

**RULES OF CIVIL PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 12**

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GENERAL PROVISIONS

12.01 Policy. The purpose of this Chapter is to provide procedures to govern all civil actions and special proceedings commenced in the Klamath Tribal Courts. The Klamath Rules of Civil Procedure shall consist of Informal Rules of Civil Procedure and Formal Rules of Civil Procedure, and this Chapter shall determine their application.

12.02 Scope. This Chapter governs procedure and practice in the Tribal Court for all civil actions and special proceedings, whether in law or equity, except where a different procedure is specified under the Klamath Tribal Code. This Chapter also governs procedure and practice in all civil actions and special proceedings, whether in law or equity, for all other courts of the Klamath Tribes to the extent the Klamath Rules of Civil Procedure are made applicable to such courts by the Klamath Tribal Code.

12.03 Conflicts and Collateral References.

(a) In the event of a conflict between specific provisions of the Klamath Tribal Code and this Chapter, the specific provisions of the Klamath Tribal Code shall apply notwithstanding any conflicting provisions in this Chapter.

(b) Any procedures or matters not specifically set forth in this Chapter shall be handled in accordance with the Federal Rules of Civil Procedure insofar as such are not inconsistent with this Chapter, and with general principles of fairness and justice as prescribed and interpreted by the Court.

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

12.05 Application of Informal and Formal Rules of Civil Procedure.

(a) Except as otherwise provided by this Chapter or the Klamath Tribal Code, procedure and practice in all civil actions commenced in the Tribal Court shall be governed by the Informal Rules of Civil Procedure.

(b) The parties to any civil case may agree to use the Formal Rules of Civil Procedure throughout the entire case or for any part of the case, and if there is such agreement, they shall file a joint written motion to that effect, explaining the reasons for the motion. The Court shall freely grant such joint motions when to do so would be in the interest of justice, and would not result in unnecessary complexity, expense, or delay.

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(c) At any point after a complaint has been filed, any party to a civil case may make a motion to invoke the Formal Rules of Civil Procedure for the rest of the case, or for the determination of particular questions of procedure. The other party may agree to the change or may object to the use of the Formal Rules of Civil Procedure, specifying the reasons for the objection. If there is an objection, the judge shall hear argument on the issue. The judge shall grant the motion to change to the Formal Rules of Civil Procedure, if the judge determines that changing to the Formal Rules of Civil Procedure:

- (1) would be in the interest of justice;
- (2) would provide the basis for determining an issue about which there is or could be disagreement between the parties;
- (3) would provide the basis for determining an issue which, under the circumstances, is not adequately dealt with by the Informal Rules of Civil Procedure;
- (4) would not result in unnecessary complexity, expense, or delay; and
- (5) would not result in unfair advantage to either party.

(d) At any point in a civil case in which the Formal Rules of Civil Procedure are being used, either party may make a motion to return to the Informal Rules of Civil Procedure for a part of the case or the rest of the case. The other party may agree to the change, or may object to the use of the Informal Rules of Civil Procedure, specifying the reasons for the objection. If there is an objection, the judge shall hear argument on the issue. The judge shall grant the motion to change to the Informal Rules of Civil Procedure, if the judge determines that changing to the Informal Rules of Civil Procedure:

- (1) would be in the interest of justice; and
- (2) would not result in unfair advantage to either party.

(e) The judge, on his or her own initiative, may order that a change be made from one set of rules to the other, based on the same criteria established in Subsections (c) and (d) of this Section. Before any such change shall be made on the judge's own motion, the judge shall announce his or her intention to do so and provide the parties an opportunity to be heard on the matter.

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(f) Whenever the judge orders that the rules governing procedure in a case shall be changed from Formal to Informal, or vice versa, he or she shall explain the order and the reasons for its issuance. The Clerk of the Court shall note such change and the judge's reasons on the record.

12.06 Definitions. The following words shall have the following meanings under this Chapter:

- (a) "Appellant" means the party who takes an appeal;
- (b) "Appellee" means the party against whom an appeal is taken;
- (c) "Attorney" means a person admitted to practice law by any state and who is an active member in good standing with the appropriate state bar association;
- (d) "Clerk of the Court" or "Clerk" means the clerk of the Klamath Tribal Courts;
- (e) "Complaint" means the initial pleading that sets forth a claim for relief and commences a civil action;
- (f) "Counsel" means an attorney or law advocate who is licensed, or a law student who is certified under the Klamath Tribal Court Ordinance to practice before the Klamath Tribal Courts;
- (g) "Court" or "Tribal Court" means the Klamath Tribal Court;
- (h) "Defendant" means the person defending or denying and against whom relief or recovery is sought;
- (i) "Entry of Judgment" means the date the judge signs the final decision in a civil action in the Tribal Court;
- (j) "Final Judgment" means a judgment, order, or decision by the Tribal Court that ends litigation on the merits and/or finally disposes of the issues involved in a civil action or proceeding, whether disposing of the entire controversy or a part thereof; *provided* that a judgment, order, or decision as to a part is final only if no future action by the Tribal Court is necessary to settle and determine the entire controversy;
- (k) "Klamath Reservation" means all land, the title to which is either held in trust by the United States for the Klamath Tribes, held by the Klamath Tribes or a member of the Klamath Tribes subject to a restriction by the United States, and all other lands that may hereafter be

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acquired or conveyed to, or held in trust for the benefit of, the Klamath Tribes, whether by purchase, gift, act of Congress, or otherwise;

(l) "Klamath Tribal Code" means the Klamath Tribal Code, as adopted by the General Council of the Klamath Tribes;

(m) "Klamath Tribal Lands" means all Klamath Reservation land and all other lands that may hereafter be acquired or conveyed in fee to the Klamath Tribes, whether by purchase, gift, act of Congress, or otherwise;

(n) "Klamath Tribal Law" means the Constitution and By-Laws for the Klamath Tribe, the Klamath Tribal Code and any rules promulgated thereunder, other ordinances and enactments of the General Council, and Klamath Tribal Common Law;

(o) "Klamath Tribes" means the Klamath Tribes of Oregon, a federally-recognized Indian tribal government;

(p) "Motion" means a written application or spoken request to the Tribal Court or a judge thereof to obtain a ruling or order directing some act to be done in favor of the applicant;

(q) "Order" means every ruling of the Tribal Court;

(r) "Party" or "Parties" means a person or persons named as a participant in any civil proceeding in the Tribal Court;

(s) "Person" means an individual natural person, trust, firm, association, partnership, limited liability company, public or private corporation, political subdivision, government agency, municipality, industry, or any other entity whatsoever;

(t) "Plaintiff" means a person who brings a civil action in the Tribal Court seeking relief for an injury to his or her rights;

(u) "Pleading" means the written claims, allegations, responses, defenses, and requests of the parties, filed by a party with the Tribal Court;

(v) "Service" means the delivering to or leaving of a document with the party for whom it is intended and, when it is so delivered in accordance with this Chapter, it has been served;

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(w) "Summons" means the instrument directing a process server to notify the defendant(s) named that a civil action has been commenced against him or her and that he or she is required to appear and answer; and

(x) "Third-Party Practice" means a procedure in which a party may bring into the action as a party, an additional person who is or may be liable for all or part of the plaintiff's claim.

12.07 Limitation of Actions.

(a) Except as otherwise provided in the Klamath Tribal Code, a civil lawsuit in the Tribal Court must be started:

(1) in the case of torts and oral contracts, and actions not otherwise provided for herein, within two (2) years;

(2) in the case of causes of action based upon statute, within one (1) year; and

(3) in the case of written contracts, five (5) years.

(b) The time within which a civil lawsuit must be filed shall be counted from the date on which the injury or breach was first known to the injured party or should have been known to a reasonably aware person in the position of the injured party.

(c) For the purpose of meeting a deadline established in this Section, a civil suit is started when the complaint is filed with the Clerk of the Court.

12.08 Gender. Any noun or pronoun used in this Chapter shall refer to any gender and to any number as the context requires or permits.

12.09 Sovereign Immunity. Except as expressly and specifically waived by resolution of the Klamath Tribes or by Klamath Tribal Law, the Klamath Tribes shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties. Nothing in this Chapter shall be deemed to waive such immunity.

12.10 Severability. If any provisions of this Chapter or the application of any provision to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of this Chapter and its application to any other person or circumstances and, to this end, the provisions of this Chapter are severable.

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12.11 Filing and Notice.

