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Confederated Tribes of Siletz Indians of Oregon Siletz Tribal Court Rules and Procedures

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Original Date: 1/15/84, Reso. No. 84-79.
Subject: Tribal Court Rules and Procedures

SILETZ TRIBAL COURT RULES AND PROCEDURES

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PART I COURT STRUCTURE AND COURT PERSONNEL

§ 3.001 ESTABLISHMENT OF SILETZ TRIBAL COURT RULES

(a) **Policy.** The Siletz Constitution, Article V, Section 3, establishes the authority to promulgate rules of pleading, practice and procedure, as follows:

The Chief Judge shall promulgate rules of pleading, practice, and procedure applicable to any and all proceedings of the Tribal Court, consistent with the provisions of this Constitution and requirements of Federal Law. In case of failure of the Chief Judge to establish such rules, the Tribal Council shall have the authority to establish them.

These rules shall be known as the "Siletz Tribal Court Rules" and shall be cited as "STCR". The Tribal Council declares that public policy reasons exist that make it necessary for the Tribal Council to exercise its constitutional authority to establish rules of pleading, practice and procedure applicable to any and all proceedings of the Tribal Court.

Adopted: 1/15/84

Amended: 5/1/99, 3/16/01, 8/19/05,
9/16/05, 5/8/09.

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(b) **Scope of the Siletz Tribal Court Rules.** These Rules shall govern procedure in all courts and judicial forums of the Siletz Tribe in all actions and suits of a civil nature, except where otherwise expressly provided.

(1) In the absence of a specific rule of pleading, practice or procedure set out in this Ordinance, the Tribal Court may look to the rules of other tribal or federal courts, in that order, and may adopt specific rules or may create an analogous rule in a specific case.

(2) These rules shall be construed and administered to secure the just, speedy and inexpensive determination of every action.

(3) There shall be one form of action to be known as "civil action."

(c) **Creation of Substantive Rights.** These Siletz Tribal Court Rules shall not create any substantive legal right or remedy in any person or entity, and shall not affect or diminish the sovereignty or sovereign immunity of the Siletz Tribe and tribal government. Any substantive legal right or remedy must be found in the Siletz Constitution or in Siletz tribal law, including Ordinances, Resolutions, regulations, and other formally adopted tribal policy, or in applicable federal law.

§ 3.002 ESTABLISHMENT OF THE SILETZ TRIBAL COURT

(a) **Policy.** The Siletz Tribal Court is created by the Siletz Constitution, Article IV, Section 2, by the following language:

The Tribal Court shall consist of one Chief Judge and such Associate Judges and staff as are deemed necessary by the Tribal Council. The Tribal Court is empowered to exercise all judicial authority of the government. Such authority shall include but is not limited to the power to review and overturn tribal legislative and executive actions for violations of this Constitution or of the Federal Indian Civil Rights Act of 1968 as well as to perform all other judicial and court functions. The Tribal Council shall set forth qualifications for Tribal Court Chief Judge, Associate Judges, and staff positions by ordinance, and shall appoint persons to fill said positions for a term of not less than four years for Chief Judge, not less than two years for Associate Judges. During the tenure of his or her

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appointment, the Chief Judge, or an Associate Judge may be suspended or dismissed only for cause by the Tribal Council upon due notice and an opportunity for a hearing open to tribal members.

(b) **Judicial Authority of the Tribal Court.** As expressed in the Siletz Constitution, the Tribal Court possesses constitutional authority to review and overturn tribal legislative and executive actions for violation of the Siletz Constitution or of the Federal Indian Civil Rights Act of 1968. Other judicial authority of the tribal government shall be expressly vested in the Tribal Court by Tribal Council Ordinance or Resolution. Any judicial authority affirmatively created by the Tribal Council shall be vested with the Tribal Court, *provided*, that the Tribal Court may, by appropriate rule and upon approval of the Tribal Council, delegate judicial authority of the Court to other appropriate forums. Judicial authority other than the authority expressly vested in the Tribal Court under the Siletz Constitution shall not be implied.

(c) **Branches and Divisions of the Siletz Tribal Court.** The Siletz Tribal Court shall consist of the following branches and divisions:

- (1) The Siletz Community Law Court;
- (2) The Siletz District Court;
- (3) The Siletz Court of Appeals;
- (4) The Siletz Gaming Court;
- (5) The Siletz Commercial Court.

The Tribal Council may add other branches or divisions of the Tribal Court from time-to-time as it determines necessary, or upon the recommendation of the Chief Judge. In such event, any new branch or division shall be added to this list.

[Amended 5-8-09, by Resolution No. 2009-205]

§ 3.003 JURISDICTION OF THE SILETZ TRIBAL COURT: GENERAL

Adopted: 1/15/84

Amended: 5/1/99, 3/16/01, 8/19/05,
9/16/05, 5/8/09.

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(a) **Subject Matter Jurisdiction.**

- (1) The Tribal Court shall have subject matter jurisdiction over cases arising within the territory of the Siletz Tribe, as the Tribe's territory is defined for different purposes in the Geographic Areas of Tribal Interest Ordinance.
- (2) The Tribal Court shall have jurisdiction to review and overturn tribal legislative and executive actions which violate the provisions of the Siletz Constitution or of the Federal Indian Civil Rights Act of 1968, as amended, to the extent such actions adversely affect the legal rights of any person or entity.

