COURT OF INDIAN OFFENSES
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THE COURT OF INDIAN OFFENSES
SOUTHERN PLAINS REGION
ANADARKO, OKLAHOMA

BE IT RESOLVED:

PURSUANT TO 25 CFR § 11.313 the following are hereby adopted as the official Rules of The Court for the Courts of Indian Offenses of the Southern Plains Region, Anadarko, Oklahoma. This Court gratefully acknowledges the hard work and diligent efforts of all those involved in the preparation thereof. These Rules represent many hours of discussion, revision, preparation and proofing. The objective in preparing these Rules was to provide easier access to the Courts, and a more efficient, effective process for all citizens who desire to have their voice heard.

IT IS SO ORDERED:

O. Ronald McGee

O. Ronald McGee, Chief Magistrate

All Magistrates Concur:
Honorable Rebecca Cryer
Honorable Steven Parker
Honorable Lisa Otipoby Herbert
Honorable Shannon Edwards
Honorable Phil Lujan
Honorable Tom Walker

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COURT OF INDIAN OFFENSES
SOUTHERN PLAINS REGION

PART I. RULES OF THE COURT OF INDIAN OFFENSES AND INDIAN APPEALS FOR THE SOUTHERN PLAINS REGION

TITLE I. THE COURTS

Rule 1.1 Term and Location

The headquarters of the Court of Indian Offenses and Indian Appeals for the Southern Plains Region, also known as the CFR Court, shall be at the Bureau of Indian Affairs, Southern Plains Region, Anadarko, Oklahoma. The Court is open for the transaction of judicial business on all business days throughout the year except holidays unless otherwise ordered by the Magistrate.

Rule 1.2 Officers of the Court

Officers of the Courts shall include:

- Appointed Magistrates
- Court Clerks and Court interpreters
- BIA/Tribal Law Enforcement Officers, probation officers, and other persons when carrying out orders of the Court
- Attorneys and Advocates representing parties before the Courts
- Bailiffs; and
- Prosecutor

Rule 1.3 Authority of the Court

The Court shall have, but not be limited to, the following authority:

- To punish for contempt, any of its officers or other persons present at judicial proceedings;

- To compel witnesses to attend and testify and to produce documents or other tangible objects to be used as evidence, provided, that a defendant in a criminal trial may not be compelled to be a witness against himself;
- To adopt rules of pleading, practice and procedure applicable to any or all proceedings in the Court either at the trial or appellate level. In addition, the Court may adopt uniform rules for the admission of evidence and may require the use of standard forms for pleadings, motions and other documents filed in the Court by litigants, as well as for judgments; writs and court orders.
- In any proceeding, where there is no applicable rule of procedure, a Magistrate of the Court may prescribe same for the duration of that proceeding. The issue shall be presented at a conference of the Magistrates (Quarterly Magistrates' Conference), and the majority opinion of the Magistrates shall be adopted as a court rule.
- Request that the Bureau of Indian Affairs, Southern Plains Regional Director furnish an opinion when the Court is in doubt as to the meaning of any law, treaty or regulation.

Rule 1.4 Transfer of Cases

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

Rule 1.5 Alternative Venue Allowed

The Magistrate may order that oral arguments in any case civil or criminal shall be held at the courtroom or another Agency within the jurisdiction of the Southern Plains Region for the convenience of the litigants or the Court.

Rule 1.6 Court Officers Not Sureties

No Magistrate, Clerk, Chief of Police or any other officer of the Court may act as surety on any bond or undertaking in any action or proceeding in the Court.

Rule 1.7 Quarterly Magistrate Conference One session each quarter shall be designated for a Magistrate's Conference. If necessary, the Chief Magistrate may call Magistrate Conferences more frequently.

TITLE II. COURT CLERK'S OFFICE

Rule 2.1 Hours

The Court Clerk's Office shall be open for court business from 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Thursday, except on such days that are declared legal holidays.

Rule 2.2 Court Clerks

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

- Assist in the issuing of complaints, subpoenas, warrants, writs, notice of hearings or other orders of the Court;
- Maintaining records of court proceedings;
- Collecting and accounting for fines and other property taken into custody of the Courts;
- Accepting bonds;
- Filing notices of appeal and petitions; and recording and certifying records;
- Issuance of subpoenas;
- Assembling juries.

Rule 2.3 Prohibition against Legal Advice

The Court Clerks shall not be responsible to assist litigants in preparation of pleadings, and shall not give legal advice.

Rule 2.4 Filings and Maintenance of Records

All proceedings, civil, criminal and appellate, shall be assigned a case number and all filings in the case shall be maintained in the Court Clerk's office. The Court Clerk shall use an official stamp to file all pleadings. Nothing shall be removed therefrom except upon order of a Magistrate of this Court.

Rule 2.5 Fees and Costs

Upon the institution of any civil action or proceeding, the party instituting such action shall pay to the Court Clerk a filing fee as set forth in the Uniform Fee Schedule, except in those cases where the litigant is allowed to proceed in forma pauperis.

In appeals of civil or criminal cases, a party filing a notice of appeal shall pay to the Court Clerk a filing fee as set forth in the Uniform Fee Schedule and in addition thereto shall pay a fee for obtaining a copy of all records available, including transcripts, except when taken in forma pauperis.

Upon entry of judgment or decree in any case or proceeding, where costs are allowed, the party seeking to recover costs shall, within ten (10) days after entry thereof, file with the Court Clerk a verified bill of costs which shall have endorsed thereon proof of service upon the opposite party. The Court may, for good cause shown, and upon written motion filed within the ten (10) day period, extend the time for filing a verified bill of costs.

TITLE III. BIA LAW ENFORCEMENT

Rule 3.1 Magistrates to Appoint Bailiffs

A Magistrate of the Court may appoint bailiffs from BIA/Tribal Law Enforcement to assist the Magistrate in maintaining order in the courtroom.

Rule 3.2 Authority of Bailiff

The Bailiff, in addition to all other lawful power and authority, shall have the power to administer oaths and subject to the direction of the Magistrate shall maintain the order and dignity of the court and he/she shall have all necessary and proper powers for carrying out his/her lawful duties. The Baliff or other appointed Court

Security shall have the authority to search any and all persons who attend Court proceedings. The least intrusive method of search shall be employed unless cause exists for a more thorough search to be conducted.

Rule 3.3 Disclosure of Information to General Public

BIA/Tribal Law Enforcement Officer may disclose information regarding criminal cases except as follows:

- The names and birthdates of the defendant;
- The charge;
- The fact that the defendant has plead not guilty and denies the charge;
- The identity of the arresting officer and agency. If any individual charged is at large, additional information may be released to include the defendant's physical description, any alias used and other similar information as may be necessary to protect the public welfare or to assist in his/her apprehension. The Magistrate may, upon application, order the release of additional information as warranted.
- No disclosure of information in juvenile cases is authorized except by Court order.

TITLE IV. ATTORNEYS AND ADVOCATES

Rule 4.1 Eligibility

The following persons shall be permitted to practice before the Courts:

- Any person licensed to practice law by the highest Court of any state of the United States or any Federal Court;
- Any person employed as an attorney by the United States;
- Any member of a federally recognized Indian tribe who has graduated from an American Bar Association Accredited Law School;
- Any member of a federally recognized Indian tribe who is a member of the bar of any Tribal Court of a federally recognized Indian tribe;

- Any person who has been issued an internship license (limited license to practice law) by the Supreme Court of the State of Oklahoma for so long a period as said license is valid;
- Any member of a federally recognized Indian tribe who has been certified by a paralegal training program, as a paralegal or paraprofessional lawyer's assistant or the equivalent;
- Any member of a federally recognized Indian tribe who has been actively employed in one or more law offices under the supervision of one or more attorneys for a period of two (2) years upon the recommendation of their supervising attorney;
- Any person appointed by the Regional Director of the Southern Plains Region and approved by the effected tribes as a Magistrate of the Court of Indian Offenses.

Rule 4.2 Ethics

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

Rule 4.3 Withdrawal

Counsel shall not be allowed to withdraw from a case after they have made any appearance in the case without leave of the Court. This rule is designed to prevent unnecessary and unfair hardship to the clients and should be so applied.

Rule 4.4 Courtroom Decorum

The Canons of Professional Ethics were adopted by the American Bar Association as a general guide, because as stated in the preamble, "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life." The preamble further admonishes that "the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned."

In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes, and the usages, customs, and practice of the bar.

The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer's conduct in the courtroom. In addition to all other requirements, therefore, lawyers appearing in this Court shall:

- Always be punctual in attendance at Court;
- Refrain from addressing one another in Court by their first names;
- Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been first obtained;
- See that only one of them is on his/her feet at a time, unless an objection is being made;
- Refrain from approaching jurors who have completed a case unless authorized by the Court;
- Refrain from implying dilatory tactics;
- Hand all papers intended for the Court to see to the Bailiff or Court Clerk, who, in turn will pass them up to the Magistrate;
- Hand to the Bailiff or Court Clerk, any exhibits to be marked which have not previously been identified;
- Advise clients, witnesses, and others concerning rules of decorum to be observed in Court;
- Stand when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose;
- Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument what has been previously admitted in evidence;
- Avoid disparaging personal remarks or acrimony toward opposing counsel;

- Rise when addressing, or being addressed by, the Magistrate;
- Any attorney who appears in court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

When presenting a matter to the Court, it shall be the responsibility of the attorneys to ensure the Magistrates are provided with, or have access to, all tribal, federal and state laws and regulations of the Bureau of Indian Affairs applicable to the conduct of persons within the boundaries of the Court's jurisdiction.

TITLE V. GENERAL PROVISIONS

Reserved.

PART II. RULES OF CIVIL AND CRIMINAL PROCEDURE

TITLE I. JURISDICTIONAL STATEMENT

Rule 1.1 Jurisdiction of the Court

The Court of Indian Offenses and Court of Indian Appeals operate exclusively from the Code of Federal Regulations, Title 25, Part 11 and the properly approved laws, ordinances, resolutions and constitutions adopted by the Indian Nations/Tribes within the jurisdiction of the Bureau of Indian Affairs, Southern Plains Region, as well as the Court's Adopted Court, Procedural and Appellate Rules.

TITLE II. SCOPE OF RULES

Rule 2.1 Scope of Rules

These rules shall govern the procedure in the trial Court of Indian Offenses for the Southern Plains Region in all actions, suits and proceedings of civil nature, and in criminal matters to the extent no different rule is specified.

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

There shall be one form of action known, except in criminal cases, as a "civil action."