(a) The original of every written complaint, answer, summons, motion, argument, agreement, order, or other document served upon a party during a case in the Tribal Court shall be filed with the Clerk of the Court.

(b) A party who files any document with the Clerk of the Court in a lawsuit shall give a copy of the same document to every other party in the case. If a party is represented by counsel, all documents except the complaint and summons shall be given to counsel, instead of the party. Delivery of a copy as required by this Section may be made either by giving it to the party or counsel in person or by mailing it first class, postage paid, to the correct address of the party or counsel.

(c) Every decision and order of the Court shall be written down by the judge or Clerk of the Court, and signed by the judge. The Clerk of the Court shall file a copy and give or send a copy of each such ruling to each party and counsel in the case.

12.12 Timing.

(a) Whenever an Informal Rule of Civil Procedure, Klamath Tribal Law, or an order of the Court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted; but the last day shall be counted unless it is a Saturday, Sunday, or tribal holiday. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted. Where the time limit is less than seven (7) days, Saturdays, Sundays, and tribal holidays shall not be counted at all.

(b) When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three (3) days after the notice is postmarked by the United States Postal Service.

(c) On request of a party, and if good cause exists, the judge may allow an extension of any time limit prescribed by an Informal Rule of Civil Procedure; *provided* that the judge may not extend the time limit for filing an appeal or for asking the judge for a rehearing, reconsideration, vacation, or modification of a judgment.

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12.13 Oral Procedures. Unless otherwise specified by these Informal Rules of Civil Procedure, or ordered by a judge, motions, arguments, discovery requests, and other actions taken by the parties during the course of a lawsuit may be oral or written. Oral actions taken by the parties, in order to be enforceable by the Court, shall take place in open court in the presence of the judge and all parties.

12.14 Form of Court Papers. All written materials submitted to the Court must be clear and legible and shall contain the name of the Court, the names of all parties, the Court file number for the case, the signature of the party filing it or of the party's counsel, and any other information required by these Informal Rules of Civil Procedure. For convenience the Court may develop standard forms for pleadings, motions, notices, and orders.

12.15 Proof of Service. For all materials and documents required to be served under these Informal Rules of Civil Procedure, a person serving such materials or documents shall file a proof of service with the Clerk of the Court. The proof of service shall indicate the type of document served, the date and place of service, and the name of the person served, and shall be on the form provided for that purpose by the Tribal Court.

12.16 Commencement of a Lawsuit: Complaints, Service, Summons, and Filing Fees.

(a) A person who wishes to start a civil lawsuit in the Tribal Court shall first file a written complaint with the Clerk of the Court. The person who has filed the complaint shall be known as the plaintiff in the lawsuit. The complaint shall describe the injury or breach the plaintiff is complaining of, the name of the person responsible for such injury or breach, who shall be known as the defendant, and state the relief requested. The plaintiff shall sign the complaint.

(b) After the plaintiff has filed the complaint, the Clerk of the Court shall issue a summons directing the defendant to answer the complaint within twenty (20) days of the time defendant receives the complaint and summons. The summons shall be on the official form provided by the Tribal Court and shall inform the defendant that if he or she fails to answer timely, a default judgment may be entered against him or her for the relief requested in the complaint.

(c) Within ninety (90) days after the plaintiff files a civil complaint, the plaintiff shall cause a copy of the complaint, together with the summons, to be served upon (delivered to) each defendant named in the complaint. It may be served either by giving it to the defendant directly or by leaving it at the defendant's residence or place of employment with a suitable person that is at least fourteen (14) years old who lives or works there.

(d) Personal service may be made on Klamath Tribal Lands by any authorized person who

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is at least age eighteen (18) that has no stake in the outcome of the lawsuit. Personal service off Klamath Tribal Lands shall be made by a person authorized to serve process under the laws of the state or Indian reservation where such service is made.

(e) The person who delivers the complaint shall sign and file a proof of service with the Clerk of the Court.

(f) Every person who files a civil lawsuit shall pay at the time of filing a fee of fifty (\$50.00) dollars or such other fee as may be established by rule of court; *provided that*, in no event shall the Klamath Tribes, or any officer or agent of the Tribes, be required to pay a filing fee for actions filed in the Tribal Court to enforce Klamath Tribal Law.

(g) Any person who is unable to pay the filing fee required in Subsection (f) of this Section may file with his or her complaint a motion for leave to proceed in *forma pauperis*, which shall be accompanied by a signed affidavit stating his or her inability to pay, the issues he or she intends to bring in the lawsuit, and his or her belief that he or she would win the lawsuit. If the motion is granted, the person may proceed without payment of the filing fee. If the motion is denied, the Court shall state in writing the reason for the denial and order the party to pay the filing fee within five (5) days or the complaint will be dismissed. The Clerk shall cause the judge's order to be served on the person.

12.17 Amendment, Withdrawal, or Dismissal of the Complaint.

(a) A plaintiff may change the complaint without Court permission at any time before the defendant answers it, as long as a copy of the changed complaint is delivered to all parties according to the rules set forth in this Chapter governing complaints. After the defendant has answered the complaint, the judge may still allow the plaintiff to change the complaint as long as allowing the change would not be unfair to defendant.

(b) The judge shall allow the plaintiff to withdraw the complaint and shall dismiss the case at any time the plaintiff requests unless the defendant has counterclaimed against the plaintiff or dismissal of the case would otherwise be unfair to the defendant. The judge may order a plaintiff who withdraws a complaint to pay all costs of the suit to the defendant.

12.18 Defenses, Answers, and Counterclaims.

(a) Within twenty (20) days after the defendant receives a copy of a civil complaint and summons, he or she must do all of the following: answer the complaint in writing, sign the answer,

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file it with the Clerk of the Court, and cause it to be served upon the plaintiff following the rules for service of a complaint. The person who delivers the answer shall sign and file a proof of service with the Clerk of the Court.

(b) In addition to, or as a way of raising a defense to the complaint, the defendant may file a complaint (counterclaim) against the plaintiff, following the same rules that apply to complaints.

12.19 Preliminary Injunctions and Temporary Restraining Orders.

(a) A party to a civil suit may ask the judge for a pretrial order (injunction) prohibiting or requiring a particular action by another party to keep things as they are until the Court has a chance to reach a final decision in the case. The order shall be granted if the person requesting it shows that there is a good chance that he or she will win the suit and that he or she will suffer irreparable loss or injury if the injunction is not issued.

(b) Unless otherwise stated in the injunction, a pretrial injunction shall remain in effect until final judgment in the case.

(c) Except as provided in this Section, no pretrial injunction shall be issued unless the party to be enjoined first has notice and an opportunity to be heard in Court.

(d) A judge may issue a temporary restraining order prohibiting or requiring a particular action by a party to keep things as they are pending the Court's final decision in the case without prior notice to the party to be restrained, when the party who requests such an order shows by sworn statement or oral testimony that he or she will suffer permanent loss or injury if the order is not issued before the opposing party can be notified and heard, and that he or she made a reasonable attempt to notify the opposing party of the time when the request would be made.

(e) A temporary restraining order shall be effective only for the time period specified in the order, and in no case for longer than ten (10) days. Subject to the requirements of Subsection (d) of this Section, a temporary restraining order may be renewed once for good cause.

(f) The judge may require a party who requests a restraining order or pretrial injunction to provide security for any loss or injury that may be suffered by a party who is wrongfully enjoined or restrained; *provided, however*, that the judge shall not require such security from the Klamath Tribes or any of their branches, departments, commissions, or agencies.

12.20 Default.

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(a) Failure of a defendant to file and serve an answer upon the plaintiff within twenty (20) days after the complaint was served shall be a default and shall provide grounds for judgment against the defendant as asked for in the complaint. No judgment of default shall be made, however, unless the plaintiff makes a written motion for a default judgment and serves a copy of the motion on each defendant in the same manner as a complaint must be served. The motion for default judgment shall state a time, no sooner than three (3) days after service of the motion, when the plaintiff will argue the motion to the judge. If the defendant files an answer to the complaint at or before the time that the motion is to be argued to the judge, no default judgment shall be granted, and the matter shall proceed as though answered on time. If the defendant does not answer by that time, the judge shall enter a default judgment against the defendant.

(b) In granting a default judgment, the judge may refuse to grant the relief requested by the plaintiff if granting the relief would be contrary to Klamath Tribal Law or would be unjust. The judge may not grant the plaintiff greater relief on default than was requested in the complaint.

