

**TITLE II**  
**CHIPPEWA CREE TRIBAL**  
**CIVIL PROCEDURE**

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## TITLE II

### CIVIL PROCEDURE

#### Chapter 1 GENERAL PROVISIONS

##### 1.1 Scope and Construction.

Except when different rules specifically apply, these rules shall govern the procedures of the Chippewa-Cree Tribal Courts, in all civil proceedings and shall be constructed to secure a just, speedy, and inexpensive determination of every action.

#### Chapter 2 COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

##### 2.1 Commencement of Action – Service of Process.

Any action shall be commenced in the Tribal Court by the filing of a complaint with the Clerk, stating the names of the parties and the facts constituting a grievance for which relief is requested and signed by the Complainant and/or complaining witness.

##### 2.2 Service of Process.

Upon the filing of the complaint, the Clerk shall issue a summons; Service of process shall consist of delivering to the other party a copy of the complaint along with a summons.

(1) The summons shall be signed by a Judge or the Clerk, be under the seal of the Tribal Court, contain the names of the parties, be directed to the defendant, and state the name and addresses of the plaintiff or his attorney or representative in the action, and that the defendant is required to answer the complaint within 20 days or a default judgment will be taken against him.

(2) Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.

(3) Services may be made on a party by delivering the summons and complaint to the party himself or to a person over 14 years old at the party's home or principle place of business, or officer, managing agent, or employee, or partner of a person.

(4) If the party cannot be found within the exterior boundaries of the Rocky Boy's Reservation, service may be had by certified mail with delivery restricted to the party to be served.

(5) Where the Tribal Court has Jurisdiction of the cause of action, service may be made anywhere in the United States.

(6) All papers filed with the Clerk of Court by a party shall be filed by the Clerk with the opposing party, or the opposing party's designated attorney or lay council. Service of all papers except the complaint may be made by first class mail, return receipt requested.

(7) Persons other than natural persons involved in private or commercial activity within the exterior boundaries of the reservation shall designate an agent resident within the boundaries of the reservation for service of process. Service of process upon the designated agent constitutes service upon the person.

(8) Service upon a state shall be upon the Secretary of state.

(9) Service upon any branch or agency of the federal government shall be upon the Secretary of State or head of the agency.

### **2.3 Proof of Service.**

The returned postal receipt or an affidavit of service by the person making the service, returned to the Clerk, shall constitute proof of service.

### **2.4 Time.**

(1) Computation. In the computing any period of time, the day on which the period is to begin shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will end on the next day which is not a Saturday, Sunday, or legal holiday.

(2) Service by Mail. Whenever service is accomplished by mail, any period of time will begin on the date of the postmark and three (3) days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period of they would not otherwise have been counted.

(3) Extension. The court for good cause shown may extend the period of time within which an act may be done.

(4) Notice of Motion. Written motions and required notice of hearing on motions shall be served at least five (5) days prior to the time specified for hearing.

### **2.5 Pleadings.**

There shall be a complaint and an answer. Responsive pleadings shall be allowed whenever there is a cross-claim or counterclaim.

(1) Complaint. A complaint set forth a claim for relief and shall contain;

(a) A short, plain statement of the grounds upon which the Tribal Court's Jurisdiction depends.

(b) A short, plain statement of the facts which show that the complaint is entitled to relief. A party may state more than one (1) statement of facts constituting a claim regardless of consistency:

(c) A demand for judgment for the relief to which the complaint feels entitled. A demand for relief can be in the alternative or for several types of relief.

- (2) Answer. An answer to the complaint shall contain;
- (a) A statement of which facts in the complaint the answering party denies and which the facts the answering party admits. If the answering party does not know whether a fact in the complaint is true or false, the answering party shall state he has no knowledge of the truth or falsity of the claim. A statement of no knowledge of a fact shall be treated as a denial and leaves the fact in controversy.
- (b) Defense. Defenses which are based on a different allegation of facts from that contained in the complaint should be affirmatively stated. Affirmative defenses include but are not limited to: assumption of the risk; contributory negligence; discharge in bankruptcy; fraud; illegality; payment of debt; and completion of contract.
- (c) Counterclaim. The answering party may include in the answer any claim he may have against the original complaint.
- (3) Crossclaim. A party may assert a claim against a co-party in a cross-claim. The cross-claim is a complaint filed against a co-party.
- (4) Third Party Claim. A party may file a claim against a third person whom the party believes is or may be liable for a claim filed against the party.

