

TITLE 12 Tribal Court

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CHAPTER 12-1 TRIBAL COURT ORDINANCE

Section 12-1.10 Definitions. For the purpose of this ordinance the following words and phrases shall have the following meanings:

- (a) “*Attorney*” or “*Counsel*” shall mean any person admitted to a bar of any state.
- (b) “*Immediate Family*” shall mean a person’s parent, sibling, child, or spouse.
- (c) “*Peacemaker*” shall mean a mediator who is a tribal member listed on the Peace Making Roster.
- (d) “*Reservation*” shall mean all lands within the exterior boundaries of the Hopland Indian Reservation and lands held in trust for the Tribe or a Tribal member by the United States.
- (e) “*Big Talker*” shall mean any person not admitted to a bar of any state that is a tribal member or a relative of a party and speaks for a party in a case filed in the Tribal Court.
- (f) “*Supreme Court*” shall mean the trial court, as opposed to the appellate court, if any, of the Tribal Court.
- (g) “*Tribal Court*” shall mean the entire court of the Hopland Band of Pomo Indians, including all divisions and inferior courts, unless the context indicates that another Tribe’s court is intended.
- (h) “*Tribe*” shall mean the Hopland Band of Pomo Indians.

Section 12-1.20 Establishment of Court. There is established for the Tribe a court to be known as the Hopland Tribal Court. The Tribal Court shall be empowered to exercise the judicial authority of the Tribe as delegated herein.

12-1.20.010 The Supreme Court shall consist of at least three judges.; one (1) Chief Judge and at least two (2) Associate Judges appointed by the Tribal Chairperson and confirmed by not less than a three-fourths (3/4) majority vote of the Tribal Council. Such judges may be appointed on a temporary or permanent basis. The Tribal Council or the Tribal Court is empowered to create such specialized divisions or inferior courts as necessary to hear matters as defined in the Tribe’s ordinances.

12-1.20.020 In addition to the Supreme Court there may be established a roster of Peacemakers to mediate disputes between parties before trying the case in Tribal Court. A Peacemaker is an optional way for peacefully resolving disputes and can be used only with the consent of all parties. A Peacemaker may be used by the parties even before a case is filed in Tribal Court so long as the parties notify and coordinate through the Tribal Court. Parties utilizing a Peacemaker are not prohibited from continuing their case in the Tribal Court should the dispute resolution prove unsuccessful.

Section 12-1.30 Jurisdiction and Powers.

12-1.30.010 Civil Jurisdiction.

(A) Subject Matter Jurisdiction. The Tribal Court shall have civil jurisdiction over all matters in law or in equity which the Tribal Council expressly authorizes by ordinance. The Tribal Court shall have no jurisdiction to hear any matter filed -against the Tribe, the Tribal Council, or any individual member of the Tribal Council when acting in his or her official capacity. The Tribal Court should decline to exercise its jurisdiction if it finds any of the following to exist:

- (1) *Another court has the jurisdiction to hear the case and would be more convenient for the parties than the Tribal Court;*
- (2) *One or more of the parties is not a person over which the Tribal Court can exercise its authority;*
- (3) *The matter involves a question or dispute better resolved by the Tribal Council or General Council because of the inherently political nature of the question or dispute, including but not limited to where:*
 - (a) the Tribe's Constitution has committed decision- making on the subject to the Tribal Council or General Council; or*
 - (b) no adequate standards exist for the court to apply; or*
 - (c) the Tribal Court believes it is prudent not to interfere.*
 - (d) The case is of such a nature that the Tribal Court should not hear it.*

(B) Territorial Jurisdiction: The Tribal Court shall exercise civil jurisdiction as stated in subsection (1) on all lands within the exterior boundaries of the Reservation and (2) on all lands owned by the United States of America in trust for the Tribe or a Tribal member. The scope of the Tribal Court's civil jurisdiction shall extend to the following individuals:

- (1) *Tribal members;*
- (2) *Anyone the Tribe formally recognizes as Indian;*
- (3) *Other Indians;*
- (4) *Anyone who consents to Tribal Court jurisdiction;*
- (5) *Other individuals or entities whose conduct affects the ability of the Tribe to govern itself;*
- (6) *all other individuals whose conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe.*

(C) Concurrent Jurisdiction: The Tribal Council recognizes that Public Law 83-280 granted concurrent jurisdiction to the State of California over some criminal and civil

matters on the Reservation. The Tribal Court shall exercise its jurisdiction in all areas to the extent delegated by Tribal ordinance.

12-1.30.020 Criminal Jurisdiction.

(A) The Tribal Court shall have jurisdiction over all criminal offenses set forth in an ordinance when committed by an Indian within the exterior boundaries of the Reservation or on any land owned by the United States of America in trust for the Tribe or a Tribal member.

(B) For purposes of this subsection, an Indian shall be any person of Indian descent who is a member of any federally recognized Indian Tribe.

(C) In all criminal prosecutions, the accused shall enjoy the right to a speedy jury trial, to be informed of the nature and cause of the accusations, to be confronted with the witnesses against him, the right of cross-examination, to have compulsory process for obtaining witnesses in his or her favor, and to have the assistance of an advocate for his or her defense admitted to practice before the Tribal Court.

12-1.30.030 Powers. The Tribal Court is granted all the powers necessary to exercise its jurisdiction in accordance with the procedures set forth in this Ordinance. Additionally, the Tribal Court may exercise its jurisdiction in accordance with any suitable procedures where specific procedures are not set forth in this Ordinance, so long as such procedures are in accordance with the Tribe's Constitution. The Chief Judge, in consultation with the Tribal Council, or the Tribal Council on its own accord, shall promulgate such rules of procedure and evidence that are necessary for the efficient prosecution or processing of cases through the Tribal Court.

12-1.30.040 Full Faith and Credit. The Tribal Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, countries, and the federal government unless:

(A) The court in question does not recognize the orders and judgments of the Tribal Court;

(B) The court in question did not have jurisdiction over the case or a party or parties to it;

(C) The order or judgment was based on fraud;

(D) To do so would violate the public policy of the Tribe; or

(E) The order or judgment is not final.

Section 12-1.40 Judges.

12-1.40.010 Qualifications.

(A) Chief Judge: The Chief Judge shall be at least 35 years of age and be a graduate from an accredited law school and have experience in the area of federal Indian Law for five years or more.

(B) Associate Judge: The Associate Judge shall be at least 30 years of age with a bachelor's degree; the equivalent of one year Tribal Court training; and, demonstrable knowledge of Indian Law, federal law, and California law.

(C) No person shall serve as Judge of the Tribal Court who has been convicted of: (1) a felony at anytime or (2) misdemeanor within one year from receiving his or her appointment. No person shall serve as a Judge of the Tribal Court until a bond has been posted, at tribal expense, in an amount determined by the Tribal Council or, until the person is covered by a blanket bond provided for all tribal employees, unless waived by the Tribal Council. No person shall serve as a Judge of the Tribal Court who holds any elective or appointive office of the Tribe.

12-1.40.020 Appointment and Term of Service. After advertisement and interviewing by the Tribal Council, the Tribal Chairperson will appoint a judge who must be confirmed by not less than a three-fourths (3/4) majority vote of the Tribal Council. Preference will be given to Tribal members first and Indians of other tribes second.

12-1.40.030 Duties.

