## DRY CREEK RANCHERIA TRIBAL COURT RULES

Effective June 21, 2013

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## DRY CREEK RANCHERIA BAND OF POMO INDIANS TRIBAL COURT RULES

#### **GENERAL RULES**

#### RULE G - 1. SCOPE AND CONSTRUCTION OF RULES

- a. *Scope*. Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in any Court of the Dry Creek Rancheria Band of Pomo Indians.
- b. *Rules of Construction*. The following rules of construction shall apply to all Court rules.
  - i. Where a more general rule of procedure conflicts with a more specific rule of procedure, the more specific rule of procedure shall be applied.
  - ii. Where a rule of procedure conflicts with a statute, the statute shall control.
  - iii. The term plaintiff includes a plaintiff, petitioner, claimant, or any similar term. The term respondent includes a defendant, respondent, or similar term. The term counsel means a person admitted to the bar of the Tribal Court, whether that person is an attorney or lay-advocate.
  - iv. No rule of procedure shall be construed to extend or limit the jurisdiction of the Tribal Court.
  - v. No Rule of Procedure shall be construed to create or expand a waiver of the sovereign or official immunity of the Tribe, its officers, or its agencies.
  - vi. These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.
  - vii. Most legal terms are defined in Appendix A. and their meaning within this document will be construed as such.
- c. *Absence of Rule*. Where these rules do not provide a mode of proceeding, the Court may adopt any suitable mode of proceeding.
- d. *Tribal Dispute Resolution*. The Court, in its discretion, may apply a mode of proceeding that is faithful to Tribal ways of being and allows resolution of a matter without argument and aggression including informal dispute resolution.

## RULE G - 2. SERVICE AND FILING OF PLEADINGS AND PAPERS OTHER THAN PROCESS

- a. *Service required*. Except as otherwise provided in these Rules, every paper (which includes every order required by its terms to be served, every pleading subsequent to the original complaint or petition, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, brief, and similar paper) shall be served upon each of the parties or their counsel of reference.
- b. Service by Hand Delivery and Mail. Except for process, as defined in Rule C-4(c), and absent law or Court order to the contrary, service of any paper may be made by personal delivery, or by placing the paper, properly addressed, in the United States mail for first class delivery, or by placing the paper, properly addressed for delivery by other comparably reliable means.
- c. Service by other means. Service by facsimile, email, or other electronic means is allowed upon written permission of the party served.
- d. *Service in property seizure cases*. In an action begun by seizure of property, in which no person need be or is named as respondent, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.
- e. *Filing*. A pleading or other paper is filed with the Court by delivering it to the Court Clerk, except that a judge may permit any paper to be filed with the judge. Unless otherwise required by law or Court order, delivery to the Clerk is completed upon placing the paper, properly addressed to the Clerk, in the United States mail for first class delivery, in person when the Clerk is available, or by placing the paper, properly addressed for delivery by facsimile, email, or other electronic means as long as the documents are properly signed. Emailed documents must be in Adobe PDF format except for proposed orders which must be submitted in a Microsoft Word format. All filings must contain a valid signature.
  - i. The filing must include:
    - 1. A proposed order (optional)
    - 2. A petition, complaint, answer, or motion
    - 3. All supporting documents
    - 4. Points and authorities (as necessary)

#### **RULE G - 3. TIME**

a. *Computation of time*. In computing any period of time set forth herein, the day from which the period is to commence shall not be counted and the last day of the period

shall be counted. A day shall mean a business day which is Monday through Friday. Official Tribal Holidays shall not count when computing time.

Example: A Complaint is filed on the  $1^{st}$ . The Respondent now has 20 days to file an answer to the complaint. So in this example, the Answer is due on the  $29^{th}$ .

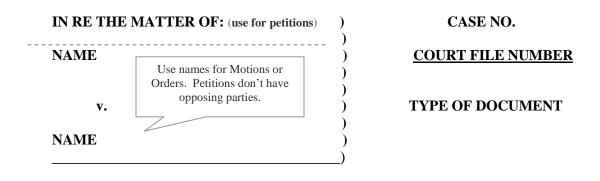
Sun	Mon	Tues	Wed	Thu	Fri	Sat
		1 (x)	2 (1)	3 (2)	4 (3)	5
6	7 (4)	8 (5)	9 (6)	10 (7)	11 (8)	12
13	14 (9)	15 (10)	16 (11)	17 (12)	18 (13)	19
20	21 (14)	22 (15)	23 (16)	24 (17)	25 (18)	26
27	28 (19)	29 (20)	30	31		
		Answer				
		Due				

- b. *Enlargement and shortening time*. The Court for good cause shown may enlarge or shorten the prescribed period of time within which any required act may be done.
- c. Additional Time after Service. Whenever service is accomplished by mail, facsimile, email, or other electronic service, three days shall be added to the prescribed period of time to allow for delivery processing, but such addition shall not cause legal holidays to be counted in the time period if they would not otherwise have been counted.

## RULE G - 4. FORMS OF PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

a. *Caption*. The first page of every paper filed with the Court (other than exhibits or attachments to other documents which comply with this rule) shall contain the name of the Court and name of the parties, Court file number (if known), and a designation as to what kind of paper it is, in a manner consistent with Article IV, Chapter 3, Section 1, rule (d) of the Tribal Court Ordinance; an example is below.

# IN THE COURT OF THE DRY CREEK RANCHERIA SONOMA COUNTY, CA



- b. *Signature Block*. Every paper shall be signed by at least one counsel of record in the individual name of the counsel, or, if the party is not represented by counsel, shall be signed by the party or his/her authorized representative. Each paper shall state the signer's address, date of signature, and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the counsel, party, or representative.
- c. Representations to Court. By presenting to the Court, any document or statement whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, counsel, or an un-represented party is certifying that after a reasonable effort and to the best of their knowledge, information, and understanding that:
  - i. 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;
  - ii. The claims, defenses, and other legal contentions therein are warranted under existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
  - iii. The allegations and other contentions of fact are supported by existing evidence, or, if specifically stated are likely to be supported by evidence after a reasonable opportunity for further investigation or discovery;
  - iv. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information and belief; and
  - v. The submission, when read together with other submissions which have been or are expected to be submitted by other parties, will provide the Court with all relevant facts and other matters and circumstances known or within the control of the person signing the document which will enable the Court to determine the truth and make a proper, informed, and just decision, whether or not the fact, matters, or circumstances are in favor of either party.
- d. *Duty to Supplement*. Where a person makes a representation to the Court, as defined in subsection (c), the person has a duty to supplement the submission where the person determines that the representation is inaccurate or incomplete. A representation is inaccurate or incomplete if the party would no longer provide the identical submission if being required to make the submission anew. The duty to supplement continues until the case is finally concluded.
- e. *Sanctions*. If, after notice and a reasonable opportunity to respond, the Court determines that subdivision (c) or (d) has been violated, the Court shall impose an appropriate sanction upon the party, counsel, or counsel's firm that violated subdivisions (c) or (d) or that was responsible for the violation.