## **2.6 Forming of Pleading.**

- (1) Caption. Every pleading shall contain a hearing: the name of the court, the title of the action, the Court file number (if known) and a designation as to the kind of pleading it is. All pleadings shall contain names of the parties. The name of the first party on each side may be used on all pleadings except the complaint.
- (2) Paragraphs. All claims or defenses shall be set forth in separate numbered paragraphs each of which shall be limited, as nearly as possible, to a single circumstance. Claims or defenses found upon separate transactions or occurrences should be set forth in separate paragraphs.

## **2.7 Time Period for Responsive Pleadings.**

- (1) An answer to a complaint shall be filed within twenty (20) days from the date of service of the complaint.
- (2) Counterclaim. Any counter-claim the answering party has against the complaint at the filing of the answer must be included in the answer. If a counter-claim arises later; the Tribal Court may allow it to be filed if justice would be served.
- (3) Cross-claims and third party claims must be filed within twenty (20) days of filing of the complaint.
- (4) Responsive pleadings must be filed within twenty (20) days of the filing of the proceeding pleads.

## **2.8 Construction and Amendments to Pleadings.**

(1) The Tribal Court shall construe all pleadings so as to do justice. Mistakenly designating a defense as a counter-claim or any other technical mistake shall not defeat the defense or claim.

(2) The Tribal Court shall freely allow amendments to the pleadings.

**2.9 Motions to Dismiss or to Make More Definite.**

Any motion to make a complaint more specific or to dismiss a claim must be made within five (5) days after receiving the complaint and prior to answering the complaint. The answer to the complaint shall not be due until twenty (20) days after the Court has ruled on the motion.

**2.10 Real Property in Interest.**

Every action must be pursued in the name of the person who has the complaint, except a personal representative or other person in a fiduciary relationship with the real party in interest, may sue in his own name without joining the party for whose benefit the action is maintained.

**2.11 Representative.**

When an infant or incompetent person is a party to an action, if that person does not have a general guardian, the Court shall appoint a representative for such person in the action.

**2.12 Joiner of Parties.**

Whenever possible, all persons interested in an action may be joined as parties in the action. Failure to join a party over whom the Court has no jurisdiction will not require the Court to dismiss the action unless it would be impossible to reach a just result without that party. Where a just result can be reached without joining such parties, the Court shall take the party's absence into account to assure justice is done.

**2.13 Interveners.**

A person may intervene in an action and become a party by filing a complaint in any action where that person has an interest in property which may be affected by the action or where a question of law of fact common to another claim of his may be litigated.

**2.14 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.

**2.15 Discovery by Interrogatories.**

A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within twenty-five (25) days of when they are received.

**2.16 Discovery of Deposition.**

A party may take the oral deposition of an adverse party or non-party witness under oath after providing not less than ten (10) days notice, specifying the time and place where the deposition will occur.

The party requesting the deposition must hire an impartial person to record the questions and answers. The party answering the questions must read the record made and sign a statement attached to the record acknowledging that the record is completely accurate.

**2.17 Discovery by Production, Entry, or Inspection.**

A party may request another party to produce any documents or things in his custody or possession for inspection or copying or requested permission to enter and inspect property reasonably related to the case, and the opposing party shall within twenty-five (25) days reply as to whether or not such will be allowed and, if not, why not. If the request is refused, the requesting party may move the court to compel production, inspection, or entry.

**2.18 Scope of Discovery.**

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not it would be admissible at trial, if it appears reasonably calculated to lead to the discovery of admissible evidence., except that discovery may not be had of the work product of a party's counselor or attorney.