(A) Chief Judge. The Chief Judge will be responsible for:

- (1) *Developing rules of procedure and evidence for the efficient operation of the Tribal Court, subject to approval by the Tribal Council;*
- (2) *Hearing all matters delegated to the Court by ordinance;*
- (3) *Development and maintenance of a list of Temporary Judges to be called upon to hear cases in the event of disqualification of a judge or as deemed necessary;*
- (4) *Development and maintenance, with the assistance of the Clerk of the Court, of a system for record keeping and docket system;*
- (5) *Maintenance of current copies of Tribal, Federal, and State of California laws applicable to proceedings coming before the Tribal Court;*
- (6) *Preparation of the Court's annual plan and budget;*
- (7) *Issuing receipts for any monies collected or paid out by the Tribal Court;*
- (8) *Depositing all receipts into the Tribal accounting system earmarked for inclusion in the Tribal Court's annual plan and budget, and*
- (9) *Supervising and coordinating training of Court personnel and Peacemakers.*

- (B) Associate Judge. The Associate Judge will be responsible for hearing all cases as are assigned by the Chief Judge and other duties as assigned by the Chief Judge.

12-1.40.040 Removal.

(A) During the tenure of his or her appointment, any Judge may be suspended, dismissed, or removed only for just cause by a unanimous vote of the Tribal Council. Except for suspension, dismissal, or removal based on lack of funding, the Tribal Chairperson or his/her designate shall make available copies of a written statement setting out the facts and reasons for the proposed action to the Judge in question, the other Judges, and to members of the Tribal Council at least fourteen (14) calendar days before the next regularly scheduled meeting of the Tribal Council at which the charges shall be presented. The Secretary of the Tribal Council shall give notice of the hearing to the Judge by personal service and to the Tribal Membership by posting a notice of the date, place and time of the hearing in the Tribal Newsletter, at the Tribal Council office and at least two other conspicuous places on the Reservation. The meeting shall be a public hearing where the accused Judge shall be given an adequate opportunity to answer any and all charges.

(B) Cause shall be defined as malfeasance in office, corruption, neglect of duty, misconduct or incompetence in performance of duty, personal conduct involving moral turpitude whether or not related to judicial duties, conduct that brings disrepute on the office, conviction of a felony or misdemeanor, excluding minor traffic violations, or lack of funding. No Judge shall be removed from office for exercising his/her discretion or for making a decision in a case that the Council does not agree with. The decision of the Tribal Council to suspend, dismiss, or remove a Judge shall be final.

12-1.40.050 Disqualification.

(A) Conflict of Interest.

- (1) *No Judge shall be qualified to act as such in any case where she/he has any direct interest, or where any party involved in the case includes a relative by marriage or blood in the first or second degree. A Judge may be disqualified upon his/her own motion or by application by any party in the proceeding upon filing a verified motion in writing.*

(B) Bias or Prejudice.

- (1) *Upon the filing of an affidavit or declaration under penalty of perjury by a party setting forth facts establishing that by reason of bias or prejudice of the Judge to whom the case is assigned, the party cannot have a fair trial, the Judge shall disqualify himself/herself. Such affidavit shall be filed five days prior to trial.*

12-1.40.060 Temporary Judges.

(A) In the event that there is no qualified permanent Judge available to hear a particular case, the Chief Judge shall appoint a qualified Temporary Judge who will have the full powers of a regularly-appointed Tribal Judge to hear and dispose of the case. The qualifications for Temporary Judges must meet the minimum qualification of Associate Judges. Such appointment shall be only for the period of time necessary to dispose of the case in question, and shall not be used to avoid giving full tenure to a regularly appointed Judge.

Section 12-1.50 Court Clerk Liaison (aka Court Clerk).

12-1.50.010 Qualifications.

(A) The Court Clerk Liaison shall have a high school diploma or the equivalent thereof; have a minimum of two years experience as a paid secretary or paid Clerk; be eligible to become a registered notary and shall not have been convicted of a felony or any other crime involving dishonesty within three years from the date of hire. There shall be preference in hiring Tribal members first and members of other Tribes second. There will be a three (3) month probationary period after hiring.

12-1.50.020 Duties. The Court Clerk shall not give legal advice to any person but shall:

- (A) Give assistance to the Tribal Court, and the Tribal Police in drafting pleadings, orders, summons, warrants, and other documents as required;
- (B) Attend all sessions of the Tribal Court;
- (C) Keep a record of all proceedings of the Tribal Court;
- (D) Administer oaths to witnesses;
- (E) Collect all fines and deposit them as directed by the Chief Judge pursuant to this Ordinance;
- (F) Pay out all fees ordered and accounted for pursuant to this Ordinance;
- (G) Account for all monies handled through the Tribal Court; and
- (H) Any other duties as directed by the Chief Judge.

12-1.50.030 Bond. The Court Clerk shall be bonded, at Tribal expense, in an amount determined by the Chief Judge unless waived by the Tribal Council.

12-1.50.040 Seal. The Court Clerk shall have an official seal which shall be impressed upon the original of each complaint or other paper filed with the Tribal Court, along with a notation of the day and time of filing.

Section 12-1.60 Applicable Law. When choosing what law applies, the Tribal Court shall apply the law of the Tribe first, federal law second and California law last, except to the extent that federal or state law governs.

Section 12-1.70 Appeals.

12-1.70.010 Court of Appeals. The Tribal Council may, but is not required to, sit as a court of appeals whenever necessary and may within its discretion hear appeals from the Supreme Court at any regular or special meetings.

12-1.70.020 Right to Appeal. Any party who is aggrieved by any final order, commitment, or judgment of the Tribal Court may appeal to the Tribal Council. The Tribal Council may accept or reject the appeal, in its sole discretion.

12-1.70.030 Notice of Appeal. Within thirty (30) days from the entry of the judgment or order appealed from, the aggrieved party may file a written notice of appeal with the Tribal Court. This time limit is jurisdictional. No extension of the thirty day period may be granted. The notice of appeal must include a short statement of the reasons, basis, or grounds for the appeal. Bond or assurance must be posted as set forth below and any filing fee required by Court Rules must be paid in order for the filing of the notice to be effective. The Tribal Court shall immediately forward a copy of the notice of appeal to the Tribal Council for review.

12-1.70.040 D. Bond. Upon filing the notice of appeal, the appellant must post bond, deposit cash, or give other assurance as will in the judgment the Tribal Court give adequate assurance of the performance of the judgment, or payment of the fine or judgment in the event the case appealed is affirmed. The Tribal Court has discretion to waive bond if it would be a hardship to appellant. No tribal agency, department, or governing body shall be required to post a bond.

12-1.70.050 Stay of Enforcement. In any case where a party has perfected his/her right to appeal in accordance with the rules set forth in this Ordinance, or the Rules of Court, the final order, commitment, or judgment of the Tribal Court shall be stayed pending the appeal.

12-1.70.060 Appellate Procedure. As soon as possible, but no later than sixty (60) days after a written notice of appeal has been filed in the Tribal Court, the Tribal Council shall meet and decide, in its sole discretion, whether to hear the appeal. If it decides not to hear the appeal, the Tribal Council shall so notify the Tribal Court in writing. The Tribal Court shall then so notify the parties. If it decides to hear the appeal, the Tribal Council shall set a briefing schedule, set an oral argument date, and adopt appropriate procedures. The procedures of the Tribal Council sitting as an appellate court shall be determined by the Tribal Council at any regular or special meeting.

12-1.70.070 Finality. Whenever the Tribal Council sits as an appellate court its decision shall be final and binding upon all parties to the suit and not subject to review.

Section 12-1.80 Appearances.

12-1.80.010 Counsel. Any party has a right to assistance of counsel at the party's expense. Such assistance shall be arranged by the party. Counsel must be admitted to practice in the Tribal Court.

12-1.80.020 Big Talker. Any party has a right to assistance of a Big Talker at the party's expense. The Big Talker shall be required to comply with all Ordinances and Rules adopted by the Tribal Court for the processing of cases. The Court shall not appoint counsel or a Big Talker for any party at the Tribe's expense.

12-1.80.030 Self-representation. Any individual party may appear and represent himself or herself in any proceeding before the Tribal Court. Judges of the Tribal Court shall insure that all parties have equal opportunity to present their case and cross-examine opposing witnesses. Parties representing themselves shall be held to the same strict standards of procedural conduct as are required of legal counsel.

