

Chapter 2
Pokagon Band of Potawatomi Indians
Court Rules of Civil Procedure

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Chapter 2
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Section 1. Purpose and Definitions.

- A. **Purpose.** The purpose of this Chapter of Court Rules is to establish the procedures by which actions, suits and proceedings of a civil nature are taken to the Tribal Court, except as otherwise provided by Tribal law or other Chapter of Court Rules. These *Rules* shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.
- B. **Definitions.** The following terms shall have the following meanings:
1. “*Band*” and “*Tribe*” are synonymous and mean the Pokagon Band of Potawatomi Indians.
 2. “*Complaint*” means a written statement of facts that asserts claims against a party, made voluntarily, and signed by the complaining party.
 3. “*Court*” and “*Tribal Court*” are synonymous and mean the trial level of the Band.
 4. “*Court of Appeals*” means the appellate level of the Band.
 5. “*Day*” means calendar day.
 6. “*Final judgment*” means a decision by the Court that disposes of all the issues in the case.
 7. “*Judgment*” means the final decision of the Court resolving the dispute and determining the rights and obligations of the parties.
 8. “*Judge*” means a judge appointed to the trial level of the Court.
 9. “*Petitioner*” means the person who brings an action; the party who is requesting relief or an order from the Court in an action or suit.
 10. “*Pleadings*” means a complaint, counterclaim, cross-claim, third-party complaint, an answer to a complaint, counterclaim, cross-claim, third-party complaint, or a reply to an answer.

11. “*Respondent*” means the party against whom relief or recovery is sought in an action or suit.
12. “*Tribal entity*” means any entity created or owned by the Pokagon Band of Potawatomi Indians for business, economic development or government purposes or any entity which is controlled by the Tribal Council of the Band.

Section 2. General Provisions.

- A. **Community Philosophy.** These *Rules* are to promote fair and appropriate resolution of issues in a manner that reflects the community values of the Pokagon Band. Parties are encouraged to seek amicable resolution to disputes. In keeping with community expectations, settlement is encouraged.
- B. **Civil Jurisdiction.** Pursuant to the Pokagon Band of Potawatomi Indians *Tribal Court Code*, Section 3(A), the Tribal Court shall have general civil jurisdiction over all causes of actions.
- C. **Law Applicable to Civil Actions.**
 1. The Tribal Court and Court of Appeals shall apply the law of the Band, and, to the extent applicable, the law of the United States. See *Tribal Court Code*, Section 8(A).
 2. In contract causes of action, where the contract does not specify governing law, the Tribal Court and Court of Appeals shall apply the law of the state having the most significant relationship to the matter in dispute in accordance with conflict of laws rules in the State of Michigan. See *Tribal Court Code*, Section 8(B).
 3. All decisions of the Tribal Court and the Court of Appeals shall be consistent with prior decisions of the Tribal Court and the Court of Appeals whenever reasonably possible. See *Tribal Court Code*, Section 8(C).
- D. **No Right to Jury Trial in Civil Matters.** Pursuant to the *Tribal Court Code*, Section 7(E), there is no right to a jury trial in the Tribal Court in any civil matter.
- E. **Filing Fee.** Every person or entity who files a civil action shall pay a filing fee as stated in the *Schedule of Court Fees* pursuant to the Pokagon Band of Potawatomi Indians *Tribal Court Code*, Section 15 and Tribal Council *Resolution No. 03-06-14-02*. The filing fee shall be paid at the time of filing.
- F. **Waiver or Suspension of Fees and Costs for Indigent Persons.**
 1. **Applicability.** Only a natural person is eligible for a waiver of the filing fees under this Section.

2. **Persons Receiving Public Assistance.** If a party demonstrates by notarized affidavit that he/she is primarily supported by public assistance, the payment of fees required by law or court rules as to that party must be waived.
 3. **Other Indigent Persons.** If a party demonstrates by notarized affidavit that he/she is unable to pay fees required by law or court rules, the Court may order those fees waived.
 4. **Reinstatement of Requirement for Payment of Fees.** If the payment of fees has been waived under this Section, the Court may on its own motion order the person for whom the fees were waived to pay those fees when the reason for the waiver no longer exists, if the matter is still pending.
- G. **Signature of the Party or Attorney on Pleadings.** All documents filed with the Court shall be signed by the party or the attorney.
- H. **Manner of Filing Initial Pleadings and All Other Pleadings with the Court.** Initial pleadings by the parties must be filed with the Court by delivery or by mailing, fully prepaid. After the filing of initial pleadings, pleadings may be filed by delivery, mailing, electronic filing or facsimile transmission as directed by these *Rules*. Any pleadings received by the Court for filing in which a required filing fee is not included, or a delivery or mailing cost has not been fully prepaid, shall be returned unfiled to the party by delivery or first-class mailing, postage fully paid.
- I. **Service of Pleadings and Documents.** Except as otherwise directed in these *Rules* or as provided under a Court Rule or Tribal law, a copy of a pleading or document filed in Court must be served on all parties of the action or the party's attorney.
- J. **Manner of Service of Pleadings and Documents on the Parties of an Action, Except the Summons and Complaint.** Every pleading and document filed in Court, after commencement of an action and service of the summons and a copy of the complaint, must be served on a party by personally delivering a copy to the party or by mailing it first-class, postage paid, to the party's address unless otherwise directed by the Court. If a party is represented by an attorney, then the attorney must be served by personally delivering a copy to the attorney's business address or by mailing it first-class, postage paid, to the attorney's business address.
- K. **Certificate of Service.** A party must provide proof to the Court that a pleading or document was served on another party by filing a certificate of service with the Court stating how and when a copy of a pleading or document was served on another party or the party's attorney. A blank "*Certificate of Service*" form can be obtained from the Court.