**2.19 Protective Order.**

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.

**2.20 Failure to Make Discovery.**

If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for and order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed proved, or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.

**2.21 Use of Discover.**

Answer to interrogatories and depositions or facts discovered by production of documents, entry, or inspection may be used in a motion, hearing, or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

**2.22 Deposition used at Trial.**

If a witness is unavailable to testify because of incompetence, absence from the jurisdiction by a distance of incompetence, absence from the jurisdiction by a distance greater than one hundred (100) miles (unless appears that such absence was procured by the person offering the deposition), illness, death, or imprisonment, a sworn deposition may be offered instead of testimony of the witness who gave the deposition.

**2.23 Transfer of Indian Child Welfare Proceedings from the State Court.**

(1) The Tribal Court, upon receipt of notice of hearing pending in State district court involving a child who is an enrolled or enrolled member of the Tribe, shall cause an investigation to be made and shall determine whether transfer to the Tribal Court is appropriate. If a determination is made that a transfer is appropriate, the Tribal Court shall file a petition for transfer to Tribal Court with the state district court within three (3) working days of the Tribal Court determination.

(2) Once jurisdiction is transferred from state court, the Children's Court Counselor shall file a petition for emergency placement of the child and proceed to an adjudicatory placement of the child in accordance with Title VI, Chapter 6 of this Code.

**Chapter 3 TRIAL**

**3.1 Assigning Cases for Trial.**

The court shall establish rules for designating the time and judge before whom each action shall be heard.

**3.2 Dismissal of Actions.**

(1) Prior to a responsive pleading, the party making the claim may file notice of dismissal and the Court shall dismiss his claim without prejudice. After a response pleading has been filed; 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 and proper given the stage of the proceedings. However, if a cross-claim or counter-claim has been filed against the moving party; the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can pursue his claim independently without undue additional hardship. The Court may order a party moving to dismiss his own claim to pay the costs of the

adverse party if the proceedings has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

(2) 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 ground;

(a) Failure of the adverse party to pursue prosecution of his claim; or

(b) Failure of the adverse party to comply substantially with these rules; or

(c) Failure of the adverse party to comply with an order of the court that affects the moving party's case; or

(d) Failure of the adverse party to establish a right to relief bases on the facts and law presented. This motion is made at the close of the presentation of the adverse party's evidence and does not prejudice the moving party's own right to present evidence. Whenever dismissal appears proper based upon a failure to prove claim, such dismissal shall be deemed an adjudication of the merits of the issue dismissed.

### **3.3 Subpoenas.**

(1) Upon the request of a party, the Court may issue subpoenas for attendance of witness or production of documents or things.

(2) A person who has been properly served with a subpoena and fails to appear or produce may be held in contempt of Court.

(3) A person present in Court, or before a Judicial Officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

### **3.4 Rules of Evidence.**

The court shall establish Rules of Evidence, which shall apply in all proceedings.

### **3.5 Jury Trials.**

(1) A party may request a trial by jury in all civil actions involving a claim or claims exceeding five hundred (\$500) dollars except domestic relation cases, cases involving adoptions, probate, minors, incompetence, hearings in court orders, contempt, or cases in the appellate court. The request for jury trial shall be filed, along with a fee to be set by court rule, no less than twenty-five (25) days prior to the scheduled date of trial. Once a jury trial has been requested the request may not be withdrawn without the consent of all the parties.

(2) A judge may, upon his own motion, order the trial by a jury of any or al of the factual issues of a case regardless of whether or not the parties have requested it.

(3) A judge may, upon motion of any party or upon his own motion, 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 those issues.

(4) A judge may hear and decide an issue or issues 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 issues.

**3.6 Selection and Number of Jurors; Alternate.**

There shall be six (6) jurors chosen to hear a case by the method determined by Court in its rules, plus the Court may allow one (1) additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen, he shall be treated as a regular juror in all respects unless dismissed by direction of the Court prior to the jury's deliberations.

