party has asked the Court to order that something be done in connection with a pending case. Hearings on motion are not automatic.

(B) Unless requested by either party or ordered by the Court, a hearing on the motion will not be held. In the event a hearing is desired, a hearing date can be requested in writing or by contacting the Court prior to filing the notice. Hearings will be set as soon as practicable.

(C) Hearings will be set when oral argument would be helpful to the Court and on request of a party or parties or the Court's own motion. Motions may be filed to add or eliminate parties, to amend pleadings, to request a jury trial, to prepare or simplify a case for trial, or to request judgment as a matter of law in the absence of material disputed issues of fact pursuant to this Title.

(D) A party requesting a hearing must:

- (1) Schedule the hearing with the Court, and
- (2) Deliver or mail notice of the hearing to other parties at least five (5) calendar days prior to the hearing. If the trial is scheduled to begin within the time allowed for a hearing, all responses shall be made by the time scheduled for commencement of the trial.

(E) Motions made within fourteen (14) calendar days of trial may be dismissed and costs and fees assessed against the moving party if the Court finds no good cause

exists for failing to file the Motion more than fourteen (14) calendar days in advance of the trial.

## CHAPTER 9. DISCOVERY

### **RULE 901. Discovery Defined**

Discovery is the process used among parties to uncover evidence relevant to the action, including the identity of persons having knowledge of facts. Discovery may take place before an action has been filed and may be used for the purpose of preserving testimony or other evidence which might otherwise be unavailable at the time of trial. Discovery may include written interrogatories, depositions, and requests for the production of documents and things. It is the policy of the Court to favor open discovery of relevant material as a way of fostering full knowledge of the facts relevant to a case by all parties. It is the intent of these rules that reasonable open discovery will encourage settlement, promote fairness, and further justice.

### **RULE 902. Required Disclosures**

(A) Disclosures. Except to the extent otherwise stipulated or directed by order, a party shall, without waiting for a discovery request, provide to other parties:

(1) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(2) A copy of, or a description by category and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(3) A computation of any category of damages claimed by the disclosing party, made available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(4) For inspection and copying any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part of all of a judgment which may be entered in an action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) Judicial notice shall be taken of and required disclosures shall be made of official documents, public documents, documents subject to public inspection, document and materials of non-executive session, governmental minutes and recordings of a Tribal governmental body.

(C) Time of Disclosure. Unless otherwise stipulated or directed by the Court, these disclosures shall be received by the Court within ten (10) calendar days after the scheduling conference. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(D) Authority to Compel. The Court shall have authority to compel disclosure or production of discoverable documents, records and other materials, and to compel parties to answer or respond upon the Court's own motion.

### **RULE 903. Interrogatories**

A party may submit interrogatories (written questions) to other parties. The requesting party must receive the responding party's written answers, under oath, within twenty-five (25) calendar days of receiving them. The responding party must include facts he/she knows, facts available to him/her, and give opinions, if requested.

### **RULE 904. Depositions**

A party may take a deposition (testimony, under oath and recorded) of a deponent (another party or a witness) after giving at least five (5) calendar days notice of the time and place where the deposition will occur to all parties and the deponent. All parties may ask the deponent questions. Depositions may take place by telephone and be recorded stenographically, by tape recording or by other means if the parties agree or the Court so orders.

### **RULE 905. Requests for Documents and Things**

A party may request another party to produce any documents or things within his/her possession or control for the purpose of inspection and/or copying. This includes permission to enter onto land for testing. The responding party must make the documents or things available to the requesting party within twenty-five (25) calendar days of the date of receiving the request.

**RULE 906. Ongoing Obligation**

There is an ongoing obligation by any party subject to a discovery request, which continues up to and through the trial, to supplement any response previously answered if new or freshly discovered material previously unavailable is discovered or revealed to them.

**RULE 907. Protective Orders**

For good cause, the Court on its own motion or at the request of any party or witness, may enter an Order to protect a party or other person from undue annoyance, embarrassment, oppression or undue burden or expense.

**RULE 908. Non-Compliance**

If a party fails to appear or respond as requested under these rules, a party may request or the Court may issue an Order requiring a response and imposing costs, attorney's fees, and sanctions as justice requires in order to secure compliance.

**RULE 909. Power to Compel**

The Court retains the inherent authority to compel disclosure of material it has cause to believe is relevant to the matter before it.

**CHAPTER 11. WITNESSES AND SUBPOENAS**

**RULE 1001. Presence of Parties and Witnesses**

Subpoenas may be used to cause a witness to appear and give testimony. If a party wishes to have a subpoena issued by the Court, he/she shall furnish a properly prepared subpoena including information necessary for service of process at least ten (10) calendar days before trial. Service will be completed at least three (3) calendar days prior to hearing or trial. When service has been completed, the Court shall mail proof of service to all parties. When service of the subpoena will not be through the Court, the requesting party shall present the properly prepared subpoena to the Court for signature in time to ensure proper service before the hearing or trial and shall return proof of service to the Court prior to the trial. If a party does not timely request a subpoena, he/she shall not be entitled to a postponement because of the absence of the witness. If the subpoena has been timely issued, the Court may, in its discretion, postpone the hearing or trial. A person who fails to appear after being subpoenaed may be held in contempt of Court.