#### RULE G - 5. ADMISSION AND REGULATION OF LEGAL COUNSEL

- a. *Bar Admission Required*. No other person, including attorneys or lay-advocates, may appear in any court or administrative forum of the Tribe on behalf of any person or entity unless the person is admitted to the Dry Creek Rancheria Tribal Court Bar as described below.
  - i. Exception An individual may represent an immediate family member including a parent, grandparent, sibling, and child over the age of 18 and does not have to be admitted to the Dry Creek Rancheria Tribal Court Bar.
- b. *Application Procedure*. Any person may apply to become a member of the Bar of the Dry Creek Rancheria Tribal Court by submitting an Application for Admission to the Tribal Court and an annual, non-refundable application fee of \$50.00. Dry Creek Rancheria Tribal Attorneys and Tribal members are exempt from the application fee. The Tribal Court Judge shall also have discretion to waive fees for any applicant. The Application must contain the applicant's sworn statement that the applicant has reviewed the Tribe's statutory laws and Court rules, that applicant consents to the jurisdiction of the Tribe for all matters related to the application for admission and all other conduct by the applicant, whether before or after admission and whether by appearance, written submission, or otherwise, in the Tribe's courts administrative bounds.
- c. *Admission*. After the application has been received by the Tribal Court, the Court shall act on the application. Where the applicant is an attorney, licensed to practice before other courts of the United States, any tribe, or any state, the applicant shall rebuttably be presumed to be in good standing with each court they are admitted to. The Tribal Court may require that the applicant establish fitness to practice in each court they are admitted to prior to admission. Following admission, it is the attorney's duty to notify the Court of any change in status regarding admission in any other jurisdiction.

d. Oath. After admission, and prior to taking any action in any matter, applicant must

- "I, \_\_\_\_\_\_\_ do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of the Court of the Dry Creek Rancheria Band of Pomo Indians, uprightly and according to law, that in every proceeding I will comply with my duty to ensure that all necessary, helpful, and relevant facts are discovered such that the Court can determine the truth and make a proper, informed, and just decision, and that I will uphold and support the Articles of Association of the Dry Creek Rancheria Band of Pomo Indians and the laws of the Tribe."
- e. Suspension, disbarment, or discipline.

subscribe to the following oath or affirmation:

- i. *Standard*. A member of the Bar is subject to suspension or disbarment by the Court if the member is guilty of conduct unbecoming a member of the Court's bar.
- ii. *Procedure*. The member must be given notice and an opportunity to show good cause, within the time prescribed by the Tribal Court, why the member should not be suspended or disbarred.
- iii. *Order*. In any case where the Tribal Court provides notice under subsection (ii), it shall subsequently issue a written order, appropriate under the facts of the case. There shall be no right to appeal from such order.

## f. Discipline.

- i. *Standard*. Any Court may discipline counsel who practices before it for conduct unbecoming a member of the Bar or for failure to comply with any Court rule, including, but not limited to verbal warnings, monetary penalties, and disbarment.
- ii. *Procedure*. The Court may impose appropriate discipline immediately only if the conduct occurs durring open Court proceedings. In all other cases, the Bar member must be provided notice and an opportunity to show cause why disciplinary measures should not be taken. Discipline may include: verbal warnings, fines, suspension, and disbarment.
- iii. *Order*. In any case where the Court provides notice under subsection (ii), it shall subsequently issue a written order, appropriate under the facts of the case. There shall be no right to appeal from such order.

#### RULE G - 6. WAIVER OF COURT FEES AND SERVICE FEES

- a. *Filing Fees*. Where a natural person shows the Court that he or she is indigent, as defined in subsection (c), and the party requests waiver of a filing fee, the Court shall waive the fee. The party requesting the waiver must complete a form which proves that he or she is eligible for a waiver. Fees are to be waived for Dry Creek Rancheria Tribal Attorneys.
- b. Fees for Service of Process. Where a natural person shows the Court that he or she is indigent and that these rules require him or her to serve process on another party, and the party requests that the Court appoint the Tribal Security to serve the process, the Court shall order such service at no cost.
- c. *Indigent defined*. A person is indigent when, the person shows the following three elements:
  - i. That the person's household's income is below the federal poverty line for a household of that size;

- ii. That the person has less than \$5,000 in liquid assets, including funds in joint or individual bank or savings accounts; and
- iii. That the person owns, either by individual or joint ownership, assets which are worth less than \$50,000.

#### **RULE G - 7. HARMLESS ERROR**

No error in either the admission or the exclusion of evidence, and no error or defect in any paper, process, ruling, or order, or in anything done or omitted by the Court or by any of the parties, is ground for granting a new hearing or otherwise disturbing a judgment or order, or striking a paper or process, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

#### **RULE G - 8. CITATION**

These Rules shall be known as the Dry Creek Rancheria Tribal Court Rules and may be abbreviated as the "Tribal Court Rules."

#### **RULE G - 9. AMENDMENT**

Any Court rule may be amended or repealed by a majority vote of the Dry Creek Rancheria Tribal Council memorialized in a written and signed Tribal Council Resolution.

#### **RULE G-10. SEVERABILITY**

If any part of these Tribal Court rules are found to be void and without legal effect, the remainder of the rules shall continue to remain in full force and effect, as though such part had not been contained therein.

# RULE G-11. OUTSIDE GOVERNMENT AGENCIES AUTHORITY TO OPERATE ON THE RANCHERIA

State, local agencies, government and their government officials, shall not execute any governmental or agency functions affecting any Tribal member without first petitioning the Tribal Court and obtaining a judgment which authorizes them to do so. The outside agent or official shall be required to file a petition with the Court Clerk requesting access to an individual or their property. The Clerk shall provide notice to the indicated parties in accordance with the service of process rules of the Tribal Court. A hearing will commence no later than 10 days after filing of a petition for access. Hearings and their participants shall follow the rules contained herein for procedure and judgments.