Any procedures or matters not specifically set forth herein may, in the discretion of the Court, be handled in accordance with Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules.

TITLE III. COMMENCEMENT OF AN ACTION

Rule 3.1 Commencement of Action

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

Rule 3.2 Criminal Complaints

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

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

Rule 3.3 Assignment of Numbers to Cases

A case number shall be assigned by the Court Clerk in accordance with established procedures and shall be noted on the initial pleading.

Rule 3.4 Pauper's Affidavit

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

Rule 3.5 Service of Process

Service of process shall consist of delivering to the party served, a copy of the petition along with summons, issued by a Magistrate or Court Clerk, which advises the defendant that he is required to answer the petition within thirty (30) days or a default judgment will be entered against him.

All documents required to be filed shall be served as under this rule, and except for the complaint, may be served on the attorney of a party.

A civil action is deemed commenced by filing in the Court Clerk's Office a petition and by the Court Clerk's issuance of summons thereon. Where service by publication is proper, the action shall be deemed commenced at the date notice of publication is published. Service of all papers, except a criminal complaint may be made by mail. Where service is sought to be effected by mailing, the action shall be deemed commenced when the envelope containing summons, addressed to the defendant or to the service agent if one has been appointed, is deposited in the United States mail with postage prepaid for forwarding by certified mail with a request for a return receipt from addressee only.

Rule 3.6 Service on Minor

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

Rule 3.7 Return of Service

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

TITLE IV. PARTIES

Rule 4.1 Parties

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

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

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

Rule 4.2 Intervention

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

Rule 4.3 Substitution of Parties

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

TITLE V. PLEADINGS AND MOTIONS

Rule 5.1 Form of Pleadings

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

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

All statements of claim or defense shall be set forth in separate numbered paragraphs.

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 5.2 Pleadings to be Signed

All pleadings shall be signed by a party, or their attorney/advocate, and shall contain the printed name, mailing address and telephone number or email (if any), of said person.

Rule 5.3 Copies of Pleadings and Filings

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

Rule 5.4 Originals to be Filed

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

Rule 5.5 Respect for Courts

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

Rule 5.6 Types of Pleadings

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

Rule 5.7 Claims for Relief

A pleading which sets forth a claim for affirmative relief shall contain:

- A short, plain statement of the grounds upon which the Court's jurisdiction depends,

- A short, plain statement of the claim showing that the pleader is entitled to relief; and
- A demand for judgment for the relief. Such claim for relief can be in the alternative or for several types of relief.

Rule 5.8 Defenses and Objections

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

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

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

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

Rule 5.9 Alternative Pleadings of Claims and Defenses

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

Rule 5.10 Affirmative Defenses

Matters constituting a defense or avoidance shall be affirmatively set forth.

Rule 5.11 Construction of Pleadings

All pleadings shall be construed so as to do substantial justice.

Rule 5.12 Filing an Appearance – Effect

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

Rule 5.13 Counterclaim

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

Rule 5.14 Amendment of Pleadings

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

When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

Rule 5.15 Motions

An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief sought and the grounds shall be stated with particularity.

The presiding Magistrate for good cause shown may enlarge the prescribed period of time within which any required response may be done.

Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served on all parties to the case.

Rule 5.16 Motions for Temporary Restraining Orders

No temporary restraining order shall be granted upon motion in a civil case without notice to the adverse party unless it clearly appears from the facts shown by affidavit that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. A show cause hearing with notice to the adverse party shall be scheduled to be heard within ten (10) days.

A restraining order or preliminary injunction shall only issue upon the giving of security by the applicant in such amount as the Magistrate deems proper for the payment of such costs and damages as may be incurred and suffered by any party who is found to have been wrongfully restrained or enjoined.

Rule 5.17 Preliminary Injunctions

No preliminary injunction, following a temporary restraining order granted shall be issued 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 of the action on the merits to be advanced and consolidated with the hearing on the application.

Rule 5.18 Extraordinary Writs

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

- Writ of Prohibition
- Writ of Mandamus
- Writ Quo Warranto
- Writ of Habeas Corpus

Rule 5.19 Habeas Corpus

Application for the Habeas Corpus Writ shall be made by petition, signed and verified by the applicant and shall specify:

- For whom the writ is being sought and the reason he/she is restrained of his/her liberty;
- The location of all parties, if known;
- The cause or pretense of the restraint, according to the applicant's best knowledge and belief;
- If the restraint is alleged to be illegal, the reason for the alleged illegality.

If filed by a self represented litigant, the petition may be on forms supplied by the Court Clerk. Writs of Habeas Corpus may be granted by a Magistrate of this Court and upon application the writ shall be considered without delay.

Rule 5.20 Service of Writ of Habeas Corpus

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

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

Rule 5.21 Motions for Summary Judgment

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

TITLE VI. HEARINGS AND PRETRIAL MATTERS

Rule 6.1 Motion Docket

The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for placing all pending motions on the Motion Docket. The Motion Docket shall be faxed to parties prior to the hearing.

Rule 6.2 Inadvertent Settings

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

Rule 6.3 Continuances

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

Rule 6.4 Hearings Automatically Continued

A motion shall be automatically continued if the Magistrate before whom it was to be heard is unable to hear it on the day specified and no other Magistrate is available to hear it.

Rule 6.5 Limitations on Argument

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

Rule 6.6 Evidence Taken at Hearings

At all hearings the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules.

Rule 6.7 Discovery in Civil Cases

A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within thirty (30) days of receipt of such. A party may take a testimony of any person, including a party, by deposition upon oral examination without leave of court. The attendance of witnesses may be compelled by subpoena. A party may request another party to produce any documents or things in his custody or possession for inspection or copying. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, if it would lead to evidence which would be admissible at trial.

A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

If a party fails to respond or appear for discovery after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or ender a judgment by default against the non-complying party.

Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person of whom obtained, or by an adverse party for any purpose.

Rule 6.8 Subpoenas

Upon request of any party, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The Court Clerk may act on behalf of the Court and issue subpoenas which have been signed either by the Court Clerk or by the Magistrate of the Court and which are to be served within Indian country over which the Court has jurisdiction.

- A subpoena shall bear the signature of the Magistrate of the Court, and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.
- A subpoena may be served at any place but any subpoena to be served outside of the Indian country over which the Court has jurisdiction shall be issued personally by the Magistrate of the Court.
- A subpoena may be served by any BIA/Tribal Law Enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person eighteen (18) years of age or older who also resides or works there.

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

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

Rule 6.9 Witness Fees

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

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

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

Rule 6.10 Rules of Evidence

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

Rule 6.11 Pretrial Conference

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

Rule 6.12 Dismissal of Actions

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

Rule 6.13 Involuntary Dismissal

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

- Failure of the adverse party to pursue prosecution of his claim; or
- Failure of the adverse party to comply substantially with these rules; or
- Failure of the adverse party to comply with an order of the Court; or
- At the close of the presentation of the other party's evidence and without prejudice to his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or

□ Whenever dismissal appears proper based upon failure to prove a claim.

Rule 6.14 Payment of Costs on Dismissal

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

TITLE VII. TRIALS AND JUDGMENT

Rule 7.1 Burdens of Proof Required

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

Rule 7.2 Jury Trial

A jury trial shall be held if:

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

Any enrolled member of a tribe/nation within the Court's jurisdiction over the age of eighteen (18) years, not subject to judicial restraint and who resides within the Court's service area may be listed as an eligible juror, except those persons licensed to practice law before the Court of Indian Offenses.

In any case, a jury shall consist of six (6) residents of the vicinity in which the trial is held, selected from the list of eligible jurors by the Magistrate by a random selection process.

Each party shall have the right to challenge an unlimited number of jurors for cause on the basis of lack of qualifications, partiality, or other acceptable reason. Whether or not cause exists shall be determined by the Magistrate in all instances. In addition, each party shall have the right to a maximum of three peremptory challenges for jurors, for which, no reasons need to be given and which the Magistrate may not refuse to grant.

The Magistrate shall instruct the jury with regard to applicable law and the jury shall decide all questions of fact on the basis of that law.

The jury shall deliberate in secret and return a verdict of guilty or not guilty. The Magistrate shall render judgment in accordance with the jury verdict.

In a criminal proceeding the jury shall render a verdict by unanimous vote. In a civil or ICW proceeding, the jury may render a verdict by a majority vote.

Each juror in attendance shall be entitled to a fee as set by the 29 USC 206 for each day his services are required by the Court. The Court may tax all juror costs against the losing party.

Rule 7.3 Jury Trials

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

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

In criminal cases there shall be no deposit required in a jury trial.

Rule 7.4 Jury Dockets

The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for preparing all civil and criminal jury dockets. The day for sounding a civil and/or criminal jury trial docket shall be set by order of the Court. All cases placed on any jury docket shall be set for the first day of the docket, if not sooner set for a day.

certain. On the date the cases are set, the cases shall be called for trial in the order of their setting. If more cases are set on any day than can be tried, the cases shall be continued to a day certain later on the docket. A copy of the jury trial docket shall be mailed out to counsel of record, parties pro se, and bail bondsmen at least ten (10) days prior to the commencement of the docket.

Civil cases thereon will generally be set for trial on a day certain at the pretrial conference. Criminal cases may generally be set for trial on a day certain at the time of arraignment. Attorneys/Advocates shall keep the Magistrate apprised of the settlement or trial status of their cases on the docket. Jury trials start promptly at 9:00 a.m., unless otherwise announced.

Rule 7.5 Non-Jury Dockets

The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for preparing all civil and criminal non-jury dockets. The day for sounding the civil and criminal non-jury docket shall be set by order of the Court. All cases placed on any non-jury docket shall be set for the first day of the docket, if not sooner set for a day certain. If more cases are set on any day than can be tried, the cases shall be continued to a day certain later on the docket.

Civil cases thereon will generally be set for trial on a day certain at the pretrial conference. Criminal cases may generally be set for trial on a day certain at the time of arraignment. Attorneys and Advocates shall keep the Magistrate apprised of the settlement or trial status of their cases on the docket.

Rule 7.6 Designation of Jury Trial Issues by Magistrate

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

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

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

Rule 7.7 Separate Trials

The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Rule 7.8 Opening Statements at Trial

The opening statements of the counsel shall be limited to a brief, concise, summary statement or synopsis of the evidence the party intends to present for the consideration of the Magistrate or jury. There shall be no discussion of the law and no argument of the facts.