12.21 Discovery.

(a) It is the policy of the Tribal Court that the truth will be revealed more readily if all parties in a civil case have access to all information and evidence related to the case. In preparation for trial, therefore, the parties may ask each other for and shall make available to each other all information in each other's possession or control which will be used as evidence in the case, or which can reasonably be expected to lead to evidence.

(b) Methods of discovering and exchanging information may include, but need not be limited to written questions, oral examination, requests for witnesses' names, requests for admissions, physical inspection of property, requests to perform scientific or physical tests, and requests for documents. The party who makes a request under this Section shall be as clear and specific as possible in describing what he or she wants.

(c) A party may refuse to make available the information requested pursuant to this Section if its release would cause the responding party or a third person undue hardship, annoyance, or embarrassment, or would violate a confidence which is protected by a Klamath Tribal Law, custom, or official policy of the Klamath Tribes. If the parties disagree about whether the responding party is required to release the information, the judge shall decide the dispute. The judge may place conditions on the release of information in order to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise to ensure fairness to all parties.

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(d) A party who receives a request for information under this Section shall, within ten (10) days of receiving the request, respond either with the information, with an indication where and when the information will be available, or with an objection and refusal to comply with the request. Failure to respond within ten (10) days is grounds for a Court order requiring a response.

12.22 Pretrial Conference.

(a) In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the judge may, on his or her own initiative, or on the motion of any party, schedule one or more pretrial conferences with all parties to a case. In any case determined by the judge to be complex, at least one pretrial conference shall be held after the completion of discovery, and early enough to aid parties in planning for trial.

(b) The pretrial conference shall be held in an informal setting and shall be conducted without formal procedures. The parties and the judge shall discuss areas where the parties are in agreement and areas where they disagree. The purpose of the discussion shall include the following:

- (1) to identify and dispose of issues which may be resolved without trial;
- (2) to narrow and focus issues of law which remain to be decided and to identify central facts which are still in dispute;
- (3) to limit the number of witnesses and the evidence that will be presented so that testimony and other evidence is not repetitious or irrelevant; and
- (4) to avoid surprise at trial.

(c) To accomplish the above purposes, all parties to a lawsuit shall, at the pretrial conference after discovery, fully disclose:

- (1) the names and addresses of all witnesses they expect to present at trial, and the basic information to which they expect the witness to testify;
- (2) all documents they expect to introduce as evidence, and the basic information which they intend to prove with the documents; and
- (3) all objects which they intend to introduce as evidence and the basic information which they intend to prove with those objects.

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(d) No party shall be permitted to use the testimony of any witness or introduce as evidence any document or object unless they disclosed the witness, document, or object at the pretrial conference as provided in Subsection (c) of this Section, unless the party proves that, at the time of the pretrial conference, he or she was unaware of the existence or nature of the witness, document, or object and could not, with reasonable effort, have discovered it in time to disclose it. Such evidence must, in any case, be disclosed to the judge and opposing party before it is offered in the trial.

(e) No offer of settlement or other statement which is made by a party during a pretrial conference may be used as evidence against that party if settlement is not then achieved. Agreements reached as a result of a pretrial conference shall be put in writing and signed by all parties. Such agreement shall be made part of the final judgment issued by the judge.

12.23 Motions.

(a) Any questions regarding procedure or the rights of the parties that arise during a lawsuit and which cannot be settled by agreement of the parties may be presented to the judge in a motion, which is a request for an order.

(b) Motions may be made in writing or orally. If the motion is not made during and as a consequence of events at a trial or other hearing, the moving party shall notify other parties of the nature and basis of the motion and the hearing time at least five (5) days before the motion is presented in court, so the responding party has a chance to plan a response. The notice required by this Section shall be called a notice of motion, shall be in writing, and shall be served upon the party or, if the party is represented by counsel, upon the party's counsel.

(c) Motions to dismiss the lawsuit because the Court lacks jurisdiction or because the plaintiff has not started a basis for relief may be made at any time. All other pretrial motions which would determine the procedures used at trial must be made at least five (5) days before trial. The judge may deny a motion which could and should have been made earlier in the case if it appears that the moving party knew or should have known earlier about the basis for the motion and has raised it late because of negligence or an intent to harass the other party.

12.24 Compelling Witnesses to Appear; Subpoenas.

(a) Any party to a lawsuit or other proceeding in Tribal Court shall have the right to

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compel witnesses to appear in Court and testify concerning the matter.

(b) Upon the request of a party, the Court shall issue a subpoena, an order which commands a named person to appear in court and/or to bring certain evidence or documents to Court.

(c) All subpoenas shall be signed by a judge.

(d) Every subpoena shall be in writing and shall include the name of the Court, the names of all parties, the time and place that the witness must appear, and a clear and detailed description of any documents or evidence which the witness is required to bring.

(e) Subpoenas shall be delivered to the witness by a person who is at least eighteen (18) years old that has no stake in the case. The subpoena must be delivered by giving it to the witness directly.

(f) A person who delivers a subpoena shall promptly file with the Clerk of the Court a copy of the subpoena and a proof of service.

(g) Failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of Court in accordance with the Klamath Tribal Court Ordinance.

(h) Unless otherwise ordered by the judge, a witness who responds to a civil subpoena shall be entitled to a fee of twenty dollars (\$20.00) for each day or partial day that he or she must appear in Court. The judge may, in addition, order that an out-of-town witness be paid reasonable and necessary travel and living expenses incurred in responding to the subpoena. The party requesting the issuance of a subpoena must pay one day's fees to the witness upon service of the subpoena and the remainder on each day that the witness appears in Court or at such other time ordered by the Court.

12.25 Trial by Court. All civil cases shall be tried by the Court.

12.26 Order of Trial Proceedings.

(a) At the trial of a civil case, presentations shall be made in the following order unless otherwise agreed by the parties or determined at the pretrial conference:

(1) motions by either party regarding procedure at trial, evidence to be presented, jurisdiction of the Court, or the sufficiency of a claim;

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(2) evidence and statements presented by the party (the plaintiff) who filed the original complaint;

(3) evidence, statements, or motions presented by the person complained against (the defendant);

(4) motions of either party that are based on events at trial; and

(5) final arguments by both parties.

(b) At the close of trial, the judge will announce his or her decision at a hearing before the parties or may take the matter under submission and issue a written decision not later than thirty (30) days after the end of the trial.

12.27 Burden and Standard of Proof.

(a) Unless otherwise provided by the Klamath Tribal Code, the burden of proving a civil claim shall be on the party who makes the claim.

(b) Unless otherwise provided by the Klamath Tribal Code, a party to a civil case shall be considered to have met the burden of proof if more than half of the evidence presented tends to prove that party's claim.

12.28 Informal Rules of Evidence. Whenever these Informal Rules of Civil Procedure govern a civil matter, the Informal Rules of Evidence set forth in the Klamath Rules of Evidence shall govern the admissibility and use of evidence, except as otherwise agreed to by the parties or ordered by the judge to promote the purposes of this Chapter and the Klamath Rules of Evidence.

12.29 Judgments.

(a) A judgment is the final order of the Court that determines the rights of the parties to the lawsuit. The judge must announce the final judgment no later than thirty (30) days after the end of a trial.

(b) A judgment becomes final when it has been recorded in the docket book by the Clerk of the Court, which recordation shall be made promptly.

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12.30 Proceedings After Judgment.

(a) No later than ten (10) days after the judgment is final, a party may ask the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment.

(b) The judge may grant a new hearing or reconsider any change in the judgment if he or she finds at least one of the following to be true:

(1) the original judgment was based on or reached as a result of fraud or mistake of law;

(2) there is newly discovered evidence that probably would have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing of the case; or

(3) the court did not have jurisdiction over a party or over the subject matter.

(c) No later than twenty (20) days after the judgment is final, a party may appeal an adverse judgment as provided in the Klamath Rules of Appellate Procedure.

(d) No civil judgment shall be enforced earlier than ten (10) days after judgment is entered in the docket. A party appealing a judgment against him or her, or filing a motion pursuant to Subsection (a) of this Section, may make a motion requesting that the Court delay (stay) enforcement of the judgment until after such motion or appeal has been decided. The party who won the judgment may oppose the motion for a stay and/or ask the Court to require that the party asking for a stay post a bond to protect him or her from further damage, to cover costs, or to guarantee that sufficient assets are within the control of the Court to satisfy the judgment if the original winning party wins the motion or the appeal. Stays shall be granted only under the terms of this Section and the Klamath Rules of Appellate Procedure, and no stays shall be granted automatically.