- L. **Electronic Filing.** The filing of an electronically scanned document with the Court, traditionally filed in paper form, shall be at the discretion of the Court. An electronic document shall be considered the original for all court purposes. The attorney or party sending the electronic document to the Court shall retain the original signed document for sixty (60) days after completion of the case.
1. **Initial Pleadings by the Parties Excluded from Electronic Filing.** The Court shall not accept an electronic filing of initial pleadings. Initial pleadings by the parties must be filed at the Courthouse, by delivery or by mailing, fully prepaid.
 2. **Time of Filing and Confirmation.**
 - a. An electronic document shall be considered received by the Court when it is received by the Court Administrator's designated computer. Any electronic document received before 12:00 a.m. (midnight) on the day sent shall be considered received that day.
 - b. The Court Administrator shall issue confirmation to the sending party that an electronic document has been received and filed by the Court.
 3. **Incomplete Electronic Transmission of Document.** If a document is not completely transmitted, it will not be considered received by the Court.
 4. **Electronic Filing Transmission Fees.** The Court may charge reasonable fees for transmission of documents established by the Court and stated in the *Schedule of Court Fees*.
- M. **Facsimile Transmission Filing.** The Court may accept a document for filing with the Court by facsimile transmission at the discretion of the Court. A facsimile copy shall be considered the original for all court purposes. The attorney or party sending the document by facsimile to the Court shall retain the original signed document for sixty (60) days after completion of the case.
1. **Initial Pleadings by the Parties Excluded from Facsimile Transmission.** The Court shall not accept a facsimile of initial pleadings by the parties. Initial pleadings by the parties must be filed at the Courthouse, by delivery or by mailing, fully prepaid.
 2. **Accompanying Facsimile Transmittal Sheet.** Documents from attorneys and parties transmitted by facsimile to the Court shall include a facsimile transmittal sheet stating: "SENT ON (Date) VIA FACSIMILE FOR FILING IN COURT" or similar language. It must clearly indicate the date of transmission, the sender's name, the sender's facsimile number, the total

number of pages of the facsimile transmittal sheet and document to be filed with the Court, the case number and case caption.

3. **Facsimile Transmission by the Court.** The Court at its discretion may use facsimile transmission to send any document requiring personal service to one charged with personally serving the document. The Court at its discretion may use facsimile transmission to send judgments, orders, notices and other documents of the Court to the parties and attorneys of record.
4. **Time of Filing and Confirmation.**
 - a. A document transmitted by facsimile shall be considered received by the Court when the Court's facsimile machine receives the first page of the facsimile transmission regardless of when the final page is printed. Any facsimile received before 12:00 a.m. (midnight) on the day sent shall be considered received that day.
 - b. The Court Administrator shall issue confirmation to the sending party that an electronic document has been received and filed with the Court.
5. **Incomplete Facsimile Transmittal of Document.** If a document is not completely transmitted, it will not be considered received by the Court.
6. **Facsimile Transmission Fees.** The Court may charge reasonable fees for facsimile transmission of documents established by the Court and stated in the *Schedule of Court Fees*.

Section 3. Application of Michigan Rules of Civil Procedure. Where otherwise not addressed by these *Rules*, upon motion of any party, or upon the Court's own initiative, the presiding judge may apply the Michigan *Rules of Civil Procedures*.

Section 4. Commencement of Action. A civil action is commenced by filing a complaint with the Tribal Court.

Section 5. Summons, Dismissal of Action.

- A. **Issuance.** On the filing of a complaint, the Court shall issue a *Summons* to be served with a copy of the complaint.
- B. **Content of the Summons.** A summons must be issued by the Court and directed to the respondent. A copy of the summons shall be prepared for each respondent. The summons must include:
 1. the name of the Court;
 2. the file number of the action;

3. the name of the parties;
4. the name, address, telephone, and professional number of the petitioner's attorney or the name, address and telephone of the petitioner if appearing without an attorney;
5. the address of the respondent, if known;
6. the date on which the summons was issued;
7. the last date on which the summons is valid;
8. a statement that the summons will expire if not served on or before the last date the summons is valid;
9. the time in which the respondent must answer or take other action; and
10. a statement that if the respondent does not answer or take other action within the time stated on the summons, a judgment for the relief requested may be entered against the respondent.

C. **Expiration of Summons.** A summons expires twenty-eight (28) days after the complaint is filed with the Court, unless otherwise extended by the Court upon the petitioner's showing of due diligence in attempting to serve the summons and copy of the complaint.

D. **Lost Summons.** The Court shall issue a duplicate summons in the same form as the original and it shall be issued and served within the same time as the original.

E. **Dismissal if Respondent Not Served.** The action shall be dismissed by the Court upon the expiration date of the summons as to a respondent who has not been served with the summons and a copy of the complaint, unless the respondent has submitted to the jurisdiction of the Court.

1. **Dismissal Without Prejudice.** A dismissal shall be without prejudice to the respondent.

2. **Order of Dismissal.** The Court shall issue an order dismissing the action and serve it on the petitioner.

Section 6. Service of Summons and Complaint. The petitioner must serve a copy of the complaint, together with the summons, on each respondent named in the complaint within twenty-seven (27) days of the filing of the complaint and file a *Certificate of Service* with the Court as required under Section 9 of these *Rules*.

Section 7. Who May Serve Summons and Complaint. The summons and copy of the complaint in civil actions may be served by any legally competent adult who is not a party to the action.

Section 8. Manner of Service of Summons and Complaint. The summons and a copy of the complaint must be served together in a manner listed below.

A. **Individuals.** Service upon an individual may be served by:

1. personally delivering the summons and a copy of the complaint to a respondent; or
2. sending the summons and a copy of the complaint by registered mail, return receipt requested and delivery restricted to the addressee.