#### **RULE C - 1. ONE FORM OF ACTION**

There shall be one form of action under the Rules of Civil Procedure, to be known as a "civil action."

#### **RULE C - 2. COMMENCEMENT OF ACTION**

A civil action is commenced by filing a petition or complaint with the Tribal Court and payment of the filing fee of \$50.00. No filing fee shall be required in an action commenced by the Tribe. The Court has the discretion to waive the filing fee in any civil action filed. The Tribe is exempt from paying all court fees.

# RULE C - 3. SUMMONS AND SERVICE OF THE SUMMONS AND PETITION OR COMPLAINT

- a. *Summons: issuance*. Upon the commencement of an action, the clerk shall proceed to issue the number of summonses which are reasonably requested by a petitioner.
- b. *Summons: form.* The summons shall be directed to the respondent(s), and shall state the name, and address of the respondent's counsel, if any, or otherwise it shall state the respondent's address, and the time when the respondent(s) must appear and defend. It shall also prominently state that in case of respondent's failure to appear and defend, a judgment by default may be rendered against respondent(s) for the relief demanded in the petition or complaint.

# RULE C - 4. SERVICE OF A SUMMONS, PETITION OR COMPLAINT, SUBPOENA, OR OTHER PROCESS

- a. *Process Defined*. Process includes any summons or subpoena, or un-amended petition or complaint, and includes those amended petition or complaints as provided for in Rule C-10.
- b. Waiver of Service of Process. A plaintiff may request that any individual, corporation or association waive service of the summons and petition or complaint. Such request shall be in writing, shall inform respondent of the consequences of failure to comply with the request, and shall provide respondent with a pleading which respondent may sign and return to effectuate waiver. A respondent who receives such request has a duty to avoid unnecessary costs of service of process. A respondent's failure, without good cause, to comply with that duty shall be deemed relevant in any subsequent discretionary decision in the same case to extend time or continue any hearing.
- c. *Mode of Service of Process*. Except as otherwise provided for in the Dry Creek Rancheria Tribal Codes, service of the process shall consist of delivering to the party served a copy of the process.
  - i. The signed copy of the service of process form 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.

- ii. Service may be made on a party by delivering the required papers to the party in person or upon some person of suitable age and discretion over 16 years old at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of a non-individual party. Service may also be made by first class mail and fax. Service of process may not be made by email.
- iii. 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 three weeks and by leaving an extra copy of the petition or complaint or paper with the Court for the party.
- iv. Service may be made by any person authorized to service under the Tribal Court Ordinance including Tribal security personnel.
- v. Service upon a person otherwise subject to the jurisdiction of the Tribal Court may be made anywhere in the United States.
- vi. The cost of service of process shall be \$25.00 per service plus 50¢ per mile driven to complete the service.

#### **RULE C - 5. PLEADING**

- a. *Pleadings permitted*. Pleadings permitted in Court include a petition, complaint, answer, response, reply to a counterclaim, and an answer to a cross-claim. No other pleading may be filed unless the Court grants additional leave to plead in the interest of narrowing and defining issues or as justice may require.
- b. *Petition or Complaint*. A pleading which sets forth a claim for affirmative relief shall be known as a petition or complaint and shall contain:
  - i. A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;
  - ii. A short, plain statement of the claim showing that the pleader is entitled to relief; and
  - iii. A demand for judgment for the relief to which the pleader considers herself/himself entitled. Such claim for relief can be in the alternative or for several types of relief.
- c. Answer or response. In responding to a pleading, a party must:
  - i. State in short and plain terms its defenses to each claim asserted against;
  - ii. And admit or deny the allegations asserted against it by an opposing party or;

- iii. State a general denial of all claims stated.
- iv. If a claim is not denied it will be deemed to have been admitted

#### RULE C - 6. GENERAL RULES OF PLEADING

- a. Statement 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. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses. Paragraphs shall be separately numbered and each shall be limited, as nearly as possible, to a single circumstance.
- b. *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 which is an exhibit to a pleading is a part thereof for all purposes.
- c. Construction of Pleadings. All pleadings shall be construed so as to do substantial justice. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleadings as if it had been properly designated if justice so requires.

## **RULE C - 7. ANSWERS AND OBJECTIONS**

- a. *Answers*. A respondant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon her/him to answer or respond to the claim.
- b. *Objections to Petition or Complaint*. Every defense, in law or fact, to a claim for relief shall be asserted in a responsive pleading thereto if one is required, except that the following defenses or requests for relief may, at the option of the pleader, be made by motion:
  - i. Lack of jurisdiction over the subject matter;
  - ii. Lack of jurisdiction over the person;
  - iii. Insufficiency of process;
  - iv. Insufficiency of service of process;
  - v. Failure to join a party pursuant to Rule C-11(c);

- vi. Failure to state a claim upon which relief may be granted, further provided that if in hearing such motion, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule C-14(d), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule C-14(d)(iv);
- vii. Requesting a more definite statement; or
- viii. Requesting that immaterial, impertinent, or scandalous matter be stricken from a pleading.
- c. Combination of objections. A party shall be permitted to file only one motion to each pleading in which the filing party states objections listed in subsection (b)(i-viii) prior to answering the pleading, and the party may combine as many of the objections as warranted into the motion. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.
- d. *Effect of failure to move or plead*. A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived if the party does not include that defense in the earlier filing of a responsive pleading or motion to dismiss.
- e. *Motion for Judgment on the Pleading*. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule C-14(d), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule C-14(e)(iii).
- f. *Preliminary Hearings*. Defenses and requests for relief stated in this rule, whether made in a pleading or by motion, shall be heard and determined before trial unless the Court for good cause orders that the hearing and determination be deferred until trial.

## RULE C - 8. COUNTERCLAIM OR CROSS-CLAIM

- a. Compulsory Counterclaims. A pleading shall state as a counterclaim any claim that, at the time of serving the pleading the pleader has against any opposing party as long as it arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim. It also must not require the presence of third parties over whom the court cannot acquire jurisdiction. Such a claim need not be stated if at the time the action was commenced the claim was the subject of another pending action.
- b. *Permissive Counterclaims*. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

- c. *Cross-claim*. A party against whom a claim is made may assert any claim she/he has against a co-party and have such claim resolved at trial.
- d. *Third-Party Claims*. 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 petition or complaint resolved at trial.