12.31 Costs.

(a) Upon judgment, the judge may order the losing party to pay to the winning party the costs of the lawsuit, unless applicable law provides otherwise or the judge determines that such an order would be unjust.

(b) Costs may include civil filing fees, any costs for delivering documents required by these Informal Rules of Civil Procedure to be delivered, postage for Court notice sent to the parties,

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fees and expenses paid to witnesses and jurors, and counsel fees.

FORMAL RULES OF CIVIL PROCEDURE

**COMMENCEMENT OF ACTION; SERVICE; PLEADINGS;
MOTIONS; AND ORDERS**

12.32 Commencement of Action.

(a) There shall be one form of action known as a "civil action." A civil action is commenced by filing a complaint with the Tribal Court and serving a copy of such on the defendant or defendants as provided herein. A complaint shall be labeled a complaint, a petition, or an application.

(b) Every person who files a complaint shall pay at the time of filing a fee of fifty (\$50.00) dollars or such other fee as may be established by rule of court; *provided that*, in no event shall the Klamath Tribes, or any officer or agent of the Tribes, be required to pay a filing fee for actions filed in the Tribal Court to enforce Klamath Tribal Law.

(c) Any person who is unable to pay the filing fee required in Subsection (b) of this Section may file with his or her complaint a motion for leave to proceed in *forma pauperis*, which shall be accompanied by a signed affidavit stating his or her inability to pay, the issues he or she intends to bring in the lawsuit, and his or her belief that he or she would win the lawsuit. If the motion is granted, the person may proceed without payment of the filing fee. If the motion is denied, the Court shall state in writing the reason for the denial and order the party to pay the filing fee within five (5) days or the complaint will be dismissed. The Clerk shall cause the judge's order to be served on the person.

12.33 Summons. Upon the filing of the complaint, the Clerk of the Court shall place upon the complaint the date and hour of filing and the number of the action and shall issue a summons. The summons shall:

- (a) contain the signature of the Clerk;
- (b) contain the name of the Court;

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- (c) contain the names of the parties;
- (d) be directed to the defendant(s);
- (e) state the name and address of the plaintiff's counsel, if any, or the plaintiff's address;
- (f) show the docket number; and
- (g) inform the defendant(s) that the defendant(s) must answer the complaint within twenty (20) days after the service of the summons and complaint; and that, in the case of a failure to do so, a default judgment may be entered against the defendant(s) for the relief demanded in the complaint.

12.34 Service of Summons and Complaint.

(a) The plaintiff must furnish the person making service with a copy of the summons and complaint to be served together on each defendant. Service shall be made and/or attempted in any of the following ways:

(1) By mailing a copy of the summons and complaint first-class certified mail, return receipt requested, postage prepaid, to the person to be served. If the sender does not receive a return receipt within twenty (20) days after the date of mailing, service must be made under Subsection (a)(2) of this Section;

(2) By personal service upon the defendant(s) as follows:

(A) Upon an individual, by delivering a copy of the summons and complaint to him or her personally or by delivering copies to an agent authorized by appointment or law to receive service of process for the defendant(s). Such service shall be made only at an appropriate time (hour) between sunrise and sunset, not including Sundays or tribal holidays, except upon order of the Tribal Court on good cause shown.

(B) Upon a person who is under the age of sixteen (16) or an incompetent person, by serving the summons and complaint on a parent, guardian, or custodian of such person or, if none is found, upon any person having the care or control of the minor or incompetent or with whom he or she resides.

(C) Upon a corporation, partnership, business, or association, by delivering a copy of the summons and complaint to an officer, managing partner, general agent, or any other

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agent authorized by appointment or by law to receive service of process for the defendant(s), and by simultaneously mailing a copy by certified mail, return receipt requested, postage prepaid, to the defendant(s).

(D) Upon the Klamath Tribes, by delivering a copy of the summons and complaint to the Secretary of the Tribal Council and by contemporaneously mailing copies by certified mail, return receipt requested, postage prepaid, to the Chairman and Office of Tribal Attorney of the Klamath Tribes; *provided* that this Section shall not be construed as a waiver of sovereign immunity of the Klamath Tribes, including their subdivisions, agents, agencies, enterprises, or officers; or

(3) Upon the order of the Court for good cause shown and where personal service is not required by applicable law, by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four (4) weeks. Additionally, the plaintiff must leave a copy of the summons and complaint with the Court for each defendant.

(b) Personal service may be made on Klamath Tribal Lands by any authorized person, including but not limited to a law or other enforcement officer authorized to enforce Klamath Tribal Law. Personal service made off Klamath Tribal Lands shall be made by a person authorized to serve process under the law of the state or Indian reservation where such service is made.

(c) The person making the personal service shall file with the Clerk of the Court a proof of service, properly endorsed with his or her name, the date, time, manner, and place of service. If service is made by certified mail, upon return of the receipt, the person making the service shall file with the Clerk of the Court an affidavit stating:

(1) that a copy of the summons and complaint was mailed by certified mail to the party being served;

(2) that it was in fact received by the party as shown by the attached return receipt;
and

(3) that the genuine receipt is attached.

(d) If service is made by publication, the proof of service shall be made by filing with the Clerk of the Court an affidavit stating:

(1) that the summons was published in a local newspaper of general circulation once a week for four (4) weeks;

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- (2) the dates of publication; and
- (3) that the attached printed copy of publication is genuine.

(e) These affidavits shall be prima facie evidence of the service of summons and complaint. Failure to make proof of service does not affect the validity of the service, and the Court may in its discretion allow any proof of service to be amended unless it clearly will result in prejudice to the substantial rights of the defendant.

(f) If an individual personally refuses to accept service, service shall be deemed performed if the process server informs the person of the purpose of the service and files with the Clerk of the Court an affidavit so stating.

(g) All process may be served anywhere on Klamath Tribal Lands and, where authorized by the Klamath Tribal Code, outside such boundaries.

(h) If the plaintiff does not serve the summons and complaint upon a defendant within ninety (90) days after filing the complaint, and the plaintiff cannot show good cause why such service was not made within that period, the Court may, on its own initiative, dismiss the action without prejudice as to that defendant.

12.35 Service and Filing of Other Pleadings.

(a) Except as otherwise ordered by the Court or provided in this Chapter, every pleading, discovery request or response, motion, notice, demand, and offer of judgment shall be served upon each of the parties.

(b) Whenever a party is represented by counsel, service shall be made upon the counsel only. Service shall be made by delivering or mailing a copy to the counsel or party at his or her last known address, or by leaving it at his or her office with the person in charge. Service by mail is complete upon mailing.

(c) Except as otherwise provided in this Chapter or the Klamath Tribal Code, all pleadings after the complaint is filed with the Court shall be served upon a party either before filing or within five (5) days thereafter.

(d) The filing of pleadings and other papers with the Court shall be made by filing them

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with the Clerk of the Court, except that a judge may permit a paper to be filed with him or her. In that event, the judge shall note thereon the filing date and transmit them to the Clerk. By rule of court, the Court may permit pleadings and papers to be filed, signed, and verified by electronic means.

(e) When service of a pleading is accomplished by mail, three (3) days from the date of the postmark on the mailing shall be added to the prescribed period of time for response, and Saturdays, Sundays, and tribal holidays shall not be counted in the extended time period.

12.36 Notice of Hearings on Motions. Notice of a hearing on a motion shall be served on the parties not less than five (5) days before the time specified for the hearing.

12.37 Computing Time. In computing any time period prescribed by this Chapter, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or tribal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or tribal holiday. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and tribal holidays shall not be included in the computation.

12.38 Enlargement of Time.

(a) Except as otherwise provided in this Section, whenever this Chapter or the Court requires that an act be done at or within a specified time, the Court for good cause shown may at any time in its discretion:

(1) with or without motion or notice, order the period enlarged if a request is made before the expiration of the period prescribed, including any previously ordered extensions; or

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

(b) The Court may not extend the time for filing any of the following:

- (1) a motion for directed verdict;
- (2) a motion for a new trial;
- (3) a motion to alter or amend a judgment;

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- (4) a motion for relief from judgment or order based on mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud; or
- (5) an appeal.

PLEADINGS AND MOTIONS

12.39 Complaints and Responsive Pleadings.

(a) Complaints, counterclaims, crossclaims, and third-party complaints are “claims for relief.” “Responsive pleadings” include an answer to a complaint; a reply to a counterclaim; an answer to a crossclaim; and a third-party answer to a third-party complaint. The Court may permit or order a reply to an answer, including a third-party answer.