12-1.80.040 Witnesses – Summons to Appear. On motion by any party to the case, or on the Tribal Court's own motion, the Tribal Court may issue a summons to compel the attendance of witnesses, or the production of books, records, documents, paper and things necessary to the determination of the cause. Failure to comply with a summons shall constitute contempt of court.

12-1.80.050 Witnesses – Fees. Each party shall be responsible for his/her own witnesses. The Tribe shall pay witnesses summoned on its behalf at a rate established by the Court.

Section 12-1.90 Records.

12-1.90.010 Docket. The Court Clerk shall keep a docket which shall contain the names of each plaintiff and defendant in any civil or criminal proceeding, the type of proceeding, the date of issuance and the return date of any legal order or process issued in the proceeding, the appearance or default of parties summoned, the date and the amount of any judgment, appeal, and all other proceedings and documents as directed by the Chief Judge. The Court docket shall be posted in a public place.

12-1.90.020 Copies of proceedings. Any party may obtain a certified copy of proceedings in the Tribal Court at his or her own expense; the seal of the Court Clerk shall be applied to all copies so certified. The preceding shall not apply to matters or records sealed or expunged by the Tribal Court as permitted or required by this Ordinance or Federal law.

12-1.90.030 Copies of Laws. The Tribal Court shall obtain copies of this Ordinance and copies of tribal ordinances, federal laws, and state laws and regulations as are deemed by the Tribal Court to be necessary, helpful; and proper to secure the rights and privileges of persons subject to the jurisdiction of the Tribal Court and its judicial powers and responsibilities. Copies of same shall be available for review by the public.

Section 12-1.100 Peace Making Roster.

12-1.100.010 Purpose. The purpose of the Tribe's Peace Making Roster is to provide a non-adversarial way to resolve disputes. The Peace Making process is intended to reflect the Tribe's tradition of using respected members of the community to heal conflicts among its members. The Peace Making Roster is not a tribal committee.

12-1.100.020 Appointment. The Tribal Council, with the advice of the Chief Judge and the Culture Committee, will create and maintain a roster of Peacemakers.

12-1.100.030 Qualifications. Peacemakers shall be at least 50 years of age, members of the Tribe, and known and respected in the community. No peacemaker shall serve who has been convicted of a crime within the last five (5) years of being named to the roster.

12-1.100.040 Duties. Peacemakers shall work to resolve disputes. To do this, Peacemakers shall, as needed, do the following:

- (A) Conduct informal conferences.
- (B) Insure in each conference that all relevant facts are presented and that all parties have an opportunity to speak.
- (C) Encourage the parties to reach an agreement that is acceptable to all of them.
- (D) Attend training at Tribal Court expense as requested by the Chief Judge.

12-1.100.050 Procedure.

(A) Any party who wishes to have a Peacemaker conference shall file with the Court Clerk and serve on all parties a request for conference. Within ten (10) days of the date of filing of the request, if no party has filed an objection to the request, the Tribal Court Judge shall refer the case to a member of the Peace Making Roster for mediation and possible settlement. No lawsuit need be filed or pending in the Tribal Court.

(B) A Peacemaker shall then contact the parties to schedule a Peacemaker conference and explain the basic rules of the conference. Any party may object to the Peacemaker appointed. In that case, the Tribal Court shall appoint a different Peacemaker. If a party after hearing the explanation of the goals and rules objects to holding a conference, the Peacemaker shall not hold it. If the parties want to participate in peacemaking but cannot agree on a Peacemaker, the Chief Judge shall designate a Peacemaker.

(C) If the nonmoving party agrees to a conference, the Peacemaker shall send written notice of it to the parties. The notice shall contain:

- (1) *The names of the parties.*
- (2) *The date, time, and place of the conference.*
- (3) *The allegation(s) and a brief statement of the alleged facts on which it is based.*
- (4) *A brief description of how the peacemaker conference works.*

(D) If there is no agreement on a peacemaker among the parties, the peacemaker will be designated by the Chief Judge.

12-1.100.060 Representation. No party to a peacemaking conference may be represented by counsel. A party may only be represented by a Big Talker to the extent necessary for the party to understand the nature of the proceedings.

12-1.100.070 Settlement. If the matter is resolved by the Peacemaker, the parties shall confirm the terms of the resolution in a writing signed by the parties and the Peacemaker. The writing shall be an enforceable agreement. If a lawsuit is pending, the written settlement shall be filed and treated as the final judgment. Discussions during the peacemaking conference shall be confidential and privileged and cannot be used in subsequent litigation.

Section 12-1.110 General Provisions

12-1.110.010 Repeal. All prior Ordinances or provisions of any previously enacted ordinances of the Tribe that are inconsistent or in conflict with this Ordinance are hereby repealed.

12-1.110.020 Effective Date. This Ordinance shall be effective upon its passage by the Tribal Council.

12-1.110.030 Severability. Any portion of this Ordinance that is determined by a court of competent jurisdiction to be invalid shall not affect, impair, or invalidate any other section, provision, or portion of this Ordinance.

12-1.110.040 Sovereign Immunity. Nothing herein shall be construed as a waiver of the Tribe's sovereign immunity.

History: Ordinance No. 10-12-14

CHAPTER 12-2 ATTORNEY'S FEES ORDINANCE

Section 12-2.10 Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings as set forth hereinafter unless the context clearly appears otherwise:

(a) “*Adverse Party*” means any party to any litigation who seeks any relief from the Tribe or opposes any relief requested by the Tribe.

(b) “*Tribe*” means the Hopland Band of Pomo Indians, its officers, agents and employees acting in their official capacities.

(c) “*Court*” means any court, administrative proceeding or hearing of any kind. “*Litigation*” means any hearing, administrative proceeding or court action to which the Tribe is a party.

(d) “*Prevailing Party*” means a party to litigation who obtains any relief it has sought in the litigation. The term “any relief” includes, but is not limited to, one or more but not necessarily all of the claims or defenses asserted in the action. Any party who achieves any relief sought including relief by way of settlement or unilateral act of an opposing party shall also be considered a prevailing party for purposes of this section.

Section 12-2.20 Award of Fees. In any litigation in which the Tribe is a prevailing party the Tribe shall be entitled to recover from all adverse parties all of its costs and reasonable attorney’s fees incurred in prosecuting or defending the action.

Section 12-2.30 Computation of Award. The amount of such attorney’s fees shall be established by the Court upon the filing of a cost bill as provided by law, rule, or by separate motion. In determining the amount of the fee, the court shall multiply the number of hours devoted to preparing, prosecuting or defending the action, commencing when the matter is first referred to the Tribe’s Attorney, by a reasonable hourly rate for the services provided. In determining a reasonable hourly rate, the court shall consider the reasonable market rate in the jurisdiction for the attorney’s services, taking into consideration the attorney’s experience and skill and shall not be limited to the amounts actually paid by the Tribe.

Section 12-2.40 Multiple Adverse Parties. If there is more than one adverse party, they shall be jointly and severally liable for all of the costs and attorney’s fees awarded to the Tribe by the court.

Section 12-2.50 Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid. such decision shall not effect the remaining portions of this ordinance. The Tribal Council declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any such provisions be declared unconstitutional or invalid.

History: Ordinance No. 00-01-07B

CHAPTER 12-3 VALIDITY AND ENFORCEABILITY OF ARBITRATION AGREEMENTS

Section 12-3.10 Jurisdiction of the Tribal Court.