**3.7 Examination of the Jury.**

The Court shall permit the parties or the attorneys to conduct the examination of prospective jurors and may itself examine the jurors, according to such rules as the Court establishes.

**3.8 Separation of the Jury.**

Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge 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.

**3.9 Improper Influence.**

If improper influence is used to pressure a juror to reach an opinion during the course of the action, either party may move to discharge the jury and retry the action.

**3.10 Instruction to the Jury.**

At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear objections and rule on them out of hearing of the jury.

**3.11 Arguments in a Jury Trial.**

Final arguments for the parties shall be made after the jury has been instructed.

**3.12 Special Verdicts and Interrogatories.**

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 accompanied by answers to questions related to the issues under consideration.

**3.13 Deliberation for the Jury.**

(1) Once the case is submitted to it, the jury shall retire to deliberation on private under the charge of an officer of the Court who will refrain from communicating with the jury except to inquire whether they have reached a verdict, and who shall prevent others from improperly communicating with the jury.

(2) The jury may take with them when deliberating any of the following;

- (a) The Court's instructions;
- (b) Papers or things received in evidence as exhibits;
- (c) Notes taken by the jurors themselves, but not notes

taken by non juror.

(3) If after the jury retires there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, which shall be given on the record after notice to the parties or their counsel.

**3.14 Declaration of the Juror's Verdict.**

When four (4) of the six (6) members of the jury agree on a verdict, they shall inform the officer who shall notify the Court. The Court shall reconvene and the jury foreman shall give the jury's written verdict to the Clerk of Court. The Clerk shall then read the verdict to the Court. The Court shall ask the jury foreman if that is the verdict.

Either party may request the Court to poll the jury members individually to determine if the verdict given is, in fact, the jury's verdict. The Court shall poll the jurors without the presence of the parties or their counselors. If less than four (4) jurors agree to the verdict, the court shall send the jury to deliberate again until a majority of four (4) is reached.

**3.15 Non Jury Trials.**

In cases tried without a jury, the Court shall make findings of fact and conclusions of law in support of its final judgment. These findings serve as a jury's verdict does in a jury trial.

### **3.16 Motion for a New Trial.**

(1) Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than ten (10) days after the entry of judgment, for any of the following grounds;

(a) Error or irregularity which prevented any party from receiving a fair trial; or

(b) Misconduct of the jury or jury members; or

(c) Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at the trial; or

(d) Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice; or

(e) Insufficiency of the evidence to justify the verdict or other decisions, or that is contrary to the law; or

(f) Error in law.

(2) A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

(3) Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed.

### **3.17 Court Initiative.**

The Court may, on its own initiative, not later than ten (10) days after entry of judgment, order a new trial on any grounds asserted by a party to the action, and shall specify the reasons for so ordering.

## **Chapter 4 JUDGMENTS**

### **4.1 Default.**

(1) When a party against whom a complaint asking for money damages has been filed has been served with process and fails to appear to defend against the claim, the court may enter a default judgment against the party.

(2) The court may enter a default judgment only for money damages and only for the amount asked for in the complaint.

(3) The court may for good cause shown, set aside a default judgment.

### **4.2 Summary Judgment.**

Any time at least twenty (20) days after commencement of an action, any party may move the court for summary judgment as to any or all of the issues presented in the case. Summary judgment 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. Such motions, which shall be served not less than ten (10) days prior to the hearing in the motion, may be supported by affidavits, discovery, or

memoranda, all of which must be made available to opposing parties at least two (2) days prior to the hearing.

#### **4.3 Judgments after Full Trial.**

(1) The court shall enter judgment on all claims before it in an action. Each judgment shall order relief, either as the party requested or as the Court deems appropriate and shall consist of an order of the court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefits of the injured party.

(2) The Court may include the court costs of the prevailing party in the damages award.

#### **4.4 Entry of Judgment.**

The judge in the action shall sign the judgment and file it with the Clerk of Court. A judgment is complete when it is so signed and filed.