(b) A claim for relief shall contain:

- (1) a short and plain statement of the grounds upon which the Court's jurisdiction depends;
- (2) a short and plain statement of the facts giving rise to the action;
- (3) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (4) a request for judgment awarding the relief to which the pleader demands, which relief may be in the alternative or of several different types.

(c) A party shall state in short and plain terms his or her defenses to each claim asserted. In responding to the assertions upon which the adverse party relies, a party also shall: admit or deny either specifically or generally the assertions upon which the adverse party relies; or if he or she is without knowledge or information sufficient to form a belief as to the truth of an assertion, he or she shall so state, and this has the effect of a denial. A party may deny only a part of an assertion by specifying so much of it as true and denying the remainder.

(d) Assertions in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Assertions in a pleading to which no responsive pleading is required or permitted shall be deemed denied.

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(e) In pleading to a preceding pleading, a party must plead all applicable affirmative defenses in his or her answer, including but not limited to: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, and waiver. When a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the Court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(f) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or in separate counts. When two or more statements are made in the alternative, and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party also may state as many separate claims or defenses as he or she has, regardless of consistency and whether based on legal or equitable grounds.

(g) A party asserting a claim to relief may join, either as independent or as alternate claims, as many claims, legal or equitable, as he or she has against an opposing party. Whenever a claim is cognizable only after another claim has been prosecuted to a conclusion, a party may join the two claims in a single action. The Court shall grant relief in that action, however, only in accordance with the relative substantive rights of the parties.

12.40 Pleading Special Matters. A party must state with particularity the circumstances within the pleader's knowledge of all claims or defenses:

- (a) raising an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity;
- (b) alleging fraud or mistake; or
- (c) claiming special damages.

12.41 Form of Pleadings.

(a) Every pleading shall contain a caption setting forth the name of the Court, the title of the action and names of the parties, the Court docket number (if known), and a designation or title for the pleading.

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(b) All assertions, denials, and defenses shall be set forth in separate numbered paragraphs, and the contents of each shall be limited as far as practicable to a statement of a single set of circumstances. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts.

(c) 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. Exhibits to a pleading become a part of the pleading for all purposes.

(d) Pleadings, and exhibits insofar as possible, shall be on 8 1/2" x 11" size paper, double spaced with a 2" top margin and a 1" left side margin. Substantial compliance with this Section will be sufficient for parties not represented by counsel.

12.42 Signing Pleadings; Sanctions.

(a) Every pleading shall be signed by at least one counsel of record, whose address and telephone number shall be stated. A party not represented by counsel shall sign his or her own pleading and state his or her address and telephone number.

(b) Unless specifically required, pleadings need not be verified or accompanied by an affidavit.

(c) The signature of counsel or a party constitutes a certificate by him or her that he or she has read the pleading; that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or expense of litigation.

(d) If a pleading is not signed, the Court shall strike it unless promptly signed after the omission is called to the attention of the person whose signature is required.

(e) If a pleading is signed in violation of this Section, the Court, upon motion or its own initiative, shall impose upon the person who signed it an appropriate sanction, including but not limited to an order to pay the reasonable expenses of the other party or parties incurred because of the filing of the pleading, including but not limited to reasonable counsel fees.

12.43 Defenses and Objections -- When and How Presented By Pleading or Motion.

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(a) Except as provided herein, all answers to complaints and cross-claims must be filed within twenty (20) days after the service of the pleading to which the response is required.

(b) If a reply is ordered by the Court, the party ordered to reply shall do so within twenty (20) days after service of the order, unless the order otherwise directs.

(c) The service of a motion for judgment on the pleadings or a motion for a more definite statement by a party required to file a responsive pleading tolls the time period for filing the responsive pleading as follows, unless the Court orders otherwise:

(1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's order of denial or postponement; and

(2) if the Court grants a motion for a more definite statement, the responsive pleading shall be filed within ten (10) days after the service of the more definite statement.

(d) Except as otherwise permitted herein, every defense in law or fact to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) lack of jurisdiction over the subject matter;
- (2) lack of jurisdiction over the person;
- (3) insufficiency of process;
- (4) insufficiency of service of process;
- (5) failure to state a claim upon which relief can be granted;
- (6) failure to join a party as required by this Chapter; or
- (7) improper venue.

(e) A party does not waive a defense or objection by joining it with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at

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the trial any defense in law or fact to that claim for relief.

(f) If, on a motion asserting a failure to state a claim upon which relief can be granted or on a motion for a judgment on the pleadings, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

(g) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived unless it is raised in a motion or included in a responsive pleading or an amendment thereof as permitted by these Formal Rules of Civil Procedure.

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

(i) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join an indispensable party, and an objection of failure to state a claim upon which relief can be granted may be made in any pleading permitted or ordered, by motion for judgment on the pleadings, or at the trial on the merits.

(j) Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

12.44 Motions. A request to the Court for an order shall be by a written motion, unless made orally during a hearing or trial. All motions must contain or be accompanied by a memorandum containing a statement of the relief desired, the factual or legal grounds supporting the motion, and any other relevant matters. The Court, in its discretion, may order briefs and/or oral arguments on the motion. A party may join one or more motions then available to the party.

12.45 Motion for Judgment on the Pleadings. After the pleadings are closed, but within such time as not to delay the trial, any party may move for a judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

12.46 Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he or she may move for a more definite statement before filing his or her responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion

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is granted and a more definite statement is not filed within ten (10) days after the granting order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

12.47 Motion to Strike. Upon a motion or upon the Court's own initiative, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

12.48 Compulsory Counterclaim.

(a) A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third-parties over which the Court cannot acquire jurisdiction.

(b) The pleader need not state such claim if:

(1) at the time the action was commenced, the claim was the subject of another pending action; or

(2) the opposing party brought suit upon his or her claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating a counterclaim.

12.49 Permissive Counterclaim. 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.

12.50 Omitted and After-Acquired Counterclaims.

(a) When a pleader fails to state a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of the Court state the counterclaim by amendment.

(b) A claim that matured or was acquired by the pleader after serving a pleading may, by leave of the Court, be presented as a counterclaim by supplemental pleading.

12.51 Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one

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party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim in or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

12.52 Third-Party Practice.

(a) At any time after the commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim.

(b) When a counterclaim is asserted against a plaintiff, he or she may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the plaintiff for all or part of the counterclaim.

(c) The third-party defendant, who is the person served with a summons and third-party complaint, shall answer and defend according to this Chapter.

12.53 Amended and Supplemental Pleadings.

(a) A party may amend his or her pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading does not require a responsive pleading and the action has not been set for trial, he or she may so amend it at any time within twenty (20) days after it is served. Otherwise, a party may amend his or her pleading only by written consent of the adverse party or by leave of the Court, which shall be freely given when justice so requires.

(b) A party shall plead a response to an amended pleading within the time remaining for a response to the original pleading or within ten (10) days after service of the amended pleading, whichever is longest, unless the Court orders otherwise.

(c) Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him or her, the party to be brought in by amendment:

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(1) has received such notice of the institution of the action that he or she will not be prejudiced in maintaining his or her defense on the merits; and

(2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him or her.

(d) Upon motion of a party, the Court may, on such terms as are just, permit a party to serve a supplemental pleading setting forth events that have happened since the date of the pleading sought to be supplemented.

12.54 Pretrial Conferences.

(a) In any action, the Court may in its discretion direct the counsel for the parties and any unrepresented parties to appear for a pretrial conference or conferences to expedite the disposition of the action, establish early and continuing judicial control, discourage wasteful pretrial activities, improve the quality of the trial through preparation, and facilitate settlement of the case.

(b) In any action, the Court may, in its discretion and after consulting with the counsel for the parties and any unrepresented parties, enter a scheduling order limiting the time to complete certain actions, identifying deadlines and dates, and addressing any other appropriate matters.

(c) After any pretrial or scheduling conference, the Court shall enter an order reciting the action taken. The order shall control the subsequent course of the action.

(d) The Court may impose sanctions on a party or a party's counsel, including but not limited to an order to pay the reasonable expenses incurred because of noncompliance with this Section, if a party or a party's counsel:

- (1) fails to obey a scheduling or pretrial order;
- (2) fails to appear at a scheduling or pretrial conference;
- (3) is substantially unprepared to participate in the conference; or
- (4) fails to participate in the conference in good faith.