B. **Individuals, Substituted Service.**

1. **Minor.** Service upon a minor under the age of eighteen (18) may be made by:
 - a. personally delivering the summons and copy of the complaint on the person having the care and control of the minor with whom the minor resides; or
 - b. sending the summons and a copy of the complaint to the person having the care and control of the minor with whom the minor resides by registered mail, return receipt requested and delivery restricted to the addressee.
2. **Guardian or Conservator.** Service upon a guardian or conservator whom has been judicially appointed and is acting on behalf of a respondent may be made by:
 - a. personally delivering the summons and a copy of the complaint on the guardian or conservator; or
 - b. sending the summons and a copy of the complaint to the guardian or conservator by registered mail, return receipt requested and delivery restricted to the addressee.
3. **Pokagon Band of Potawatomi Indians.** Service upon the Pokagon Band of Potawatomi Indians may be made by:

- a. personally delivering the summons and a copy of the complaint on the General Counsel for the Band; or
 - b. sending the summons and a copy of the complaint to the Office of General Counsel for the Band by registered mail, return receipt requested, delivery restricted to the addressee and addressed to the principal Office of General Counsel for the Band located at 58155 M-51 South, Dowagiac, MI 49047; provided, however, that these *Rules* or service of the summons and a copy of the complaint shall not be construed as a waiver of sovereign immunity of the Pokagon Band of Potawatomi Indians, its agents, agencies, instrumentalities, officers, or enterprises.
4. **Partnership, Limited Partnership, Corporation, Unincorporated Association, Public Corporation.** Service upon a partnership, limited partnership, corporation, unincorporated association, public corporation or other such entity may be made by:
- a. personally serving the summons and copy of the complaint on a partner, director, president, officer, agent or person in charge of an office or business establishment authorized by appointment or law to receive service for the entity; or
 - b. sending the summons and a copy of the complaint to a partner, director, president, officer, agent or person in charge of an office or business establishment authorized by appointment or law to receive service for the entity by registered mail, return receipt requested, delivery restricted to the addressee and addressed to the principal office place of business.

Section 9. Certificate of Service of Summons and Complaint.

- A. **Requirement.** A "*Certificate of Service*" form may be obtained from the Court. Certificate of service of the summons and a copy of the complaint must be filed with the Court by a:
1. written affidavit stating that the summons and copy of the complaint were served on a respondent by registered mail, return receipt requested and delivery restricted to a respondent with an attached written acknowledgement of receipt from the U.S. Post Office that is dated and signed by the person that service is directed or other substituted person authorized by these *Rules*, by law, by appointment to receive service or otherwise directed by the Court; or
 2. certificate stating the facts of service, including the manner, time, date and place of service if service was personally made by a(n):

- a. Pokagon Band Tribal Police Officer;
 - b. sheriff of the county in which a respondent resides;
 - c. deputy sheriff of the county in which a respondent resides; or
 - d. appointed Court officer; or
3. written affidavit stating the facts of service, including the manner, time, date and place of service by stating the address where service was made or a description of the location if there is no particular address if service was personally made by another individual not stated above in subsection 2.

B. When Service of the Summons and Complaint is Completed by Registered Mail. Service of the summons and a copy of the complaint is complete when a respondent acknowledges receipt of the mail. The return receipt must be signed by the respondent, or other substituted person authorized by these *Rules*, by law, by appointment to receive service, or otherwise directed by the Court, and must be attached to a *Certificate of Service* that is to be filed with the Court.

Section 10. Alternative Methods of Service.

- A. Discretion of the Court.** The Court may order an alternative method of service when it is shown that service of the summons and a copy of the complaint cannot reasonably be made by these *Rules*. A certificate of service must be filed with the Court as directed under Section 9.
- B. Publication.** A request for an order allowing for notice by publication must be by motion to the Court showing that service of the summons and a copy of the complaint cannot be made by personal delivery or mailing. The Court shall determine the content of the notice.
1. **Service by Publication.** Service by publication shall be made by publishing the Court's notice in a newspaper of general circulation, that publishes legal notices, at least once a week for three (3) consecutive weeks in the county where the respondent last resided, or if the residence of the respondent is unknown, in the county where the Tribal Court is located.
 2. **Publication in the Tribal Newsletter.** Along with publication in a newspaper of general circulation, if a party is the Pokagon Band or a Tribal member, the Court shall publish notice one time in the newsletter, the *Pokégnek Yajadanawa*, as soon as possible after commencement of the action.
 3. **Mailing.** Along with publication in a newspaper, the serving party shall mail on or before the first date of publication the summons and a copy of the

complaint by registered mail, return receipt requested, to the last known address of the respondent. If the address of the respondent is unknown and cannot be obtained by diligent inquiry, then mailing may not be required if determined by the Court.

4. **Certificate of Service.** The serving party must file with the Court proof of publication and service by registered mail by filing:
 - a. affidavit from the publisher; and
 - b. an affidavit by the serving party proving mailing occurred with the attached return receipt of mailing.
 - c. The affidavit from the publisher must:
 - i. state the dates the notice was published; and
 - ii. include a copy of the published notice.
 - d. If no newspaper can be found in the county where publication is to be made, then a newspaper of general circulation that publishes legal notices in an adjoining county may be used.

Section 11. Complaint, Content. A blank “*Complaint*” form is available at the Pokagon Band Tribal Courthouse and may be obtained from the Court upon request. Claims are to come to the Court in the form of a complaint in the following manner.