**RULE 1002. Notice**

At all times the parties shall use diligent efforts to notify witnesses subpoenaed to appear in sufficient time so that they might make arrangements needed to appear.

**RULE 1003. Failure to Appear**

If any party fails to appear at a hearing or trial for which they received proper notice, the case may be postponed or dismissed, a judgment may be entered against the absent party, or the Court may proceed to hold the hearing or trial.

**RULE 1004. Issuance of Subpoenas**

(A) The power to subpoena or otherwise to order attendance in Court or the production of evidence, shall not extend to any Tribal government official with respect to matters or actions arising in the member's official capacity, or in the exercise of the member's official duties.

(B) Upon request of any party or upon the Court's own initiative, 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. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the Tribe. Each subpoena shall be accompanied by a certified check or money order, prepaying the witness fees and expenses required by Rule 1007, and no subpoena shall be valid in the absence of such a check or money order.

(C) A subpoena shall bear the signature of the Chief Judge or an Associate Judge 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.

**RULE 1005. Service of Subpoenas**

A subpoena may be served in the manner prescribed in Rule 404, except that service by publication is not permitted.

**RULE 1006. Failure to Obey Subpoena**

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena issued and served in accordance with the provisions of this Code may be cited and held in contempt of court.

**RULE 1007. Witness Fee and Expenses**

(A) Each witness answering a subpoena shall be entitled to reimbursement of his/her mileage expenses at the current rate paid by General Services Administration, and to witness fees at the rate of fifty dollars (\$50.00) per day except that the custodian of any public books; records; documents or other physical evidence subpoenaed shall not be entitled to witness fees. A certified check or money order for these fees and expenses shall be attached by the party issuing the subpoena to the subpoena served on the witness.

(B) The fees and expenses provided for in this Chapter shall be taxed as court costs, and assessed against the parties as provided in the judgment in the case.

**CHAPTER 11. TRIALS**

**RULE 1101. Hearing**

At the time the verified complaint is filed, the clerk shall schedule a hearing on the claim not less than fifteen (15) days after the complaint is filed. The clerk shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the presiding judge shall ascertain whether:

(A) The defendant has any defenses to the claim, or wishes to present any counterclaim against the plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence;

(B) Any party wishes to present evidence to the Court concerning the facts of the transaction or occurrence;

(C) The interest of justice require any party to answer written interrogatories, produce any documents or other evidence, or otherwise engage in any pre-trial discovery considered proper by the judge;

(D) Some or all of the issues in dispute can be settled without a formal adjudication; and

(E) The claim is ready for trial:

(1) If the claim is ready for trial, the judge may try it immediately or set a subsequent date for trial.

(2) If the claim is not ready for trial, the judge shall set a subsequent date for trial and order such preparation by the parties as he/she deems necessary.

**RULE 1102. Pretrial Conference**

The Court may hold conferences with the parties, or their counsel when the party is represented. Notice of the time, place and purposes must be given far enough in advance to allow all parties to attend. The purposes of a conference may be to foster a resolution of the action without trial, to schedule discovery, motions, and hearings to expedite the action, and to formulate a plan for the trial, identifying witnesses to be called, evidence to be presented, unresolved factual and legal issues, and for discussion of any other matter among the parties. A party may be sanctioned for failing to attend a conference if they received at least ten (10) calendar days notice and do not show good cause for failing to attend.

**RULE 1103. Scheduling Conference**

The Court may enter a scheduling order on the Court's own motion or on the motion of a party. The Scheduling Order may be modified by motion of a party upon a showing of good cause or by leave of the Court.

**RULE 1104. Postponement**

The Court may postpone a trial upon the request of a party, upon agreement of all parties, or at the Court's discretion for good cause and on such terms as the Court deems just.

**RULE 1105. Consolidation or Separation of Action**

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

(B) Separation. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to judicial economy, may order a separate trial

of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues.

#### **RULE 1106. Trial Procedure**

(A) The time and place of court sessions, the rules of evidence to be followed by the court and all other details of judicial procedure may be set out in rules of court.

(B) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.

(C) Civil cases shall be tried before a judge.

(D) The case of the plaintiff shall be presented first followed by the case of the defendant. If rebuttal is required, the plaintiff shall proceed first, followed by the defendants.

(E) At the conclusion of the evidence, the plaintiff and defendant each in turn may summarize the proof and make final argument.

#### **RULE 1107. Intervention**

A person may be permitted in the discretion of the Court to intervene as a party to an action in cases where property in which he/she claims an interest may be substantially affected by disposition of the action or where the applicant for intervention asserts a claim or defense which presents a question of law or fact common to the main action.