PARTIES

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12.55 Parties.

(a) Every action shall be prosecuted in the name of the real party in interest, except that a personal representative or other person in a trust relationship may sue in his or her name, without joining the party in whose benefit the action is brought. The Court shall not dismiss any action on the ground that is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Whenever a minor or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative, he or she may sue by his or her next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

12.56 Joinder of Persons.

(a) 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 his or her absence, complete relief cannot be accorded among those already parties; or

(2) he or she claims an interest relating to the subject of the action and is so situated that the disposition of the action in his or her absence may:

(A) as a practical matter impair or impede his or her ability to protect that interest; or

(B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

(b) If he or she has not been so joined, the Court shall order that he or she be made a party. If he or she should join as a plaintiff but refuses to do so, he or she may be made a defendant,

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or, if appropriate, an involuntary plaintiff.

(c) If a person described in Subsection (a) of this Section 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, but are not limited to:

- (1) the extent a judgment rendered in the person's absence might be prejudicial to him or her or to those already parties;
- (2) 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;
- (3) whether a judgment rendered in the person's absence will be adequate; or
- (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

12.57 Permissive Joinder of Parties.

(a) All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative with respect to 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.

(b) All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief with respect to or arising out of the same transaction, occurrence, or series transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

(c) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. The Court may grant a judgment in favor of one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(d) 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 he or she asserts no claim and who asserts no claim against him or her, and may order separate trials or make other orders to

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prevent delay or prejudice.

12.58 Misjoinder and Non-Joinder of Parties. Misjoinder of parties is not grounds for dismissal of an action. The Court, on motion of any party or of its own initiative at any stage of the action and on such terms as it deems just, may order that parties be dropped or added. Any claim against a party may be severed and proceeded with separately.

12.59 Interpleader. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counter-claim.

12.60 Intervention of Right. Upon timely application, the Court shall permit anyone to intervene in an action:

(a) when Klamath Tribal Law confers an unconditional right to intervene; or

(b) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he or she is so situated that the disposition of the action may as a practical matter impair or impede his or her ability to protect that interest.

12.61 Permissive Intervention. Upon timely application, the Court may permit anyone to intervene in an action:

(1) when Klamath Tribal Law confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

12.62 Procedures for Intervention. Any person desiring to intervene shall serve a motion to intervene upon the parties to the action stating the grounds and the claim or defense for which intervention is sought.

12.63 Substitution of Parties. If a person dies, becomes incompetent, transfers his or her interest, or separates from his or her official capacity under which an action is maintained or defended, the Court upon motion properly served on the parties may join or substitute a party as justice requires.

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DEPOSITIONS AND DISCOVERY

12.64 Discovery Methods.

- (a) Parties may obtain discovery by one or more of the following methods:
- (1) depositions upon oral examination or written questions;
 - (2) written interrogatories;
 - (3) production of documents or things or permission to enter upon land or other property for inspection and other purposes;
 - (4) physical and mental examinations; and
 - (5) requests for admission.
- (b) Unless the Court orders otherwise upon motion for the convenience of the parties and witnesses and in the interest of justice, a party may use the methods of discovery in any sequence.

12.65 Discovery Scope and Limits.

- (a) Parties may obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including but not limited to the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
- (b) The Court may limit the frequency or extent of use of the discovery methods set forth in this Section if it determines that:
- (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
 - (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought;

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(3) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The Court may act upon its initiative after reasonable notice or pursuant to a motion.

(c) A party may obtain discovery of the existence and contents of any insurance agreement under which any insurance company or business may be liable to satisfy part or all of a judgment that may be entered. Information about the insurance agreement is not admissible in evidence at trial.

(d) A party may obtain discovery of documents and tangible things otherwise discoverable under this Section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including but not limited to his or her counsel, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against the disclosure of mental impressions, conclusions, opinions, or legal theories of counsel or other representative of a party concerning the litigation.

(e) A party may discover facts known and opinions held by experts, otherwise discoverable under this Section and acquired or developed in anticipation of litigation or for trial, only by interrogatories requiring a party to identify each person whom the other party expects to call as an expert witness at trial, the subject matter and substance of facts and opinions on which the expert is expected to testify, and a summary of the grounds for each opinion. A party may discover facts known or opinions held by an expert who is retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means. Unless manifest injustice would result, the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to requests for discovery.

12.66 Protective order Limiting Discovery.

(a) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court may make any order if justice requires to protect the party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of

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the following:

- (1) that discovery not be had;
- (2) that discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the Court;
- (6) that a deposition be sealed and later be opened only by order of the Court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

(b) If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

12.67 Discovery Conference. At any time after commencement of an action, upon a motion by any party, the Court may direct the parties or their counsel to appear before it for a conference on discovery. Following the discovery conference, the Court shall enter an order tentatively identifying the issues for discovery, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including but not limited to the allocation of expenses necessary for the proper management of discovery in the action. The Court may amend such order as justice requires and may combine the discovery conference with a pretrial conference.

12.68 Signing Discovery Requests, Responses, and Objections.

- (a) Every request for discovery or response or objection thereto shall be signed by at least

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one counsel of record, whose address and telephone number shall be stated. A party not represented by a counsel shall sign the request, response, or objection and state his or her address and telephone number. The signature of the counsel or party constitutes a certification that he or she has read the request, response, or objection, and that, to the best of his or her knowledge, information, and belief formed after a reasonable inquiry, it is:

(1) consistent with these Formal Rules of Civil Procedure and warranted by existing laws or a good faith argument for the extension, modification, or reversal of existing law;

(2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(b) If a discovery request, response, or objection is not signed, the Court shall strike it unless it is signed promptly after the omission is called to the attention of the party whose signature is required. No party is obligated to respond to any discovery request, response, or objection, if it is not signed.

(c) If a certification on a discovery request, response, or objection is made in violation of this Chapter, the Court, upon motion or its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including but not limited to reasonable counsel fees.

12.69 Interrogatories. Any party may serve written interrogatories upon any other party, who shall answer in writing within thirty (30) days after service of such interrogatories, except that a defendant may answer within forty-five (45) days after service of the summons and complaint on the defendant.

A party shall answer separately and fully each interrogatory in writing under oath, unless objected to, in which event the party shall state the reasons for objection in lieu of an answer. The person making the answers and objections must sign them.

12.70 Depositions.

(a) After commencement of an action, any party may take the oral deposition of any person under oath after giving reasonable notice to such person and every party, which specifies the time and place where the deposition will occur, the name and address of the person to be examined,

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and how the testimony will be recorded.

(b) If a subpoena duces tecum is to be served on the person to be examined, the materials to be produced under the subpoena shall be attached to the notice.

(c) Examination and cross-examination of the person being deposed may proceed as permitted at trial under the Klamath Rules of Evidence.

(d) A party may take the testimony of any person by deposition upon written questions to be answered under oath by serving such person and all parties with the questions and a notice stating that the answers are under oath.

(e) Leave of Court is required to take a deposition before the expiration of the thirty (30) days after service of the summons and complaint on a defendant or when the person to be deposed is in jail or prison.

(f) Once the testimony is fully transcribed, the deposition shall be signed by the person who gave such testimony, unless the parties by stipulation waive the signing.

(g) The deposition shall be promptly filed with the Clerk of the Court.

12.71 Production, Entry, or Inspection. A party may request another party to produce any documents or things in his or her custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case. The opposing party shall reply within thirty (30) days as to whether or not such will be allowed. Any party objecting to a request may move the Court for a protective order; otherwise, the objecting party must comply with the request within thirty (30) days of service of the request.

12.72 Physical and Mental Examination of Persons. When the mental or physical condition of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his or her legal custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The party against whom such order is issued or the person examined may request that the party causing the examination to be made deliver to him or her a copy of a detailed written report of the examining physician setting out his or her findings, including the results of all tests, diagnoses, and conclusions. If a physician fails or refuses to make a report to such

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party and to the Court, the Court may exclude his or her testimony if offered at trial.

12.73 Requests for Admissions.

(a) A party may serve upon any other party a written request for admissions, for purposes of the pending action only, of the truth of any discoverable matters relating to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection signed by the party or by his or her counsel.

(c) Unless the Court shortens the time, a defendant shall not be required to serve answers to interrogatories or objections to requests for admissions, before the expiration of forty-five (45) days after service of the summons and complaint upon him or her. Answers or objections shall be in the form of an admission or a denial, or shall provide detailed reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he or she states that, after reasonable inquiry, the information known or readily obtainable by him or her is insufficient upon which to admit or deny.