12-3.10.010 The Tribal Court shall have the jurisdiction and authority, upon the filing of a complaint by any party to an agreement containing an arbitration clause, to:

- (A) determine the validity of the underlying contract containing the arbitration provision;
- (B) determine whether the issues that the party or parties wish to resolve through arbitration proceedings are arbitrable or covered by the arbitration provision;
- (C) enjoin the parties from proceeding to arbitration if the Court determines that the underlying contract containing the arbitration provision is not valid or that the issues that the parties wish to resolve through arbitration are not arbitrable or covered by the arbitration provision;
- (D) order the parties to engage in arbitration if the Court determines that an agreement to arbitrate is valid or that the issues the parties seek to resolve through arbitration are within the scope of the arbitration provision contained in the agreement;
- (E) stay proceedings initiated in the Tribal Court, if the Court determines that the issues raised in the pending action are the subject of the arbitration agreement or arbitration provision contained in the agreement;
- (F) vacate or correct an award entered by an arbitrator or arbitrators under an agreement containing an arbitration provision in accordance with Sections 12-3.90 and 12-3.100 of this Chapter; and
- (G) confirm and enforce a valid arbitration award in accordance with Section 12-3.120 of this Chapter. If the Court determines that there are other issues between the parties which are not subject to arbitration and which are the subject of a pending action between the parties and that a determination of such issues may make the arbitration unnecessary, the Court may delay its order to arbitrate until the determination of such other issues or until such earlier time that the Court specifies.

12-3.10.020 If the Court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party, the Court may:

- (A) refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding;
- (B) order an intervention or a joinder as to all or only certain issues;
- (C) order arbitration among the parties who have agreed to arbitration and the stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or

(D) may stay arbitration pending the outcome of the court action or special proceeding.

Section 12-3.20 Restrain and Enjoin Arbitration Proceedings.

If the Court determines that it has jurisdiction over the parties, the Court may order the parties or either of them to cease from proceeding with an arbitration, including proceedings conducted by the American Arbitration Association until such time as the Court determines the validity of the agreement containing the arbitration provision, the validity of the arbitration provision, whether the issues which the parties seek to resolve through arbitration are arbitrable or otherwise covered by the arbitration provision or whether the arbitrator(s) has jurisdiction over either one or both of the parties.

If the Court determines that the arbitration provision. contained in the agreement and the agreement are valid and that the issues one or all of the parties seek to resolve by arbitration are arbitrable or otherwise covered by the arbitration clause, the Court shall, upon motion of a party to such action or proceeding, stay the action or proceeding until an arbitration is had in accordance with any order entered by the Court to arbitrate or until such earlier time that the Court specifies.

Section 12-3.30 Appointment of Arbitrator. If the arbitration agreement provides a method of appointing an arbitrator, such method shall be followed. If the arbitration agreement does not provide a method for appointing an arbitrator, the parties to the agreement who seek arbitration and against whom arbitration is sought may agree on the method of appointing an arbitrator and that method shall be followed. In the absence of an agreed method, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails to act and a successor has not been appointed, the Court, upon the filing of a verified complaint of a party to the arbitration agreement, shall appoint the arbitrator. The Court shall nominate five persons from lists of persons supplied jointly by the parties to the arbitration or obtained from a governmental agency concerned with arbitration or private disinterested association concerned with arbitration. The parties to the agreement who seek arbitration and against whom arbitration is sought may, within five days of receipt of notice of such nominees from the Court jointly select the arbitrator whether or not such arbitrator is among the nominees. If such parties fail to select an arbitrator within the five day period, the Court shall appoint the arbitrator from the nominees.

Section 12-3.40 Confirmation Correction or Vacation of Award. Any party to an arbitration in which an award has been made may, upon the filing of a verified complaint, petition the Court to confirm, correct, or vacate an arbitration award. The Complaint shall name as defendants all parties to the arbitration and may name as defendants any of the parties bound by the arbitration award. The defendants named in the Complaint may file an answer to the complaint and may request the Court to dismiss the complaint or to confirm, correct, or vacate the award.

Section 12-3.50 Contents of Answer to Complaint. The complaint filed under this Chapter shall: (1) set forth the substance of or have attached a copy of the agreement to arbitrate unless the plaintiff denies the existence of such an agreement; (2) set forth the names of the

arbitrators; and (3) set forth or have attached as a copy the award and the written opinion of the arbitrators, if any.

Section 12-3.60 Contents of Answer to Complaint. Unless a copy thereof is set forth in or attached to the Complaint, an answer to a complaint filed under this Chapter shall: (1) set forth the substance of or have attached a copy of the agreement to arbitrate unless the defendant denies the existence of such an agreement; (2) set forth the names of the arbitrators; and (3) set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

Section 12-3.70 Grounds for Relief. A complaint to correct or vacate an award, or a response requesting such relief shall set forth the ground(s) upon which the request for such relief is based.

Section 12-3.80 Powers of the Court. If a complaint or answer filed under this Chapter is duly served and filed with the Court, the Court shall confirm the award as made, whether rendered on or off the Reservation, unless, in accordance with this Chapter, it corrects the award and confirms it as corrected, vacates the award, or dismisses the proceedings.

Section 12-3.90 Grounds to Vacate Award. The Court shall vacate the award if the Court determines that: (1) the award was procured by corruption, fraud, or other undue means; (2) there was corruption by any of the arbitrators; (3) the rights of such party was substantially prejudiced by misconduct of a neutral arbitrator; (4) the arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; (5) the rights of such party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefore or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title; and (6) the decision of the arbitrator is clearly contrary to federal or tribal law.

Section 12-3.100 Grounds to Correct Award. The Court, unless it vacates the order pursuant to Section 17.03.090 of this Chapter, shall correct the award and confirm it as corrected when the Court determines that: (1) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award; (2) the arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; (3) the award is imperfect in a manner of form, not affecting the merits of the controversy; and (4) the decision of the arbitrators is clearly contrary to federal or tribal law but the award may be corrected without affecting the merits of the decision upon the controversy submitted.

Section 12-3.110 Dismissal of Proceeding. The Court shall dismiss any proceedings brought under this Chapter as to any person named as a defendant if the Court determines that such person was not bound by the arbitration award and was not a party to the arbitration. In the alternative, the Court, if requested, may enter a judgment enjoining the person seeking to compel arbitration from proceeding with arbitration on the grounds that the Court has determined that the person named as a defendant who the plaintiff seeks to compel to participate in arbitration, is not bound by the arbitration award.

Section 12-3.120 Entry of Judgment. If an award is confirmed, Judgment shall be entered in conformity therewith. The Judgment so entered shall have the same force and effect as, and is subject to all the provisions of law relating to, a Judgment in a civil action; and it may be enforced like any other judgment of the Court in which it is entered.

Section 12-3.130 Force and Effect of Unconfirmed or Vacated Award. An award that has not been confirmed or vacated has the same force and effect as a contract in writing, if valid, between the parties to the arbitration.

Section 12-3.140 Statute of Limitations Period. Any action to confirm an award shall be served and filed not later than two years after the date of service of a signed copy of the award on the parties to the arbitration. A complaint to vacate an award or to correct an award shall be served and filed not later than 90 days after the date of service of the signed copy of the award on the plaintiff.

Section 12-3.150 Court Proceedings Under This Chapter. A proceeding brought under this Chapter in the Tribal Court, except as otherwise provided in this Chapter, shall be governed by the Court's Rules of Pleading, Practice and Procedure.

Section 12-3.160 General Provisions

12-3.160.010 Severability. If any part of the provisions of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of any such part or provision to the other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

12-3.160.020 Effective Date. This Ordinance shall become effective on the date that it is adopted by the Tribal Council and shall govern all arbitration proceedings pending as of the effective date of this Ordinance or filed after the effective date of this Ordinance.

History: Ordinance No. 02-17-07.

CHAPTER 12-4 TRIBAL CLAIMS ORDINANCE

Section 12-4.10 Presentation of Claims as Prerequisite to Filing Suit. All claims against the Tribe or any of its business enterprises for money or damages shall be presented to the Tribal Council and acted upon as a prerequisite to suit thereon as further provided in this Ordinance. All such claims shall be presented as required by this Ordinance and within the time periods specified herein.