#### RULE C - 9. JOINDER OF CLAIMS AND REMEDIES

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim may join, either as independent or alternative claims, as many claims as the party has against any opposing party.

#### RULE C - 10. AMENDMENT AND SUPPLEMENTATION OF PLEADINGS

- a. *Amendments Prior to Trial*. A party shall have the right to amend a pleading once prior to pre-trial. Other amendments shall be allowed only upon motion and order of the Court, provided that leave shall be freely given when justice so requires.
- b. *Supplementation Prior to Trial*. Upon motion of a party, the Court may permit a party to supplement a pleading to set forth transactions, occurrences, claims, counterclaims, cross-claims, and third-party claims which happened, matured, or were acquired since the date of the pleading sought to be supplemented.
- c. Amendment or Supplementation to Conform to Evidence. 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 amendment or supplementation of the pleadings.

#### **RULE C - 11. 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 her/his own name without joining the party for whose benefit the action is maintained.
- b. *Infants or Incompetent Persons*. When an infant, or an 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. A guardian ad litem is considered an officer of the Court to represent the interests of the infant, insane, or incompetent person, in the litigation. Those eligible to be a guardian ad litem are: ICWA representatives, TANF representatives, attorneys, and members of a Tribal Health Program, and any others the Tribal Court deems acceptable.
- c. *Joinder of Persons Needed for Just Adjudication*. The rule for joinder of persons needed for just adjudication shall be as follows:

- i. *Persons to Be Joined If Feasible*. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:
  - (1) in the person's absence the court cannot accord complete relief among existing parties; or
  - (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may
    - (a) as a practical matter impair or impede the person's ability to protect that interest; or
    - (b) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a respondant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

- ii. Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (c)(i)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.
- iii. *Pleading Reasons for Nonjoinder*. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (c)(i)(l)-(2) hereof who are not joined, and the reasons why they are not joined.
- d. *Permissive Joinder of Parties*. The rule for permissive joinder of parties shall be as follows:
  - i. *Permissive Joinder*. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or

occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as respondants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all respondants will arise in the action. A plaintiff or respondant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more respondants according to their respective liabilities.

- ii. *Separate Trials*. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim, and may order separate trials or make other orders to prevent delay or prejudice.
- e. *Misjoinder and Non-Joinder of Parties*. Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.
- f. *Interpleader*. Persons having claims against the plaintiff may be joined as respondants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It cannot be asserted that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff maintains that the plaintiff is not liable in whole or in part to any or all of the claimants. A respondant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule C-11(d).

## **RULE C - 12. INTERVENTION**

a. *Intervention of Right*. Upon timely application, anyone shall be permitted to intervene when the applicant shows that it has a claim of interest relating to the property or transaction which is the subject of the action, so long as the Tribal Court approves.

#### **RULE C - 13. SUBSTITUTION OF PARTIES**

If a party dies or becomes incompetent or transfers her/his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

#### **RULE C - 14. MOTIONS PRACTICE**

a. *Motions and other Papers*. An application to the Court for an order shall be by motion or by petition 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. Submission of a motion or petition shall be deemed a request that the Court set the motion or petition for hearing and rule on the request.

- b. Scope and Application. This rule shall govern all civil motions.
  - i. Motions can seek to dispose of all or part of the claims or parties, except motions for default judgment which seeks to end the case before final judgment. Motions which dispose of a claim or party include a motion to dismiss, (a party or claim), and a motion for summary judgment. Other motions, include motions to compel or exclude discovery, motions to add a third party, motions for temporary relief such as an injunction, and motions for amendment of pleadings.
- c. *Hearing Date; Notice to Parties*. Upon the filing of a motion, the Clerk shall set the matter for hearing and send notice to all parties who have appeared at the address the party provided for service of notice.
- d. Motions and Petitions.
  - i. No motion or petition shall be heard until the moving party serves a copy of the following documents on opposing counsel and files the original with the Clerk of Court as ordered by the Court:
    - (1) The motion or petition;
    - (2) Any affidavits and exhibits to be submitted in conjunction with the motion; and
    - (3) Memorandum of law, as required for motions.
  - ii. The party responding to the motion shall serve a copy of the following documents on opposing counsel and shall file the originals with the Clerk of Court as ordered by the Court:
    - (1) Memorandum of law; and
    - (2) Supplementary affidavits and exhibits.
  - iii. *Reply Memoranda*. The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the Clerk of Court as ordered by the Court.
  - iv. Additional Requirement for Summary Judgment Motions. For summary judgment motions, the memorandum of law shall include:

- (1) A statement by the moving party of the issues involved in the motion for summary judgment;
- (2) A statement identifying all documents (such as depositions or excerpts thereof, pleadings, exhibits, admissions, interrogatory answers, and affidavits) which comprise the record on which the motion is made. Opposing parties shall identify in their responding Memorandum of Law any additional documents on which they rely.
- (3) A recital by the moving party, in short numbered paragraphs, of the material facts as to which there is no genuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page and paragraph of an exhibit. A party opposing the motion shall admit or deny that each numbered factual assertions contains undisputed facts, and may make additional statements, in short, numbered paragraphs, of undisputed material facts and material factual disputes. Where the party opposed to the motion makes such additional statements, the moving party shall admit or deny in like manner. Such recitals are excluded from the page limitations of this rule; and
- (4) The party's argument and authorities.
- (5) These additional requirements also apply to a motion under Rule C-14(b)(i) if factually based.
- e. *Hearing Scheduling*. Hearings will be scheduled by the Court Clerk no later than 20 days after the filing of a motion in which a hearing is required. Parties shall receive a minimum of 7 days notice for any hearing unless waived by the parties.
- f. Motions on Which No Hearing is Scheduled. If a motion is filed and no hearing date thereon is scheduled, the non-moving party(ies) have fifteen (15) days to respond to the motion, and the moving party shall have seven (7) days to file any reply. These time limits shall apply to all motions on which no hearing is scheduled unless otherwise agreed by the parties or ordered by the Court. The page limits set forth in subsection (g) shall apply to this subsection.
- g. *Page Limits*. No memorandum of law submitted in connection with a motion shall exceed thirty pages, exclusive of the recital of facts required by subsection (d)(iv)(3), except with permission of the Court. For motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests and the response or objection thereto which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed thirty-five pages, except with the permission of the Court.
- h. *Witnesses*. No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain

prior consent of the Court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses and summary of their testimony which that party intends to call at the motion.