(d) Any matter admitted under this Section is conclusively established unless the Court on motion permits withdrawal or amendment of the admission.

12.74 Failure to Make or Cooperate in Discovery. If a party fails to respond to or appear for discovery as provided in this Chapter, the opposing party may move for an order to compel the defaulting party to perform. The Court may make such orders in regard to the failure as are just, including but not limited to the following:

- (a) an order establishing certain facts for certain purposes;
- (b) an order prohibiting the introduction of certain evidence;
- (c) an order striking pleadings or parts thereof or staying the proceedings;

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(d) an order treating the failure as contempt; and/or

(e) an order requiring the party to pay the reasonable expenses, including counsel fees, caused by the failure.

12.75 Use of Discovery. Any party may use depositions and answers to interrogatories in a motion, hearing, or a trial to impeach or contradict the testimony of the person discovered. An adverse party may use answers to interrogatories and depositions for any purpose.

TRIALS

12.76 Assigning Cases for Trial.

(a) The Chief judge shall determine which judge shall hear a case. The Chief Judge also shall establish procedures for placing cases on the Court calendar and providing all parties adequate notice of trial dates.

12.77 Postponement. Upon the motion of a party or its own initiative, the Court may, in its discretion, postpone a trial or proceeding upon good cause shown.

12.78 Voluntary Dismissal by Plaintiff.

(a) A plaintiff may voluntarily dismiss his or her action without order of the Court:

(1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment; or

(2) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

(b) Unless otherwise stated in the notice of dismissal or stipulation, such a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who previously dismissed in any Court an action based on or including the same claim.

(c) Except as provided in Subsection (a) above, the Court shall not dismiss an action upon the plaintiff's motion except upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to

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dismiss, the Court shall not dismiss the action against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court.

(d) The provisions of this Section also apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by any claimant of its counterclaim, cross-claim, or third-party claim must be made before a responsive pleading thereto is served or with the consent of the other parties.

12.79 Involuntary Dismissal.

(a) A defendant may move the Court to dismiss an action or claim against him or her if the plaintiff fails to prosecute for ninety (90) days or to comply with this Chapter or any order of the Court.

(b) After the plaintiff has completed his or her presentation of evidence, the defendant, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that, upon the facts and the law, the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make findings of fact.

12.80 Consolidation; Separate Trials.

(a) When actions involving a common question of law or fact are pending before the Court, it may order:

- (1) a joint hearing or trial of any or all of the matters in issue in the actions;
- (2) a consolidation of all of the actions; or
- (3) such other actions concerning the proceedings as may tend to avoid unnecessary costs or delay.

(b) The Court may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, of any separate issue, or of any number of claims, cross-claims, counter-claims, third-party claims, or issues whenever separate trials will be more convenient, fairer, or more economical.

12.81 Interpreters. The Court may appoint an interpreter of its own selection and may fix his or

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her reasonable compensation. In the discretion of the Court, the compensation shall be paid out of funds provided voluntarily by the Klamath Tribes or provided by one or more of the parties, as the Court may direct.

12.82 Taking of Testimony.

(a) In all trials, the testimony of witnesses shall be taken orally in open Court, unless otherwise required by Klamath Tribal Law or applicable federal law.

(b) Whenever this Chapter requires an oath to be taken, a solemn affirmation to tell the truth, the whole truth, and nothing but the truth, may be accepted in lieu thereof.

(c) When a motion is based on facts not appearing of record, the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or deposition.

12.83 Witness Examination and Cross-Examination.

(a) A party may call any competent person to be a witness and examine any witness on any relevant matter.

(b) A party may use leading questions against an adverse party or hostile witness or whenever reasonably necessary to elicit testimony from witnesses under the age of fourteen (14) years or with a poor ability to communicate.

(c) A party may impeach his or her own witness.

(d) Cross-examination shall be limited to the general scope of direct examination, provided that, full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.

12.84 Physical Evidence. Upon being identified and authenticated, written documents and other physical evidence shall be received if relevant. An official record may be evidenced by an official publication thereof or by a copy attested to by the officer or person having the legal custody of the record and accompanied by a certificate that such officer or person has the custody.

12.85 Subpoena.

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(a) The Clerk of the Court may issue to any party so requesting subpoenas signed by a judge of the Court which shall state the name of the Court and the title of the action but which otherwise are blank. The requesting party shall fill in the purpose of the subpoena before service. A subpoena may command the person to whom it is directed to:

(1) attend and give testimony at the time and place therein specified, whether at a deposition or at a hearing or trial; or

(2) produce documentary evidence, including but not limited to specifically designated books, papers, documents, or other tangible things.

(b) A subpoena may be served by any authorized person, including but not limited to a law enforcement officer. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

(c) Proof of service of a subpoena may be made by filing with the Clerk of the Court a copy of the notice together with a statement of the date, manner of service, and the name of the person served, certified by the person who made the service.

(d) Failure by any person without adequate excuse to obey a subpoena served upon him or her may be deemed a contempt of the Court from which the subpoena issued.

(e) A person present in Court or before a judicial officer may be required by the Court to testify in the same manner as if he or she were in attendance upon a subpoena.

12.86 Exceptions. While formal exceptions to rulings or orders of the Court are unnecessary, a party must, at the time the order of the Court is made or sought, make known to the Court his or her objection to the action of the Court and the grounds therefor. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him or her.

12.87 Findings by the Court. In all actions the Court shall set forth its findings of facts and state separately its conclusions of law thereon. In granting or refusing injunctions, the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds for its action. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Tribal Court to judge the credibility of the witnesses. Findings of fact and conclusions of law are not required for decisions on motions.

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JUDGMENTS

12.88 Judgments; Costs.

(a) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision which designates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(b) Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his or her pleadings.

(c) Costs shall be allowed as a matter of course to the prevailing party unless the Court otherwise directs, and except as otherwise provided by this Chapter or the Klamath Tribal Code.

12.89 Default Judgment.

(a) When a party against whom a judgment is sought has failed to plead or otherwise defend as provided by this Chapter and that fact is shown to the Court by affidavit or otherwise, the Clerk of the Court shall enter his or her default. Judgment by default may be entered as follows:

(1) by the Clerk when the plaintiff's claim against the defendant is for a sum certain or for a sum which can be computed; and

(2) by the Court in all other cases.

(b) A judgment by default shall not be different in kind from or exceed the amount prayed for in the demand for judgment, however, the judgment also may include costs and counsel fees except as otherwise provided by these Formal Rules of Civil Procedure or the Klamath Tribal Code.

(c) No judgment by default shall be entered against a minor or incompetent person unless

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represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he or she shall be served with written notice of the application for judgment at least three (3) days before the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of an assertion by evidence or to make an investigation of any other matter, the Court may conduct such hearings as it deems necessary and proper.

(d) For good cause shown, the Court may set aside a judgment by default in accordance with the provisions herein governing relief from judgment due to mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud.

(e) The provisions of this Section apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a crossclaim or counterclaim.

(f) No judgment by default shall be entered against the Klamath Tribes or their subdivisions, agents, agencies, enterprises, or officers unless the claimant establishes his or her claim or right to relief by clear evidence satisfactory to the Court.

12.90 Summary Judgment.

(a) Any party may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his or her favor upon all or any part thereof.

(b) A motion asking for a summary judgment shall be served at least forty-five (45) days before the time fixed for the hearing. Within fourteen (14) days after service of the motion asking for summary judgment, the adverse party may serve opposing pleading and affidavits. Within ten (10) days of service of the opposition, the moving party may file a response to the opposition. The Court shall render the judgment sought if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The Court may render a summary judgment on the issue of liability alone even if there is a genuine issue as to the amount of damages.

(c) If on a motion for summary judgment, the Court does not render judgment upon the whole case or for all the relief asked and trial is necessary, the Court at the hearing on the motion

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shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually controverted. The Court may make an order specifying the facts that appear without controversy and direct such further proceedings as are just.

(d) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts referred to in an affidavit shall be attached. When a motion for summary judgment is made and supported as provided herein, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but his or her response affidavits must set forth specific facts showing that there is a genuine issue for trial. If he or she does not so respond, the Court shall enter summary judgment, if appropriate, against him or her.

(e) Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purpose of delay, the Court shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable counsel fees. The Court may hold any offending party or counsel guilty of contempt.