Section 12-4.20 Claims Subject to Filing Requirements. The claims subject to the filing requirements under this Section shall include, but not be limited to, any and all claims for money or damages; any and all claims by Tribal employees for fees, salaries, wages, mileage, or other expenses and allowances, and any and all claims by any federal, state, or local public entity. The provisions of this Section shall apply to any and all claims whether they relate to events, transactions, or occurrences that took place prior to or after the effective date of this Ordinance.

Section 12-4.30 Contents of Claim. A claim shall be presented by the claimant or by a person acting on the claimant's behalf and shall include the following: (1) the name and address of the claimant; (2) the address to which the claimant desires notices to be sent; (3) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted; (4) a general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim; (5) the name or names of the Tribal employee or employees causing the injury, damage, or loss, if known; and (6) the amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Section 12-4.40 Signature of Claimant. The claim shall be signed by the claimant or a person on the claimant's behalf. Claims against the Tribe or any of its business entities for supplies, materials, equipment, or services need not be signed by the claimant or on the claimant's behalf if presented on a bill-head or invoice regularly used in the conduct of business of the claimant.

Section 12-4.50 Forms. The Tribal Council may provide forms specifying the information to be contained in claims against the Tribe or any of its business enterprises. If the Tribal Council provides forms pursuant to this Section, the claimant need not use such form if he/she presents his/her claim in conformity with Sections 1.030 and 1.040. A claim presented on a form provided pursuant to this Section shall be deemed to be in conformity with Sections 1.030 and 1.040, if the claim complies substantially with the requirements of the form or with the requirements of said Sections.

Section 12-4.60 Amendment of Claim. A claim may be amended at any time before the expiration of the period designated in Section 1.090 or before final action thereon is taken by the Tribal Council, whichever is later, if the claim, as amended, relates to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.

Section 12-4.70 Notice of Insufficiency of Claim. If, in the sole discretion of the Tribal Council or a person designated by the Tribal Council to evaluate the claim, a claim as presented fails to comply substantially with the requirements of this Ordinance or the requirements of the form provided under this Ordinance, the Tribal Council or such designated person may, at any time within twenty (20) days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. Such notice shall be given in the manner prescribed by this Ordinance. Where such notice is given, the claimant shall have 15 days to amend the claim. The Tribal Council may not take action on the claim during that time.

Section 12-4.80 Effect of Failure or Refusal to Amend. If, within 15 days of the giving of notice of the insufficiency of his or her claim, the claimant fails or refuses to amend his or her claim, the claim shall be deemed denied.

Section 12-4.90 Failure to Give Notice of insufficiency Waiver of Defense Based on Defect or Omission. Any defense based on the insufficiency of a claim resulting from a defect or omission in the claim as presented is waived by the failure on the part of the Tribe to give notice of the insufficiency as provided in Section 1.070, except that, no notice need be given and no waiver shall result when the claim, as presented, fails to state either an address to which the claimant desires notice to be sent or an address of the claimant.

Section 12-4.100 Time Limits for Presentation of Claims. A claim relating to a cause of action for death or for injury to a person or to personal property shall be presented as provided for in this Ordinance not later than the ninetieth (90th) day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented, as provided in this Ordinance not later than one hundred eighty (180) days after the accrual of the cause of action.

Section 12-4.110 Grant or Denial of Claim by Tribal Council.

12-4.110.010 The Tribal Council shall grant or deny any claim within sixty (60) days after the claim is presented to the Tribal Council. The claimant and the Tribal Council may extend the period within which the Tribal Council is required to act on the claim by written agreement entered into before the expiration of such period.

12-4.110.020 If the Tribal Council fails or refuses to act on the claim within the time prescribed by this Section, the claim shall be deemed to have been denied on the sixtieth day or, if the period within which the Tribal Council is required is extended by agreement pursuant to this Section, on the last day of the period specified in such agreement.

Section 12-4.120 Notice of Denial of Claim.

12-4.120.010 Written notice of the rejection of the claim or the Tribal Council's inaction on the claim, which is deemed a rejection of the claim by operation of law under this Ordinance, shall be given in the manner provided in the Chapter. Such notice shall be in substantially the following form:

“Notice is hereby given that the claim which you presented to the Tribal Council of the Hopland Band of Pomo Indians on {indicate date} was [indicate whether rejected, allowed, allowed in the amount of

\$ _____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable] on [indicate date of action or rejection by operation of law).”

12-4.120.020 If the claim is rejection in whole or in part, the notice required shall include a warning in substantially the following, form:

“WARNING”

If your claim was based upon death or injury to a person or personal property, you have ninety (90) days from the date this notice was personally delivered or deposited in the mail to file a court action on this claim, otherwise, you have one hundred eighty (180) days from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.”

Section 12-4.130 Mailing or Service of Notice. The notice required by shall be deemed given when it is either:

12-4.130.010 personally delivered to the claimant or the claimant’s representative as specified in the claim or

12-4.130.020 when deposited in the United States mail addressed to the claimant or the claimant’s representative as specified in the claim, first class postage prepaid.

Section 12-4.140 Re-examination of Rejected Claim.

The Tribal Council may, in its discretion, within the time described by Section 1.090 for commencing a court action on the claim, re- examine a previously presented claim in order to consider a settlement of the claim.

Section 12-4.150 General Provisions

12-4.150.010 Sovereign Immunity. Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hopland Band of Pomo Indians or any of its enterprises, officers, agents, or employees.

12-4.150.020 Effective Date, Publication. This Ordinance shall take effect immediately after its adoption.

History: Ordinance No.00-01-07A.

CHAPTER 12-5 SMALL CLAIMS

Section 12-5.10 Definitions. For the purpose of this Chapter, the following words and phrases shall have the following meanings:

- (a) “*Big Talker*” shall mean a person 18 years of age or older authorized to speak on behalf of a plaintiff or defendant at a hearing held under Section 12.590 of this Chapter.
- (b) “*Court Clerk*” or “*Clerk*” shall mean the Clerk of the Tribal Court.
- (c) “*Defendant*” shall mean the person or persons against whom the Plaintiff has (filed suit).
- (d) “*Judge*” or “*Tribal Judge*” shall mean any Judge of the Tribal Court.
- (e) “*Reservation*” shall mean all lands within the exterior boundaries of the Reservation or any land held in trust for the Tribe or its members by the United States.
- (f) “*Small Claims*” shall mean a claim brought by an individual of \$5,000 or less and a claim brought by an entity of \$5,000 or less.
- (g) “*Tribal Court*” or “*Court*” shall mean the Tribal Court of the Tribe.
- (h) “*Tribal Council*” or “*Council*” shall mean the Tribal Council of the Tribe.
- (i) “*Tribe*” shall mean the Hopland Band of Pomo Indians.
- (j) “*Plaintiff*” shall mean the person or persons filing the claim

Section 12-5.20 Requirement for a Claim. A claim may be filed with the Tribal Court only when the following conditions are met:

12-5.20.010 The claim is for the recovery of money and/or specific personal property, or performance of a contract;

12-5.20.020 The total amount of the claim, including goods or services, is Five Thousand Dollars (\$5,000) or less;

12-5.20.030 One party must be a Tribal member or a resident of the Reservation. Any plaintiff who is not a Tribal member or a resident must waive the right to contest the Tribal Court’s jurisdiction and consent to the jurisdiction of the court.

12-5.20.040 The possession of personal property must be or the injury must have occurred within the Reservation, or, for a contract claim, the contract must have been executed or to have been performed within the Reservation.

12-5.20.050 A good faith effort was made to collect the claim.

12-5.20.060 The plaintiff has read the Small Claims Court Brochure.

Section 12-5.30 Time Limit on Action. No claim may be filed more than one (1) year after the date that the plaintiff knew or should have known of the damage, injury, or breach upon which the claim is based.