- i. *Telephone Hearings*. When a motion is authorized by the Court to be heard by telephone conference call, and has been scheduled accordingly, the moving party shall be responsible either to initiate the conference call or to comply with the Court's instructions on initiation of the conference call. If necessary, adequate provision shall be made by the Court for a record of the telephone hearing.
- j. Settlement Efforts. No motion will be heard unless the parties have conferred, either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate the conference. The moving party shall certify to the Court, before the time of the hearing, compliance with this rule or any reasons for inability to comply, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the Court.
- k. *Time limits for Injunctions and Temporary Restraining Orders*. This Rule shall not apply to motions or applications for injunctions or temporary restraining orders. Briefing and hearing schedules for motions or applications for injunctions or temporary restraining orders shall be set by the Court on a case-by-case basis.

#### **RULE C - 15. DISCOVERY**

- a. Stipulations Regarding Discovery Procedure. Both Parties shall submit to each other copies of all documents relevant to the issue at hand at least 12 days prior to the scheduled hearing. Such documents shall include anything to be presented at the hearing including testimony transcripts, photos, or any other tangible elements to be utilized in the Tribal Court process by either party. The work product of a party's counsel is not discoverable. Request for Admissions are allowed, however interrogatories will not be used in Tribal Court.
- b. *Use of Discovery*. Material obtained through discovery may be used in a motion, hearing, or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose as if the witness were present at the motion, hearing, or trial. Unless used as evidence, discovery documents need not be filed with the Court.
- c. Failure to Provide Discovery; Motion to Compel. 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 non-defaulting 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.

- d. *Persons before whom Depositions may be Taken*. The Tribal Court prefers that each witness testify in person at hearings or by telephone when authorized, therefore deposition requests must be petitioned for by submitting an affidavit to the Court stating why the proposed deponent is unable to attend a hearing.
- e. *Physical and Mental Examinations of Persons*. The court where the action is pending may order a party whose mental or physical condition, or DNA is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.
  - i. Motion and Notice; Contents of the Order. The order:
    - 1. May be made only on motion for good cause and on notice to all parties and the person to be examined; and
    - 2. Must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.
    - 3. Require an Examiner's Report.

### ii. Request by the Party or Person Examined.

The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

#### iii. Contents.

The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

#### iv. Request by the Moving Party.

After delivering the reports, the party who moved for the examination may request — and is entitled to receive — from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

## v. Waiver of Privilege.

By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have — in that action or any other action involving the same controversy — concerning testimony about all examinations of the same condition.

vi. Failure to Deliver a Report.

The court on motion may order — on just terms — that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

f. *Discovery Hearing*. Issues regarding discovery which include: protective orders, motions to compel, depositions, physical and mental exams, or any other discovery issue shall be heard by the court at a discovery hearing. Parties seeking a discovery hearing must file a motion with the Court Clerk. Discovery hearings will be held no later than 20 days after filing with the Court Clerk.

#### **RULE C - 16. DISMISSAL OF ACTIONS**

- a. On Motion of Plaintiff. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss, or for summary judgment of such claim, the party making the claim may file a notice of dismissal and her/his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss her/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 her/his claim independently without undue additional hardship.
- b. *Other dismissals; effect*. Dismissal other than those moved by plaintiff shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise.
- c. *Costs on dismissal*. The Court may order a party moving to dismiss her/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 C - 17. PRETRIAL MEETINGS**

- a. Setting Pretrial meeting. Upon written request of either party or upon the Court's own motion, the Court may schedule a pretrial meeting between the parties, and their counsel, if any. Such meetings may be held or requested either before or after the case is scheduled for trial.
- b. Scope of issues at Pretrial Meeting. During such meetings the parties and the Judge may consider any matters which will aid in the simplification, clarification, or disposition of the case. The parties and the Judge may develop procedures to be followed at the trial. The Judge may encourage the parties to explore the possibility of settling their dispute and the Judge may participate in settlement discussions to the extent that her/his impartiality at any eventual trial will not be affected.

c. *Memorandum of Actions Taken at Pretrial Meeting*. The parties shall prepare a written memorandum of each pretrial meeting setting forth the actions taken at the meeting. Copies of this memorandum shall be distributed to the parties.

#### **RULE C - 18. TRIALS**

- a. *Trial by Court; exceptions*. Unless otherwise provided by law, all trials shall be tried by a judge.
- b. Assignment of Trial Judge. The Chief Judge shall determine which judge shall preside over a case.

## **RULE C - 19. 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 C - 20. EVIDENCE**

- a. *Admissibility of Evidence*. Evidence is admissible if it will assist the Tribal Court Judge or other tier of fact to discover and determine the truth or to determine the relief appropriate to repair relationships, achieve substantial justice, or restore balance to the community in accordance with the customs and traditions of the Tribe.
- b. *Proof of Official Documents*. Official documents of the Tribe or a copy thereof shall be admitted into evidence if they are relevant and if an official having custody or official knowledge thereof certifies under penalty of perjury, whether in Court or by affidavit, that the document or copy thereof is a true and correct representation of what it purports to be.
- c. Offer of Proof. In an action tried by the Court, the judge may receive such excluded testimony into the record.

## **RULE C - 21. SUBPOENAS; WITNESSES**

a. *Subpoenas*. Subpoenas for attendance of witnesses or production of documents or things at deposition or trial may be signed by the Clerk of Court or by counsel of record in an action. Subpoenas must be served as provided for in Rule C-4. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Court and amenable to civil sanctions.

- b. *Witnesses*. A party may call any person who is competent to testify as a witness and examine any witness so called on any matter relevant to the action. A party may impeach her/his own witness. A witness may be called to testify if the witness is present, even if the witness was not subpoenaed.
- c. *Oath.* Prior to testifying, the witness must subscribe to the following oath or affirmation:
  - "I, \_\_\_\_\_\_\_ do solemnly swear [or affirm] that the testimony I give will be the truth and will include all necessary, helpful, and relevant facts such that the Court may make a proper, informed, and just decision."
- d. *Leading questions*. A party may use leading questions against an adverse party or hostile witness, when such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate, and in cross-examination which is within the general scope of topics discussed in direct examination.