#### **4.5 Clerical Mistakes.**

Clerical mistakes in judgments, orders or other parts of the recode and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the appellate court, and thereafter while the appeal is pending with leave of the appellate court.

#### **4.6 Death of a Party.**

If a party dies after a verdict or decision has been reached upon any issue of fact before judgment, a judgment may nevertheless be entered thereon.

#### **4.7 Proceedings to Enforce a Judgment.**

Proceedings to enforce a judgment shall issue immediately upon the entry of the judgment, unless the court stays the proceedings.

#### **4.8 Satisfaction of Judgment.**

A judgment is satisfied, in whole or in part, as to any or all of the judgment debtors when the owner thereof or his attorney execute under oath and files an acknowledgment of satisfaction specifying the amount paid and whether such payment is a full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket. A judgment satisfied in whole has no continuing effect.

**4.9 Time Limitation on Order of Judgment.**

A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight (8) years and will extend the period of limitations for one (1) additional eight (8) year period.

**4.10 Stays of Proceedings to Enforce Judgment.**

(1) The court may stay proceedings to enforce a judgment where;

- (a) There has been filed a motion for a new trial; or
- (b) There has been filed an appeal of the judgment.

(2) The party filing the motion for a new trial or the party filing an appeal shall pay any bond required by the court to stay the proceedings to enforce the judgment, except that the Tribe, or an officer or agency of the Tribe, shall not be required to give a bond.

(3) Where the stayed judgment grants or denies injunctive relief, the court may suspend, modify, restore, or grant a temporary injunction during the stay.

(4) The appellate court itself may, upon appeal of a judgment, order a stay of proceedings to enforce a judgment, and suspend, modify, restore, or grant a temporary injunction during the stay.

**4.11 Execution of Judgment.**

A judgment creditor shall petition the Courts for a Writ of Execution to enforce his judgment within five (5) years of the entry of a judgment against a party or of final resolution of an appeal for which a stay of judgment had been ordered.

**4.12 Property Subject to Writ of Execution.**

All wages, money, goods, chattels, or other property, both real and personal belongings to the judgment debtor are subject to a writ of execution. All property not exempt under Section 4.13 of this chapter and all property seized and held under attachment in an action are subject to execution.

**4.13 Exemptions.**

The following property is exempt from execution:

(1) The first three hundred fifty dollars (\$350) of the judgment debtor's wages if he is the head of the family, or the first two hundred dollars (\$200) of the judgment debtor's wage if he is not the head of a family, when it appears by the debtor's affidavits or otherwise that the income is necessary for his use or for the use of his family;

(2) Books, pictures, and musical instruments belonging to the judgment debtor not to exceed three hundred dollars (\$300) in value;

(3) Necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed two hundred dollars (\$200) in value;

(4) The tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and other articles necessary to enable a person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of two thousand five hundred dollars (\$2,500), including sufficient quantity of food to support the animals, if any, for six (6) months;

(5) The following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of one thousand two hundred dollars (\$1,200), including food sufficient to support the animals, if any, for six (6) months, and provisions actually provided for family use and necessary for the support of that person and family for six (6) months;

(6) All property of a public or municipal corporation;

(7) No article of property mentioned in this Section is exempt from execution issued on a judgment recovered for its price, and, in the event the articles of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution.

#### **4.14 Procedure for Identification.**

After petitioning the court for a Writ of Execution, the judgment creditor shall, if possible, identify property of the judgment debtor of value to satisfy the judgment. Such identification shall be made in a sworn affidavit, and shall not include exempt property.

The Court shall then order the judgment debtor to appear and identify under oath all of his exempt and non-exempt property or at least property subject to the action. If a judgment debtor claims certain property is exempt, he must provide information to support his claim. Failure of the judgment debtor to appear and provide information shall be a Contempt of Court, and unless other interested parties (e.g., spouse, children, and parents) come forward with information, no property or the judgment debtor will be held as exempt from execution. The judgment debtor must appear before the Court within five (5) working days of the order to appear, unless the Court is given good reasons for his failure to appear.