(b) **Personal Jurisdiction.**

- (1) Tribal Members. The Tribal Court shall have jurisdiction over tribal members in any case in which the Tribal Court has subject matter jurisdiction.
- (2) Non-tribal member Indians. The Tribal Court shall have jurisdiction over non-tribal member Indians who have consented to the jurisdiction of the Siletz Tribe or Siletz Tribal Court, who have close social and economic ties to the Siletz Tribe or a Siletz tribal member, or whose conduct affects the political integrity, the economic security, or the health or welfare of the Siletz Tribe or any of its members. The term "non-tribal member Indians," for purposes of this Ordinance, shall mean Indians who are members of other federally recognized Indian tribes and persons of Indian descendency who are members of the immediate family of a Siletz tribal member, as the term immediate family is defined at § 2.203 of the Tribal Council Ethics Ordinance.
- (3) Non-Indians. The Tribal Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Siletz Tribe or Siletz Tribal Court, or whose conduct affects the political integrity, the economic security, or the health or welfare of the Siletz Tribe or any of its members.

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- (4) Consent to Jurisdiction. For purposes of subsections (2) and (3) of this Section, a person or entity shall have consented to the jurisdiction of the Siletz Tribal Court by entering into a consensual relationship with the Siletz Tribe, tribal entities, tribal corporations, or tribal members, including but not limited to contracts or other agreements, by voluntarily entering onto tribal land or property, by engaging in any activity or conduct that is authorized, regulated or conducted by the Siletz Tribe, an arm of the Tribe or tribal corporation, or by other facts which the Tribal Court determines manifest an intent to consent to the authority of the Siletz Tribe or the jurisdiction of the Tribal Court.

**§ 3.004 JURISDICTION OF THE SILETZ TRIBAL COURT: SILETZ
COMMUNITY LAW COURT**

(a) **Subject Matter Jurisdiction.** The Siletz Community Law Court shall have jurisdiction over the following cases:

- (1) Garnishments;
- (2) Evictions and Housing Authority homeowner or tenant disputes;
- (3) Private civil disputes between persons or entities which do not request monetary damages;
- (4) Disputes involving monetary claims which do not exceed \$2,500.00;
- (5) Offenses under the Civil Offenses Ordinance; and
- (6) Minor crimes.

The subject matter jurisdiction of the Siletz Community Law Court shall be limited to the subject areas listed in this subsection. The Siletz Tribal Council may add other subject areas to the jurisdiction of the Siletz Community Law Court from time-to-time by Resolution. In such event, the additional subject areas shall be added to the list in this subsection.

(b) **Mandatory Mediation.**

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- (1) Policy. It is the strong public policy and tradition of the confederated Siletz Tribes to resolve disputes in an informal and consensual manner, using tribal elders where possible. The Tribal Council hereby implements this policy and tradition for community disputes by establishing a mandatory mediation program for disputes brought before the Siletz Community Law Court.
- (2) Establishment of Program. The Chief Judge shall by rule establish a mandatory mediation program for disputes subject to the jurisdiction of the Siletz Community Law Court, including but not limited to payment for mediation services, timelines, and those disputes which are exempted from mandatory mediation (for example, uncontested garnishment actions).

§ 3.005 JURISDICTION OF THE SILETZ TRIBAL COURT: SILETZ DISTRICT

(a) **Subject Matter Jurisdiction.** The Siletz District Court shall have exclusive jurisdiction over the following cases:

- (1) Disputes arising under the Siletz Constitution or under the Indian Civil Rights Act;
- (2) Claims against the Siletz Tribe, tribal government, tribal corporations, tribal entities, or against tribal employees;
- (3) Cases involving monetary claims which exceed \$2,500.00;
- (4) Appeals from final administrative action of the Siletz Tribe, tribal government or arms or entities of the Tribe, pursuant to the Siletz Administrative Procedures Ordinance or other tribal authority;
- (5) Indian Child Welfare Act proceedings and other juvenile proceedings;
- (6) Domestic relations cases;
- (7) Cases involving Public Health Emergencies, including applications for quarantine or other measures;
- (8) Crimes in which incarceration is a potential punishment; and

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(9) All other cases over which the Siletz Tribal Court has subject matter jurisdiction and which are not specifically vested in another branch or division of the Tribal Court.

(b) **Mediation.** It is the strong public policy and tradition of the confederated Siletz Tribes to resolve disputes in an informal and consensual manner. The Chief Judge shall by rule establish a mediation program for cases subject to the jurisdiction of the Siletz District Court which shall encourage mediation of all disputes and which may require mediation of certain categories of disputes.

(c) **Scope of Review for Appeals from Final Administrative Action.** Jurisdiction of the Siletz District Court over appeals from final administrative decisions of the Siletz Tribe, arms of tribal government or a tribal corporation or entity shall be limited to review of questions of law, in which case the Siletz District Court shall review the issue de novo. Rulings on questions of fact in a final administrative decision shall be accorded deference by the Siletz District Court, and shall be disturbed only if no substantial basis exists for the administrative ruling and no reasonable grounds exist under which the administrative decision could have decided the factual question as it did. The Siletz District Court may affirm, reverse, remand, or otherwise modify in whole or in part the final administrative decision it is reviewing.