- A. **Claim for Relief, In General.** A pleading that states a claim must contain:
 1. short and plain statement of the grounds for the Court’s jurisdiction;
 2. short and plain statement of the claim showing that the pleader is entitled to relief; and
 3. a demand for relief sought, which may include relief in the alternative or different types of relief.
- B. **Content of the Complaint.** The “*Complaint*” must contain:
 1. name and address of the Court;
 2. name and address of the person against whom the claim is made;
 3. name, address and telephone number of the petitioner’s attorney and if petitioner is not appearing with an attorney, the name, address and telephone number of the petitioner;

4. a statement whether the transactions or occurrences alleged in the complaint has been previously filed in another of any jurisdiction;
5. a statement why the action is proper under the jurisdiction of the Pokagon Band Tribal Court;
6. the date the claim arose;
7. the location at which the claim arose;
8. a statement of the facts providing the basis for the claim;
9. a short and plain statement of the claim showing that the pleader is entitled to relief; and
10. a statement identifying the relief sought.

C. **Alternative Statements of a Claim.** A party may set out two (2) or more statements of a claim in the alternative, either in a single count or in separate ones.

D. **Inconsistent Claims.** A party may state as many claims regardless of consistency.

Section 12. Answer, Defenses and Objections. A blank “*Answer to the Complaint*” form shall be available from the Tribal Court.

A. **Defenses, Admissions and Denials, In General.** In response to a claim, a party must:

1. state in short and plain terms its defenses to each claim asserted; and
2. admit or deny the allegations asserted.

B. **Denials, Responding to the Substance.** A denial must respond to the substance of the allegation.

C. **Denials and Specific Denials.** If a party intends to deny in good faith all the allegations of a pleading, including the jurisdictional grounds, it may be done by a general denial. A party that does not intend to deny all the allegations must specifically deny designated allegations or generally deny all except those specifically admitted.

D. **Denying Part of an Allegation.** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

E. Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must state so, and the statement has the effect of a denial.

F. Effect of Failing to Deny.

1. Allegations in a pleading that require a responsive pleading, other than allegations to the amount of damages or the nature of the relief demanded, are admitted if not denied in the responsive pleading.
2. Allegations in a pleading that does not require a responsive pleading are taken as denied.

G. Affirmative Defenses. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

1. accord and satisfaction;
2. an agreement to arbitrate;
3. assumption of risk;
4. contributory negligence;
5. discharge in bankruptcy;
6. duress;
7. estoppel;
8. fraud;
9. illegality;
10. immunity granted by law;
11. laches;
12. license;
13. payment;
14. release;
15. statute of frauds;

16. statute of limitations;

17. want or failure of consideration; and

18. waiver.

H. **Mistaken Designation.** If a party mistakes a defense as a counterclaim, or a counterclaim as a defense, the Court may treat the pleading as though it were correct and impose terms to do so. Pleadings must be construed by the Court so as to do justice.

I. **Alternative Statements of a Defense.** A party may set out two (2) or more statements of a defense in the alternative, either in a single defense or in separate ones.

J. **Inconsistent Defenses.** A party may state as many defenses regardless of consistency.

K. **Time to Serve a Responsive Pleading.** Unless another time is specified by this Section, the time for serving a responsive pleading is as follows:

1. The respondent must file an answer with the Court within twenty-eight (28) days after being served with the summons and complaint. The Tribal Court will serve petitioner with the answer.

2. A party must serve an answer to a counterclaim or cross claim within twenty-eight (28) days after being served.

3. Unless the Court sets a different time period, serving a motion under this Section alters the time period to reply as follows:

a. if the Court denies the motion or postpones its disposition until trial on the merits, the responsive pleading shall be served within fourteen (14) days after notice of the Court's action; or

b. if the Court grants a motion for a more definite statement, the responsive pleading must be served within fourteen (14) days after service of the more definite statement.

L. **How to Present Defenses.** Every defense to a claim for relief in a pleading must be asserted in the responsive pleading. But a party may assert the following defenses by motion:

1. lack of jurisdiction over the person or property;

2. the process issued in the action was insufficient;
3. service of process of the summons and copy of the complaint was insufficient;
4. the party asserting the claim lacks capacity to sue; and
5. failure to state a claim on which relief can be granted;

M. Motion for Judgment on the Pleadings. A party may move for judgment on the pleadings after the pleadings have closed, but early enough not to delay trial. If on a motion for judgment on the pleadings, matters are presented and not excluded by the Court, the motion shall be addressed as a summary judgment and disposed of as provided by Section 23 of these *Rules* and all parties shall be given reasonable opportunity to present all material that is pertinent to the motion.

N. Motion for a More Definite Statement. A party may move for a more definite statement before filing a responsive pleading if a pleading to which a responsive pleading is allowed is so vague or ambiguous that the party cannot reasonably be required to prepare a response. The motion must point out the defects complained of and the details desired. If the motion is granted by the Court, and the court order is not obeyed within fourteen (14) days after notice of the order or within such other time the Court may set, the Court may strike the pleading or issue any other appropriate order.

O. Motion to Strike. The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent or scandalous matter by acting on its own at any time or upon the motion made by a party either before responding to a pleading, or if a responsive pleading is not allowed, within fourteen (14) days after being served with the pleading.

P. Consolidation of Motions. A motion under this Section may be joined with it any other motions allowed by this Section. A party that makes a motion under this Section must not make another motion under this Section raising a defense or objection that was available but omitted from the party's earlier motion except as provided in Section 12(Q).

Q. Waiving and Preserving Certain Defenses. A party waives any defense listed in subsection (L)(1)-(4) by failing to either:

1. make it by motion under this Section; or
2. include it in a first responsive pleading or in an amendment allowed by Section 14.