Rule 7.9 Examination at Trial

All examination and cross examination shall be taken under oath:

- A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate;
- A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness;
- Cross examination shall, except with the permission of the Court, be limited to the general scope of direct examination;
- Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action;
- Official documents or an official law, record, or copy thereof, may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document, or record, or copy thereof is accompanied by a certificate identifying

such thing and stating that it is a true and correct representation of what it supports to be;

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

Rule 7.10 Trial Juries

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

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

The Court Clerk, under direction of the Court, must publicly draw the ballots from the box. Before the name of the first prospective juror is drawn, the box must be closed and shaken so as to intermingle the ballots therein. The Court Clerk must then, without looking at the ballots, draw them from the box.

Rule 7.11 Jurors

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

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

Rule 7.12 Discharge of Juror

If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror, if any, shall take his place.

If there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the Magistrate shall discharge the jury and the case shall be tried with a new jury.

Rule 7.13 View of Jury

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

Rule 7.14 Separation of the Jury

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

Rule 7.15 Deliberation

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

Rule 7.16 Things Taken by Jury

The jury may take with them when deliberating any of the following:

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

Rule 7.17 No Verdict

If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retried.

Rule 7.18 Declaration of the Verdict

When the jury members agree on a verdict, they shall so inform the officer who shall notify the Court. The jury shall be conducted into the courtroom; the verdict shall

be given in writing to the Court Clerk and who in turn will give the written verdict to the Magistrate and the Magistrate will give to the Court Clerk to be then read by the Court Clerk for the Court; inquiry shall be made by the Court to the Jury Foreman as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the Court Clerk or Jury Foreman, the jury shall retire to correct the verdict.

Rule 7.19 Special Verdicts and Interrogatories

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

Rule 7.20 Instructions to the Jury

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

Rule 7.21 Final Arguments

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

Rule 7.22 Motion for a Directed Verdict

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

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

Rule 7.23 Judgment

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

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

Rule 7.24 Granting of Demand for Relief

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

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

Rule 7.25 Costs

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

Rule 7.26 Attorney's Fees

The Court shall have the discretion to award attorney's fees as appropriate.

Rule 7.27 Default

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

Judgment by default can be entered on motion of a party only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim.

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

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

Rule 7.28 Entry of Judgment

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

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

A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A Magistrate may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Court Clerk shall file all satisfactions of judgment.

Rule 7.29 Motion for New Trial/Reconsider

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

Rule 7.30 Relief from Judgment or Order

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

Rule 7.31 Stay of Proceedings to Enforce a Judgment

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

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

Rule 7.32 Disability of a Magistrate After Trial

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

Rule 7.33 Execution

Immediately upon the entry of a judgment awarding money damages, costs and/or attorney's fees against a party unless such judgment has been properly stayed, the prevailing party may serve interrogatories upon the judgment debtor to inquire as to the status of said person's financial affairs and ability to pay said judgment. Said interrogatories shall be served either by personal service or by certified mail, return receipt requested, on the judgment debtor, who shall answer the same in spaces provided on the interrogatories, in writing and under oath, within fifteen (15) days of receipt of the same. The original copy of the answers shall be filed with the Court, and a copy shall be served upon the prevailing party. The party upon whom the interrogatories are served may, in the alternative, tender to the prevailing party all amounts then due under the judgment, in which case the prevailing party shall forthwith file a satisfaction of judgment with the Court. In the event that the judgment debtor fails to respond to the interrogatories in the period specified, or the answers thereto are

shown to be false, misleading, or otherwise inadequate, the Court may order that the judgment debtor appear before it to answer concerning his property.

A writ of execution shall be issued by the Court and shall direct BIA/Tribal Law Enforcement Officers to seize as much of the personal property of the judgment debtor as reasonably appears necessary to satisfy the judgment amount. Sale of the seized property shall be at a public auction conducted by the BIA/Tribal Law Enforcement after giving not less than ten (10) days public notice posted conspicuously in three (3) public places within the jurisdiction of the Court where the trial was held, and published three (3) times during said ten (10) days in a local newspaper. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone such in his discretion if there is inadequate response to the auction or the bidding, and may re-schedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

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

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

- The tools required for the conduct of the debtor's trade or business;
- Ceremonial or religious items;
- One automobile value not greater than seven thousand five hundred dollars ($7,500);
- Necessary household utensils and/or furnishings;
- Real Property (land);
- Family heirlooms;
- Clothing;
- Wedding rings;
- Pets, but not including cattle, sheep, pigs, chickens, geese, and more than one (1) horse; and
- Food.

TITLE VIII. SPECIAL PROVISIONS APPLICABLE TO CRIMINAL MATTERS

Rule 8.1 Jail Bonds

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

Rule 8.2 Bondsmen

Reserved

Rule 8.3 Appearance on Jail Bonds

Defendants must appear for initial appearance or arraignment the next Court day that is scheduled or the date set on their release bond after posting the jail bond with the BIA/Tribal Law Enforcement Services. No other notice is given to the defendant. The privilege of making bond prior to formal charging and arraignment incorporates the duty to voluntarily and promptly appear for arraignment.

Rule 8.4 Arrest Warrants

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

- Name or description and address, if known, of the person to be arrested;
- Date of issuance of the warrant;
- Description of the offense charged;
- Signature of the issuing Magistrate.

Service of such warrants shall be made by a BIA/Tribal Law Enforcement Officer.

Rule 8.5 Notification of Rights

Prior to custodial interrogation, the suspect shall be advised of the following rights:

- That he/she has the right to remain silent;
- That any statements made by him/her may be used against him/her in court;
- That he/she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her;

- That if he/she wishes to answer questions of the police, he/she may have his/her counsel present with him/her and can cease answering questions at any time.

Rule 8.6 Summons in Lieu of Warrant

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

Rule 8.7 Search Warrants

Each Magistrate of the Court shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation under the regulations of this part located within the Indian country over which the Court has jurisdiction.

No warrant for search or seizure may be issued unless it is based on a written and signed statement establishing, to the satisfaction of the Magistrate, that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation under the regulations of this part.

No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the Magistrate who issued it.

Warrants may be executed only by a BIA/Tribal Law Enforcement Officer or other official commissioned to enforce the regulations under this part. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

Rule 8.8 Search without a Warrant

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

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

Rule 8.9 Disposition of Seized Property

The officer serving and executing a warrant shall make an inventory of all seized property, and a copy of such inventory shall be left with every person from whom property is seized.

A hearing shall be held by the Court to determine the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court.

Rule 8.10 Commitments

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

Rule 8.11 Arraignments

Arraignment is the bringing of an accused before the Court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pretrial release as appropriate in accordance with this part.

Arraignment shall be held in open Court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court.

Before an accused is required to plead to any criminal charges, the Magistrate shall:

- Read the complaint to the accused and determine that he or she understands it and the section(s) of this part that he or she is charged with violating, including the maximum authorized penalty; and
- Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel (which shall be paid for by the government if the accused is indigent) and that the arraignment will be postponed should he or she desire to consult with counsel.

The Magistrate shall call upon the defendant to plead to the charge:

- If the accused pleads "not guilty" to the charge, the Magistrate shall then inform the accused of the trial date and set conditions for release prior to trial.
- If the accused pleads "guilty" to the charge, the Magistrate shall accept the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The Magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing.
- If the accused refuses to plead, the Magistrate shall enter a plea of "not guilty" on his or her behalf.

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

Rule 8.12 Bail

Each person charged with a criminal offense under this part shall be entitled to release from custody pending trial under whichever one or more of the following conditions are deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

- Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times;
- Release to the custody of a designated person or organization agreeing to assure the accused's appearance;
- Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;
- Release after deposit of a bond or other sufficient collateral in an amount specified by the magistrate or a bail schedule;
- Release after execution of a bail agreement by two responsible members of the community; or
- Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

Any BIA/Tribal Law Enforcement Officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Court.

A convicted person may be released from custody pending appeal on such conditions as the Magistrate determines will reasonably assure the appearance of the accused unless the Magistrate determines that release of the accused is likely to pose a danger to the community, the accused, or any other person.

The Court of Indian Offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

Rule 8.13 Joinder of Criminal Offenses

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

Rule 8.14 Pleadings and Motions Before Trial in Criminal Cases

Pleadings in criminal proceedings shall consist of the complaint and the pleas of either guilty, not guilty or nolo contendere (no contest). All other pleas and motions shall be made in accordance with these rules.

Motions raising defenses and objections shall be made as follows:

- Any defenses or objections which are capable of determination prior to trial must be raised before trial by motion.
- Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction of the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any stage of the proceeding.
- Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before trial unless the Court directs otherwise. Decision on such motions shall be made by the Magistrate and not by the jury.

Rule 8.15 Discovery and Inspection in Criminal Cases

The BIA/Tribal Law Enforcement Officer and Prosecutor, shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control or reasonably obtainable by the officer or prosecution. The officer and prosecution shall

make similarly available copies of reports of physical, mental or scientific tests or examinations relating to the defendant.

Rule 8.16 Dismissal of Complaint

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

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

Rule 8.17 Verdicts in Criminal Cases

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

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

Rule 8.18 Defendant, Presence Required

The defendant shall be present at any bail hearing, at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, unless the Court orders the defendant removed for continued misconduct, whereupon the matter may proceed in the defendant's absence.

Rule 8.19 Order of Trial in Criminal Cases

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

The prosecution shall present an opening statement. The defendant or his counsel may then either make his opening statement or reserve it to be made

immediately prior to the presentation of evidence on behalf of the defendant. The prosecution shall then offer its evidence in support of the charge, and the defendant may then offer evidence in his defense. The parties may then respectively offer rebutting testimony, unless the Court, for good reasons, in furtherance of justice, permits them to offer additional new evidence.

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

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

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

Rule 8.20 Right of Appeal in Criminal Cases

If the Court of Indian Appeals finds that any or a combination of the following has occurred, it shall order the judgment or order reversed or may remand the case for retrial:

- Irregularities in the proceedings or conduct by the jury, adverse party, or his counsel prejudicial to the appellant;
- Any ruling, order, or abuse of discretion, which may have prevented a fair trial;
- Newly discovered evidence which could not, with reasonable diligence, have been produced at trial;
- Insufficient evidence to support the verdict;
- Any error or law occurring at the trial prejudicial to the appellant; or
- Any other reason, which would warrant reversal by a court when reviewing a similar appeal.

If the Court of Indian Appeals finds that reversal under of this section is unwarranted, it shall affirm the judgment or order appealed from; no further appeal under this Rule shall thereafter be permitted.