(d) **Public Health Actions.** Jurisdiction of the Siletz District Court over requests for Public Health Orders shall include actions requested by any responsible Public Health Department, but shall issue only on a finding of personal jurisdiction over the Respondent and a finding, by clear and convincing evidence, that the measure is necessary under the circumstances to protect or preserve public health. The Court may order any necessary measure, however, the Court shall order only the least restrictive measure that will still protect or preserve public health. No quarantine order shall exceed sixty (60) days, although a request for extension may be had within that time, if necessary, for an order continuing the quarantine order. When the Court has issued a public health Order, jurisdiction over the person shall continue, even if the person is removed from Tribal lands.

§ 3.006 **JURISDICTION OF THE SILETZ TRIBAL COURT: SILETZ COURT OF APPEALS**

(a) **Subject Matter Jurisdiction.** The Siletz Court of Appeals shall have jurisdiction to review any final decision of the Siletz Community Law Court, the Siletz District Court, or the Siletz Gaming Court. These courts may certify interlocutory rulings to the Court of Appeals,

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which shall have discretion as to whether to assume jurisdiction over such rulings. In no other case shall the Court of Appeals assume jurisdiction over a case before a final decision of the lower court has been issued.

(b) **Scope of Review.** Jurisdiction of the Court of Appeals shall be limited to review of questions of law, in which case the Court of Appeals shall review the issue de novo. Rulings on questions of fact by the lower courts shall be accorded deference by the Court of Appeals, and shall be disturbed only if no substantial basis exists for the lower court's ruling and no reasonable grounds exist under which the lower court could have decided the factual question as it did. The Court of Appeals may affirm, reverse, remand, or otherwise modify in whole or in part a decision of the lower courts.

§ 3.007 JURISDICTION OF THE SILETZ TRIBAL COURT: SILETZ GAMING COURT

(a) **Subject Matter Jurisdiction.** The Siletz Gaming Court shall have jurisdiction over claims by patrons of Chinook Winds Casino involving payment or non-payment of prizes from gaming activities conducted therein. The jurisdiction of the Siletz Gaming Court shall be limited to those cases in which a final decision has been rendered by the General Manager of the Casino, and the patron is dissatisfied with that decision.

(b) **Rules of Procedure.** The Chief Judge shall establish rules of procedure for the Siletz Gaming Court, subject to approval of the Tribal Council, which will expedite the dispute process and which shall protect the due process rights of Casino patrons. In the absence of such rules, the Tribal Court Rules shall apply. The Tribal Council may by resolution designate the Siletz District Court to sit in appropriate cases as the Siletz Gaming Court in lieu of establishing a separate Gaming Court.

§ 3.008 JURISDICTION OF THE SILETZ TRIBAL COURT: SILETZ COMMERCIAL COURT

(a) **Subject Matter Jurisdiction.** The Siletz Commercial Court shall have jurisdiction over claims arising out or related to any written contract, agreement or other written instrument entered into by the Tribe, Tribal government, Tribal corporation, and Tribal entities concerning commercial transactions. The court shall also have jurisdiction over any other person or entity entering into a commercial transaction subject to the jurisdiction of the Tribe in which the parties expressly agree to settle by arbitration any controversy arising out of such written contract in which this Commercial Court Ordinance is expressly and specifically invoked, and

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where the matter and controversy exceeds the sum or value of \$10,000, exclusive of interest and costs. For purposes of this Ordinance, any written instrument subject to the jurisdiction of the Commercial Court shall hereinafter be referred to as a “Contract.”

(b) **Mediation.** It is the strong public policy and tradition of the Confederated Tribes of Siletz to resolve disputes in an informal and consensual manner. Accordingly, in every dispute arising out of a Contract, the parties shall engage in a mediation within thirty (30) days following notice by one party to the other of a dispute subject to arbitration.

(c) **Agreements to Arbitrate are Enforceable.** An express agreement to arbitrate in any Contract shall be valid, irrevocable and enforceable, except as may be expressly set forth in the Contract.

(d) **Law to Be Applied.**

- (i) **By Agreement of the Parties.** In a Contract, the parties may agree upon the jurisdiction whose substantive of law shall govern the interpretation and enforcement of the agreement or controversy. Such governing law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties, except as may be expressly set forth in the Contract.
- (ii) **Procedural Rules of the Siletz Tribal Court Shall Apply.** The foregoing subsection notwithstanding, whenever the Contract sets forth a governing law provision, the Court shall apply the procedural rules of the Siletz Tribal Court and the substantive law of the jurisdiction selected in such governing law provision; provided that no procedural rule of the Tribal Court shall be effective to bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.
- (iii) **No Governing Law Provision.** In any proceeding under this Ordinance, in any agreement subject to the jurisdiction of the Siletz Tribe, whenever the Contract does not set forth a governing law provision, the Court shall first apply Tribal law, and if no Tribal law applies, then it shall apply applicable Federal law, and if no Federal law applies, it shall then apply substantive statutory, regulatory, and common law of Oregon, but only to

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the extent that any such substantive statutory, regulatory or common law does not conflict with this Ordinance or other applicable Tribal law.

