

**LEECH LAKE BAND OF OJIBWE**

**JUDICIAL CODE**

**TITLE 2. RULES OF PROCEDURE**

**Adopted on November 21, 2000**

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**TITLE 2: RULES OF PROCEDURE**

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LEECH LAKE BAND OF OJIBWE

*JUDICIAL CODE*

TITLE 2. RULES OF PROCEDURE

PART I. INTRODUCTION TO THE RULES

Rule 1. Scope of Rules.

These rules shall govern the procedure of the Tribal Court in all actions and proceedings except as otherwise provided in Band statutes, codes, or ordinances dealing with a particular subject matter, or as provided for Peacemaker Tribunals and small claims wherein the amount in controversy does not exceed the sum of five thousand dollars (\$5,000.). The Chief Judge may prescribe supplemental or additional rules which are not in conflict with these rules or other applicable Band law and all judges and justices may look to Band customs and traditions for guidance in applying justice and promoting fairness to parties and witnesses.

Rule 2. Liberal Construction.

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

PART II. BEGINNING AN ACTION

Rule 3. Complaints or Petitions.

An action begins by filing a written *Complaint*<sup>1</sup> with the Court Administrator. The *Complaint* shall contain short, plain statements of the grounds therefore; the facts and circumstances giving rise to the action, and a demand for any and all relief the party wants awarded. Relief should include, but is not limited to the dollar amount that the party is requesting. The *Complaint* must contain the full names, addresses and telephone numbers of all parties and any counsel and shall be signed by the filing party and his/her counsel, if any. The court shall have jurisdiction from the time the *Complaint* is filed.

Rule 4. Filing Fees.

A. Fee

The filing fee for a *Complaint* in the Tribal Court shall be twenty-five dollars (\$25.). The fee shall be waived for petitions filed by the Band. The fee may be waived at the court's discretion, for parties who are unable to pay the fee.

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<sup>1</sup> The use of the term "complaint" in these rules shall also refer to the term "petition" where an action is commenced by petition rather than complaint.

## B. Fee Waiver

Persons asking to file their complaint without paying the fee shall file an affidavit stating that they are a complaining party and are requesting an order to proceed without paying the filing fee, the kind and amount of income to their household, household expenses, whether they are represented by a civil legal services program, and any other supporting information which will help the judge understand their situation. A copy of the affidavit shall be attached to the complaint.

## C. Other Costs Waived.

A person authorized to file their petition without paying a filing fee shall also be entitled to have other costs and expenses deferred until the time of settlement or judgment of the action.

## Rule 5. Service of Process.

### A. Introduction.

Service of process is the manner in which parties are informed of the complaint and of the opportunity to answer. Personal service is preferred, however, service at the person's home or usual place of business or employment is a second option. Other methods may be employed when, in the Court's discretion, they are the most likely to result in actual notification of parties.

### B. Summons.

The summons is the official notice to the party informing him/her that he/she is identified as a party to an action or is being sued, that an answer is due in twenty (20) calendar days and that a default judgment may be entered against him/her/them if an answer is not filed in the limited time. It shall also include the name and location of the court, the case number, if known, and the names of the parties. The summons shall be issued by the Court Administrator and shall be served with a copy of the filed complaint attached. The summons may also be issued and signed by a professional attorney licensed to practice before the Tribal court.

### C. Methods of Service of Process.

(1) Personal Service. The required papers are delivered to the party in person by a law enforcement officer of the Band or any other person not a party to the action who is eighteen (18) years of age or older. Personal service is required for the initiation of actions in the following:

- Relief requested is over \$5,000.00, excluding the enforcement of foreign child support orders; or
- Children's custody and/or placement are the subject matter of the proceedings.

A filer who exercises due diligence in pursuing personal service of process and is unsuccessful, upon order of the court for good cause shown, may be permitted to serve a party by any other means provided in sections (2) through (5).

(2) Service upon a Business, Corporation or Entity. Service may be made upon an agent of a business, corporation, governmental agency, or other entity by delivering the papers to the offices of the entity and handing them to an employee or agent thereof.

(3) Service upon an Individual. The required papers are delivered in person to the party's home or usual and current place of business or employment to someone of suitable age and discretion over sixteen (16) years of age.

(4) Service by Mail. Service of process may be accomplished by sending the required papers to a party by registered mail with return receipt requested, except in the instances of Rule 5.C. (1) as stated above.