If a defendant is found "not guilty" in a criminal case, the prosecution may appeal any alleged errors of law committed in the trial court so as to obtain the opinion of the Appellate Court on the issue. Provided, that the Court of Indian Appeals may affirm or reverse the action of the Trial Court on the issue. Provided further, that the defendant shall not be subject to further action of the Court on the same charge after the "not guilty" verdict regardless of the determination of the Prosecutor's Appeal. The defendant may participate in the appeal if he so desires.

Rule 8.21 Nature of Sentences

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

Rule 8.22 Restitution

In addition to any prescribed punishments, where the defendant's acts have injured the person or property of another, the Court may order restitution be made to the injured party(ies).

Rule 8.23 Sentences of Imprisonment

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

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

Rule 8.24 Payment of Fines

Any person sentenced to pay a fine shall pay such fine in cashier's checks or money order.

If the full amount of the fine cannot immediately be paid, the Court may provide for the payment of such fine in installments.

Rule 8.25 Commutation of Sentence

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

Rule 8.26 Suspension of Sentence; Probation

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

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

Rule 8.27 Violation of Suspended Sentence

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

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

Rule 8.28 Civil Remedies not Precluded

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

Rule 8.29 Limitation on Filing Complaints

No complaint shall be filed charging the commission of an offense under this Rule unless such offense shall have been committed within five (5) years prior to the date of the complaint.

Rule 8.30 Extradition

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

Rule 8.31 Arrest

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

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

TITLE IX. GENERAL PROVISIONS

Rule 9.1 Time Computation

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

Rule 9.2 Extensions of Time

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

Rule 9.3 Disqualification of Magistrates

Magistrates may be disqualified from hearing a case for cause. Disqualification may be accomplished on motion of any party to the proceeding or upon the Court's own motion.

Before filing any motion to disqualify the Magistrate, a request shall first be made to the Magistrate to disqualify or to transfer the cause to another Magistrate. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial a motion to disqualify a Magistrate or to transfer a cause to another Magistrate may be filed and a copy delivered to the Magistrate. If the motion is entered by a party, the Magistrate will hear the argument and determine if he should disqualify himself.

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

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

Rule 9.4 Orders

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

Rule 9.5 Withdrawal as Counsel

When clients violate their obligations to counsel, or fail to cooperate with counsel, in matters civil or criminal, counsel may withdraw after notice to all involved, so long as such is without prejudice to any scheduled hearing or trial, and with approval of the Court. If such request is denied because of the pendency of a hearing or trial and the granting of such would prejudice the other parties or the Court in its docketing and disposition of cases, the request to withdraw may be renewed as soon as the scheduled hearing is completed. Counsel may withdraw any time other attorneys are ready and able to take over without delay.

Rule 9.6 Default, Agreed or Uncontested Matters

No special appointment need be made for the presentation of any default, agreed or uncontested matter, whether civil or criminal. Counsel may present their Journal Entry, Decree or Order, and supporting evidence to the Magistrate.

Rule 9.7 Contempt of Court

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

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

Rule 9.8 Contempt Proceedings

Punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding five hundred dollars ($500.00) or by imprisonment in the city/county jail not exceeding six (6) months, or by both, at the discretion of the Court.

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

- It is clear from the identity of the offender and the character of his acts that disruptive conduct is willfully contemptuous; or
- The conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

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

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

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

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

In the event the party so charged shall demand a trial by jury, the Court shall thereupon set the case for trial at the next jury term of said Court, unless such time is waived by the party so charged, in which event the case shall be set for trial at a time determined by the Court. The Court shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two (2) sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative,

the party charged may deposit with the Court Clerk a money order or cashiers check equal to the amount of the appearance bond.

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

Rule 9.9 Cooperation by Federal Employees

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

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

PART III. THE JUVENILE COURT

TITLE I. ESTABLISHMENT AND DEFINITIONS

Rule 1.1 The Children's Court Established

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

Rule 1.2 Definitions

For purposes of sections pertaining to the Children's Court:

- *Abandon* means the leaving of a minor without communication or failing to support a minor for a period of one year or more with no indication of the parents' willingness to assume a parental role.
- *Adult* means a person eighteen (18) years or older.

- *Counsel* means an attorney admitted to the bar of a state or a lay advocate admitted to practice before the Court.
- *Custodian* means one who has physical custody of a minor and who is providing food, shelter and supervision to the minor.
- *Custody* means the power to control the day-to-day activities of the minor.
- *Delinquent act* means an act which, if committed by an adult, would be designated a crime under this part or under an ordinance of the tribe.
- *Detention* means the placement of a minor in a physically restrictive facility.
- *Guardian* means a person other than the minor's parent who is by law responsible for the care of the minor.
- *Guardian ad Litem* means a person appointed by the Court to represent the minor's interests before the Court.
- Juvenile offender means a person who commits a delinquent act prior to his or her eighteenth birthday.
- *Minor* means:
  - A person under eighteen (18) years of age;
  - A person eighteen (18) years of age or older concerning whom proceedings are commenced in the Children's Court prior to his or her eighteenth birthday; or
  - A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Children's Court.
- *Minor-in-need-of-care* means a minor who:
  - Has no parent or guardian available and willing to take care of him or her;
  - Is unwilling to allow his or her parent to take care of him or her;
  - Has suffered or is likely to suffer a physical or emotional injury, inflicted by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or emotional health;

  - Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian;
  - Has been sexually abused;
  - Has been committing delinquent acts as a result of parental pressure;
  - Has been committing status offenses;

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

Rule 1.3 Non-Criminal Proceedings

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

Rule 1.4 Guardian Ad Litem

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

Rule 1.5 Jurisdiction

The Children's Court has exclusive, original jurisdiction of the following proceedings:

- Proceedings in which a minor who resides in a community for which the Court is established is alleged to be a juvenile offender, unless the Children's Court transfers jurisdiction to the Court of Indian Offenses pursuant to Rule 1.7
- Proceedings in which a minor who resides in a community for which the Court is established is alleged to be a minor-in-need-of-care.

Rule 1.6 Rights of Parties

In all hearings and proceedings under these Rules the following rights will be observed unless modified by the particular section describing a hearing or proceeding. Notice of the hearing or proceeding shall be given to the minor, his or her parents, guardian or custodian and their counsel. The notice shall be delivered by certified mail, personal service or actual notice in court hearings.

The notice shall contain:

- The name of the Court;
- The title of the proceeding; and
- The date, time and place of the proceeding.
- The Children's Court Magistrate shall inform the minor and his or her parents, guardian or custodian of their right to retain counsel. In juvenile delinquency proceedings, the Court shall inform the minor charged with an offense, as follows: "You have a right to have a lawyer or other person represent you at this proceeding. If you cannot afford to hire counsel, the Court will appoint counsel for you."
- If the Children's Court Magistrate believes there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian with respect to legal representation, the Court shall appoint another person to act as counsel for the minor.
- The minor need not be a witness against, nor otherwise incriminate, himself or herself.
- The Children's Court shall give the minor, and the minor's parent, guardian or custodian the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

Rule 1.7 Transfer to Court of Indian Offenses

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

The following factors shall be considered when determining whether to transfer jurisdiction of the minor to the Court of Indian Offenses:

- The nature and seriousness of the offense with which the minor is charged;
- The nature and condition of the minor, as evidenced by his or her age; mental and physical condition; past record of offenses; and responses to past Children's Court efforts at rehabilitation.

The Children's Court may transfer jurisdiction of the minor to the Court of Indian Offenses if the Children's Court finds clear and convincing evidence that both of the following circumstances exist:

- There are no reasonable prospects for rehabilitating the minor through resources available to the Children's Court; and
- The offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.

When a minor is transferred to the Court of Indian Offenses, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

Rule 1.8 Court Records

A record of all hearings conducted in Children's Court shall be made and preserved.

All Children's Court records shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the Children's Court.

Rule 1.9 Law Enforcement Records

BIA/Tribal Law Enforcement records and files concerning a minor shall be kept separate from the records and files of adults.

All BIA/Tribal Law Enforcement records and files shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by Order of the Children's Court.

Rule 1.10 Expungement

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

Rule 1.11 Appeal

For purposes of appeal, a record of the proceedings shall be made available to the minor and parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.

Any party to a Children's Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Children's Court within thirty (30) days of the final order of disposition.

All appeals shall be conducted in accordance with this part.

Rule 1.12 Contempt of Court

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

Rule 1.13 Complaint

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

A citation to the specific section(s) of this part which gives the Children's Court jurisdiction of the proceedings;

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

Rule 1.14 Warrant

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

Rule 1.15 Custody

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

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

Rule 1.16 Law Enforcement Officer's Duties

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

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

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

Rule 1.17 Detention and Shelter Care

A minor alleged to be a juvenile offender may be detained, pending a Court hearing, in the following places:

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

Rule 1.18 Preliminary inquiry

If a minor is placed in detention or shelter care, the Children's Court shall conduct a preliminary inquiry within forty-eight (48) hours for the purpose of determining:

- Whether probable cause exist to believe the minor committed the alleged delinquent act; and
- Whether continued detention or shelter care is necessary pending further proceedings.

If a minor has been released to the parents, guardian or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of the

complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

If the minor's parents, guardian or custodian are not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the Children's Court shall recess for no more than seventy-two 72 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian. All the rights listed in **Rule 1.6** shall be afforded the parties in a preliminary inquiry.

The Children's Court shall hear testimony concerning. The circumstances that gave rise to the complaint or the taking of the minor into custody, and the need for detention or shelter care.

If the Children's Court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing unless:

- The act is serious enough to warrant continued detention or shelter care;
- There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or
- There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

The Children's Court may release a minor pursuant to **Rule 1.17** of this section to a relative or other responsible adult if the parent, guardian, or custodian of the minor consents to the release. If the minor is Fourteen (14) years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

Rule 1.19 Investigation by the presenting officer

The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

- Determine that no further action be taken;
- Begin transfer proceedings to the Court; or
- File a petition to initiate further proceedings.

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

Rule 1.20 Petition

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

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

Rule 1.21 Date of hearing

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

- The hearing is continued upon motion of the minor; or

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

Rule 1.22 Summons

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

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

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

A copy of the petition shall be attached to the summons.

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

Rule 1.23 Adjudicatory hearing

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

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

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

- ☐ The minor fully understands his or her rights and fully understands the potential consequences of admitting the allegations;
- ☐ The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis;
- ☐ The minor has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

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

If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

Rule 1.24 Dispositional Hearing

A dispositional hearing shall take place not more than fifteen (15) days after the adjudicatory hearing. The time period may be extended for good cause shown or if waived by the parties.

At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.

All the rights listed in **Rule 1.6** shall be afforded the parties in the dispositional hearing.