12.91 Declaratory Judgments. Any party may file an appropriate pleading requesting the Court to declare the rights and other legal relations of any interested party seeking such declaration. The existence of another adequate remedy does not preclude a judgment for declaratory relief. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

12.92 Entry of Judgment.

(a) Upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the Clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court.

(b) Upon a decision by the Court granting other relief, the Court shall promptly approve the form of the judgment, and the Clerk shall thereupon enter it.

(c) Every judgment shall be set forth on a separate document. Counsel shall not submit forms of judgment except upon the direction of the Court, and the Court shall not give such directions as a matter of course.

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(d) The Clerk immediately shall make a notation of the judgment in the judgment docket.

12.93 Recordation of Judgment. Upon the request of a party or by order of the Judge, the Clerk shall enter a notation about the judgment in such other records and dockets of the Klamath Tribes as requested.

12.94 Term of Judgment; Satisfaction of Judgment.

(a) A judgment shall remain in effect for seven (7) years unless satisfied earlier.

(b) A judgment may be satisfied, in whole or in part, when the party in whose favor the judgment was entered or his or her counsel of record files an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. If a judgment is satisfied but the judgment creditor fails to file an acknowledgment of satisfaction, upon request, the Court may order the entry of satisfaction upon reasonable proof of payment. The Clerk shall file all acknowledgments and satisfactions of judgment in the judgment docket.

12.95 New Trials.

(a) Any party may serve a motion for a new trial on any or all of the issues not later than ten (10) days after the entry of judgment for any of the following causes:

- (1) error or irregularity which prevented any party from receiving a fair trial;
- (2) accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial;
- (3) damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice;
- (4) insufficiency of the evidence to justify the verdict or decision;
- (5) a verdict or decision contrary to law; or
- (6) an error in law.

(b) If a motion for a new trial includes memoranda or affidavits in support of the motions,

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the opposing party shall have ten (10) days after such service to serve opposing memoranda or affidavits.

(c) The Court may, on its own initiative, but not later than fifteen (15) days after entry of judgment, order a new trial on any grounds assertable by a party to the action and shall specify the reasons for so ordering.

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

12.97 Motion to Amend or Alter a Judgment. A party must serve a motion to amend or alter a judgment not later than ten (10) days after entry of judgment. The Court may amend its judgment not later than fifteen (15) days after entry of judgment by amending its findings or making additional findings. The motion may be made with a motion for a new trial. The question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the Court an objection to such findings or has made a motion to amend them or a motion for judgment.

12.98 Relief from Judgment or Order Based Upon Clerical Mistake. 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 on its own initiative or on the motion of any party and after such notice as the Court may direct. Mistakes may be corrected before an appeal is docketed with the Klamath Supreme Court, and thereafter while the appeal is pending may be corrected with leave of the Klamath Supreme Court.

12.99 Relief from Judgment or Order Based Upon Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; or Fraud.

(a) On motion and upon such terms as are just, the Court may relieve a party from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been

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discovered in time to move for a new trial under these Formal Rules of Civil Procedure;

- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment.

(b) The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one (1) year after the judgment, order, or proceeding was entered or taken. A motion under this Section does not affect the finality of a judgment or suspend its operation. This Section does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order, or to grant relief to a defendant not actually served as provided in this Chapter or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion or by bringing an independent action.

12.100 Appeals. Except as otherwise provided by the Klamath Tribal Code, appeals from all civil actions in the Tribal Court must be filed within twenty (20) days after a judgment is final in accordance with the Klamath Rules of Appellate Procedure.

12.101 Stays.

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

(b) When an appeal is taken, the appellant by giving a bond in an amount set by the Court may obtain a stay, unless such a stay is otherwise prohibited by these Formal Rules of Civil Procedure or other applicable law. The bond may be given at or within ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the Court.

(c) When an appeal is taken against the Klamath Tribes, including their departments, agents, agencies, enterprises, or officers, no bond, obligation, or other security shall be required.

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

12.103 Power of Appellate Court not Limited. The provisions in this Section do not limit any power of the Klamath Supreme Court or a judge thereof to stay proceedings during the pendency of an appeal; to suspend, modify, restore, or grant an injunction during the pendency of an appeal; or to make an order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

12.104 Stay of Judgments Upon Multiple Claims. When the Court has ordered a final judgment on some but not all of the claims presented in an 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.

PROVISIONAL AND FINAL REMEDIES; SPECIAL PROCEEDINGS

12.105 Injunctions; Temporary Restraining Orders.

(a) The Court may not issue a preliminary injunction without notice to the adverse party. Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial on the merits of the action to be advanced and consolidated with the hearing on the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction that would be admissible at the trial on the merits becomes part of the record and need not be readmitted at the trial.

(b) The Court may grant an injunction for any of the following grounds:

(1) when it appears from the pleadings that a party is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of some act complained of for a limited period or perpetually;

(2) when it appears from the pleadings or affidavits that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

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(3) when it appears during the trial that either party is doing, threatens to do, or is about to do some act in violation of the rights of another party respecting the subject matter of the litigation and tending to render the judgment ineffectual; or

(4) when it appears that an injunction otherwise would be fair, necessary, or proper.

(c) The Court may grant a temporary restraining order without written or oral notice to the adverse party or his or her counsel only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her counsel can be heard in opposition; and

(2) the applicant or his or her counsel certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his or her claim that notice should not be required.

(d) Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire within such time after entry as the Court fixes, not to exceed ten (10) days, unless within the time so fixed the order for good cause shown is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. If 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 over 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 a preliminary injunction; if he or she does not do so, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appeal and move for 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.

(e) The Court shall not issue a temporary restraining order or preliminary injunction unless the applicant gives security in such sum as the Court deems proper for the payment of costs and damages that may be incurred or suffered by any party found to be wrongfully enjoined or restrained;

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provided that the Klamath Tribes, including their departments, commissions, agents, agencies, enterprises, or officers, shall not be required to give security.

(f) In every order granting an injunction and every temporary restraining order, the Court shall set forth the specific reasons for its issuance and shall describe in detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. Such order shall be binding only upon the parties to the action, their officers, agents, servants, employees, and counsel, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

12.106 Offer of Judgment. At any time more than ten (10) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him or her for the money or property to the effect specified in his or her offer. If within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon the Clerk shall enter judgment. An offer not accepted shall be deemed withdrawn.

12.107 Execution.

(a) A judgment for the payment of money shall be enforced through a writ of execution, unless the Court directs otherwise. The procedure on execution shall be in accordance with any applicable practice and procedures of the Klamath Tribes and Klamath Tribal Law. In aid of the execution of the judgment, the judgment creditor or his or her successor in interest may obtain discovery from any person, including the judgment debtor, in the manner provided by these Formal Rules of Civil Procedure.

(b) Except as otherwise provided by Klamath Tribal Law:

(1) If within sixty (60) days after entry of a judgment awarding money damages and/or costs against a party, or within sixty (60) days after final resolution of an appeal from such judgment, the judgment debtor has not paid the amount in full or commenced making installment payments in a manner agreed to by all the parties, the Court upon the motion of the judgment creditor shall order the judgment debtor to appear at a hearing before the Court to show cause why the personal property of the judgment debtor should not be executed upon.

(2) At the hearing, the Court shall order the judgment debtor to describe under oath his or her personal property. The Court may then determine what property of the judgment

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debtor is available for execution and may order the seizure of as much of such property as reasonably appears necessary to pay the judgment amount. The Court may deem the failure of the judgment debtor to appear contempt of Court, and in that case, proceed without the judgment debtor's appearance.

(3) The Court may order a sale of the property of the judgment debtor to satisfy a money judgment only if it will not create a substantial undue hardship on the immediate family of the judgment debtor.

(4) Any sale of seized property shall be at a public auction conducted by the judgment creditor after giving at least ten (10) days public notice posted in three (3) conspicuous places on Klamath Tribal Lands, or published once a week for four (4) weeks in a local paper of general circulation. Property shall be sold to the highest bidder who shall make payment at the time of the sale. The person conducting the sale may postpone it if there is inadequate response and may reschedule it upon the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting details of the sale.

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Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Regular General Council meeting held on the _____ day of _____, 2003 with a quorum present, the General Council took action and duly adopted this Ordinance by a vote of _____ for, _____ opposed, and _____ abstentions by General Council Resolution 2003-3.

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Allen Foreman
Chairman
The Klamath Tribes

Torina Case
Secretary
The Klamath Tribes