(e) **Stay of Proceedings and Order to Proceed with Arbitration.** If any action for legal or equitable relief or other proceeding is brought by any party to any Contract, the Tribal Court Judge presiding over the pending action shall not review the merits of the pending action, but shall stay the action until an arbitration has been had in compliance with the underlying agreement. The party claiming the refusal of the other party to proceed with an arbitration under the applicable contract may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to submit to arbitration in accordance with the provisions of the applicable contract and the question of whether an obligation to arbitrate exists shall be decided by the arbitrator(s). The Court shall have the authority to enforce compliance with the arbitration provisions of a Contract by any appropriate means.

(f) **Advice of the Court.** Any time during arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of Tribal or other applicable law arising in the course of the arbitration. The advice of the Court shall be final as to the question presented and it shall bind the arbitrator(s) in rendering any award.

(g) **Time Within Which Award Shall Be Rendered.** The arbitrator(s) shall render the award within thirty (30) days from the date the arbitration has been completed. However, the parties may expressly agree to extend the time in which an award may be made by mutually agreeing to the same in writing. The arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party.

(h) **Application For Order Confirming Award; Record To Be Filed With the Court; Effect and Enforcement of Judgment.** At any time within one year after an arbitration award has been rendered and the parties notified, any party to the arbitration may make application to the Tribal Court for an order confirming the award. In making this request, the party shall file the following papers with the Clerk of the Tribal Court: (1) the arbitration agreement; (2) document(s) reflecting the selection or appointment of the arbitrator(s); (3) any written agreement regarding the reference of any question to the Tribal Court; (4) each written extension of time; (5) the award; (6) each notice and other paper used in connection with an application to confirm; and (7) a copy of each order of the Tribal Court upon such an application. An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall

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be docketed as if it were rendered in a civil action, and shall have the same force and effect in all respects as and be subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced as if it had been rendered in a civil action in the Tribal Court.

(i) **Vacating or Correcting an Award.** An application to modify or correct an award may be joined in the alternative with an application to vacate the award and subject to the provisions below:

- (i) **Request to Vacate.** Upon application of a party, the Tribal Court shall vacate an award if the Tribal Court finds as follows:
 - (a) The award was procured by corruption, fraud or other undue or illegal means;
 - (b) There was evident partiality by an arbitrator or corruption in any of the arbitrator(s) or misconduct prejudicing the rights of any party;
 - (c) The arbitrator(s) exceeded their powers or so imperfectly executed them that a mutual, final and definite award was not made, and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted;
 - (d) The arbitrator(s) refused to postpone the hearing upon sufficient cause being shown or refused to hear evidence material to the controversy or otherwise so conducted the hearing as to prejudice substantially the rights of a party; or
 - (e) There was no agreement or provision for arbitration subject to this ordinance, unless the matter was determined in a proceeding under this ordinance and the party participated in the arbitration hearing without raising the objection.

Any application under this section shall be made within ninety (90) days after delivery of a copy of the award to the applicant, except that if predicated upon corruption, fraud, or other undue or illegal means, it shall be made within ninety (90) days after such grounds are known or should

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have been known. In vacating the award for reasons other than those stated in subsection (e) above, the Tribal Court may order a rehearing by new arbitrator(s), chosen as provided in the underlying agreement or provision for arbitration or by the Tribal Court in accordance with this ordinance, or, if the award is vacated on grounds set forth in subsections (c) and (d) above, the Tribal Court may order a rehearing before the arbitrator(s) who made the award or their successors appointed in accordance with this ordinance. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and begins from the date of the order for the rehearing. If the application to vacate is denied and no motion to modify or correct the award is pending, the Tribal Court shall confirm the award.

- (ii) **Request to Modify or Correct.** Upon application of a party, the Tribal Court shall modify or correct an award if the Tribal Court finds as follows:
- (a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the awards;
 - (b) The arbitrator(s) has made an award upon a matter not submitted to arbitration and the award may be corrected without affecting the merits of the decision upon the issues submitted; or,
 - (c) The award is imperfect as a matter of form, not affecting the merits of the controversy.

If the application is granted, the Tribal Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and correct. Otherwise, the Tribal Court shall confirm the award as made.

(j) **Arbitration Award Not Appealable.** Notwithstanding any other provision of the Siletz Tribal Court Rules and Procedures, no further appeal may be taken from an order issued by the Tribal Court enforcing the agreement to arbitrate or an award issued by an arbitrator(s).