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

The dispositional order constitutes a final order for purposes of appeal.

Rule 1.25 Dispositional Alternatives

If a minor has been adjudicated a juvenile offender, the Children's Court may make the following disposition:

- Place the minor on probation subject to conditions set by the Children's Court;
- Place the minor in an agency or institution designated by the Children's Court; and/or
- Order restitution to the aggrieved party.

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

The dispositional order is to be reviewed at the Children's Court discretion, but at least once every six (6) months.

Rule 1.26 Modification of Dispositional Order

A dispositional order of the Children's Court may be modified upon a showing of a change of circumstances.

The Children's Court may modify a dispositional order at any time upon the motion of the minor or the minor's parents, guardian or custodian.

If the modification involves a change of custody, the Children's Court shall conduct a hearing pursuant to **Rule 1.21** of this section.

A hearing to review a dispositional order shall be conducted as follows:

- All the rights listed in **Rule 1.6** shall be afforded the parties in the hearing to review the dispositional order.
- The notice required shall be given at least forty-eight (48) hours before the hearing.
- The Children's Court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

If the request for review of disposition is based upon an alleged violation of a Court order, the Children's Court shall not modify its dispositional order unless it finds evidence of the violation by a preponderance of the evidence.

Rule 1.27 Medical Examination

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

TITLE II. MINOR IN NEED OF CARE PROCEDURE

Rule 2.1 Complaint (also referred to as Petition)

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

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

Rule 2.2 Warrant (also referred to as Pick Up Order)

The Children's Court may issue a warrant, directing that a minor be taken into custody if the Children's Court finds there is probable cause to believe the minor is a minor-in-need-of-care.

Rule 2.3 Custody

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

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

Rule 2.4 Law Enforcement Officer's Duties

Upon taking a minor into custody the officer shall release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary. If the minor is not released, make

immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the Children's Court.

Rule 2.5 Shelter Care

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

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

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

Rule 2.6 Preliminary Inquiry

If a minor is placed in shelter care, the Children's Court shall conduct a preliminary inquiry with seventy-two (72) hours for the purpose of determining Whether probable cause exists to believe the minor is a minor-in-need-of care, and whether continued shelter care is necessary pending further proceedings.

If a minor has been released to the parents, guardian or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears that further efforts

are likely to produce the parent, guardian or custodian, the Children's Court shall recess for no more than seventy-two (72) hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.

All the rights listed in **Rule 1.6** of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the Court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

The Children's Court shall hear testimony concerning the circumstances that gave rise to the complaint or the taking of the minor into custody, and the need for shelter care.

If the Children's Court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian; and ordered to appear at the adjudicatory hearing, unless there is reasonable cause to believe that the minor:

- Will run away and be unavailable for further proceedings;
- Is in immediate danger from parents, guardian or custodian and that removal from them is necessary; or
- Will commit a serious act causing damage to person or property.

The Children's Court may release the minor pursuant to paragraph six (6) of this **Rule** of this section to a relative or other responsible adult if the parents, guardian or custodian of the minor consent to the release. If the minor is fourteen (14) years of age or older, the minor and the parents; guardian or custodian must both consent to the release.

Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

Rule 2.7 Investigation by the Presenting Officer

The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine

whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may determine that no further action be taken; or file a petition in the Children's Court to initiate further proceedings.

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

Rule 2.8 Petition

Proceedings under **Rules 2.1** and **2.2** of this section shall be instituted by a petition filed by the presenting officer on behalf of the tribe and the interests of the minor. The petition shall state:

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

Rule 2.9 Date of Hearing

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

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

Rule 2.10 Summons

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

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

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

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

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

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

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

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

If the circumstances of the petition are sustained by clear and convincing evidence, the Children's Court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

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

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

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

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

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

The dispositional order constitutes a final order for purposes of appeal.

Rule 2.13 Dispositional Alternatives

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

- Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the Court may prescribe; or, if reasonable efforts to have the minor return or remain in his or her own home are unsuccessful, the Children's Court may make whichever of the following dispositions is in the best interest of the minor;
- Place the minor with a relative subject to such limitations and conditions as the Court may prescribe;
- Place the minor in a foster home which has been approved by the tribe subject to such limitations and conditions as the Court may prescribe;
- Place the minor in shelter care facilities designated by the Court;
- Recommend that termination proceedings begin.

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

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

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

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

Rule 2.14 Modification of Dispositional order

A dispositional order of the Children's Court may be modified upon a showing of a change of circumstances.

The Children's Court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

If the modification involves a change of custody, the Children's Court shall conduct a hearing pursuant to **Rule 2.6** of this section to review the dispositional order. A hearing to review a dispositional order shall be conducted as follows:

- All the rights listed in **Rule 1.6** of this part shall be afforded the parties in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least forty-eight (48) hours before the hearing.
- The Children's Court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.
- If the request for review of disposition is based upon an alleged violation of a Court order, the Children's Court shall not modify its dispositional

order unless it finds by a preponderance of the evidence that a violation has occurred.

Rule 2.15 Termination

Parental rights to a child may be terminated by the Children's Court according to the procedures in this section.

Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

- The name, birth date, and residence of the minor;
- The names and residences of the minor's parents, guardian or custodian;
- If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and
- The reasons for the petition.

Upon receipt of the petition, the Children's Court shall set a date for the termination hearing which shall not be more than fifteen (15) days after the Children's Court receives the petition from the presenting officer. The hearing may be continued:

- On motion of the minor's parents, guardian or custodian; or
- Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.
- Unless ordered by the Court for good cause shown.

Rule 2.16 Summons

At least five (5)working days prior to the termination hearing, the Children's Court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the Court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing. The summons shall contain:

- the name of the Court,
- the title of the proceedings, and
- the date, time and place of the hearing.

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

The Children's Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

All the rights listed in **Rule 1.6** shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents may not be compelled to be witnesses against, nor otherwise incriminate themselves.

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

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

- The child has been abandoned;
- The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;
- The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;
- The minor has suffered serious emotional or mental harm due to the act of the parent(s); or
- The voluntary written consent of both parents has been acknowledged before the Court.

Rule 2.17 Dispositional alternatives

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

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

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

PART IV. CHILD PROTECTION AND DOMESTIC VIOLENCE PROCEDURES

TITLE I. DEFINITIONS AND PROCEDURES FOR OBTAINING AN ORDER OF PROTECTION

Rule 1.1 Definitions for purposes of this subpart:

- *Domestic violence* means to inflict physical or emotional harm, bodily injury, or sexual assault, or the fear of imminent physical harm, bodily injury, or sexual assault on a family member.
- *Family member* means any of the following:
  - A spouse;
  - A former spouse;
  - A person related by blood;
  - A person related by existing or prior marriage;
  - A person who resides or resided with the defendant;
  - A person with whom the defendant has a child in common; or
  - A person with whom the defendant is or was in a dating or intimate relationship.
- *Parent* means persons who have a child in common, regardless of whether they have been married or have lived together at any time.

Rule 1.2 How to Petition for Order of Protection

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

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

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

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

Rule 1.3 Obtaining an Emergency Order of Protection

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

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

- Within seventy-two (72) hours after the victim files a petition, serve notice to appear upon both parties and hold a hearing on the petition for order of protection; or
- If a notice of hearing cannot be served within seventy-two (72) hours, issue an emergency order of protection.
- If the Court issues an ex parte emergency order of protection, it must within ten (10) days hold a hearing on the question of continuing the order. If notice of hearing cannot be served within ten (10) days. The emergency order of protection is automatically extended for ten (10) days; and
- If after the ten (10) day extension, notice to appear cannot be served, the emergency order of protection expires.

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

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

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

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

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

The order of protection may do any of the following:

- Order the person who committed the act of domestic violence to refrain from acts or threats of violence against the petitioner or any other family member;
- Order that the person who committed the act of domestic violence be removed from the home of the petitioner;
- Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective, or order the person who has committed an act of domestic violence to provide temporary suitable alternative housing for the petitioner and other family members to whom the respondent owes a legal obligation of support;
- Award temporary custody of any children involved when appropriate and provide for visitation rights, child support, and temporary support for the petitioner on a basis which gives primary consideration to the safety of the petitioner and other household members;

- Order the person who is found to have committed an act of domestic violence not to initiate contact with the petitioner;
- Restrain the parties from transferring, concealing, encumbering, or otherwise disposing of one another's property or the joint property of the parties except in the usual course of business or for the necessities of life, and order the parties to account to the Court for all such transferring, encumbrances, and expenditures made after the order is served or communicated; and
- Order other injunctive relief as the Court deems necessary for the protection of the petitioner, including orders to law enforcement agencies as provided by this subpart.

Rule 1.5 Service of the Protection Order

When an order of protection is granted under this subpart:

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

Rule 1.6 Duration and Renewal of a Regular Protection Order

An order of protection granted by the Court is effective for a fixed period of time up to a maximum of three (3) years.

Rule 1.7 Consequences of Disobedience or Interference

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

Rule 1.8 Relationship to Other Remedies

The remedies provided in this subpart are in addition to the other civil or criminal remedies available to the petitioner.

PART V. RULES OF APPELLATE PROCEDURE

TITLE I. COURT OF INDIAN APPEALS ESTABLISHED

Rule 1.1 Court of Indian Appeals

There shall be and there is hereby created one Court with the power to hear appeals from the decisions of the Court and tribal entities established at the Agencies within the jurisdiction of the Southern Plains Region which Court shall be called the "COURT OF INDIAN APPEALS."

Rule 1.2 Adoption of Appeals Court by Tribal Entities

The various procedures and rules of this Court's appeal process may be adopted or incorporated by reference and/or the Appellate Court adopted as an Appeals Court by any tribal Court or tribal entity of competent jurisdiction.

Rule 1.3 Composition

The Magistrate of the Court of Indian Offenses of the Anadarko, Concho, Pawnee, and Shawnee Agencies sitting en banc shall constitute the COURT OF INDIAN APPEALS.

Rule 1.4 Place of Sitting

The Court of Indian Appeals shall maintain regular offices at the Southern Plains Regional Office, Anadarko, Oklahoma, and generally conduct its business there.

Rule 1.5 Time of Sitting

The Court of Indian Appeals shall convene for the consideration of appeals from the orders of the Courts of Indian Offenses or upon a notification of an appeal from a tribal entity which has adopted the Court of Indian Appeals.