(5) Service by Publication. Upon order of the court for good cause shown, service of process may be accomplished by publishing the contents of the summons in Di-Bajamon or a newspaper of general circulation in a district of the Reservation where the party is most likely to be made aware of the summons. Publication must be in two consecutive issues of the Di-Bajamon or in a paper of general circulation, at least, once per week for three consecutive weeks. Proof of publication must be provided to the Court Administrator. Proof of publication requires a signed certificate from the editor and/or publisher of the Di-Bajamon or the general circulation newspaper.

(6) Service outside the Leech Lake Reservation. Service of process may be made on a party by any means permitted in sections (1) through (4).

(7) Proof of Service. Proof of service shall be endorsed with the name of the person serving and the date, time and place of service. It shall state the manner in which service was made and shall be filed with the Court Administrator.

#### D. Effect of Incomplete or Improper Service.

Incomplete or improper service results in a lack of jurisdiction over the person incompletely or improperly served. If a person refuses to accept offered papers, service shall be deemed properly performed if the person is informed of the purpose of the

service and offered copies of the papers served. If a person intentionally avoids service, the court may also consider service as properly performed. Upon order of the court **for good cause shown, if the filer exercises due diligence in unsuccessfully pursuing** service of process, whether personal or otherwise, a *Default Judgment* may be entered in accordance with Rule 47.

#### E. Emergency Service.

This rule provides for service in cases of emergency where the court may conduct a hearing which provides less than forty-eight (48) hours *notice*. The parties shall be notified either by telephone with written confirmation of the call filed in the record indicating who made the call, the name of the person to whom the *notice* was directed, the telephone number called and the date and time the call was placed. *Notice* can also be given by fax with a confirmation call to the party confirming receipt of the fax and documentation of the telephone call as provided in the preceding sentence of this subsection.

#### Rule 6. Answer.

A party against whom a *complaint* has been made shall have twenty (20) calendar days from the date of service to file an *answer* with the Court Administrator. The *answer* shall use short and plain statements to admit, admit in part, or deny each statement in the *complaint*, assert any and all claims against other parties arising from the same facts or circumstances as the *complaint* and state any defenses to the *complaint*. The *answer* must be signed by the party and his or her counsel and contain their full names, addresses, and telephone numbers. An *answer* shall be served on other parties and may be served by mail. Proof of service of the answer by mail or otherwise shall be filed with the Court Administrator.

#### Rule 7. Defenses and Counterclaims.

A defense which alleges new facts excusing the conduct of the defendant must be affirmatively stated in the answer. *Counterclaims* arising from the same facts or circumstances as alleged in the *complaint* shall be raised in the *answer*. If a party fails to raise such *counterclaims*, he/she shall be forever barred from bringing them to the court in a future action. Other claims against parties in the action may also be raised in the *answer*. A party may file a response to counterclaims raised in the *answer*, but is not required to do so.

### PART III. GENERAL RULES FOR PLEADING

#### Rule 8. Form.

All pleadings shall be on 8½ by 11 inch paper with at least an one (1) inch top margin and an one (1) inch left margin. The information must be typewritten or clearly printed ***within the margins and double spaced between the lines.*** ***The first page of a pleading shall*** contain the heading. The heading shall include the name of the court, the names of the parties with designations of plaintiff or defendant or petitioner or respondent, as appropriate, the title of the document, and the case number, if known.

#### Rule 9. Attachments.

Attachments to pleadings must be specifically identified and referenced to in the pleading.

#### Rule 10. Signature of Parties and Counsel; Special Appearances.

- A. The *complaint* and *answer* shall be signed by the party and/or his/her counsel, if any. The signature means the statements in the pleading are made in good faith, are believed to be true and accurate, and are based upon adequate research or investigation. The court may impose sanctions if it finds statements in a pleading are not made in good faith, contain intentional misstatements, or are not based upon adequate research or investigation. This includes omitting material facts or law which the person knew was relevant to the action. Sanctions may include removing issues from consideration in the action, imposing costs and counsel fees, and any other relief which may be appropriate under the circumstances.
- B. Professional attorneys not admitted to practice before the Tribal Court may be permitted to appear on behalf of a client by *Special Appearance* in an action. In order to be permitted to make a special appearance, the attorney must file a motion to allow the special appearance; a proposed *Order*; and an affidavit containing the oath or affirmation for admission to practice, stating that they are admitted to practice in any state or other Tribal Court. They must also submit a processing fee for the special appearance of \$35.00.