The Court may issue a Writ of Execution solely upon the affidavit of the judgment creditor, if some evidence is present to show that the property in fact belongs to the judgment debtor.

#### **4.15 Substance of Writ.**

Writ of execution may be against the property of the judgment debtor, another against his person, and a third for the delivery of the possession of real or personal property, including damages for withholding the property. Upon determination of what property is available for

execution, the Court shall issue the necessary Writ and Order to the Rocky Boy Police Department to carry out the orders in the Writ; specifically, to seize as much non-exempt property belonging to the judgment debtor as reasonably appears necessary to pay the judgment amount. All Writs shall direct the Police Department to proceed in the manner prescribed in the Court Rules.

#### **4.16 Redemption from Sale.**

At any time within six (6) months after the sale under this rule, the judgment debtor may redeem his property, personal or real, from the purchaser thereof or from any subsequent successors in interest, by paying the amount such purchaser or successor paid for the property plus eight (8) percent interest, plus any expense actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

#### **4.17 Judgment Debtor's Property Owned with Another.**

(1) If an individual judgment debtor owns property jointly with another, a judgment creditor may obtain a Writ of Execution and force a sale of the debtor's interest, provided the property is not exempt under Section 4.13. An individual who jointly owns property with the judgment debtor shall have the right to meet the highest bid at an auction sale, and thereby obtain the judgment debtor's interest.

(2) A partner's right in specific partnership property is exempt on a claim against the partnership. If partnership property is attached for a partnership debt the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this rule.

### **Chapter 5 EXTRAORDINARY PROCEEDINGS OR REMEDIES**

#### **5.1 Expulsion and Exclusion of Non-Members from Tribal Lands.**

(1) Who may be Excluded. Any person who is not a member of the Chippewa-Cree Tribe may be excluded from the Rocky Boy's Indian Reservation.

(2) Grounds for Exclusion. Non-members of the Chippewa-Cree Tribe may be excluded on one (1) or more of the following grounds;

(a) Unauthorized prospecting, mining, timber cutting or other activity causing physical loss or damage to property on the Rocky Boy's Indian Reservation;

(b) Commission of a crime as defined by this Code, State or Federal Laws;

(c) Unauthorized trading;

(d) Entering an area of Rocky Boy's Reservation in violation of an order of the Tribal Business Committee and Agency

Superintendent designating such area as closed because of fire hazard or any other reason;

(e) Absent a Tribal Court order granting custody, removing or attempting to remove any Chippewa-Cree minor from the Rocky Boy's Reservation without prior approval of the present custodian, legal guardian, or Tribal Business Committee;

(f) Posing a danger to life, death, health, moral or property of the Chippewa-Cree Tribe or any of its members.

(3) Exclusion after a Hearing. A non-member of the Chippewa-Cree Tribe may be excluded from the Rocky Boy's Indian Reservation, if it is determined at a hearing that he has committed any of the acts listed in Subsection (2) of this Section.

(a) Initiation of an Exclusion Hearing. Upon request of the Chairman or the Vice-Chairman of the Tribal Business Committee or upon its own motion, the Tribal Court shall set a time and date within (10) to twenty (20) days for a hearing in which a person who is to be excluded may Present his defense to the grounds named for exclusion.

(b) Notice of an Exclusion Hearing. Notice shall be served personally or by registered mail to the person to be excluded when the Tribal Court sets the hearing date. The notice shall state the reason for the proposed exclusion, the proposed duration of the exclusion, the person's right to present evidence in his defense, and the time, date and place of the hearing

(c) Hearing: Order of Exclusion. After the hearing, or after the time set for the hearing if the person proposed for exclusion does not appear, the Tribal Court may order such person excluded from all or any part of the Rocky Boy's Indian Reservation for such time and on such condition as the Tribal Court sees fit to impose. All orders of exclusion shall state the period for which the order shall apply.