Rule 1.6 Court of Indian Appeals is Court of Record

The Court of Indian Appeals is a Court of record. Record of all oral arguments made at the trial Court level shall be made by whatever means is available. Any party may enlist the services of a certified Court reporter at their own expense. If no record is made the Appeals Court will review the matter only on existing record in the case. If no stenographic report of the evidence or proceedings at hearing or trial was made, or if a transcript of the reporter's notes cannot be prepared, or where the judgment involves an involuntary loss of liberty, personal freedom or incarceration, and where the appealing party is an indigent, the party desiring to take the appeal under these rules (or any other party) may prepare a statement of the evidence or proceedings in the narrative form from the best available means, including his recollection. The opposing party may object or propose amendments to the statement within ten (10) days after receipt. Thereupon, the statement, and any objections thereto, or proposed amendments shall be submitted, upon due and advance notice to all parties, to the trial Magistrate for settlement and approval and as settled and approved shall be included by the Court Clerk in the record on appeal.

Rule 1.7 Record Retention

Any transcript of the proceedings of the Court of Indian Appeals shall be filed of record.

Rule 1.8 Scope

These rules shall govern the appeal of all cases of either a civil or criminal nature arising in the Southern Plains Region jurisdiction.

Rule 1.9 Effective Date

By order of the Court these rules shall become effective upon their effective date of publication. These rules may be amended as needed by order of this Court at any regularly scheduled meeting or special meeting of the Magistrates of this Court, provided a majority of the Magistrates are in attendance.

Rule 1.10 Withdrawal of Records

The Court Clerk shall not permit any of the following to be taken from the Courtroom, or the Court Clerk's office without an order from the Court or two (2) of its Magistrates.

- Original record of the Trial Court;
- Original transcript of the proceedings of the Trial Court;
- Any physical evidence forwarded for the appeal;
- Original transcript of the proceedings of the Appellate Court;
- Original record of the Appellate Court;
- Original decision of the Appellate Court.

Rule 1.11 Copies of Records

The Court Clerk may allow any party to a proceeding or their attorney to purchase a copy of the record of their case or any portion thereof before final disposition of the appeal. After final disposition of the appeal, any person may purchase a copy of the record of any case, juvenile and/or adoption not subject to disclosure except by Order of the Court. For each copy of the record or portion thereof released under this provision, the party obtaining the copy shall pay a fee in accordance with the adopted Uniform Fee Schedule.

Rule 1.12 Form of Certification of Record in Court of Indian Offenses

Transcripts and any physical evidence to be filed in the Court of Indian Appeals shall be certified by the Court Clerk of the Court of Indian Offenses where the case was tried.

Rule 1.13 Briefs—Filing

An original and three (3) copies of each brief submitted to the Court shall be filed with the Court Clerk. Unless otherwise ordered by this Court. Opening brief of appellant shall be filed within sixty (60) days from the date the appeal records are filed in the Court Clerk's office. The Respondent shall file his response brief within forty (40) days from the date the appellant's brief is filed with the Court Clerk.

A reply brief in reply to the response brief or any previously filed reply brief shall be filed within twenty (20) days after filing of the response brief.

All briefs shall be typewritten and all copies thereof must be clearly legible. Briefs shall be typed on 8 1/2 x 11-inch plain bond white paper, however, briefs filed by a defendant in a criminal case filing pro se may be handwritten so long as all copies and the original are clearly legible, those portions of any handwritten brief which cannot be read will be disregarded by the Court.

All briefs must be promptly served on the other parties to the case.

The Prosecutor in the trial Court shall be responsible for briefing and conducting the appeal on behalf of the tribe in criminal appeals.

Rule 1.14 Contents of Briefs.

The brief shall contain a title page clearly indicating the style of the case, leaving space for insertion of the Appellate Court case number, the case number in the Trial Court, and the name, address and phone number of counsel, or any party acting in his own behalf (pro se).

The brief shall contain a table of contents referring to the pages in the brief where each specification of error can be found.

A short concise history of the prior proceedings in the case shall be stated. Included shall be the crime or actions alleged to have been committed, the Magistrate, case number, Tribal court or Tribal entity, any important procedural steps in the development of the case, a concise statement of the evidence introduced at trial by the parties, and a statement as to which party prevailed as a result of the trial.

A specification of errors stating specifically and particularly the exact error asserted and an argument stating specifically and particularly the reasons for the parties position on the question. Any applicable authority shall be cited to the Court.

Whenever jury instructions or the admissibility of evidence is questioned, the portion in question shall be quoted word for word in the brief and a specific reference made as to where it can be found in the record.

Rule 1.15 Reserved

Rule 1.16 Action of Court on Failing to File Briefs

When an appeal is perfected before this Court but a party fails to file a brief within the prescribed time or approved extensions, the Court shall decide the appeal upon the record and the brief(s) of the other party(ies). If no party(ies) file a brief, the Court will examine the record only for fundamental error.

Rule 1.17 Additional Briefs

The Court may at any time require one or more parties to an appeal to clarify their position or provide any additional arguments or authorities.

Rule 1.18 Oral Argument

All appeals shall be submitted for decision on the briefs without oral argument, provided, that within thirty (30) days after the appeal has been filed in this Court, either side may move for oral argument stating the reasons that oral argument will be beneficial in the determination of the issues presented. The Chief Magistrate, or in his absence any two (2) Magistrates neither of which is the trial Magistrate, may approve or deny the request for oral argument.

Except in unusual and extreme circumstances, the Court shall, in a criminal case, approve a request for oral argument from a petitioner who is not represented by counsel when he alleges that he can better state his position orally than in writing.

In any event, the Court may, on its own motion, order an oral argument when it appears to the Court that an oral argument will assist the Court in the determination of the issues or appeal.

Rule 1.19 Manner of Making Arguments

Each party will be granted an identical amount of total time by the Court in which to present their case. The appellant shall be afforded the opportunity to open and close the argument if he desires to reserve a portion of his time for rebuttal.

Rule 1.20 Notification of Oral Argument

The Court Clerk of the Court of Indian Appeals shall notify all parties to the cases of the date, time, and place assigned for oral argument not later than fifteen (15) days prior to that date.

Rule 1.21 Additions to the Record

Any two (2) Magistrates of this Court, except the Magistrate who conducted the trial, may, on their own motion or the motion of any party, order the record supplemented to include any portions thereof not designated before the appeal was lodged in the Court.

Rule 1.22 Motions

All motions shall be reduced to writing and shall contain a brief statement of the facts and reasons for the motion and specific relief requested.

Rule 1.23 Judicial Notice

The Court shall take judicial notice of the Law and Order Codes and legislation of the Tribes within the jurisdiction of the Southern Plains Regional Office, when a certified copy of same has been delivered to the Court. The Regulations of the Secretary of the Interior, and any Special Provisions or alterations thereto affecting the Tribes subject to the jurisdiction of the Southern Plains Regional Office, the decisions of the Board of Indian Appeals, all federal, state legislation, the decisions of all federal Courts, and the highest Appellate Court of each state. The Court may take judicial notice of facts and/or tribal customs generally known throughout the jurisdiction of the Court and generally accepted as true.

Rule 1.24 Determination of the Appeal

All appeals shall be decided by a majority vote of the Magistrates sitting on the case.

Rule 1.25 Opinions

Each Magistrate sitting on an appeal shall have a right to file a written opinion expressing his/her reasons for taking the position, which he/she deemed appropriate, but before his/her opinion is filed it shall be circulated to the other Magistrates.

Opinions may be memorandum or of such length as the Court shall determine and shall be in writing.

After all briefs are filed and the oral argument, if any, the Chief Magistrate shall assign the case to a participating Magistrate who shall prepare an opinion and deliver a copy of his/her opinion to the other participating Magistrates.

After the Magistrate to whom the case is assigned has delivered his opinion to the other Magistrates, they shall have twenty (20) days in which to join in the opinion, concur, concur in part and dissent in part, or dissent and deliver a copy of their decision to the other Magistrates, provided that two participating Magistrates may order an extension of this time.

At any time after an opinion is in circulation, a Magistrate may withdraw his opinion and join in the decision of another Magistrate.

When all participating Magistrates have reached an opinion on the Appeal, the Chief Magistrate shall deliver to the Court Clerk for filing all opinions issued in the case.

The Court Clerk shall immediately cause the opinion(s) of the Court to be filed in the record in the following order:

- Majority Opinion,
- Concurring Opinion(s),
- Opinion(s) Concurring in Part and Dissenting in Part,
- Dissenting Opinion(s), and to cause same to be delivered to all parties in the case, the affected Tribal Council, and the public:

In all opinions relating to juvenile matters and adoptions, the opinion of the Court shall not reflect the name of the juvenile(s), the adoptee(s), or any other person whose information would reasonably lead to identification, of the juvenile(s) or adoptee(s), by the public, but the initials or another distinct identification symbol shall be used to identify the rolls of such persons in the opinion.

Rule 1.26 Re-hearings

Application for re-hearings shall be by written motions, which may be contested in writing, without oral argument within ten (10) days of the filing of the Courts opinion for the following reasons and none other:

- Some question decisive of the case and presented by counsel was overlooked by the Court.
- Some express statute or controlling decision specifically controlling the case was overlooked by council and the Court and the decisions contrary thereto.

Any such question, statute, or decision must be specifically set out in the motion as the grounds for the motion.

If the motion for re-hearing is granted, the re-hearing shall be had at such time, date, and place and under such conditions of briefing and oral argument as the Court shall direct.

If a petition for re-hearing is granted, the original opinion(s) shall be withdrawn and no Mandate issued until the opinion after the re-hearing is issued.

The ten (10) day rule shall be jurisdictional and cannot be waived by either party or the Court.

Rule 1.27 Mandates

Fifteen (15) days after the filing of the Courts decision, if no motion for re-hearing of said decision has or can be filed, or five (5) days after denial of a motion for re-hearing, the Court shall issue its mandate to the Court of Indian Offenses or tribal entity wherein the case arose, directing said Trial Court to take further action in accordance with the decision of this Court.

Issuance of the mandate shall confer sufficient jurisdiction on the Trial Court to comply with the mandate and no more.

Once the mandate is issued, or once a motion for re-hearing is denied, or an opinion is issued pursuant to a re-hearing, no further motions or applications for review may be filed in the case and the Court Clerk shall accept none.

Nothing in these rules shall prohibit the Court from issuing the mandate immediately or staying its issuance in the interests of justice. Mandates issued immediately shall be recalled forthwith if a motion for re-hearing is granted.

Rule 1.28 Duties of Prosecutor

In criminal cases, a copy of the opinion rendered by this Court shall be forwarded to the prosecutor for the Court from which the appeal is perfected. A directive with instructions setting forth the prosecutor's duties, as an officer of the Court, will be attached to the opinion.