#### Rule 11. Computation of Time.

When counting days to meet time limits under these rules, the day identified as the starting day is not counted in the time limit. <sup>2</sup>If a time limit identified in these rules is less than seven (7) calendar days, then Saturdays, Sundays, and legal holidays are not counted in the time limit. Legal Holidays are defined as those recognized by the Band. If a time limit falls on a Saturday, Sunday, or legal holiday, then the time limit falls on the next working day. Computation of time originates with the actual court filing date and not the date the notice or the document is received by the party.

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<sup>2</sup> For example, if a *Complaint* is filed on the first day of a month and the *Answer* is due in 20 calendar days, then the date the *Answer* is due will be the twenty-first day of the month.

## \* Rule 12. Motions.

*Motions* are requests directed to the Court and must be in writing except for those made at trial. *Motions* based on factual matters shall be supported by affidavits, references to other documents, testimony, exhibits or other material already in the Court record. *Motions* based on legal matters shall be supported by a legal memorandum, which states the issues and legal basis relied on by the moving party.

## Rule 13. Filing and Responding to Motions.

### \* A. Motion.

*Motions* may be filed by a party with any pleading or at any time after their first pleading has been filed. A copy of all written *motions* shall be delivered or mailed to other parties at least five (5) calendar days before the time specified for a hearing on the *motion*. A *response* to a written *motion* must be filed at least one day before the hearing. If no hearing is scheduled, the *response* must be filed with the court and served on the other parties within ten (10) calendar days of the date the *motion* was filed. The party filing the *motion* must file any *reply* within three (3) calendar days. In the discretion of the presiding judge these time limits may be altered by issuance of a scheduling order.

### \* B. Motions for Expedited Consideration.

Any *motion* which requires action prior to the normal time period identified in part A above shall be accompanied by a *Motion for Expedited Consideration*. The *motion* shall state (1) the reasons why the *motion* should be heard prior to the normal time period allowed to respond, and (2) what efforts the party has made to resolve the issue with the opposing party prior to filing the *Motion for Expedited Consideration*.

## Rule 14. Hearings on Motions.

A hearing on a *motion* may be held in the discretion of the Court. A party requesting a hearing must (a) schedule the hearing with the court and (b) deliver or mail notice of the hearing to other parties at least five (5) calendar days prior to the hearing. If the trial is scheduled to begin within the time allowed for a hearing, all responses shall be made by the time scheduled for commencement of the trial. *Motions* made within fourteen (14) calendar days of trial may be dismissed and costs and fees assessed against the moving party if the court finds no good cause exists for failing to file the *motion* more than fourteen (14) calendar days in advance of the trial.

## PART IV. PARTIES TO AN ACTION

### Rule 15. Naming Parties.

Every action shall be brought in the name of the real party in interest, however, a *guardian, trustee or other person in a fiduciary position may sue in his/her own name* without joining the party for whose benefit the action is maintained.

#### **Rule 16. Substituting, Intervening and Joining Parties.**

If a party becomes incompetent or transfers his/her interest or separates from some official capacity, another party may be substituted as justice requires. A party with an interest in an action may intervene and be treated in all respects as a named party to the action. To the greatest extent possible, all persons with an interest will be joined in an action if relief cannot be accorded among the current parties without that person, or the absent person's ability to protect their interests is impeded unless they are a party. Failure to join a party over whom the court has no jurisdiction will not require dismissal of an action unless it would be impossible to reach a just result without the absent party. The court will determine only the rights or liabilities of those who are a party to the action.

#### **Rule 17. Death of a Party.**

An action may continue following the death of a party with the rights and liabilities continuing in the deceased's successor in interest.

#### **Rule 18. Appointing Guardian Ad Litem.**

The court may appoint a *guardian ad litem* to represent the interests of a minor or incompetent person who is a party in an action. The *guardian ad litem* is not a party to the action but is responsible for independently investigating and advising the court on the best interests of the minor or incompetent person.

#### **Rule 19. Joining, Consolidating, and Separating Claims.**

##### **A. Joinder of Claims.**

Each complaining party in a case must join all claims arising from the same set of circumstances in one action. The complaining party may join all claims against one defendant in one action even if the claims arise from a different set of circumstances.

##### **B. Consolidation of Claims.**

The court, on its own *motion* or upon *motion* of a party, may order a joint hearing or trial of any and all claims in an action and of multiple actions to avoid unnecessary costs or delay. The court may also separate claims in an action for the convenience of the court and to avoid prejudice or delay.