#### RULE C - 22. FINDINGS BY THE COURT

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. Findings of fact and conclusions of law may be written or may be orally stated on the record. Upon its own motion or the motion of any party within ten (10) days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly. Upon receipt of a motion to amend judgment, the non-moving party wishing to file a response shall do so within ten days, but shall not be required to file a response.

## **RULE C - 23. JUDGMENT; COSTS**

- a. *Judgment defined*. A judgment includes any final order and no special form of judgment is required.
- b. *Judgment upon multiple claims or involving multiple parties*. 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 the claims as determined by the Court. Absent such a finding, an order or decision will not terminate the action for any of the claims until all claims have been finally decided.
- c. Scope of Permitted Judgment. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several plaintiffs; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves. 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*. The Court may allow necessary costs and disbursements to the prevailing party or parties upon the filing of a verified memorandum of her/his costs and necessary disbursements within fourteen (14) days of the entry of judgment and serving a copy of such on the opposing party. If such are not objected to within ten (10) days, they shall be deemed to be a part of and included in the judgment rendered. The Tribe shall be exempt from any and all court fees.
- e. *Counsel's fees*. The Court shall not award counsel's fees in a case unless such have been specifically provided for by Tribal law, contract, or agreement of the parties to the 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 or if the Court determines that such award is appropriate in equity.

#### **RULE C - 24. 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, her/his default may be entered by the Clerk and judgment by default granted. Once the default is entered, no further notice to the defaulting party of any action taken or to be taken need be given.
- b. *Judgment*. Judgment by default may be entered by the Court without a hearing 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. Otherwise, judgment by default can be entered only upon receipt of whatever evidence the Court deems necessary to establish the relief which should be provided.
- c. Setting aside default. The Court may, for good cause shown, set aside either an entry of default or a default judgment.

## **RULE C -25. SUMMARY JUDGMENT**

Any time twenty 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.

#### **RULE C - 26. DECLARATORY JUDGMENT**

In a case of actual controversy within the jurisdiction of the Dry Creek Rancheria Band of Pomo Indians Tribal Court, the Court may, upon the filing of an appropriate pleading, declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The

Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

#### RULE C - 27. ENTRY AND SATISFACTION OF JUDGMENT

- a. Signature. All judgments shall be signed by the judge and filed with the Clerk.
- b. *Entry*. 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 register of actions and the judgment docket. The Clerk shall provide notice of entry of judgment to all parties without counsel or to all counsel if parties are so represented. An award of costs or fees need not be contained within the judgment, and costs and fees may be awarded by subsequent order of the Court.
- c. *Judgment after death*. If a party dies after hearing 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 debt owed by the debtor by executing under oath and filing an acknowledgment of satisfaction of the debt. This is done by specifying the amount paid and whether it is a full or partial satisfaction of the debt. A judge may order the entry of satisfaction for proof of payment if the creditor fails to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount paid in the court's register. This action may be completed by the debtor or creditor's representative as well.
- e. Renewal of judgment. A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as a debt. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained anytime prior to the expiration of eight years and will extend the period of limitations an additional eight years, provided that only one renewal of the judgment may be granted.

## RULE C - 28. NEW TRIALS; AMENDMENTS OF JUDGMENT

- a. *Time and Grounds*. Any party may petition for a new trial on any or all of the issues presented by filing and serving a motion not later than ten days after the entry of judgment, for any of the following causes:
  - i. Error or irregularity which prevented any party from receiving a fair trial; or
  - ii. Accident or surprise, or newly discovered evidence which ordinary prudence could not have revealed to produce at trial; or
  - iii. Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice; or

- iv. Error in law.
- b. *Supporting papers*. Parties may include memoranda or affidavits in support of their motions to which responsive memoranda and affidavits shall be allowed.
- c. Court authority to act sua sponte (on its own initiative). The Court may, on its own initiative, not later than ten days after entry of judgment, order a new trial on any grounds which may be asserted by a party to the action, and shall specify the reasons for so ordering.
- d. *Motion to alter or amend*. A motion to alter or amend a judgment shall be filed and served no later than ten days after entry of the judgment.

#### RULE C - 29. 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.
- b. *Relief based upon grounds other than clerical mistake*. Upon motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or her/his legal representative from a final judgment, order, or proceeding for the following reasons:
  - i. Mistake, inadvertence, surprise, or excusable neglect;
  - ii. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial within 10 days after the judgment;
  - iii. Fraud, misrepresentation, or other misconduct of an adverse party;
  - iv. When, for any cause, the summons in an action has not been personally served upon the respondant and the respondant has failed to appear in said action;
  - v. The judgment is void;
  - vi. The judgment has been satisfied, released, or discharged; or a prior judgment should have prospective application; or
  - vii. Any other reason justifying relief from the operation of the judgment.
- c. *Time for motions*. The motion shall be made within a reasonable time and for reasons specified in subsection (b), not more than 20 days after the judgment, order, or proceeding was entered or taken. A motion under subsection (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 C - 30. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

- a. *Immediate enforcement*. Proceedings to enforce a judgment may commence immediately upon the entry of such judgment, unless the Court in its discretion, directs otherwise.
- b. Stay on motion for new trial or to alter judgment. In its discretion, the Court may stay the execution of or any proceedings to enforce a judgment pending the ruling on a motion for: a new trial, to amend a judgment, for an amendment to the findings, or for additional findings.
- c. Stay of judgment as to multiple claims or multiple parties. When a Court has ordered a final judgment on some but not all of the claims presented in the action, 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.
- d. *Posting and waiver of bond.* 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 amount as the Court may order, is equivalent to the filing of the undertaking.

#### **RULE C - 31. INJUNCTIONS**

- a. *Preliminary injunction; notice*. No preliminary injunction shall be issued without notice to the adverse party.
- b. *Temporary restraining order; notice*. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified petition or complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall:
  - i. be endorsed with the date and hour of issuance;
  - ii. be filed forthwith in the Clerk's office and entered of record:
  - iii. define the injury and state why it is irreparable and why the order was granted without notice;

iv. expire by its terms within such time after entry, not to exceed fifteen days, as the Court fixes, unless within the time 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 reasons for the extension shall be entered of record.