On the day the mandate is actually issued, the Court Clerk shall notify the prosecutor that the mandate has been issued in order that he may act accordingly.

Rule 1.29 Contempt of Court, What Constitutes

Improper, insulting or contemptuous language, pleadings or conduct of attorneys to or concerning each other in Court, or to and concerning the Court, or any member thereof, both in or out of the Court, will be considered and treated as direct contempt of the Court.

Rule 1.30 Communication to be Addressed to Clerk

All communications and inquiries in relation to causes pending or other Court matters shall be addressed to the Clerk of the Court of Indian Offenses.

Rule 1.31 Notice—Sufficiency

All notices required by these rules to be given by the Court Clerk shall be by mail addressed to the party or his attorney of record at the address shown by the record or at the address furnished to the Court Clerk.

Rule 1.32 Attendance of Parties

It shall not be necessary for the parties to an appeal to be present at any oral argument or hearing conducted by this Court if they are represented by counsel.

Rule 1.33 Harmless Error

No judgment or judgment and sentence shall be reversed, modified or vacated by the Court of Indian Offenses if all errors found in its proceedings appear harmless in view of all the evidence properly admitted in the case. Reversal, modification, or vacation shall occur only when it appears that such action is necessary in the interests of tribal customs or substantial justice and fairness.

Rule 1.34 Who May Appeal—Civil Cases

Any party aggrieved by a final order of a Court of Indian Offenses subject to the jurisdiction of the Southern Plains Region may appeal to the Court of Indian Appeals. Any ruling of law made by the Trial Magistrate may be heard on the appeal.

Rule 1.35 Defendant's Appeal—Criminal Cases

Reserved.

Rule 1.36 Tribe's Appeal—Criminal Cases

The tribe may appeal a verdict of not guilty, any order of the Trial Court directing the jury to acquit the defendant, or overturning or modifying the jury verdict of guilty. Any ruling of law made by the Trial Magistrate may be heard on appeal, provided, that once a "not guilty" judgment is entered, the defendant is forever discharged of liability for the alleged offense and he may participate in the appeal or not as he chooses.

Rule 1.37 Certified Questions

Whenever it appears that an interlocutory order of the Trial Court will have a serious impact on the determination of the case, and that the rights of some party to the case will be irretrievably lost if said order was in error, the Trial Magistrate, at the request of the party who would be so injured, may certify the question to the Court of Indian Appeals for determination and shall thereafter stay further proceedings in the case until the Court of Indian Appeals has issued its opinion.

TITLE II. REGULAR APPEALS

Rule 2.1 Regular Appeals

Regular Appeals may be taken in all cases, civil or criminal, except where the defendant entered a plea of guilty in a criminal case, provided however that a defendant may appeal a matter if he/she had requested that his/her plea of guilty be withdrawn and said request was denied.

Rule 2.2 Time for Appeal

The time period for perfecting an appeal begins to run on the date the journal entry of judgment in a civil case is filed or on the date of sentencing in a criminal case. The day after the date of judgment in a civil case is filed or sentencing in a criminal case is the first day of the appeal period. All appeals must be perfected within sixty (60) days except on order of this Court for good cause shown. When the last day of the appeals period falls on the day on which the Court Clerk's Office is not open for its regular business day, the appeal period shall end on the next day in which the Court Clerk's Office is open for its regular business day.

Rule 2.3 Definitions

- *Judgment and Sentence Record.* The formal instrument, which reflects the Judgment and Sentence of the Trial Court, in a criminal case.
- *Judgment.* The formal instrument, which reflects the Judgment of the Trial Court in a civil case. A judgment in a civil case is the final determination of the rights of the parties in an action.
- *Original Record.* All of the instruments filed with the Court Clerk of the Trial Court during the trial proceedings. Photocopies of the original record—as designated—shall be filed on the appeal, including original copy of the Court's jury instructions.
- *Designation of Record.* The instrument filed by an appellant designating the records to be filed on appeal. Such includes that portion of the original record and that portion of a Court Reporter's transcript of evidence, which appellant desires in order to perfect the appeal.

- *Transcript of Evidence.* The reported record as prepared by a Court Reporter, including Instructions as read to the jury, when requested by appellant.
- *Notice of Intention to Appeal.* The written instrument serving notice on the Trial Court of a party's intention to appeal the Judgment or Judgment and Sentence.
- *Writ of Certiorari.* The only method of appeal from a plea of guilty entered in the Trial Court.
- *Petition in Error.* Petition filed by the Appellant, stating error of law.

Rule 2.4 Commencement of Appeal

An appeal is commenced by filing a written notice of intent to appeal and the designation of record, both to be filed in the Trial Court within fifteen (15) days of the date of judgment and sentence or judgment; and notice of intent to appeal shall contain a short statement of reasons for the appeal.

Rule 2.5 Contents of Petition in Error—Filing

The appellant's petition in error must contain the following:

- Tribal Court or tribal entity;
- Crime for which appellant was convicted, or type of civil action and cause which appellant is contesting;
- Judgment and sentence or judgment imposed and date thereof;
- Amount of bail and whether or not appellant is free on bail, incarcerated, or subject to other restraint;
- Error of law urged as having been committed during the progress of the trial;
- Nature of relief appellant seeks.

The party appealing the judgment of the trial Court shall be shown as the "Appellant." The party adverse to the appellant shall be shown as "Respondent."

The petition in error shall be filed with the Court Clerk no later than 30 days after judgment is entered in a civil proceeding or judgment or sentencing is entered in a criminal case, and the Court Clerk shall affix the original of the petition in error to

the records for appeal when such are filed.

An amendment to the petition in error may be filed by first obtaining leave of the Chief Magistrate or any two (2) Magistrates of this Court.

Rule 2.6 Joinder

When two (2) or more parties have identical or similar interests in an appeal from the same trial, and all such parties were either all plaintiffs or all defendants in the trial Court, and all such parties request substantially similar relief, they may join in one appeal or appeal separately as they desire, provided, that where such parties bring separate appeals, the Court may order joinder of those appeals for decision.

When two or more parties appeal with different attorneys, one (1) record may be filed for both such parties but separate Petitions in Error must be filed for each party.

Where one (1) record is filed for several appellants not joining in one (1) appeal, all appellant's attorneys not filing the record shall be responsible for assuring that their appeal is cross-referenced to the appeal containing the record and for referring to that appeal in all further documents filed in this Court.

Rule 2.7 Instruments to be Filed with Petition of Error

The original and three (3) copies of the petition in error must be filed with the Court Clerk. One (1) copy of the original record. Original and one (1) copy of the transcript of evidence. In the event the petition in error and original record are timely filed and through no fault of the appellant, the said transcript of evidence has not been completed and cannot be filed, this Court, for good cause shown on affidavit of appellant's attorney of record and/or the Court reporter who reported the trial, may assume jurisdiction and grant additional time for filing of said original transcript and copy.

Rule 2.8 Notice of Intent to Appeal and Designation of Record

Within fifteen (15) days after the date of entry of judgment or judgment and sentence, any party desiring to appeal must file with the Court Clerk of the trial Court, his "Notice of Intent to Appeal" and "Designation of Record." One (1) copy of the

designation of record shall be served on each adverse party and on the Court reporter, if applicable, at or immediately after the time of filing.

Rule 2.9 Contents of Designation of Record—Procedure

The designation of the original record shall designate those records filed in the Trial Court, which are desired to be included in the "Original Record" for appeal. Judgment and sentence, or judgment shall be included in the designation.

The designation of record or the transcript of evidence must designate that part of the record to be included in the record for appeal. If the defendant desires the entire proceedings to be included, the designation of record must so state.

At the time the designation of record is served on the Court Clerk, or as soon as possible thereafter, arrangements for preparing the transcript of evidence shall be reached between defendant and Court Clerk.

If appellant's designation of record does not designate preparation of the entire record, the respondent may designate a "Counter-Designation of Record" within ten (10) days after being served with a copy of the appellant's designation of record.

Unless otherwise ordered by the Court, the cost for the counter-designation of record shall be borne by the appellant; except portions thereof shown at a hearing before the trial Court to be unnecessary, may be ordered at respondent's expense when inclusion thereof is insisted upon by the respondent.

Rule 2.10 Form and Contents of Record

After a designation of record is made, the Court Clerk shall promptly assemble in chronological sequence, all of the instruments on file which have been designated for inclusion in the record on appeal and all others made in the trial Court with respect to the content of the transcript and assessment of cost. The instruments numbered consecutively, indexed and bound shall be certified under the seal of the Clerk. All designations of record and a certified copy of all the appearance docket sheets and the judgment and sentence and/or final order shall be included.

If the documents to be included in the record are voluminous, the trial Court may order the record to be abbreviated by a narrative description of the omitted instruments.

The original trial exhibits shall not be reproduced in the record unless otherwise directed by the trial Court for good cause shown. The trial exhibits shall be indexed and incorporated into the transcript either by reference or physical attachment, as the Court Clerk may deem advisable. The original transcript, indexed and certified as correct, together with two (2) certified copies, and the exhibits in the case, if any are attached thereto, shall be filed in the trial Court. If any party desires a copy for his sole use, such party shall procure it from the Court Clerk on payment of cost. NO EXHIBITS (firearms, narcotics, etc.), other than documentary or photographic evidence, shall be incorporated in the record of an appeal or transmitted to the Clerk of the Court of Indian Appeals; PROVIDED, HOWEVER, this Court may direct supplementation of the record for any exhibit necessary for the determination of the appeal. It shall be the duty of the trial Court to issue directives to secure and maintain all physical evidence admitted at trial in whatever manner it deems appropriate.

The petition in error, the instruments bound by the Court Clerk, together with the original and one copy of the Court reporter's transcript of evidence and the exhibits incorporated therein (if portions of proceedings or evidence were designated for inclusion), shall constitute the record on appeal.

It shall be the duty of the appellant to reduce to writing the transcript of any recording to be included in the record on appeal which shall be accomplished within sixty (60) days of the date of judgment in a Civil case or the date of judgment and sentencing in a Criminal case, at which time the appeal shall be deemed perfected.

Rule 2.11 Duties of Clerk on Completion of Record

When the Court Clerk has completed the record he/she shall notify all parties (or their counsel) in writing of its completion, and notify the Court Clerk in writing of the completion of the record and that all parties to the case have been notified thereof in writing.

Rule 2.12 Fees

The fees, which may be charged by the Court Clerk of the Trial Court for assembling the record are in accordance with the Court approved Uniform Fee Schedule.