## PART V. DISCOVERY

**Statement of Policy.** Discovery is the process used among parties to uncover evidence relevant to the action, including the identity of persons having knowledge of facts. Discovery may take place before an action has been filed and may be used for the purpose of preserving testimony or other evidence which might otherwise be unavailable at the time of trial. Discovery may include written interrogatories (questions) depositions, and requests for the production of documents and things. It shall be the policy of the court to favor open discovery of relevant material as a way of fostering full knowledge of the facts relevant to a case by all parties. It is the intent of these rules that reasonable open discovery will encourage settlement, promote fairness and further justice. There is an ongoing obligation by any party subject to a discovery request, which continues up to and through the trial, to supplement any response previously answered if new or freshly discovered material previously unavailable is discovered or revealed to them.

### Rule 20. Required Disclosures.

#### A. Disclosures.

Except to the extent otherwise stipulated or directed by order, a party shall provide to other parties:

- (1) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;
- (2) a copy of, or a description by category and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;
- (3) a computation of any category of damages claimed by the disclosing party, and copies of the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (4) for inspection and copying any insurance agreement under which any person carrying on an insurance business may be liable to for satisfaction of part of all of a judgment which may be entered in an action or to indemnify or reimburse for payments made to satisfy the judgment.
- (5) judicial notice shall be taken of and required disclosures shall be made of official documents, public documents, documents subject to public inspection, document

and materials of non-executive session, governmental minutes and recordings of a governmental body.

**B. Time of Disclosure.**

A party shall make the required disclosures within 20 days of the mailing of the request for disclosure based on the information then reasonably available to it. A party shall not be excused from making its disclosures because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

**C. Authority of Court to Compel.**

The court shall have authority to compel disclosure or production of discoverable documents, records and other materials, and to compel parties to answer or respond upon the court's own motion.

**Rule 21. Interrogatories.**

A party may submit interrogatories (written questions) to other parties. The responding party must submit written answers, under oath, within twenty (20) calendar days of receiving them. The responding party must include facts he/she knows, facts available to him/her, and give opinions, if requested.

**Rule 22. Depositions.**

A party may take a deposition (testimony, under oath and recorded) of a deponent (another party or a witness) after giving at least ten (10) calendar days notice of the time and place where the deposition will occur to all parties and the deponent. All parties may ask the deponent questions. Depositions may take place by telephone and be recorded stenographically, by tape recording or by other means if the parties agree or the court so orders.

**Rule 23. Requests for Documents and Things.**

A party may request another party to produce any documents or things within his/her possession or control for the purpose of inspection and/or copying. This includes permission to enter onto land for testing. The responding party must make the documents or things available to the requesting party within twenty (20) calendar days of the date of receiving the request.

**Rule 24. Answers to Discovery Requests.**

Subject to applicable rules of evidence answers to discovery requests may be used in a *motion* or hearing for any purpose. At trial, answers to deposition questions or written interrogatories may be used if the *deponent's testimony is unavailable*, or to *contradict* or impeach the deponent, or for any purpose if the deponent is an adverse party. Answers to discovery requests shall be supplemented whenever the person responding discovers an answer was incorrect when made or is not true and amounts to a knowing concealment.



#### Rule 25. Protective Orders.

For good cause, the court on its own motion or at the request of any party or witness, may make an order to protect a party or other person from undue annoyance, embarrassment, oppression or undue burden or expense.

#### Rule 26. Non-Compliance.

If a party fails to appear or respond as requested under these rules, a party may request and the court may issue an *order* requiring a response and imposing costs, attorney's fees, and sanctions as justice requires in order to secure compliance.

#### Rule 27. Power to Compel.

The court retains the inherent authority to compel disclosure of material it has cause to believe is relevant to the matter before it.

### PART VI. TRIALS

#### Rule 28. Pre-Trial Conference.

The Court may hold conferences with the parties, or their counsel when the party is represented. *Notice* of the time, place and purposes of a conference shall be given far enough in advance to allow all parties to attend. The purposes of a conference may be to foster a resolution of the action without trial, to schedule discovery, motions and hearings to expedite the action, and to formulate a plan for the trial, identifying witnesses to be called, evidence to be presented, unresolved factual and legal issues, and for discussion of any other matter among the parties. A party may be sanctioned for failing to attend a conference if they received at least ten (10) calendar days notice and do not show good cause for failing to attend.

#### Rule 29. Presence of Parties and Witnesses.

##### A. Subpoenas.

*Subpoenas* may be used to require a witness to appear and give testimony. If a party wishes to have a subpoena issued by the Court, he/she shall furnish a properly prepared **subpoena including information necessary for service at least ten (10) calendar days before trial**. Service shall be completed at least three (3) calendar days prior to hearing or trial. The requesting party shall present the properly prepared subpoena to the court for signature in time to ensure proper service before the hearing or trial and shall return proof of service to the court prior to the trial. If a party does not timely request a subpoena, he/she shall not be entitled to a postponement because of the absence of the witness. If the subpoena has been timely issued, the court may, in its discretion, postpone the hearing or trial. A person who fails to appear after being subpoenaed may be held in contempt of court.