- c. *Time for hearing*. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if she/he does not do so, the Court shall dissolve the temporary restraining order. On two 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 may appear and move its dissolution or modification; in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.
- d. Security. Except as otherwise provided by law, no restraining order or preliminary injunction shall be issued except upon the giving of security by the applicant, in such sum 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 Dry Creek Rancheria Band of Pomo Indians, 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. Nothing in this section shall be construed to give the Dry Creek Rancheria Band of Pomo Indians Tribal Court jurisdiction over the United States or its employees operating within the scope of their employment.
- e. *Bond*. A surety upon a bond or undertaking under this rule submits herself/himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as her/his agent upon whom any paper affecting her/his liability on the bond or undertaking may be served. Her/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
- f. *Order*. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not reference to the petition or complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, counsels, or attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- g. Grounds for granting. An injunction may be granted:

- i. 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 commencement or continuance of some act complained of, either for a limited period or perpetually;
- ii. When it appears from the pleadings or by affidavit that the commencement or continuance of some act during the litigation would produce irreparable injury to the party seeking injunctive relief;
- iii. When it appears during the litigation 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 subject matter of the action, and tending to render the judgment ineffectual;
- iv. In all other cases where an injunction would be proper in equity.

#### **RULE C - 32. EXTRAORDINARY WRITS**

- a. *Grounds for granting*. Where no other plain, speedy, and adequate remedy exists, relief may be obtained by seeking an extraordinary writ which may be granted for any one of the following grounds:
  - i. 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 her/his office; or
  - ii. Where an inferior tribunal, board, or officer exercising judicial or ministerial functions has exceeded its jurisdiction or abused its discretion; or
  - iii. 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 she/he is entitled and from which she/he is unlawfully excluded by such inferior tribunal, board or person; or
  - iv. Where the relief sought is to stop 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.
- b. *Sovereign immunity*. No extraordinary writ may issue against the Tribe, or Tribal officer or official, or any entity owned by the Tribe in its governmental capacity absent an unequivocally expressed waiver of the Tribe's sovereign immunity from suit.

#### RULE C - 33. EXECUTION OF JUDGMENT

- a. Execution on Personal Property. If within thirty days after entry of a judgment awarding money damages and/or costs against a party, it is made to appear to the Court that the judgment debtor has 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 an examination of the debtor as outlined in section (b).
- b. *Examination of Debtor*. The Court shall order the judgment debtor to appear before it and answer under oath regarding all her/his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the debtor to liquidate such assets and pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance.
- c. Seizure of Property; limitations. 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. Ceremonial regalia, basketry, and other traditional items used for cultural or religious purposes are exempt from seizure. Only property of the judgment debtor herself/himself may be subject to execution and not property of her/his family or trust property of the Tribe.

#### **RULE C - 34. GARNISHMENT OF WAGES**

- a. Garnishment Action Procedure. Judgment Required. A creditor shall begin a garnishment action against an employee of the Dry Creek Rancheria Band of Pomo Indians, the Tribe's Gaming Operation, or independent contractor contracting with either entity, by first obtaining a final judgment from an appropriate court. A garnishment action under this section shall not begin unless the creditor has: (1) already obtained a valid final judgment and can show proof of judgment to the Court Clerk and (2) the debtor has failed to pay the creditor the agreed upon amount within 40 days of the judgment.
- b. *Filing Action*. The creditor shall be responsible for notifying the Court Clerk of its intent to begin the garnishment action.
  - i. A written notice shall be mailed or given to the Court Clerk indicating the creditor, the intended respondent, the reason for the claim and the amount of the claim.
  - ii. The Court Clerk shall, within 20 days, set a date and time for a garnishment hearing. The date for the hearing shall be within 60 days of receipt of the first notification to the Court Clerk.

- iii. It is the responsibility of the Court Clerk to notify the creditor, respondent, and any other parties in interest as to the date, time, and place of the garnishment hearing.
- c. *Hearing*. The Tribal Court shall establish a designated date, time, and place to hear evidence in order to render a determination as to the validity of a claim by the creditor in a garnishment action and the amount of the garnishment order to be entered. Hearings shall not be utilized to challenge the validity of the final judgment other than the authenticity of the document. The time may be used to resolve one or more deduction claims of one or more employees. However, each claim shall be heard and determined separately. This hearing will be known as the Garnishment Hearing.
- d. *Final Decision*. The Tribal Court will make the final decision as to the garnishment action within 10 days of the garnishment hearing and notify by formal order all parties within 15 days of the decision.
- e. *Representation*. The respondent and creditor may represent themselves or be represented by someone to speak on their behalf, if they so choose. Representatives shall comply with Rule G-5, Admission and Regulation of Legal Counsel.
- f. *Notice of Garnishment*. The Tribal Court will notify the appropriate Fiscal Department or Payroll Department should a decision to garnish an employee's compensation be made. The notice shall contain the amount to be garnished, how long the garnishment will take place, or the number of garnishments and any related fees authorized under the Tribal Court Rules.
- g. *Garnishment Implementation*. The Departments shall begin garnishments within 20 days of notification of the judgment. The Department shall then: Send to the creditor the allowable amount garnished from the employee's paycheck following each payroll period and notify the employee and creditor when the garnishments are terminated.
- h. *Records*. The Court Clerk shall keep complete records of all garnishment actions that are started/and or completed. The records shall contain: Correspondence and notices to all parties involved; bookkeeping records; garnishment evidence presented by all parties; decisions made by the hearing officer.
- i. *Filing Fees*. At the time of the creditor's first notice to the Court Clerk, the creditor shall pay a fee of \$25.00 which shall be known as the Garnishment Action Fees. The Court Clerk is not required to begin any action on the claim until the fee is paid. The fee shall be charged to the respondent should a decision be made to garnish. The fee will be applicable in each case, except that in cases where indebtedness is with a department, program or enterprise of the Dry Creek Rancheria Band of Pomo Indians.
- j. *Administrative Fee*. An administrative fee of \$5.00 shall be deducted monthly along with the ordered garnishment until the amount claimed is paid in full. This fee is to cover the cost of garnishing as expected by the Fiscal or Payroll Department.

k. Amount of Garnishment. The Tribal Court may order an employee's compensation to be subject to a garnishment of up to twenty percent of the employee's disposable weekly wage, the remainder to be identified as a protected subsistence allowance. Provided that, in calculating twenty percent, the Tribal Court shall not include amounts garnished regarding child support orders. The employee may voluntarily request more to be deducted. The request shall be made directly to the Fiscal Department. It is presumed that the beginning amount to be deducted in any garnishment hearing shall begin at twenty percent of the employee's weekly wages. The respondent is responsible for presenting evidence that it is unreasonable to require the full twenty percent be deducted.

l. *Garnishments by the State of California*. The Tribe and the Tribal Court will honor all garnishments by the State of California for employees at the Tribe's Gaming Operation as described in the 2008 Amended Tribal-State Gaming Compact at Section 10.3, subdivision (d). The amount of the garnishment will not be subject to modification by the Tribal Court as outline in Section (k) above.