Section 12-5.40 Statement of What Can Be Recovered.

12-5.40.010 The plaintiff may only receive one of the following, after a final judgment has been entered:

- (A) Money for the value of the claim;
- (B) The objects in controversy and the value of any loss/damage to the objects;
- (C) Work to be performed under a contract in dispute, and
- (D) In kind payment, either in goods or services.

12-5.40.020 Interest can also be recovered on the value of the claim.

Section 12-5.50 Filing a Claim: Content and Form. A case shall begin upon filing with the Court Clerk a verified complaint in the form that the Court has prescribed. The plaintiff shall sign the complaint and verify under oath that as of the date of its filing each requirement of Section 12-5.40 has been met. The complaint shall contain the name and mailing address of the plaintiff and of the defendant, followed by a simple statement of the claim. If the claim is based upon a breach of a written contract, the plaintiff shall attach a copy of the contract to the complaint. This statement shall include the amount of the claim and the date the actions allegedly occurred. With the complaint the plaintiff shall include its or their affidavit stating that they meet all of the requirements in Section 12-5.40 of this Chapter and the date that the damage or injury upon which the claim is based occurred.

Section 12-5.60 Notice: Content: Service. Upon the filing of a complaint, the Court Clerk shall issue a notice in the form prescribed by the Court, directed at the defendant, and shall contain a copy of the complaint. The Court shall serve the notice and complaint upon the defendant by certified mail at the defendant's last known address. The envelope shall be marked "Deliver to Addressee Only" and "Return Receipt Requested," and the date on the return slip will serve as the date upon which the notice and complaint were served on the defendant. If the defendant refuses to sign the certified mail receipt, the plaintiff will have to have the defendant personally served in accordance with the Court's Rules of Pleading, Practice and Procedure.

Section 12-5.70 Defendant's Rights and Liabilities. Within thirty (30) days after the defendant was served with the notice and the complaint, the defendant must answer and either admit or deny each of the allegations contained in the complaint on the form approved by the Court for that purpose, by filing an admission or denial with the Court.

12-5.70.010 If the defendant admits all of the allegations in the complaint, the defendant may settle by paying the plaintiff the amount of the filing fees and service expenses paid by the plaintiff, plus:

- (A) Paying the amount of the claim and mailing or providing proof of such payment to the Court.)

- (B) Delivering the property in dispute to the plaintiff and, if applicable, an amount of money equaling the value of the loss or damage to the property, and mailing or providing proof of delivery to the Court; or
- (C) Completing performance of the promised service(s) and mailing or providing proof of performance to the Court.
- (D) If the case is settled under this Section 12.5.70.010 the Court shall upon proof that the parties have settled the case, dismiss the complaint.

12-5.70.020 If the defendant denies any or all of the allegations in the complaint the matter will be set for a hearing.

Section 12-5.80 Counterclaims. A defendant may make a counterclaim, on any claim that the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the complaint filed by the plaintiff. The counterclaim must be filed with the Tribal Court Clerk on a form approved by the Court for that purpose within thirty (30) days after service of the complaint filed by the plaintiff. The Court Clerk will then serve the plaintiff with the counterclaim by certified mail at the plaintiffs last known address. The defendant is limited to recovery of money, goods, or services, as set forth in Section 12-5.40.

Section 12-5.90 Hearing. The Court Clerk shall mail to the parties notice of the hearing, In the notice of the hearing, the Court Clerk shall instruct the parties that they need to bring witnesses, documents, and other evidence pertinent to the controversy. If a counterclaim was filed by the defendant, the notice of hearing shall be accompanied by such counterclaim. No formal pleading other than the complaint, counter-claim or answer shall be necessary. The hearing will be informal. Only the parties, their witnesses and Big Talkers of a party will be allowed to address the court.

12-5.90.010 No Attorneys. Notwithstanding any provisions of Tribal law to the contrary, attorneys are not permitted to represent a party in a small claims court case. A party may be represented by a Big Talker in a small claims court case provided the Big Talker is not an attorney.

12-5.90.020 Time Extension. If one of the two parties wishes to extend the time, in order to make formal appearances to the Court, the party must file a written request with the Court five (5) days prior to the hearing, The requested extension can be no longer than thirty (30) days. The Court may only grant one extension per party.

Section 12-5.100 Default. If the defendant fails to pay the claim, or show up for the hearing, upon written request from the plaintiff, the Clerk shall enter a judgment against the defendant for the relief claimed plus the amount of the small claims filing fees and service expenses paid by the plaintiff. If the plaintiff fails to show up for the hearing, upon written request from the defendant, the Clerk shall dismiss the case, or if a counterclaim has been filed, enter a judgment for the amount of the counterclaim, plus fees and service expenses paid by the defendant.

Section 12-5.110 Final Judgment as Final Decree. When entered, the final judgment shall document a final decree of the rights and obligations of both parties regarding the claims and counterclaims made by the plaintiff and the defendant the judgment will remain valid for ten years. The Court shall award costs of suit and post judgment interest.

12-5.110.010 Action/Petition to Set Aside Final Judgment.

(A) A final judgment entered shall not influence nor bar the rights of either party to petition the Court to set aside or amend the final judgment for fraud, duress, accident, mistake, or other grounds recognized as reasonable under Tribal law. Provided the motion to set aside or amend the judgment is filed with the Court within one hundred twenty (120) days from the date of entry of the judgment.

(B) The Court may retain jurisdiction of a case for one (1) year following the entry of final judgment in all matters.

Section 12-5.120 Applicable Law. The Court, in resolving claims under this Chapter, shall apply the law of the Tribe first, the law of other tribes second, federal law third and California law last, except to the extent that federal or state law governs.

Section 12-5.130 Brochure Describing Proceedings Content, Form and Distribution.

The Court shall develop and print a brochure describing the requirements, nature and effect of the proceedings. The brochure shall be distributed by the Court and shall state in clear English the following:

12-5.130.010 A short summary of the provisions and procedures established by this Chapter.

12-5.130.020 A statement in boldface type that with the entry of a final judgment all rights and obligations of both parties, including property and monetary gains, will be permanently ended without right of appeal, except that either person may petition the Court to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized under Tribal law,

12-5.130.030 A summary of the procedures for enforcing a Judgment of the Tribal Court off of the Reservation in State Court.

12-5.130.040 A list of the items or services that a party can receive if the Judge rules in favor of that party.

Section 12-5.140 Fees. The Court shall collect a fee from the plaintiff for filing a complaint and a fee from the defendant if a counterclaim is filed. These fees will cover the cost of the Courts time, the distribution of the brochure, and other costs the Court may incur in processing the case. The amount of the fees shall be set by the Chief Judge in consultation with the Tribal Council.

Section 12-5.150 Fiscal Office Authority. This Chapter shall not be construed to reduce the authority of the Tribe's Fiscal Office to deduct sums owed to the Tribe from paychecks and other payments for payments.

Section 12-5.160 General Provisions

12-5.160.010 Sovereign Immunity. This Chapter shall not waive the sovereign immunity of the Tribe, except as to counterclaims against the Tribe when the Tribe is a plaintiff in a case brought under this Chapter and then only as a set-off against any amount determined by the court due to the Tribe.

12-5.160.020 Repeal. All prior Ordinances or provisions of any previously enacted ordinances of the Tribe that are inconsistent with this Amendment to this Ordinance are hereby repealed.

12-5.160.030 Effective Date. This Amendment to the Ordinance shall be effective upon its passage by the Tribal Counsel.

12-5.160.040 Severability. Any portion of this Amendment to the Ordinance that is determined by a court of competent jurisdiction to be invalid shall not affect, impair, or invalidate any other section, provision, or portion of this Ordinance or this Amendment to it.