Rule 2.13 Attorney's Withdrawal of Record for Filing

After the Court Clerk's Notification Received. When the records for appeal are prepared the Court Clerk, within twenty (20) days, will transmit said record directly to the appeals officers assigned to the appeal. PROVIDED, HOWEVER, that the ultimate responsibility for the content of the appeal records filed in this Court rests with the attorney perfecting the appeal and not with the Court Clerk regardless of the method chosen for transmission of said records to this Court.

The trial Court Clerk shall make appropriate notation in the case file to reflect the transmission of said appeal record.

Rule 2.14 Motions for New Trial

Motions for a new trial shall be made within ten (10) days of judgment or judgment and sentence is rendered and shall be heard by the trial Court thirty (30) days. Motions for new trial on the grounds of newly discovered evidence may be filed up to thirty (30) days after discovery and said motion shall be heard by the trial Court within thirty (30) working days. Even though the appeal is perfected the trial Court shall have continuing jurisdiction to decide the motion for a new trial filed within the proper time limit and if it entertains such a motion, it shall forthwith notify the Court of Indian Appeals of its action on the motion. If a motion for a new trial is granted, the appeal will be deemed to be abandoned, and it shall be dismissed if it was previously perfected.

Rule 2.15 Filing Fee

The fee, which shall be charged by the Court Clerk for filing the petition in error, shall be according to the Court approved Uniform Fee Schedule.

Rule 2.16 Indigents

Any person asserting that he cannot pay any of the fees required for appeal by this section may proceed pursuant to Part II, Title I, Rule 3.4 of the Court Rules. Upon the filing of a properly completed Affidavit in Forma Pauperis the Court may, in its discretion, waive such fees, as it considers just and equitable.

Rule 2.17 Bail

All defendants in criminal cases shall be eligible for bail on appeal as provided by law.

Rule 2.18 Application In Forma Pauperis

Any person who asserts that he is an indigent person, unable to pay the filing fees required under these rules, must execute an "Affidavit in Forma Pauperis" verified before a Notary Public, or other person authorized to administer oaths. Any false statement of a material fact therein may serve as the basis for prosecution and conviction of perjury.

Rule 2.19 Dismissal of Appeals

As a matter of right, an appeal may be dismissed at any time before a responsive pleading is filed, and thereafter upon a motion for good cause shown. Costs may be assessed, including a reasonable attorney fee as the Court deems just.

TITLE III - RESERVED

TITLE IV. POWERS OF THE COURT AND ITS OFFICERS

Rule 4.1 Powers of Court

In addition to all other lawful and inherent powers, the Court of Indian Appeals shall have the power:

- To affirm, reverse, vacate, modify, remand for further proceedings, or remand with directions the judgment of any Court of Indian Offenses or tribal entity, which has adopted this Court as the Appeals Court, subject to the jurisdiction of the Southern Plains Region.
- To issue the following extraordinary writs on motion and good cause shown:
  - Writ of Prohibition
  - Writ of Mandamus
  - Writ of Habeas Corpus

Rule 4.2 Time Limit for Filing Original Proceedings

Ten Day Rule. The Court of Indian Appeals will not assume jurisdiction in any Prohibition, Mandamus, or Habeas Corpus proceeding unless the same is filed with the Court Clerk at least ten (10) days prior to the date said cause is set for hearing or trial, nor shall this Court stay any proceeding in the Courts of Indian Offenses or assume jurisdiction in any case unless at least two (2) members of the Court shall agree.

Rule 4.3 Applications to Assume Jurisdiction—Notice

No such applications for extraordinary writs will be heard without notice to the adverse party unless by reason of an emergency this Court determines the application should be heard without notice. Such notice shall state that the application, a copy of which must be attached to the copy of the notice served on the adverse party, has been filed and the date and time on which said application will be presented to the Court. The original notice showing service on the adverse party shall be filed with the Court Clerk at the time the application with briefs attached if filed; PROVIDED, HOWEVER, that this Rule shall not apply to pro se applications filed by prison inmates.

Rule 4.4 Chief Magistrate

The Chief Magistrate of the Southern Plains Region shall, in addition to all other powers lawfully vested in him/her, be responsible for the administration of the Courts and shall have all powers necessary and proper for carrying out his/her lawful duties.

Rule 4.5 Court Clerk

The Clerk of the Court of Indian Appeals, in addition to all other lawful power and authority shall be authorized to administer oaths and attest signatures and shall have all powers necessary and proper for carrying out his/her lawful duties.

Rule 4.6 Bailiff

The Bailiff, in addition to all other lawful power and authority, shall have the power to administer oaths and, subject to the direction of the Chief Magistrate to

maintain the order and dignity of the Court and he/she shall have all necessary and proper powers for carrying out his/her lawful duties.

COURT OF INDIAN OFFENSES
FILED
In the Office of the Court Clerk
JUL 24 2012
Docket__Page__Recorded
in Journal____on Page____
By_____
Court Clerk/Deputy

THE COURT OF INDIAN OFFENSES
SOUTHERN PLAINS REGION
ANADARKO, OKLAHOMA

BE IT RESOLVED:

PURSUANT TO 25 CFR § 11.313 the following are hereby adopted as the official Rules of The Court for the Courts of Indian Offenses of the Southern Plains Region, Anadarko, Oklahoma. This Court gratefully acknowledges the hard work and diligent efforts of all those involved in the preparation thereof. These Rules represent many hours of discussion, revision, preparation and proofing. The objective in preparing these Rules was to provide easier access to the Courts, and a more efficient, effective process for all citizens who desire to have their voice heard.

IT IS SO ORDERED:

O. Ronald McGee, Chief Magistrate

All Magistrates Concur:
Honorable Rebecca Cryer
Honorable Steven Parker
Honorable Lisa Otipoby Herbert
Honorable Shannon Edwards
Honorable Phil Lujan
Honorable Tom Walker

COURT OF INDIAN OFFENSES
FILED
In the Office of the Court Clerk
FEB 18 2015
Docket__Page__Recorded
in Journal____on Page____
By_____
Court Clerk/Deputy

IN THE COURT OF INDIAN OFFENSES
FOR THE SOUTHERN PLAINS REGION
ANADARKO, OKLAHOMA

IN RE:)
ADMINISTRATIVE ORDER)
SETTING TIME TO RESPOND)
TO FILED MOTIONS AND OTHER)
RESPONSIVE PLEADINGS)

Administrative Order No. 2015-01

ORDER

Until such time as the court adopts a rule prescribing response time to filed motions and other pleadings requiring a response, where no time is specifically set forth by rule or in Title 25 of the Code of Federal Regulations, the following response times are adopted:

Response Time for Motions and other Response Time not set forth with Specificity

For response time to filed motions, and any other times not set out by Southern Plains Court Rule or with specificity in 25 C.F.R., the time shall be twenty (20) days. The day of the event that triggers the response period is excluded. Every day, including intermediate Saturdays, Sundays and legal holidays is included, and the last day is included. If the last day is a Saturday, Sunday, legal holiday or day the court clerk's office is closed, the time continues to run until the end of the next day that is not a Saturday, Sunday, legal holiday or day the clerk's office is closed.

This order applies to all cases filed in the Southern Plains Court of Indian Offenses and the Appellate Division.

Dated: February 17, 2015

Shannon L. Edwards
Chief Magistrate

IN THE COURT OF INDIAN OFFENSES FOR THE SOUTHERN PLAINS REGION
ANADARKO, OKLAHOMA

COURT OF INDIAN OFFENSES
FILED
In the Office of the Court Clerk
OCT 05 2015
Docket__Page__Recorded
In Journal____on Page
By_____
Court Clerk/Deputy

IN RE:)
)
COURT OF INDIAN OFFENSES,) Administrative Order No. ADM-16-001
FEE SCHEDULE.)

ADMINISTRATIVE ORDER

NOW, on this 5th day of October, 2015, the Court hereby enters the following administrative order upon its own initiative to assist in the administrative function of the Southern Plains Region Court of Indian Offenses. The Court adopts the attached fee schedule which is designed to provide information to Tribal members about filing and service fees in the Court of Indian Offenses.

IT IS THEREFORE ORDERED by the Court that the revised fee schedule attached hereto is adopted with an immediate effective date. This Order does not repeal any act, ordinance or resolution which was previously adopted by a tribe under the Southern Plains Region.

SHANNON EDWARDS, Chief Magistrate

COURT OF INDIAN OFFENSES
FOR THE SOUTHERN PLAINS REGION

Uniform Fee Schedule

CIVIL ACTION	FEE
Any Complaint, Petition or Application	85.00
Summons (per defendant)	5.00
Certified Mailing (per defendant)	20.00
Publication Fee	50.00
Marriage License (per individual)	25.00
Law Enforcement Service Fee	20.00
Motion to Modify, Vacate of Contempt Citation after Decree	20.00
PROBATE ACTION	
Petition for Administer of Estate	85.00
Determination of Heirship	60.00
Any Proceeding to Revoke the Probate of a Will	60.00
Summons (per defendant)	5.00
Certified Mailing (per defendant)	20.00
Law Enforcement Fee	20.00
GUARDIANSHIP ACTION	
Petition for appointment of Guardian	85.00
Summons (per respondent)	5.00
Certified Mailing (per respondent)	20.00
Law Enforcement Service Fee	20.00
Motion to Modify	20.00
ADOPTION ACTION (Must have Attorney)	
Petition for Adoption	100.00
Summons	5.00
Publication Fees	50.00
Certified Mailing (per respondent)	20.00
APPEALS	
Appeal Fee	100.00
COPIES OF RECORDS	
Photostatic Copies (per pg.)	1.00
Research Fees	25.00
Recording (per CD regardless of length)	40.00

Certifying or Authenticating an Instrument	5.00

MISCELLANEOUS	
Jury Trial Fee	400.00
Subpoenas (per respondent)	20.00
Bench Warrant Fee	50.00
Criminal Court Costs	60.00
Criminal Background Check (per person)	5.00
Service of Process of any documents	20.00

NOTE: The fees listed above do NOT include the fees or costs for a citation

ORDER

The above Uniform Fee Schedule was approved by the Magistrate of the Court of Indian Offenses, Southern Plains Region jurisdiction, on the 5th day of Oct, 2015.

APPROVED:

Shannon L Edwards

SHANNON EDWARDS, Chief Appeals Officer

CONCURRED:
Appeals Officers,
O. Ronald McGee
Rebecca Cryer
Tom Walker
Phil Lujan
Lisa Otipoby Herbert
Steven Parker
Albert Ghezzi
Jason Glidewell
Geri Wisner