#### B. Notice.

At all times the parties shall use diligent efforts to notify witnesses subpoenaed to appear in sufficient time so that they might make arrangements needed to appear.

#### C. Witness Fees.

Witnesses who appear pursuant to a subpoena shall be paid a fee of Ten Dollars (\$10.) and mileage at the rate permitted per mile by the US Internal Revenue Service for income tax purposes. The party causing the subpoena to be issued is responsible for payment of the fee and mileage.

#### D. Failure to Appear.

If any party fails to appear at a hearing or trial for which they received proper notice, the case may be postponed or dismissed, a judgment may be entered against the absent party, or the court may proceed to hold the hearing or trial.

#### Rule 30. Postponement.

The court may postpone a trial upon the request of a party, upon agreement of all parties, or at the court's discretion for good cause and on such terms as the court deems just.

#### Rule 31. Consolidation and Separation of Action.

##### A. Consolidation.

When actions involving a common question of law or fact are pending before the court, the court may order a joint hearing or trial of any or all the matters in issue in the actions;

may order all the actions consolidated; and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

#### B. Separate Actions.

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to judicial economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues.

### PART VII. JUDGMENTS AND ORDERS

#### Rule 32. Relief Available.

Except in a *Default Judgment*, the court is not limited to the relief requested in the pleading and may give any relief, including restraining orders, injunctions, declaratory judgments and extraordinary writs, which the evidence makes appropriate. The court may order any party to pay costs, including filing fees, costs of service and discovery, and witness costs.

#### Rule 33. Default Judgment.

A *Default Judgment* may be entered against a party who fails to answer if the party was personally served in accordance with the rules for service of process or if a party fails to appear at a hearing, conference or trial for which he/she was given proper notice. A *Default Judgment* shall not award relief different in kind from, or exceed the amount stated in the request for relief. A *Default Judgment* may be set aside by the Court only upon a timely showing of good cause.

#### Rule 34. Summary Judgment-Judgment on the Pleadings.

Any time after the date an *answer* is due or filed, a party may file a *Motion for Summary Judgment* on any or all of the issues presented in the action. The Court will render summary judgment in favor of the moving party if there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided herein. All parties shall be given reasonable opportunity to present all material pertinent to such a motion.

### Rule 35. Trial Procedure, Burden of Proof, Findings by the Court.

The plaintiff in any civil action shall be required to prove his/her case by a preponderance of the evidence. All issues shall be tried to a judge sitting without a jury. At the conclusion of the case the judge shall issue written findings of fact and conclusions of law in support of all final judgments and orders.

The plaintiff or petitioner shall be required to go forward with his/her evidence first. The defendant may, but is not required to, present a defense at the conclusion of the plaintiff's case. An opposing party may cross-examine any witness of another party.

Each party shall be permitted to make opening and closing statements in support of his/her case.

### Rule 36. Dismissal of Actions.

#### A. Voluntary Dismissal.

A party filing a *complaint* may file a *Notice of Dismissal* any time prior to the filing of a *response* or *answer* and the *complaint* will be deemed dismissed without prejudice.

#### B. Involuntary Dismissal.

At any other time in the action, a party must file a *Motion to Dismiss*. A *motion to dismiss* may be granted (1) if there has been no action in a case for six (6) months, or, (2) if a party substantially fails to comply with these rules, or, (3) if a party substantially fails to comply with an order of the court, or, (4) if a party fails to establish the right to relief following presentation of all evidence at trial. An *order* to dismiss a claim is a dismissal with prejudice.

#### C. *Sua Sponte* Dismissal.

The court, on its own motion, may move to dismiss an action if there has been no filing or other activity on the record for six (6) months. The court shall give written *notice* to all parties that the action will be dismissed after thirty (30) calendar days unless good cause is shown in writing prior to the end of the thirty day period. No further *notice* is necessary for the court to enter a dismissal.

### Rule 37. Entry and Filing of Judgments.

All judgments must be signed by the presiding judge. All signed judgments shall be deemed complete and entered for all purposes after the signed judgment is filed with the Court

Administrator. A copy of the entered judgment shall be mailed to each party within two (2) calendar days of filing. The time for taking an appeal shall begin running from the date *the judgment is filed*. Interest on a money judgment shall accrue from the date the judgment is filed at a rate set by the Band or at five (5) per cent per year if no rate is set.