History: Ordinance No. 02-08-28B

CHAPTER 12-6 NAME CHANGE

Section 12-6.10 Definitions. For the purpose of this Chapter, the following words and phrases shall have the following meanings:

- (a) “Tribal Court” shall mean the Tribal Court of the Tribe unless otherwise specifically indicated.
- (b) “Tribal Member” shall mean any enrolled member of the Tribe.
- (c) “Tribe” shall mean Hopland Band of Pomo Indians.
- (d) “Applicant” shall mean any person applying to the Tribal Court for a change of name.
- (e) “Court Order” shall mean a written and signed document from the Judge of the Tribal Court granting either a name change or birth certification.
- (f) “Enrollment Committee” shall mean the Enrollment Committee of the Tribe.
- (g) “Resident” shall mean any person residing on the Tribe’s Hopland Indian Reservation (“Reservation”), including any land owned by the United States of America in trust for the Tribe.

Section 12-6.20 Jurisdiction. Any Tribal member or resident of the Reservation may apply to the Tribal Court for a Change of Name for themselves or their child(ren). The Court shall grant the application if the requirements of this Chapter are met.

Section 12-6.30 Petition and Contents of Petition. All applications for Change of Name must be made to the Tribal Court by petition signed by the applicant.

12-6.30.010 If the petition is for a person under eighteen (18) years of age, it must be signed by at least one (1) of the parents or by the legal guardian if the parents are deceased or have been deprived of custody by a court of competent jurisdiction.

(A) The petition shall include the following:

- (1) *place of birth and residence,*
- (2) *present name,*
- (3) *name proposed, and*
- (4) *reason for the change of name.*

(B) If neither parent is living, the petition shall also name the nearest known relatives of the first degree and their place of residence. If the person is under eighteen (18) years of age, and the petition is signed by only one parent, it must include the address, if known, of the other parent. The petition shall also state whether the person has petitioned and been granted a change of name by the Tribal Court or any other court within the past four (4) years.

12-6.30.020 At the time of filing, any Tribal member or Resident over eighteen (18) years of age shall provide the Clerk of the Court with at least one of the following in order to verify their age:

- (A) certified copy of a birth certificate;
- (B) valid driver's license;
- (C) unexpired passport;
- (D) certified copy of a baptismal certificate; or
- (E) Tribal Identification card; or, if none of the above is available,
- (F) an affidavit witnessed by the Enrollment Committee. Tribal enrollment shall be verified by the Enrollment Committee.

Section 12-6.40 Service of Petition. The Clerk of the Court shall direct the applicant to serve by first class mail a copy of the Notice of Name Change on all creditors and any former spouse to whom an obligation exists under a Decree of Divorce, within twenty (20) days.

12-6.40.010 Additionally, in the case of a minor, the applicant will, within thirty (30) days of the filing of the application, provide written notice to the child's parents, and legal guardian, if any.

12-6.40.020 Proof of service by mail shall be filed with the Court.

Section 12-6.50 Order Granting Petition.

12-6.50.010 After the filing of the petition, proof of service and verification of the age of the applicant, the Tribal Court shall issue an Order granting the request for a Change of Name unless the notice appears faulty or an objection is filed.

The Clerk of the Court shall cause the Order to be published in the next edition of the Tribal Newsletter and provide a certified copy of the Order to the Office of the Secretary of State of the State of California. If the applicant was born in a state other than California, the Clerk of the Court shall provide a certified copy of the Order to the Registrar of Vital Statistics in the state in which the applicant was born.

Section 12-6.60 Notice to Enrollment Office. Upon issuance of the Order, the Clerk of the Court shall submit a certified copy to the Tribal Enrollment Committee to be placed in the appropriate Tribal member's file. The Enrollment Committee shall change the name on the file to the new name of the Tribal member. The Tribal member shall surrender all old Tribal identification cards to the Enrollment Committee and provide the Court with written proof to the satisfaction of the Court that the old cards have been surrendered within thirty (30) days of the date of issuance of the Order. The Enrollment Committee shall then issue new Tribal Identification cards showing the new name of the Tribal member as stated in the Order.

Section 12-6.70 Faulty Notices. The Tribal Court may order any correction in a Notice of Proposed Change of Name and any addition to a list of creditors to be notified that it may deem necessary. If the Court has reason to believe that any creditor has not been notified, it may order the applicant to file a consumer credit report with the Court at the applicant's expense. In the event the Tribal Court orders corrections or additions, the notice period shall begin upon the applicant's sending to the Court copies of the corrected notice or proof of service.

Section 12-6.80 Minors Order to Show Cause. When a petition is filed on behalf of a minor, the Court shall issue an Order reciting the filing of the petition, the name of the person for whom the petition was filed and the proposed name. The Order shall direct any parent, guardian or relative of the first degree interested in the matter to appear before the Court, at a time and place specified not less than four (4) nor more than eight (8) weeks from the date of the Order, to show cause why the petition for Change of Name should not be granted. If the parents are deceased, or have not consented to the Change of Name, the person shall cause a copy of the Order to Show Cause to be published in the Tribal Newsletter and/or such other newspaper of general circulation as the Court shall prescribe. Proof must be made to the satisfaction of the Court of such publication at the time of the hearing.

Section 12-6.90 Hearing. A petition filed on behalf of a minor shall be heard at such time as the Court may set. Objections may be filed by any interested person specified in section 12-6.80. At the hearing, which shall be closed to the public, the Court may examine under oath the minor child, if the child, in the discretion of the Judge, is of suitable age. The Court may exclude from any hearing with the child, all other persons except a representative of the parents or legal guardian if it finds that to do so would be in the best interests of the child. The Court shall then issue an Order Changing the Name or dismissing the petition, as deemed just and proper based on evidence presented. In all cases, the Court shall act in the best interests of the minor.

Section 12-6.100 Automatic Name Change. An adult Tribal member or resident may change their married name back to their birth name at any time without applying to the Tribal Court or providing notice to creditors and former spouse.

Section 12-6.110 Frequency of Name Changes. The Tribal Court shall grant no more than one (1) Change of Name in any four year period to any individual.

Section 12-6.120 Fees. The Tribal Court shall establish fees for obtaining a Change of Name in consultation with the Tribal Council.

Section 12-6.130 General Provisions

12-6.130.010 Repeal. All prior Ordinances or provisions of any previously enacted ordinances of the Tribe that are inconsistent with this Amendment to this Ordinance are hereby repealed.

12-6.130.020 Effective Date. This Amendment to the Ordinance shall be effective upon its passage by the Tribal Council.

12-6.130.030 Severability. Any portion of this Amendment to the Ordinance that is determined by a court of competent jurisdiction to be invalid shall not affect, impair, or invalidate any other section, provision, or portion of this Ordinance or this Amendment to it.

History: Ordinance No. 07-11-26.

Section 12-7.10 Purpose. The purpose of this Ordinance is to establish a systematic and uniform procedure for the garnishment of wages of employees of the Tribe or a tribal entity pursuant to orders of the Hopland Tribal Court. This Ordinance shall apply to a Tribal Court order for garnishment arising out of original proceedings in the Tribal Court as well as to Tribal Court orders resulting from the recognition of foreign judgments of judgment creditors. All Tribal Court orders for garnishment shall be made in a fair and fiscally responsible manner. This Ordinance does not prohibit judgment debtors and judgment creditors from reaching alternative agreements or settlements of their claims, nor does it alter or diminish the rights of the Hopland Tribe to collect debts owed to the Tribe or its entities.

Section 12-7.20 Definitions.