- R. **When to Raise Other Defenses.** Failure to state a claim upon which relief can be granted or to state a legal defense to a claim may be raised:
1. in any pleading allowed or ordered by the Court; or
 2. at trial.
- S. **Hearing Before Trial.** If a party moves for a defense listed in Section 12(L)(1)-(5) and 12(M), whether by motion or in a pleading, the defense must be heard and decided before trial unless otherwise ordered by the Court.

Section 13. Counterclaim, Cross-claim and Third Party Claim.

- A. **Counterclaim.** A respondent may file a counterclaim against the petitioner if the claim arises out of the same transaction or occurrence that is the subject matter of the petitioner's claim.
- B. **Cross-claim.** In a proceeding with more than one respondent, a cross-complaint may be filed against a co-party if it meets jurisdictional requirements and the claim arises out of the same transaction or occurrence that is the subject matter of the petitioner's claim.
- C. **Third Party Claim.** A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party if the third party meets jurisdictional requirements and the claim arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.
- D. **Time.** A counterclaim, cross-claim, or motion for a third party claim shall be filed on or before the time that a party is to answer the original complaint unless otherwise directed by the Court.
- E. **Response Time.** Unless otherwise directed by the Court, a party shall respond to a counterclaim, cross-claim or third party claim within twenty-eight (28) days after date of service of the counterclaim, cross-claim or third party claim.
- F. **Filing Fee.** A filing fee shall be paid to the Court at the time of filing, unless an *Order for Waiver of Filing Fee* has been granted by the Court.

Section 14. Amendments.

- A. **Amendments.** A party may amend a pleading without Court permission at anytime before an adverse party answers the pleading as long as a copy of the amended pleading is filed with the Court and served on all parties as directed under these *Rules*. After an adverse party has answered a pleading, the Court

may allow amendments to a pleading as long as the amendments would not be unfair to a party of the lawsuit.

- B. **Response Time.** Unless otherwise directed by the Court, a party shall respond to an amended pleading within twenty-eight (28) days after date of service of the amended pleading.

Section 15. Motions. Any questions regarding procedures or rights of the parties that arise during a lawsuit and that cannot be settled by agreement of the parties may be presented to the Court by motion, which is a request to the Court for an order. A motion may be made orally in open court or in writing.

- A. **Presenting a Motion.** Unless a motion is made orally in open court, a motion must be in writing, state with particularity the basis of the motion and the relief or order sought. When a motion is supported by affidavits and briefs, those documents must be served with the motion. The motion and all documents must be served on all parties of the lawsuit. If a party is represented by an attorney, then the motion and all documents must be served on the party's attorney.
- B. **Reasonable Efforts to Confer With Opposing Party.** A party shall make reasonable efforts to confer with the opposing party before filing a motion to determine if agreement between the parties can be reached. If the relief or order sought by the motion has been agreed to by the parties or will be not be opposed, the parties shall inform the Court in the motion.
- C. **Unopposed Motions.** All unopposed motions shall be stated in the title of the motion as "Unopposed Motion for" and shall include a proposed order for the Court's signature.
- D. **Opposed Motions.** A party filing an opposed motion shall state by certification that the party made reasonable efforts to confer with the opposing party to seek agreement on the issues stated in the motion. A written opposed motion, and any supporting affidavits or briefs, must be served on all parties.
- E. **Response Time.** A party who receives a written opposed motion must respond to the motion, attaching any supporting affidavits and briefs, by filing the response with the Court and serving it on all parties within fourteen (14) days after service of the motion. The responding party may request from the Court an extension of time for good cause.
- F. **Hearing on an Opposed Motion.** The moving party shall contact the Court to schedule a date and time for a hearing after the filing of a response if a motion remains opposed. The moving party shall make reasonable efforts to determine a date and time that is not in conflict with the opposing party's schedule.

G. **Notice of Hearing.** The moving party shall file a *Notice of Hearing* with the Court and serve the *Notice* on the opposing party.

H. **Certificate of Service.** A party must provide proof to the Court that a motion or response was served on another party by filing a *Certificate of Service* with the Court stating how and when a copy of a motion or response was served on another party.

Section 16. Voluntary Dismissal. The Court shall allow the petitioner to withdraw a complaint at any time the petitioner requests unless the respondent has counterclaimed against the petitioner or dismissal would be unfair to the respondent. The Court may order the petitioner who withdraws a complaint to pay all costs of the suit to the respondent.

Section 17. Pretrial and Status Conferences.

A. **Pretrial Conference.** In the interest of saving time, simplifying issues, and promoting amicable resolution to disputes, a pretrial conference will be scheduled by the Court. The Court and the parties may consider any matters that may promote a fair and prompt disposition of issues or the action. The Court, at the pretrial or at such other time the Court believes would be appropriate to assist in forwarding the progress of the case, shall set a schedule when:

1. the parties must file and exchange witness lists;
2. the parties must exchange evidence;
3. discovery shall close;
4. a trial shall commence; and
5. the Court may need to address any other issue raised by the Court or parties.

B. **Disclosure of Witnesses and Evidence.** To accomplish the purposes above, all parties to a lawsuit at a conference shall fully disclose:

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

- C. **Undisclosed Witnesses and Evidence.** No party shall be permitted to use the testimony of any witness or introduce as evidence any document or object that the party did not disclose at a pretrial or status conference, unless the party proves that at the time of the conference they were unaware of the existence or nature of the witness, document, or object and could not, with reasonable effort, have discovered it in time to disclose it. Such evidence must, in any case, be disclosed to the Court and opposing party before it is offered in the trial.
- D. **Status Conferences.** The judge may from time-to-time direct, or on the motion of any party, the scheduling of one or more conferences to bring the parties together and be apprised of the status of matters. The Court and the parties may consider any matter which may help to bring a quick and fair disposition of the action.
- E. **Order for Trial Briefs.** The Court may direct the parties to furnish trial briefs as to any or all issues involved in the action.
- F. **Conference Order.** The Court may enter an order incorporating any agreements and decisions made at a conference.