(4) Exclusion Prior to a Hearing. Prior to having received a hearing, a non-member of the Chippewa-Cree Tribe may be ordered preliminary excluded from the Rocky Boy's Indian Reservation by the Tribal Court for reasons as stated in subsection (2)(f) of this Section. The Tribal Court shall order a Tribal law enforcement officer to remove the person and any property of such person from the Rocky Boy's Indian Reservation. The law enforcement officer shall use only such force as is reasonable necessary to effect the removal.

(5) Initiation of a Preliminary Exclusion Order. Upon request of the Chairman or the Vice-Chairman of the Tribal Business Committee, or upon its own motion, the Tribal Court may issue a Preliminary Exclusion Order. Concurrent with issuing the order the Tribal Court shall set a time and a date within three (3) to ten (10) days for a hearing in which the excluded person may appear in Tribal Court to present his defense to the grounds named for exclusion. The preliminary exclusion order shall state the reasons for the exclusion, the duration of the Preliminary Exclusion, the duration of any other proposed exclusion, the

excluded person's right to present evidence in his defense, and the time, date and place the hearing is to be held.

(6) Limitation on Preliminary Exclusion Orders. A Preliminary Exclusion Order is effective only until the day after the scheduled hearing.

(7) Notice. A copy of the Preliminary Exclusion Order shall be personally served on the excluded person by a law enforcement officer at the time that such officer enforces the order. The service of the order shall satisfy the notice requirement of subsection 3(b) of this section.

(8) Attendance at the Hearing. In all cases where a Preliminary Exclusion Order has been issued, the Chairman shall notify the excluded person of a place on the reservation boundary where he may re-enter in the company of a law enforcement officer for the purpose of attending the hearing before the Tribal Court. The Chairman shall order a Tribal Law Enforcement Officer to accompany the excluded person while he is on the reservation coming to and leaving his hearing.

(9) Enforcement of Exclusion Orders. If any person, excluded from the Rocky Boy's Indian Reservation by the Tribal Courts does not promptly obey the order, the Tribal Court shall refer the case to the appropriate Tribal Officer for action (for example to write a letter, or the Tribal Court may refer the matter to the United States Attorney). The Business Committee may petition the Court to order forcible removal of an excluded person or property. Forcible removal shall be executed by a Tribal Law enforcement officer, and the officer shall use only such force as is reasonably necessary to effect the removal.

## **5.2 Temporary Restraining Orders.**

(1) A party may present to the Court an affidavit setting out specific facts indicating immediate and irreparable damage will result if the court does not immediately restrain another party or other person from acting.

(2) The court may grant the restraining order with or without notice to the person restrained.

(a) If the Court gives notice, the person to be restrained may present an affidavit also. The court will then determine whether to grant the order

(b) In any event, a hearing to determine whether the restraining order should continue must be set within fifteen (15) days of the issuance of the restraining order, otherwise the order expires after the fifteenth day.

(c) At the hearing, the parties may present testimony, cross examine witnesses, and present documentary evidence to the Court.

(d) Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or

acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concern or participation with them who receive actual notice of the order by personal service or otherwise.

### **5.3 Injunction.**

An injunction may be granted:

(1) When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in enjoining the commission or continuance of some act complained of, either for a limited period or perpetually;

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

(3) When it appears during the litigation that either party is doing, or threatens, or is procuring or suffering to be done, some act in the violations of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

(4) In all other cases where an injunction would be proper in equity.

### **5.4 Extraordinary Writs.**

Where no plain, speedy, and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which granted for any one (1) of the following grounds:

(1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

(2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

(3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specifically requires as a duty resulting from an office, trust or station to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or

(4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

### **5.5 Habeas Corpus:**

(1) Relief by habeas corpus proceedings shall be granted whenever it appears to the court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue of a Writ directed to the

defendant commanding him to bring the person alleged to be restrained before the court at a specific time and place, at which time the court shall proceed to hear the matter and render judgment accordingly. If the writ is not issued, the court shall state its reason therefore in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff.

(2) The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state the fact, and to whom, and when, the transfer was made, and the reason or authority therefore.