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(k) **Jurisdiction of the Siletz Commercial Court in Actions Toward the Tribe By Either Party.** The Tribal Commercial Court shall have exclusive jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration, and to enforce an award made by an arbitrator in accordance with such an agreement to arbitrate that is contained in any Contract to which the Tribe or a Tribal corporation, is a party; provided, however, that the Tribal Council or governing body of the Tribal corporation has explicitly waived the defense of Tribal sovereign immunity in the contract agreement or other instrument at issue. The jurisdiction of the Tribal Commercial Court shall be concurrent with the jurisdiction of any court of competent jurisdiction of which the Tribal Council or the governing body of any Tribal corporation may have explicitly consented to in such written contract. Any consent to the jurisdiction of any court of competent jurisdiction in any Contract to which the Tribe or a Tribal corporation is a party shall be valid and enforceable in accordance with its terms.

(l) **Severability.** If any section of this Ordinance or the application of it to any party, person or entity in any circumstances shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative enactment, the remainder of the relevant section of this Ordinance shall not be affected and shall remain in full force and effect as though no section has been declared invalid.

(m) **No Waiver of Sovereign Immunity.** Nothing in this Ordinance shall provide or be interpreted to provide a waiver of the sovereign immunity of the Tribe, or any of its governmental officers, employees and/or agents, and/or any Tribal corporation and any of its officers, employees and/or agents, acting within this course and scope of their authority.

(n) **Appointment of Arbitrator(s) by the Tribal Court.** If the Contract in with which the parties agree to arbitrate provides a method for appointment of arbitrators, this method shall be followed. In the absence of such provision, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his or her successor has not been duly appointed, the Tribal Court on application of the parties shall appoint one or more arbitrators. An arbitrator appointed by the Tribal Court shall meet the qualifications set forth in any agreement, or where no qualifications are set forth, shall meet the qualifications set forth below.

(i) **Amount in Controversy is Less than \$150,000.** Unless the parties to any Contract agree otherwise, the controversy shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties, or, absent such an agreement by the Tribal Court, and shall be an

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attorney admitted to practice, who is in good standing with the highest court for any jurisdiction, or a spokesperson designated in accordance with Tribal law, and who has substantial litigation experience or experience with the general subject matter of the contract.

- (ii) **Amount of Controversy Exceeds \$150,000.** Unless the parties to any Contract agree otherwise, the controversy shall be decided by a panel of three arbitrators selected as follows: one arbitrator shall be selected by each party, and the arbitrators so appointed shall select the third arbitrator. If the arbitrators selected by the parties cannot agree on the third arbitrator, the Tribal Court shall select the third arbitrator. Any arbitrator must be an attorney admitted to practice, who is in good standing with the highest court for any jurisdiction, and who has substantial litigation experience or experience with the general subject matter of the contract.

[Added 5-8-09, by Resolution No. 2009-205]

§ 3.009 TIME FOR FILING

(a) Civil actions to review Tribal Council action, or other Tribal action, shall be presented to the Court Clerk in writing not more than sixty (60) days after an action of the Tribal Council, or Tribal Officials as specified in the Tribal code, is alleged to have violated the Plaintiff's right or rights or not more than sixty (60) days after the alleged harm first manifested itself if such harm was not apparent on the date of the Tribal Councils, or other Official's action.

(b) All other Civil Actions shall be brought within two (2) years after the cause of action accrues, and not afterwards.

(c) This section does not limit the scope of the Tribal Courts civil jurisdiction in any way. When jurisdiction is vested in the Tribal Court, it shall extend to all cases in law or equity, and all means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding is not specified in this Code, any suitable process or mode of proceeding may be adopted that appears most conformable to the spirit of Siletz Tribal Law.

PART II COURT PERSONNEL

§ 3.010 JUDICIAL OFFICERS

Adopted: 1/15/84

Amended: 5/1/99, 3/16/01, 8/19/05,
9/16/05, 5/8/09.

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The Siletz Tribal Court shall consist of a Chief Judge and such Associate Judges as the Tribal Council shall from time-to-time determine are necessary for efficient operation of the Tribal Court. Associate Judges shall include judges of the Siletz Community Law Court, Siletz District Court, Siletz Court of Appeals, Siletz Gaming Court, and any other branch or division of the Siletz Tribal Court which is hereafter established by the Tribal Council. A panel of mediators shall be established by the Chief Judge for appropriate branches or divisions of the Tribal Court. Mediators shall not be Associate Judges and shall serve under the direction and authority of the Chief Judge or an Associate Judge.

§ 3.011 **CHIEF JUDGE**

(a) **Scope of Duties.** The Chief Judge shall be the chief judicial officer of the Siletz Tribe and the head of the Siletz Tribal Court. The Chief Judge shall administer the Tribal Court, including but not limited to responsibility for performing all judicial and court functions of the Tribal Court, *provided*, that the Chief Judge may delegate his or her administrative authority to an Associate Judge or other appropriate person upon budgetary approval by appropriate tribal officials. The Chief Judge may serve as Presiding Judge of the Siletz District Court, Siletz Gaming Court, or Siletz Court of Appeals, as appropriate.

(b) **Qualifications.** The Chief Judge must be at least twenty-five years of age and a graduate of an accredited law school, and a preference shall be accorded to persons who are licensed to practice law before a tribal, state or federal court. The Chief Judge shall be appointed by the Tribal Council and shall be subject to other appropriate qualifications, which may require passage of a written examination on tribal law, federal Indian law and other legal subjects as appropriate. Such qualifications shall be established by resolution of the Tribal Council. The Chief Judge shall be subject to mandatory continuing legal education requirements which may be established from time-to-time by the Tribal Council.