Section 18. Discovery.

- A. **Purpose.** It is the policy of the Court that the truth will be revealed more readily if all parties in a civil case have access to all information and evidence related to the case.
- B. **Scope.** Except for information that is privileged, parties may ask each other and shall make available to each other all relevant information in a party's possession or control that will be used as evidence in the case or other information, whether or not admissible at trial, which can be reasonably calculated to lead to the discovery of admissible evidence. A party may refuse to make available the information requested if its release would cause the responding party or a third person undue hardship, annoyance or embarrassment, or would violate a confidence that it is tribal custom or Tribal law to protect. If the parties disagree about whether the responding party is required to release the information, the Court shall decide the dispute.
- C. **Methods of Discovery.** Methods of discovering and exchanging information may include, but are not be limited to, oral examination, written questions, requests for witnesses' names, requests for admissions, request for documents, physical inspection of property, and requests to perform scientific or physical tests. A party who makes a request shall be as clear and specific as possible in describing what he or she wants.
 - 1. **Oral Examination/Deposition.** A party may take the oral examination (deposition) of an adverse party or nonparty witness under oath upon twenty-

- eight (28) days after service of the summons and complaint is completed. The oral examination must be transcribed and certified by a certified court recorder taking the oral examination. A party desiring to take testimony in this fashion shall first file a petition to the Court stating the following:
- a. the name of the party or nonparty whose testimony is sought;
 - b. the subject matter of the expected testimony, including the facts which the petitioner desires to establish by the testimony; and
 - c. a request to the Court to issue a subpoena ordering the party whose testimony is sought to appear at a time and place to take the oral examination.
2. **Written Questions/Interrogatories.** A party may submit written questions to any other party and that party shall answer them in writing, under oath, within fourteen (14) days of receipt of such.
 3. **Production, Entry, or Inspection of Documents or Property.** A party may request another party to produce any documents or things in a party's custody or possession for inspection or copying or request permission to enter and inspect property of another party that is reasonably related to the case.
 4. **Mental or Physical Examination.** When the mental or physical condition of a party is in controversy, a party must request a hearing before the Court for an order that the party submit to a physical or mental examination by a suitably licensed or certified examiner or produce for examination the person in the party's custody or legal control. The request may be made only on motion for good cause shown, giving notice to the person to be examined and to all parties of the case, and shall specify the time, place, manner, conditions, and scope of the examination on the persons by whom it is to be made.
- D. **Time for Discovery.** Parties may request discovery fourteen (14) days after service of the summons and complaint has been completed, or as otherwise directed by the Court. Initial disclosures must be made within fourteen (14) days after receiving the request for discovery, or as otherwise directed by the Court, and respond either with the information, with an indication where and when the information or property will be available, or with an objection and refusal to comply with the request.
- E. **Protective Orders.** A party against who 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. The

Court may place conditions on the release of information in order to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.

F. **Failure to Respond to Discovery.** If a party fails to respond or appear for discovery as provided in these *Rules*, the opposing party may move for an order to compel the defaulting party to provide the information or evidence requested and the Court may award costs to the non-defaulting party. A party seeking a motion to compel discovery must make reasonable efforts to contact the opposing party to request the discovery before filing a motion to compel. The motion must state the reasonable efforts undertaken by the moving party. If a party fails to perform after being ordered to do so by the Court, the Court may:

1. award costs to the other party or parties of the case;
2. strike all or part of a pleading of that party;
3. refuse to allow that party to support or oppose certain claims or defenses;
4. dismiss part or all of the case; and
5. enter a judgment by default against the non-complying party; or
6. take any other action that the Court decides is appropriate.

G. **Use of Discovery.** Answers to interrogatories and depositions may be used in a motion, hearing or trial for any purpose, by any party subject to the *Rules of Evidence*.

Section 19. Subpoena, Order to Attend.

A. **Attendance of Party or Witness.** If a party needs another party or witness to appear before the Court, a party shall request that the Court issue a subpoena commanding a party or witness to appear for the purpose of testifying in open court on a specific date and time, and return to testify until excused by the Court, and to bring all notes, documents, records, photographs, or other portable things as specified.

B. **Refusal of a Witness to Attend or to Testify, Subject to Civil Contempt.** If a witness refuses to attend or appear for the purpose of testifying, without good cause, or refuses to testify in a matter not privileged after being ordered to do so by the Court, the Court may find the witness in civil contempt and order any sanctions that the Court decides are appropriate, until the witness complies with the Court's order or subpoena.

- C. **Failure of a Party to Attend.** If a party fails to attend or produce documents or other tangible evidence that the party is ordered to bring by subpoena or order, the Court may order and award the following, which include but are not limited to:
1. stopping the proceedings until the order is obeyed;
 2. awarding costs to the other party or parties of the case;
 3. striking all or part of a pleading of that party;
 4. refusing to allow that party to support or oppose certain claims or defenses;
 5. dismissing part or all of the case;
 6. entering a judgment by default against that party; and
 7. finding that a party is in contempt of court.
- D. **Hearing on Subpoena or Order.** A person served with a subpoena or order to attend may make a motion in writing or appear in the Court to explain why the person should not be compelled to comply with the subpoena or order.
- E. **Service of Subpoena and Order to Attend.** A subpoena or order to attend must be served in the same manner as a summons and complaint as stated in Section 8 and 9 of these *Rules*.