### Rule 38. Amendment to or Relief from Judgment or Order.

#### A. Relief from Judgment.

A *motion to amend* or for relief from judgment, including a request for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *motion* must be based on an error or irregularity which prevented a party from receiving a fair trial or a substantial legal error which affected the outcome of the action.

#### B. Motion for Reconsideration.

Upon motion of the court or by motion of a party made not later than ten (10) calendar days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions, amending the judgment accordingly. The motion may be made with a motion for a new trial. If the court amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the court denies a motion filed under this rule, the time for initiating an appeal from the judgment commences when the court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within thirty (30) days after the entry of judgment, the court does not decide a motion under this Rule or the judge does not sign an order denying the motion, the motion is considered denied. The time for initiating an appeal from judgment commences in accordance with the Rules of Appellate Procedure.

#### C. Erratum Order or Reissuance of Judgment.

Clerical errors in a court record, including the *Judgment* or *Order*, may be corrected by the court at any time.

#### D. Grounds for Relief.

The court may grant relief from judgments or orders on motion of a party made within a reasonable time for the following reasons: (1) newly discovered evidence which could not reasonably have been discovered in time to request a new trial; or (2) fraud, misrepresentation or serious misconduct of another party to the action; or (3) good cause if the requesting party was not properly served in accordance with the Rules for Service and did not appear in the action; or (4) the judgment has been satisfied, released, or *discharged*.

Rule 39. Satisfaction of Judgment.

A. Complete.

The person owing money under a judgment must file proof of satisfaction of judgment with the court stating the amount and date of payment and whether the payment was in full or partial satisfaction of the judgment. The satisfaction must be signed by the person who was owed money.

B. Partial.

A partially satisfied or unsatisfied judgment continues in effect for seven years or until satisfied, whichever comes first. The judgment may be renewed for additional seven year periods upon a timely request by any party. A request for renewal shall be considered timely if it is filed thirty or more days prior to the expiration of the seven year period.

Rule 40. Who Is Bound by Judgment.

All parties and interested persons who are within the jurisdiction of the court and who had notice of the case pending before the court are bound by the judgment whether or not they appeared.

Rule 41. Emergency Order, Temporary Restraining Order (TRO) and Ex parte TRO.

A. Emergency Order.

The court may enter an *Emergency Order* without a hearing if it appears from the *complaint*, a petition, affidavits and/or sworn testimony that irreparable harm will result without the *order*. The *order* will expire in thirty (30) calendar days unless extended by the court for good cause. A hearing on the matters contained in the *order* will be held prior to its expiration. The removal of a child from its residence by the Band's social services department or equivalent agency and the imminent destruction of records or property essential to the case are examples of matters which may require an *Emergency Order*.

B. Temporary Restraining Order.

When it appears from a pleading that a party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in

violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

The application for an injunction or restraining order made to the court shall not be heard except upon notice to such other persons as may be defendants in the action unless the court is of the opinion that irreparable loss or damage will result to the applicant unless a temporary restraining order is granted.

The court may grant a temporary restraining order at any time before a hearing and determination of the application for a temporary or permanent injunction. However, such temporary restraining order shall be effective only for thirty (30) calendar days unless extended after notice and hearing thereon, or upon written consent of the parties and/or their attorneys.

~~VIII~~  
**PART IX. APPEALS**

**Rule 42. Appellate Panel.**

All appeals from the Trial Division of the Tribal Court shall be heard by the Appellate Division. The appellate panel for each case shall be composed of Justices as provided in Title I of the Leech Lake Judicial Code, Section 8.

**Rule 43. Final Order or Judgment Required.**

Any party aggrieved by a final decision of the trial division may appeal in the manner prescribed in this Part VIII. Appeals may be taken from:

- A. A final judgment, order, conviction, or commitment ; or
- B. An order which grants, refuses, dissolves or refuses to dissolve an injunction; or
- C. An order denying a new trial; or
- D. An order which, in effect, determines the action and prevents a judgment from which an appeal may be taken;

**Rule 44. Time Limit.**

*Within twenty (20) days from the entry of the order of judgment appealed from the party taking the appeal must file with the trial division a written notice of appeal specifying the*

parties to the appeal, the order or judgment which is being appealed, and a short statement of the reason or grounds for the appeal. The Court Administrator shall file the **notice and mail copies, to be provided by the appealing party**, to all other parties to the appeal to their last known address. The notice of appeal shall contain a statement as to whether a transcript of proceedings in the trial division will be required.