- (a) “*Council*” means the Hopland Band of Pomo Indians Tribal Council.
- (b) “*Creditor*” means a person to whom a debt is owing by another person who is the debtor.
- (c) “*Debt*” means a sum of money due by certain and express agreement, including a specified sum of money owing to one person from another, including not only obligations of a debtor to pay, but a right of a creditor to enforce and receive such payment.
- (d) “*Debtor*” means a person who owes a debt to another and may be compelled to pay a claim or demand by a creditor.
- (e) “*Disposable Wages*” means that part of an individual’s wages left after deduction of federal tax withholding and any other amounts required by applicable law to be withheld by the employer.
- (f) “*Employee*” means a person employed by or in the service of the Hopland Tribe or its tribal entities under any contract of hire, express or implied, oral or written, where the Tribe has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance, “employee” shall also include Council members.
- (g) “*Employer*” means the Hopland Tribe or one of its tribal entities.
- (h) “*Foreign Judgments*” means a final judgment rendered by the Courts of the State of California, any other State courts within the United States, or any federal or Tribal court which is politically and judicially distinct from the Hopland Tribal Court.
- (i) “*Garnishment*” means the method to obtain satisfaction of a judgment by reaching the unpaid past or future wages of an employee of the Hopland Tribe or a tribal entity. Garnishment shall not include voluntary wage assignments by employees of the Hopland Tribe.
- (j) “*Judgment Creditor*” means a person in whose favor a money judgment has been entered by a Court of law and who has not yet been paid.
- (k) “*Judgment Debtor*” means a person against whom judgment has been recovered, and which remains unsatisfied.
- (l) “*Tribal Entity*” means the Hopland Tribe, its departments, programs, entities and subdivisions.

(m)“*Wages*” means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise. For purposes of this Ordinance, “otherwise” includes Council and Committee honoraria.

Section 12-7.30 Applicability. This Ordinance applies to any Tribal Court order for garnishment arising out of original Proceedings in the Tribal Court as well as to Tribal Court Orders resulting from the recognition of foreign judgments, orders of decrees of judgment creditors against an employee of the Hopland Tribe or entity that is final and enforceable where rendered.

Section 12-7.40 Recognition and Enforcement. A foreign judgment against an employee of the Hopland Tribe or a tribal entity meeting the requirements of section 6 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money.

Section 12-7.50 Actions in the Hopland Tribal Court. A creditor may seek appropriate relief in the Hopland Tribal Court against a debtor pursuant to the Rules of Pleading, Practice and Procedure of the Tribal Court of the Hopland Band of Pomo Indians enacted on June 20, 2002, including any future amendments thereto and in conformance with any forms promulgated by the Tribal Court.

Section 12-7.60 Enforcement of Foreign Court Orders. Judgments or Decrees.

12-7.60.010 The Hopland Band Tribal Court, as a matter of comity, will strive to recognize, implement and enforce the final orders, judgments and decrees of foreign courts against an employee of the Hopland Band Tribe or of a tribal entity, unless the Hopland Tribal Court finds that the foreign court that rendered the order, judgment or decree:

- (A) Lacked jurisdiction over a party or the subject matter;
- (B) Denied due process as provided by the Indian Civil Rights Act of 1968; or,
- (C) Does not reciprocally provide for recognition and implementation of orders judgments and decrees of the Hopland Tribal Court.

12-7.60.020 The Hopland Tribal Court may, in its own discretion, refuse to recognize a foreign judgment, order or decree where:

- (A) The judgment was obtained by fraud;
- (B) The cause of action or defense on which the judgment is based is repugnant to the public policy of the Hopland Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe;
- (C) The proceeding of the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;
- (D) The judgment conflicts with another final judgment;

- (E) The judgment, order or decree is being contested or appealed in another jurisdiction.

Section 12-7.70 Personal Jurisdiction. A foreign judgment, order or decree against an employee of the Hopland Tribe or tribal entity shall not be refused recognition for lack of personal jurisdiction if:

- (A) The defendant was served personally in the foreign state;
- (B) The defendant personally appeared in the proceedings, other than for the Purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
- (C) The defendant had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved prior to the commencement of the proceedings.

Section 12-7.80 Notice and Opportunity to Be Heard. The judgment creditor shall request a hearing pursuant to the Pleading, Practice and Procedure Rules of the Hopland Tribal Court and shall also provide notice of the action to the judgment debtor. The debtor shall be given the opportunity to be heard regarding recognition of the foreign court order, judgment or decree.

Section 12-7.90 Garnishment of Wages for Satisfaction of Judgment.

12-7.90.010 In a civil action for garnishment filed by a judgment creditor, the Hopland Tribal Court may order garnishment of unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed in the Hopland Tribal Court unless the judgment remains unsatisfied sixty (60) days after such judgment was entered- In an action for garnishment, the judgment debtor shall be named as a defendant. In no case shall the Hopland Tribe, any tribal entity, the Tribal Council, or officials of the Hopland Tribe be named as Defendants, except where an individual is the debtor or judgment debtor for a personal debt. Nothing contained herein shall prohibit the recognition of judgments against individual debtors or judgment debtors for personal debts merely because of their position with the Hopland Tribe.

12-7.90.020 The maximum amount of wages subject to garnishment in any one pay period shall be twenty five percent (25%) of the judgment debtor's disposable wages for that pay period.

12-7.90.030 A garnishment order recognized by or rendered by the Hopland Tribal Court against an employee of the Hopland Tribe or tribal entity shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his or her employment with the Hopland Tribe or tribal entity, provided that if the judgment debtor is rehired by the Hopland Tribe or a tribal entity within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.

12-7.90.040 No employer shall discharge an employee for the reason that a judgment creditor of the employee has garnished or attempted to garnish unpaid earnings of the employee.

Section 12-7.100 Child Support Orders. All child support orders rendered against an employee of the Hopland Band Tribe, or one of its tribal entities, properly issued by a State of Tribal court shall be enforced upon presentation to the Hopland Tribal Court in accordance with the Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B.

Section 12-7.110 Per Capita Payments. The Tribal Council may withhold a per capita payment to a Tribal member if the Tribal Court determines after notice and an opportunity to be heard that the Tribal member (i) owes money to the Tribe or (ii) owes money to a third party pursuant to a valid child support order.

Section 12-7.120 Trust lands Exempt. Any real property or interests in real property held in trust or subject to restrictions against alienation imposed by the United States, or the income from such property, are exempt from execution pursuant to child support orders and garnishment orders by the Hopland Tribal Court.

Section 12-7.130 Dwelling Exempt. Any dwelling, house or mobile home in which the judgment debtor resides or intends to reside and the land on which the structure is located, if the land is held in trust or subject to restrictions against alienation imposed by the United States, are exempt from execution pursuant to child support orders and garnishment order by the Hopland Tribal Court.

Section 12-7.140 Cultural Items Exempt. Any item of religious or cultural significance shall be exempt from execution pursuant to child support orders and garnishment orders by the Hopland Tribal Court.

Section 12-7.150 Administrative Processing Fee. The Tribe reserves the right to assess a reasonable processing fee upon the Judgment Debtor for each pay period that the wages of an employee of the Hopland Tribe or tribal entity are garnished.

Section 12-7.160 Stay in Case of Appeal. If the judgment debtor satisfies the Hopland Tribal Court that an appeal is pending or that she is entitled to and intends to appeal from the foreign judgment, the Tribal Court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the judgment debtor to prosecute the appeal.

12-7.170.010 Severability. If any section, provision, or portion of this Ordinance is determined by a court of competent jurisdiction to be invalid, such a determination shall not affect, impair or invalidate any other section, provision, or portion of this Ordinance.

12-7.170.020 Sovereign Immunity. The Tribe's sovereign immunity shall not be waived or limited in any manner by this Ordinance.

12-7.170.030 Effective Date. Amendment. This Ordinance shall be effective from the date of its approval by the Tribal Council, and may be amended in accordance with Tribal law.

History: Ordinance No. 07-11-26; [12-7.110 amended by 08-05-18]

Note: Ordinance #2 ("Establishing Northern Circle Indian Housing Authority as the Tribal Housing Authority") must be read in conjunction with Resolution #09-14-82.