(c) **Term of Office.** Pursuant to Article IV, Section 2 of the Siletz Constitution, the Chief Judge shall be appointed by the Tribal Council for a period of not less than four years. Compensation for the position of Chief Judge shall be set by the Tribal Council and shall not be reduced during the term of office of a judge.

(d) **Acting Chief Judge.** During periods of temporary absence, the Chief Judge may designate an Associate Judge to perform the duties and exercise the powers of the Chief Judge. The Chief Judge shall notify the Tribal Council and post notice of such designation. If the Chief Judge is unable or unwilling to perform the duties of his or her office for any reason, on a temporary or permanent basis, the Tribal Council shall designate an Acting Chief Judge from

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qualified candidates to perform the duties and exercise the powers of Chief Judge and assume his or her judicial authority.

§ 3.012 ASSOCIATE JUDGE: SILETZ DISTRICT COURT

(a) **Qualifications.** Associate judges of the Siletz District Court must be a graduate of an accredited law school. Associate judges must be of good moral character, never have been convicted of a felony, be in good standing in any legal organization in which they are a member or are required to be a member, and shall be subject to such other qualifications as may be established from time-to-time by resolution of the Tribal Council, including but not limited to passage of a written examination testing knowledge of tribal law, federal Indian law and other relevant subjects as appropriate. Associate judges shall be subject to mandatory continuing legal education requirements as may be established by the Tribal Council.

(b) **Term of Office.** Pursuant to Article IV, Section 2 of the Siletz Constitution, Associate Judges shall be appointed by the Tribal Council for a period of not less than two years. Compensation for the position of Associate Judge shall be set by the Tribal Council, and shall not be reduced during the judge's term of office. Associate judges may be reappointed at the discretion of the Tribal Council.

(c) **Scope of Duties.** Associate judges shall preside in specific cases as assigned by the Chief Judge, in which case the Associate Judge shall exercise full judicial authority of the Siletz District Court in such proceeding. The Chief Judge may designate an Associate Judge to serve as Chief Associate Judge of the Siletz District Court and delegate authority to that judge to assign judges to specific cases filed in the Siletz District Court.

§ 3.013 ASSOCIATE JUDGE: SILETZ COMMUNITY LAW COURT

(a) **Qualifications.** Associate Judges of the Siletz Community Law Court must be an enrolled tribal member over the age of eighteen, of good moral character, and have never been convicted of a felony. Associate judges of the Siletz Community Law Court may be subject to other qualifications as the Tribal Council may establish from time-to-time by Resolution, including but not limited to passage of a written examination testing knowledge of tribal law, federal Indian law and other relevant subjects as appropriate. Associate judges shall be subject to mandatory continuing legal education requirements as may be established by the Tribal Council.

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(b) **Term of Office.** Pursuant to Article IV, Section 2 of the Siletz Constitution, Associate Judges shall be appointed by the Tribal Council for a period of not less than two years. Compensation for the position of Associate Judge shall be set by the Tribal Council, and shall not be reduced during the judge's term of office. Associate judges may be reappointed at the discretion of the Tribal Council.

(c) **Scope of Duties.** Associate judges shall preside in specific cases as assigned by the Chief Judge, in which case the Associate Judge shall exercise full judicial authority of the Siletz Community Law Court in such proceeding. The Chief Judge may designate an Associate Judge to serve as Chief Associate Judge of the Siletz Community Law Court and delegate authority to that judge to assign judges to specific cases filed in the Siletz Community Law Court.

§ 3.014 ASSOCIATE JUDGE: SILETZ COURT OF APPEALS

(a) **Qualifications.** Associate judges of the Siletz Court of Appeals must be a graduate of an accredited law school, and licensed to practice law in good standing in the bar of a tribal, state or federal court. Associate judges must be of good moral character, never have been convicted of a felony, be in good standing in any legal organization in which they are a member or are required to be a member, and shall be subject to such other qualifications as may be established from time-to-time by resolution of the Tribal Council, including but not limited to passage of a written examination testing knowledge of tribal law, federal Indian law and other relevant subjects as appropriate. Associate judges shall be subject to mandatory continuing legal education requirements as may be established by the Tribal Council.

(b) **Term of Office.** Pursuant to Article IV, Section 2 of the Siletz Constitution, Associate Judges shall be appointed by the Tribal Council for a period of not less than two years. Compensation for the position of Associate Judge shall be set by the Tribal Council, and shall not be reduced during the judge's term of office. Associate judges may be reappointed at the discretion of the Tribal Council.

(c) **Scope of Duties.** Associate judges shall preside in specific appellate cases as assigned by the Chief Judge, in which case the Associate Judges assigned shall exercise full judicial authority of the Siletz Court of Appeals in such proceeding. Associate Judges of the Siletz Court of Appeals shall sit in each case in a panel of three judges. The Chief Judge shall designate an Associate Judge to serve as Presiding Associate Judge of the Siletz Court of Appeals in each appellate case. The Chief Judge shall retain authority to assign Associate Judges to appellate panels.