**Rule 45. Filing Fee and Transcript.**

The appellant (party filing the appeal) shall pay a filing fee of fifty dollars (\$50.). An appellant or any other party requesting a transcript of proceedings shall deposit with the Court Administrator such amount of money, computed at \$2.00 per page, as the Court Administrator estimates will be necessary to pay for transcription. The transcript shall be a part of the appeals record and copies thereof shall be provided to all parties to the appeal.

**Rule 46. Denomination of Parties.**

The party taking the appeal shall be referred to as the appellant. All other parties shall be referred to as the respondent(s). The name of the case shall be the same as that used in the trial division.

**Rule 47. Application for Stay of Judgment.**

The appellant may petition the trial division for an order staying the judgment or order appealed from. A stay shall be granted in all cases in which it is requested unless manifest injustice would result from a denial. The trial division shall have discretion to require the appellant seeking a stay to file cash or a bond approved by the Chief Judge sufficient to guarantee performance of the judgment or order appealed from.

**Rule 48. Clerk.**

The Tribal Court Administrator shall serve as the Clerk of the Appellate Division. Within ten (10) days after a notice of appeal is filed, the Clerk shall prepare, certify and file with the Appellate Division all papers comprising the record of the case including the transcript if requested and paid for as required by Rule 57.

**Rule 49. No New Trial in Appellate Division.**

A new trial in the Appellate Division shall not be allowed. The appeals panel shall not be empowered to review the factual findings of the Trial Division except to determine whether such findings are based on substantial evidence in the record.

**Rule 50. Briefs.**

Within thirty (30) days of the filing of the Notice of Appeal the appellant shall file a written brief, memorandum or statement *in support of his/her appeal*. An original, signed by the appellant, or his/her attorney and three (3) copies shall be filed with the Clerk and one copy shall be served or mailed to each other party or his/her attorney, if any. The respondent shall have thirty days (30) days after receipt of the appellant's brief, memorandum or statement within which to file a response. A reply brief, memorandum or statement may be filed by the appellant within ten (10) days of the receipt of the respondent's response.

#### Rule 51. Oral Argument and Meeting of the Appellate Panel.

The Appellate Panel shall decide all cases upon the submissions of the parties to the appeal duly filed together with the record of the trial court without oral argument unless either party requests oral argument and shows to the presiding justice of the panel that oral argument will aid the panel's decision, or unless the panel decides on its own motion to hear oral argument. If oral argument is permitted it shall occur within the boundaries of the Leech Lake Reservation, otherwise the appeals panel may meet and consult regarding the appeal at any location convenient to its members, including telephone or video conferencing.

#### Rule 52. Authority of Appeals Panel.

The Appeals Panel may affirm, reverse, or modify the judgment or order appealed from, or, it may remand the case to the Trial Division for further proceedings. The decision of the Appellate Panel shall be in writing and all such decisions are final when rendered.

### <sup>IX.</sup> PART ~~VIII.~~ OTHER MATTERS

#### Rule 53. Execution of Judgment.

##### A. Judgment.

*Judgments* may be enforced through a writ of execution on the property of a person against whom the money *judgment* is entered. The party requests an execution of the *judgment* by filing a *motion* and documenting that the judgment has not been fully satisfied.

##### B. Hearing.

When such a *motion* is filed, the court shall order the person owing the money to appear in court and *answer*, under oath, describing his money, property, and income. Failure to

appear may be deemed a contempt of court and the court may proceed with the execution of *judgment* without the person. Money and property may be seized by order of the court and held to satisfy the *judgment*. Any money, and property seized shall be held for thirty (30) calendar days before being turned over to the party to whom the money is owed. Any enforcement officer of the Leech Lake Band shall be authorized to assist the court or a party in execution of a judgment pursuant to a proper court order.

### C. Satisfaction of Judgment.

The person owing the money may redeem whatever is seized by paying the full amount of the *Judgment*, plus interest and any costs incurred by the other parties executing the *Judgment*. This includes the costs of storing and maintaining whatever is seized.

### Rule 54. Garnishments and or Liens.

Garnishment/lien is a proceeding to obtain satisfaction of a *judgment* for money out of property or money in the possession or control of a third party. A *judgment* may be collected through a writ of execution on the income or other funds being held by someone other than the person owing the debt. The person requesting execution of *judgment* shall serve the *Writ of Execution* and the order directed on the third party which requires them to turn over property or money in their possession or control belonging to the person owing the debt. A Writ of Execution/Lien/ or Garnishment Order may be directed to the Band or any of its Departments. The property or money shall be turned over to the court or, if permitted by the court, to the party who secured the writ and held as under the above rule on execution of judgments.