(3) The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the Court may place such person in the custody of such individual or individuals as may be deemed proper.

(4) In each case, the court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the court finds in favor of the complaint, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to re-arraignment, retrial, custody, bail, or discharge as the Court may deem just and proper in the case.

## **Chapter 6. PROCEDURES FOR APPEALS**

### **6.1 Who can Request Judiciary Review:**

Any party adversely affected by a decision of the trial court in a civil case may appeal that decision to the Chippewa-Cree appellate court. An appeal of the Trial Court's decision in a criminal case shall proceed pursuant to the provisions contained in the Criminal Procedure Title of this Tribal Code.

### **6.2 Commencement of a Civil Appeal:**

~~A party must commence an appeal within five (5) days of the date of the Trial Court's decision by filing with the Clerk of the Chippewa-Cree Court, an original and one (1) copy of a Request for appeal. The appealing party shall pay a filing fee to be set by court rule at the time the Request of Appeal is filed. Within twenty (20) days of requesting an appeal, the party must file two (2) copies of his brief in support of the appeal. The clerk will notify the appellate court judges and the opposing parties within three (3) days of receiving the request for appeal. Upon receiving the copies of the brief in support of the appeal, the clerk will distribute one (1) copy to the appellate court and the other copy to the opposing party.~~

**6.3 What may be Appealed.**

~~Any final decision of the Trial Court may be appealed. However, the appellate court may refuse to hear a civil appeal if it determines that the appeal is without merit. The appellate court shall notify the parties that the appeal is refused no later than ten (10) days after the request for appeal is filed.~~

**6.4 Opposing Party's Response.**

~~The opposing party will have twenty (20) days from the date that the appealing party's brief is received to submit an opposing brief and to make any requests.~~

**6.5 Consequences of Missing Filing dates.**

~~If a party does not file his request for appeal within the stated time limit, he loses his opportunity to appeal. If a party does not submit his brief within the stated time limits, the case will be decided without the brief. However, for good cause, the appellate court may extend any time limit set in this chapter.~~

**6.6 Availability of the Trial Transcript.**

~~The Clerk shall keep the original trial transcript tape on file. A copy of the tape shall be provided to the appellate court, and upon the Court's request a transcribed copy of the trial transcript shall be provided. The parties to the appeal may listen to the trial transcript tape at the offices of the Court. Upon the request of the party, the Clerk will furnish that party at cost, with either a recorded copy or a transcribed copy of the transcript.~~

**6.7 Court Cost and fee Waivers.**

~~If the appellate court requests a transcribed copy of the trial court transcript, the cost of transcribing the copy will be paid by the appealing party. The appellate court may waive or reduce the transcribing fee and the filing fee, or both, as justice requires.~~

**6.8 When Oral Arguments Heard.**

~~In a civil case, the appellate court may request oral arguments. Oral arguments will be scheduled within ten (10) days of such a request.~~

**6.9 Procedures on appeal.**

~~Relying upon this Code, and custom and tradition, the appellate court may affirm, modify or reverse the Trial Court's determinations of issues of law. The appellate court shall remand a case to the Trial Court for further findings of fact and a new judgment if on review of the Trial Court's findings of fact, the appellate court determines that the Trial Court's findings of facts are not sufficient to support the Trial Court's judgment and are not sufficient to support any other judgment on appeal.~~

**6.10 Unanimous Decision.**

~~Judgment of the appellate court shall be by unanimous decision. The lower court's decision shall stand, where there is no unanimous judgment by the appellate court.~~

**6.11 Written Decision.**

~~The appellate court's decision must be in writing and contain the Trial Court's finding of facts and the appellate court's determinations of the issues of law. The addressing the issues of law, the decision shall state the Code sections, and customs or traditions upon which the appellate court based its determinations.~~

**6.12 Time Limits:**

~~The written decision in a civil case shall be issued within fifteen (15) days of when the last brief is submitted or of the completion of the oral arguments, whenever date is later.~~