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§ 3.015 ASSOCIATE JUDGE: SILETZ GAMING COURT

Associate judges of the Siletz Gaming Court shall have the same qualifications, terms of office, and general scope of duties as Associate Judges of the Siletz Tribal Court set out in § 3.011 of this Ordinance. The Tribal Council may by Resolution require that Associate Judges who preside at cases subject to the jurisdiction of the Siletz Gaming Court be non-Indian or non-tribal members.

§ 3.016 PRO-TEM JUDGES

The Chief Judge may by written order appoint a judge other than an Associate Judge to preside as a pro tem judge on a specific case before the Siletz Tribal Court. Any such judge shall otherwise meet the qualifications for Associate Judge of the branch or division of the Siletz Tribal Court in which said judge will preside, and shall be licensed or otherwise authorized to preside as judge in another tribal court or by a recognized inter-tribal court system. Compensation for pro-tem judges shall be set by the Chief Judge, subject to approval of the Tribal Council. A pro tem judge may be appointed in any case in which all Associate Judges of that branch or division of the Siletz Tribal Court have been disqualified or are otherwise unable to preside, or when the Chief Judge determines in writing that such appointment is necessary in that case for the prompt or orderly administration of justice or for good cause pursuant to the Siletz Constitution or the Indian Civil Rights Act.

§ 3.017 MEDIATORS

(a) **Qualifications.** Associate Judges shall not serve as mediators in any case. The Chief Judge shall appoint separate panels of mediators for the Siletz District Court and for the Siletz Community Law Court. Mediators selected for each branch or division of the Siletz Tribal Court shall otherwise meet the qualifications for appointment as an Associate Judge of that branch or division, *provided*, that the Chief Judge may establish other qualifications for mediators for any branch or division of the Siletz Tribal Court by rule, which shall be effective upon approval of the Siletz Tribal Council.

(b) **Duties.** Mediators shall be assigned to appropriate cases by the Chief Judge of the division or branch of the Siletz Tribal Court. The assigned mediator shall meet with the parties in the case and shall attempt to reach an agreed resolution to the case. Resolution shall be expressed in writing and shall be approved by the Chief Judge or delegated Associate Judge. Such approval shall not be unreasonably withheld.

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(c) **Term of Office.** Mediators shall be appointed for a period of time established by the Tribal Council. Mediators shall be compensated at a rate determined by the Tribal Council.

§ 3.018 REMOVAL OF THE CHIEF JUDGE & ASSOCIATE JUDGES

During the tenure of their appointment, the Chief Judge *or* Associate Judges may be suspended or dismissed only for cause by the Tribal Council upon due notice and an opportunity for a hearing open to tribal members. The judge whose suspension or dismissal is being considered shall be given written notice of the hearing, a copy of the Tribal Council Resolution authorizing the suspension or dismissal hearing, and a statement of the reasons supporting suspension or dismissal. The hearing shall be scheduled at least ten (10) days after written notice of the hearing is sent by certified mail to the last known address of the judge whose suspension or dismissal is being considered, with a copy to the Tribal Court, to the attention of the specific judge. The suspension or dismissal hearing shall be conducted by the Chairman of the Tribal Council, as presiding officer. In his or her absence, the Vice-Chairman or other presiding Tribal Council member shall conduct the hearing. The case for suspension or dismissal shall be presented by the Tribal Attorney. The presiding officer shall have broad latitude in the conduct of the hearing, including the presentation of witnesses, the allowance of evidence, and the conduct of the parties. Tribal Court Rules of Procedure shall not apply to the hearing, except as specifically adopted by the presiding officer at the commencement of the hearing. The judge whose suspension or dismissal is being considered may be represented by counsel, at his or her own expense. The Tribal Council may refer to State or Federal Rules or Canons of Judicial Conduct to define good cause in the suspension or dismissal hearing. The Tribal Council shall consider its decision in executive session, and shall make its decision by Resolution. The decision of the Tribal council shall be made in writing, and shall contain a statement of reasons supporting the decision. The decision shall be sent by certified mail to the judge whose Suspension or dismissal is at issue, with a copy to the Tribal Court to the attention of the specific judge. The decision of the Tribal Council regarding suspension or dismissal of the Chief Judge *or* an Associate Judge pursuant to Article I, §2 of the Siletz Constitution shall be final for the Tribe.

§ 3.019 COURT CLERK

The Tribal Court clerk shall be hired by the Chief Judge with advice and consent of the Tribal Council. The Court Clerk shall be responsible, at the chief Judge's direction, for the routine administration of the court. The Court Clerk must be qualified to accomplish the written and administrative tasks of the position. The Court Clerk shall collect and compile statistical and

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other data reflecting the state of the court's business and any need for judicial assistance. The Court Clerk shall make reports of the business transacted by the court as requested from time to time.

§ 3.020 LEGAL INTERNS

Qualified law students, law clerks and graduates of approved law schools may serve as defenders or advocates before the Tribal court. Legal Interns shall complete the testing and requirements of admission to the Tribal Bar prior to practicing before the Court or operate under the supervision of a person licensed to practice before the Court.