### Rule 55. Citation.

These Rules shall be known as the Leech Lake Band of Ojibwe Judicial Code Rules of Procedure and may be abbreviated L.L.R.P.

### Rule 56. Communications with Judges or Justices.

Ex Parte Communications and communications by elected officials or executive department staff with judges or justices of the Court regarding any contested matter pending before the court are strongly discouraged. All inquiries shall be directed to the Court Administrator who shall confer with the judge or justice who shall disclose the same on the court record or the court file.

### Rule 57. Court Open to the Public.

The records and proceedings of the court shall be open to the public within the limits of available space, except as to matters involving minor children or persons alleged to be incompetent. Copies of court records may be obtained by the public at a reasonable cost as established by the Court Administrator. Judges shall have discretion to seal or close a particular record or proceeding to prevent undue hardship, invasion of privacy, or in the interest of justice and fairness or the personal safety of any person balanced against the public interest.

#### **Rule 58. Peacemaker Tribunal.**

The Chief Judge shall have authority to establish and promulgate rules for a Peacemaker Tribunal either as a permanent division of the Tribal Court or on a case-by-case basis. Use of a Peacemaker Tribunal shall be voluntary on the part of the parties to the action and forecloses any further use of the Trial Court except as may be necessary to enforce any award or decision of the Peacemaker Tribunal. All decisions of a Peacemaker Tribunal will be summarized in writing and made a part of the court file. The decisions of the Peacemaker Tribunal will not be appealable. A party selecting resolution of a dispute by a Peacemaker Tribunal must do so in writing and sign an acknowledgment that they understand that they will not be able to appeal its judgment to the Trial or Appellate Divisions. All parties must consent in writing to the jurisdiction of the Peacemaker Panel. The decisions of the Peacemaker Panel apply only to the parties involved in that dispute.

#### **Rule 59. Small Claims.**

The Chief Judge shall have authority to establish and promulgate rules for a small claims procedure of the Tribal Court to hear all cases wherein the relief sought is for money damages only in an amount of five thousand dollars (\$5,000.) or less. Rules promulgated under the authority of this Rule 59 for resolution of small claims cases shall provide for the speedy and inexpensive disposition of such claims. All rules provided for in this Title, except for those governing appeal, and the execution or enforcement of judgments, shall not apply when the original claim is filed in the small claims division of the Tribal Court.

#### **Rule 60. Full Faith and Credit and Comity.**

##### **A. Full Faith and Credit and Comity.**

Unless otherwise enacted by the Reservation Tribal Council the Tribal Court may extend full faith and credit to the judicial records, orders and judgments of the courts of the State of Minnesota, the courts of other states, federal courts, and other tribal courts to the same extent the other jurisdiction extends full faith and credit to the judicial records, orders and judgments of the Tribal Court. In determining whether to extend full faith and credit, the Tribal Court will review the judicial record, order or judgment in question to assure that:

(1) the foreign Court has jurisdiction over the subject matter and over the persons named; and

(2) any judgment or order is final under the laws of the rendering court;

(3) any judgment or order is on the merits and procured without fraud, duress or coercion; and

(4) any judgment or order was procured in compliance with the procedures required by the rendering court.

#### B. Validity of Foreign Judgment or Order.

No lien or attachment based on a *Judgment* or *Order* rendered by a court of another jurisdiction will be filed, docketed or recorded in the Tribal Court unless it has been given full faith and credit by the Trial Division of the Court.

#### Rule 61. Effective Date.

These rules will take effect on the first court work day after the date these rules are adopted by the Reservation Tribal Council and certified by the Code Reviser as provided in Title 1. They will govern all proceedings brought on or after that date. They will also govern all proceedings pending on that date unless, in the discretion of the Trial Division, their application would not be feasible or would work injustice to the parties in the proceeding. In that event, the Court shall devise such procedures as are necessary for a full, fair and expeditious resolution of the proceeding.

#### Rule 62. Severability.

If any provision of this Title, or the application thereof, to any person, business, corporation, or government is held invalid, such invalidity shall not affect other provisions or applications of this Title which can be given effect without the invalid provisions, and to this end the provisions of this Title are declared severable.

#### Rule 63. Amendment.

These rules may be amended by the Chief Judge or the Reservation Tribal Council as necessary to ensure fundamental fairness and substantial justice.