Section 20. Hearings and Trials. All hearings and trials shall be conducted before the Court without a jury. The Trial Judge shall serve as the fact-finder. In all civil trials commenced within the Court:

- A. **Witness.** The witness shall be sworn.
- B. **Conduct of Hearing.** The Judge shall conduct the hearing so as to do substantial justice between the parties according to the rules of substantive law and *Rules of Evidence* of the Pokagon Band.
- C. **Order of the Hearing/Trial.** In all civil trials, presentations shall be made in the following order unless otherwise agreed by the parties or determined at a pretrial conference or status conferences:
1. opening statements;
 2. plaintiff's case-in-chief (witnesses and evidence);
 3. defendant's case-in-chief (witnesses and evidence);

4. motions of either party that are based on events at trial may be raised at different stages of the trial; and
5. final closing arguments by both parties.

D. **Decision by the Court.** The Court may announce a final decision at the close of trial or may take the matter under advisement and issue a written decision at a later time. The Tribal Court shall endeavor to issue rulings on motions and trials within thirty (30) days of submission of briefs or completion of hearing, and, upon the filing of a request by a party for findings of fact and conclusions of law, the Tribal Court shall, within fifteen (15) days of filing of the request, issue findings of fact and conclusions of law.

E. **Consolidation; Separate Trials.**

1. **Consolidation.** The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of law or fact relating to actions or if such will tend to avoid unnecessary cost or delay.
2. **Separate Trials.** The Court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, or issues.

Section 21. Judgment. A judgment is a final order of the Court that disposes of a claim in whole or in part. A judgment becomes final when it has been signed and entered by the Court.

Section 22. Default Judgment. No default judgment shall be granted by the Court without the party seeking a default judgment having proven, by a preponderance of the evidence, that the party is entitled to the relief sought in the complaint.

- A. **Entry of Default Judgment.** When a party has failed to answer, plead, or otherwise defend as provided by these *Rules*, a default may be entered by the Court after a hearing and judgment by default granted.
- B. **Hearing.** The party seeking entry of a default judgment shall schedule a hearing and must serve the party against whom judgment by default is sought with:
 1. written notice of application for entry of the default judgment;
 2. notice of hearing at least seven (7) days prior to the hearing on such application; and
 3. a copy of the proposed default judgment, if applicable.

- C. **Proof of Claim.** If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any claim or assertion by evidence or investigate any other matter, the Court may conduct hearings or order such matters it decides is necessary and proper.
- D. **Setting Aside Default.** For good cause shown and a meritorious defense, the Court may set aside an entry of default or a default judgment. The motion to set aside must be made not more than twenty-one (21) days from entry of the default judgment.

Section 23. Summary Judgment. Any party may request the Court enter a judgment or partial judgment without trial because it appears there is no genuine issue of material fact to be decided by a fact-finder and the evidence is legally insufficient to support a verdict in the nonmoving party's favor.

- A. **By a Claiming Party.** A party claiming relief may move at any time, with or without supporting affidavits, for a summary judgment in a party's favor upon all or part of the claim.
- B. **By the Defending Party.** A party against whom relief is sought may move, at any time, with or without supporting affidavits, for a summary judgment in a party's favor upon all or part of the claim.
- C. **Motion for Proceedings.** Upon timely request by any party, the Court shall set a time for a hearing on the motion. If no request is made, the Court may, in its discretion set a time for a hearing. A party opposing the motion must file affidavits, memoranda or both within fourteen (14) days after service of the motion. The moving party shall have seven (7) days thereafter in which to serve reply memorandum and affidavits. These time periods may be shortened or enlarged by the Court. The judgment sought should be rendered if the pleadings, the discovery and disclosure of materials on file, and any affidavits show there is no genuine issue as to material fact or matter of law. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.
- D. **Case Not Fully Adjudicated on Motion.** If on motion under this Section, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing on the motion, should, to the extent practical, examine the pleadings and evidence before it and by interrogating the attorneys determine what material facts are not genuinely at issue. The Court should then issue an order specifying what facts are not genuinely at issue, including the extent to which the amount of damages or other relief are not at issue. The facts so specified must be treated as established in the action.

- E. **Forms of Affidavit, Further Testimony, Defense Required.** Supporting or opposing affidavits must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The Court may permit an affidavit to be supplemented, or opposed by depositions, answers to interrogatories or additional affidavits. When a motion for summary judgment is made and supported as provided by this Section, an adverse party may not rely on allegations or denials of the adverse party's pleading; rather the adverse party's response must, by affidavits or as otherwise provided in this Section, set out specific facts showing a genuine issue for trial. If the adverse party does not respond, summary judgment should be entered against the party if appropriate.
- F. **When Affidavits are Unavailable.** If a party opposing the motion shows by affidavit reasons it cannot present facts essential to justify opposition of the motion, the Court may:
1. deny the motion;
 2. order a continuance to permit affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or
 3. issue any other order that is just.
- G. **Affidavits Submitted in Bad Faith.** The Court may order the submitting party to pay the other party reasonable expenses, attorney fees, and hold the party in contempt if it is satisfied that an affidavit was submitted in bad faith or solely to delay an action.

Section 24. Declaratory Judgment. The Court may declare the rights and other legal relations of any interested party seeking a declaratory judgment, whether or not further relief is or could be sought. The existence of another adequate remedy does not preclude a judgment for declaratory relief in an appropriate case. The Court may order a speedy hearing of a declaratory-judgment action.

- A. **Effect, Review.** Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
- B. **Other Relief.** Further necessary or proper relief based on a declaratory judgment may be granted against a party whose rights have been determined by the declaratory judgment after reasonable notice and hearing.