#### **RULE 1108. Substitution of Parties**

If a party dies, becomes incompetent or transfers his/her interest, a substitute or successor party may be joined or substituted as justice requires.

### **CHAPTER 12. DISMISSAL OF ACTIONS**

#### **RULE 1201. Voluntary Dismissal**

A plaintiff may file a Notice of Dismissal any time prior to the filing of an Answer. The Complaint will be dismissed without prejudice.

#### **RULE 1202. Involuntary Dismissal**

After an Answer has been filed, a party may file a Motion to Dismiss. A Motion to Dismiss will be granted at the discretion of the Court. A Motion to Dismiss may be granted for a lack of jurisdiction; if there has been no Order or other action in a case for six (6) months; if a party substantially fails to comply with these rules; if a party substantially fails to comply with an order of the Court; if a party fails to establish the right to relief following presentation of all evidence up to and including trial; or, if the plaintiff so requests.

#### **RULE 1203. Dismissal at Discretion of the Court**

The Court, on its own motion, may move to dismiss an action if there has been no filing or other activity on the record for six (6) months, if a party substantially fails to comply with these rules, or if a party substantially fails to comply with an order of the Court. The Court shall give written Notice to all parties that the action will be dismissed after thirty (30) calendar days unless good cause is shown in writing prior to the end of the thirty day period. No further Notice is necessary for the Court to enter a dismissal.

### **CHAPTER 13. JUDGMENTS AND ORDERS**

#### **RULE 1301. Verdict by the Judge**

The Court shall enter its verdict in open court, or at the judge's discretion, within fifteen (15) days from the time of the end of the presentation of all testimony and evidence.

#### **RULE 1302. Judgments – Generally**

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

#### **RULE 1303. Judgments – Compensation**

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

**RULE 1304. Punitive Damages**

Where the injury was willfully and maliciously inflicted, the judgment may award punitive damages to the prevailing party. Punitive damages may be assessed based on provisions of Tribal ordinances.

**RULE 1305. Cost of Civil Actions**

The Court may assess reasonable costs of the case against the party or parties against whom judgment is entered.

**CHAPTER 14. EXECUTION OF JUDGMENTS**

**RULE 1401. Procedures**

If, after the time for appeal has run, the judgment debtor has not paid the judgment amount in full or is not making payments in the manner agreed to by the parties or ordered by the Court, the Court, upon application of the judgment creditor, shall order the judgment debtor to appear before it and answer under oath regarding his or her personal and real property. The Court shall then determine what property of the judgment debtor is available for execution and order the Tribal Security Department to seize as much of such property as appears to the Court reasonably necessary to pay said judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may impose reasonable sanctions following a hearing on an Order to Show Cause.

**RULE 1402. Sale of Property**

The sale of seized property shall be at a public auction conducted by the Tribal Security Department after giving at least thirty (30) days public notice posted in at least three public places on the Rancheria, one of which shall be the Tribal Office. Property shall be sold in a commercially reasonable manner to the highest bidder who shall make payment for the property at the time of the sale. If the sale results in a higher price than the debt, plus expenses of the sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale. After the sale, a sixty (60) day escrow period will be provided for the debtor to comply with the Court's order. Said escrow shall be administered by the Clerk of the Court. After the escrow period expires, the sale shall be final.

**RULE 1401. Record of Sale**

A complete and accurate record of any sale pursuant to this Chapter shall be kept by the Clerk of the Court, including receipts and descriptions of property and any other information as deemed necessary.

**RULE 1402. Exemption From Execution**

The Court shall not order seizure and sale of property of the judgment debtor, where such an order would impose an immediate and substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor may be subject to execution and not property of his or her family.

**CHAPTER 15. MISCELLANEOUS**

**RULE 1501. Enforcement of Judgment or of Judicial Records of Other Jurisdictions**

The Tribal Court may as a matter of comity enforce the judgment of another Tribe, the United States, a state or foreign nation, provided, that such a judgment may be enforced only after hearing or trial, on an action or special proceeding in the Tribal Court, requesting enforcement relief. An authenticated copy of the judgment of the other jurisdiction shall accompany the complaint seeking enforcement.

**RULE 1502. Effective Date**

These rules will take effect on the first Court work day after the date these rules are adopted by the Judicial Committee of the Dry Creek Rancheria. They will govern all proceedings brought on or after that date. They will govern all proceedings pending on that date unless, in the discretion of the Trial Court, their application would not be feasible or would work injustice to the parties in the proceeding. In that event, the Trial Court shall devise procedures as are necessary for a full, fair and expeditious resolution of the proceeding.

**RULE 1503. Business Hours**

The Dry Creek Rancheria Tribal Court is open from 8:00 a.m. to 4:30 p.m. Monday through Friday, with the exception of holidays, closings due to inclement weather, or other unforeseen circumstances. For a document to be timely filed, it must be received and stamped by the clerk of court no later than 4:30 p.m. on the date due.