#### **RULE R-1. REPOSSESSION**

- a. *Jurisdiction*. The Tribal Court shall have jurisdiction over all claims by creditors for the return of personal property located within the Rancheria in which the creditor has a security interest as a result of a consumer credit transaction and where the debtor has defaulted. Such property shall not be returned except in accordance with this section. This section applies to repossession of consumer goods in which the creditor has a security interest. It is limited to consumer credit transactions and does not apply to commercial transactions.
- b. Self-Help Repossession Prohibited; Pre-Judgment Repossession Prohibited. Self-help repossession to obtain personal property of residents of the Dry Creek Rancheria Rancheria is prohibited. Repossession prior to judgment is also prohibited. To obtain personal property in which the creditor has a valid security interest, the creditor must comply with the procedures for repossession in this chapter. A waiver of the right to bring an action for wrongful repossession is prohibited and shall have no effect.
- c. Consent of the Debtor. A creditor may obtain without Court proceedings the return of personal property in which the creditor possesses a valid security interest where the debtor has defaulted if the creditor obtains the written consent of the debtor. The debtor must consent freely and knowingly. Consent obtained by fraud, force, harassment, or intimidation, have no effect. If no consent is given, the creditor may obtain the property only through the procedures in this Rule. Violations of this provision are subject to the civil penalties set forth in subsection (g) of this Rule.
- d. *Types of Cases in Which Repossession is Allowed*. Repossession may be sought only by a creditor who retains a valid security interest in the personal property at issue as a result of a consumer credit transaction. An unsecured creditor has no right to the property.

e. *Election of Remedies*. A creditor may elect to seek the return of the property or the money due on such property, but both remedies may not be pursued at the same time. Where the debtor has paid sixty percent (60%) or more of the cash price or loan, a creditor may not seek return of the property. Where money due on the property is sought, the parties shall comply with the Rules of the Court in maintaining the action. In the event of a money judgment, the creditor may enforce such judgment through any method provided in this Code.

## f. Procedure for Repossessing Property

## 1. Commencing an Action

A creditor shall file a written complaint with the Clerk of Court containing a concise statement of the creditor's claim against the debtor; a statement of the "creditor's interpretation of the contract, agreement, or other document entitling the creditor to possession of the property; a specific description of the property and a specific description of its location to the best knowledge, information and belief of the creditor; a statement of the value of the property, the amount paid by the debtor and the amount due; and such additional information necessary to state a claim and the relief sought. A verified copy of the contract, agreement, or other document entitling the creditor to possession shall be attached to the complaint. The complaint shall be served on the debtor in accordance with the rules for service of process.

#### 2. Written Response

Within twenty (20) days of receipt of the complaint, the debtor may file a written response containing: a denial or admission of the facts in the petition; an explanation of the facts denied and a concise statement of the debtor's version of the dispute; such other defenses as the debtor may have; and any counterclaims or cross-claims. The response shall be served on the creditor in accordance with the rules for service of process.

#### 3. Temporary Restraining order

At any time prior to a hearing on the complaint, the creditor may seek a temporary restraining order enjoining the debtor from damaging, removing or disposing of the property in order to preserve the rights of the parties and the status of the property. Such a request must be accompanied by an affidavit containing specific facts showing there is reasonable cause to believe the property may be lost, damaged, or moved off the Rancheria prior to a regularly scheduled hearing. The Court shall immediately review such a request and may order the property to be picked up and held pending a hearing in the matter. In such a case, the Court shall expedite the hearing, provided at least three (3) days notice is given the debtor. The creditor shall pay all costs incurred in picking up and holding the property.

## 4. Notice and Hearing

After reasonable notice to the debtor, the Tribal Court shall hold a hearing in the matter. The notice of hearing shall inform the debtor of the right to present evidence and testimony opposing the complaint, and that failure to appear may result in a judgment by default. At the hearing, both the creditor and debtor may present evidence, witnesses, and legal argument relevant to the dispute.

## 5. Repossession Judgment

If the Court is satisfied that the creditor is entitled to repossess the property a repossession judgment shall be entered.

#### 6. Deficiency Judgment

Where a repossession judgment is entered and the value of the property at sale is less than the debt due, the creditor thereafter may seek a deficiency judgment, provided that he has indicated in his complaint that a deficiency judgment will be sought, and provided that the creditor provides evidence of the value of the property through an appraisal or other means and the Court makes a determination of value. The amount of the deficiency judgment shall not exceed the amount of the debt less the value of the property, regardless of the amount obtained for the property at sale.

#### g. Civil Penalties for Violation

#### 1. Civil Damages and Penalty - Creditor

If a creditor violates any provisions of this Rule, the debtor has a cause of action to recover actual damages and a right to recover from the person violating this Chapter a civil penalty in an amount determined by the Court. No action may be brought more than two (2) years after the violation.

#### 2. Civil Damages and Penalty - Debtor

If a debtor takes any deliberate action to reduce the value of the property subject to repossession after a repossession complaint has been filed, the creditor has a cause of action to recover the amount by which the property has been reduced in value and a right to recover from the person violating this Rule a civil penalty in an amount determined by the Court.

#### 3. Action by the Tribe

Any creditor who violates this Rule is subject to exclusion from the Rancheria and/or denial of business privileges by the Dry Creek Rancheria Band of Pomo Indians. No action shall be taken by the Tribe without notice and hearing.

## **CERTIFICATION**

The foregoing Dry Creek Rancheria Tribal Co 2013 with a quorum present and have not been	ourt Rules were codified and approved on June 21, n rescinded or amended in any way.
Harvey Hopkins Chairman	Date
Margie Rojes Secretary/Treasurer	Date