Section 25. Entry of Judgments and Orders. All judgments and orders of the Court must be made as follows:

- A. **Content.** All judgments and orders of the Court must be in writing, signed by the Court and dated with the date they are signed. Judgments must state the facts, the issues decided, the rule(s) of law applied, and the reasoning and decision of the Court.
- B. **Date of Entry.** The date of the signing of the judgment or order is the date of entry.
- C. **Procedure of Entry of Judgments and Orders.** Judgments and orders shall be entered by one of the following methods.
1. The Court may sign a judgment or order at the time it grants relief.
 2. The Court may sign a judgment or order when its form is approved by all parties and the Court determines that the judgment or order comports to its decision.
 3. Within seven (7) days after the granting of a judgment or order, or later if the Court allows, a party may serve a proposed judgment or order on the other parties with a notice stating that it will be submitted to the Court for signature if no written objection is filed to its accuracy and completeness with the Court within seven (7) days after service of the notice. The original notice and proposed judgment or order must be filed with the Court along with proof of service on the parties.
 - a. If no written objection is filed, within seven (7) days, the proposed judgment or order will be submitted to the Court for signature and entry if it comports to the Court's decision. If the proposed judgment or order does not comport to the Court's decision, the Court shall notify the parties to appear before the Court on a specified date for settlement on the matter.
 - b. A party that files a written objection must serve the objection, a notice of hearing, and an alternative proposed judgment or order on the parties by first-class mail or by personal delivery. The original objection, notice and alternative proposed judgment or order must be filed with the Court along with a proof of service on the parties.
 - c. Objections must state specific inaccuracies or omissions of a proposed judgment or order.
- D. **Service of Judgments and Orders.** The Court must mail by first-class mail copies of judgments and orders to each interested party at their address of record within seven (7) days after entry with the Court, unless the party securing the signing of a judgment or order provides service within the seven (7) day period on all parties. Proof of service must be filed with the Court.

- E. **Official Reporter.** Any decision that determines an issue of law must be retained as Tribal substantive law in the official reporter of the Tribal Court. The Court Administrator must maintain the decisions to the official reporter of the Tribal Court. The Court Administrator shall also post the decisions of the Court on the Pokagon Band's public website.

Section 26. New Trials, Amendment of Judgments. Except as otherwise governed by Tribal law, the Court may on motion grant a new trial to all or any of the parties and on all or part of the issues whenever their substantial rights are affected. Upon motion for a new trial, the Court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. After a claim for appeal has been filed or leave to appeal has been granted, amendments to judgments may not be corrected unless by order of the Court of Appeals.

- A. **Grounds.** A new trial may be granted for the following reasons:

1. misconduct of the prevailing party;
2. excessive or inadequate damages appearing to have been influenced by passion or prejudice;
3. a verdict that is clearly inadequate or excessive;
4. material evidence that is newly discovered and could not with reasonable diligence have been discovered and produced at trial;
5. error of law occurring in the proceedings or mistake of fact by the Court; and
6. a ground listed in Section 27 warranting a new trial.

- B. **Time.** A motion for a new trial shall be filed no later than fourteen (14) days after entry of the judgment.

- C. **Time for Serving Affidavits.** When a motion for a new trial is based upon affidavits, they shall be served with the motion. The opposing party has seven (7) days after the date of service to file opposing affidavits, but that period may be extended for up to twenty-eight (28) days, either for good cause or by the parties' written stipulation. The Court may permit reply affidavits.

- D. **On Court's Initiative.** No later than fourteen (14) days after entry of judgment the Court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new

trial for a reason not stated in the motion. The Court shall specify the grounds in its order.

- E. **Motion to Alter or Amend Judgment.** A motion to alter or amend a judgment shall be served no later than fourteen (14) days after entry of the judgment.

Section 27. Relief from Judgments or Orders.

A. **Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the Court at any time on its own initiative or on motion for clarification by any party after notice to the Court, if the Court orders it or after a hearing has been held. After a claim for appeal has been filed or leave to appeal has been granted, clerical mistakes may not be corrected unless by order of the Court of Appeals.

B. **Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud.**

1. On motion and upon such terms that are just, the Court may relieve a party from a final judgment, order or proceeding for the following reasons:
 - a. mistake, inadvertence, surprise or excusable neglect;
 - b. newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
 - c. fraud, misrepresentation or other misconduct of an adverse party;
 - d. the judgment is void;
 - e. the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
 - f. any other reason justifying relief from the operation of the judgment.
2. The motion shall be filed within a reasonable time, and for grounds stated in subsections (a), (b), and (c), not more than one (1) year after the judgment or order was entered or proceeding was taken.
3. A motion under this Section does not affect the finality of a judgment or suspend its operation.
4. The procedure for obtaining any relief from a judgment shall be made by motion as prescribed in these *Rules* or by an independent action.

Section 28. Installment Payments. The Court may order that a Judgment be satisfied by installment payments in amounts and at times that the Court determines are just and reasonable under the circumstances.

Section 29. Appeal. A party may appeal a civil proceeding, in accordance with the appellate procedures established by the *Court Rules of Appellate Procedures* after entry of the final Court judgment unless otherwise specified by Pokagon Band Tribal law.

Section 30. Short Title, Effective Date and Citation Format.

- A. **Short Title.** These *Rules* are titled “Rules of Civil Procedures”.
- B. **Effective Date.** These *Rules* become effective when adopted by the members of the Court of Appeals of the Pokagon Band of Potawatomi Indians.
- C. **Citation.** The official abbreviated citation form to these *Rules* is:
2 PBCR § ____.

CERTIFICATION OF ADOPTION

The Justices of the Court of Appeals unanimously adopted the above *Rules* on

_____ Date: _____
Robert T. Anderson, Chief Justice

_____ Date: _____
Matthew L.M. Fletcher, Associate Justice

_____ Date: _____
Jill E. Tompkins, Associate Justice

_____ Date: _____
Tribal Court Administrator and
Court of Appeals Clerk

JUDICIAL HISTORY

The *Court Rules for Civil Procedure* were adopted by the Judiciary on

_____.