§ 3.021 COURT INTERPRETERS

(a) The use of qualified interpreters is authorized in judicial proceeding involving hearing impaired and/or non English speaking individuals. All interpreters serving in a legal proceeding, whether certified or uncertified, shall abide by the following rules:

- (1) An interpreter who violates any of the provisions of this section is subject to a citation for contempt, or any other sanction that may be imposed by law.
- (2) An interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.
- (3) An interpreter shall *interpret* or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible, what has been stated in the language of the speaker, giving consideration to the variations of grammar and syntax for both languages involved.
- (4) An interpreter shall use a level of communication that best conveys the meaning of the source, and shall not interject the interpreter's personal moods or attitudes.
- (5) When an interpreter has any reservation about his or her ability to satisfy an assignment competently, the *interpreter* shall immediately convey that reservation to the parties and to the court. If the communication mode or

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language of the non-English speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.

- (6) No interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend or relative of a contending party unless a specific exception is allowed by the court for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has an interest, financial or otherwise, in the outcome. Nor shall any interpreter serve in a matter where the interpreter has participated in the choice of counsel.
- (7) Except in the interpreter's official capacity, no interpreter shall discuss, report or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law, without the written consent of the parties to the communication, or pursuant to court order.
- (8) A language interpreter shall report immediately to the court any solicitation or effort by another to induce or encourage the interpreter to violate any law.

§ 3.022 TRIBAL BAR

(a) **Right to Representation.** Any party may be represented at his or her expense by a attorney or spokesperson admitted to practice before the Siletz Tribal Court at any stage of the proceeding. The Tribal Council is authorized to utilize the tribal attorney to represent it or the Tribe in any matter before the Court. The Chief Judge has the authority to appoint counsel to assist any person appearing in Tribal Court if, in the discretion of the court, it is necessary to protect that person's criminal or civil rights. Such person must pay the fee of appointed counsel, unless the Court or the Tribal Council shall determine that funds are available to pay appointed counsel's fee. The determination to pay such fees shall be made on a case by case basis. Appointed counsel may be an attorney or other spokesperson who is a member of the Siletz Tribal Bar.

(b) **Admission.**

- (1) The following classes of persons are eligible for admission to the Tribal Bar if otherwise qualified:

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- (A) Enrolled members of the Siletz Tribe;
- (B) Other Indians resident or domiciled on the Siletz reservation;
- (C) A licensed member of any other tribal or state bar association;
- (2) To be admitted to the Siletz Tribal Bar, a person must:
 - (A) be at the time of admission and continue to be of good moral character, and
 - (B) pass a prescribed test, and
 - (C) sign and take the spokesperson's oath, and
 - (D) be approved by the court, and pay the Tribal Court Bar admission fee.

(c) **Test.** The admission test shall include, but is not limited to, demonstration of knowledge of the Siletz Constitution, Ordinances and Code, and Siletz Tribal policies and Court rules and procedures. The test will be devised and administered by the Chief Judge. The test may be written or oral, to be determined by the Chief Judge at the time of the test. Persons already admitted to the Tribal Court Bar shall not be required to complete such admission test.

(d) **Fees.** The admission fee to practice before Siletz Tribal Court is fifty (\$50.00) dollars. The fee, or part of it, may be waived by the presiding judge if good cause is shown.

(e) **Spokespersons Conduct Before Tribal Court.** The Court may establish rules of conduct for the practice of spokespersons before the Tribal Court. In the absence of such rules, the Court may refer to State or Federal Rules of professional Conduct for attorneys as a guide to govern the conduct of spokespersons before the Court.

(f) **Disbarment.** Any member of the Tribal Bar who violates the Oath of Admittance to the Tribal Bar or the Rules of Conduct for Tribal Court shall be subject to disbarment. Any Judge may submit a written complaint against such person. The Chief Judge shall hold a hearing, at which the person may present a defense of his or her actions. If

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disbarred, any Tribal Bar admittance fees shall be refunded. The decision of the Chief Judge shall be final.

(g) **Roster.** The Clerk of the Court will maintain a roster of all persons admitted to practice before the Siletz Tribal Court, and maintain a file of their oaths.

**PART III EXPLANATION OF PETITION, PRE-HEARING,
HEARING & TECHNICALITIES**

§ 3.023 STARTING OF AN ACTION

(a) **Commencement of Action.** A civil action is commenced by the filing of a complaint and the serving of a copy of such and a summons on the defendant or defendants. The court shall have jurisdiction from such time as the complaint is filed with the Court Clerk.

(b) **Service of Process.** Service of process shall consist of delivering to the party served, a copy of the complaint along with the summons which advises the defendant that they are required to respond to the complaint within twenty (20) days or a default judgment granting the plaintiff all the relief requested will be entered against them.

- (1) The return of service shall be endorsed with the name of the person serving the summons and the date, time, and place of service. The return of service shall be filed with the Court Clerk.
- (2) Service may be made on a party by delivering the required papers to the party or upon some person of suitable age and discretion over 18 years of age at the party's home or principal place of business, or an officer, managing agent or employee, or partner of a non-individual party.
- (3) Service by publication may be made only upon order of the court for good cause shown by publishing the contents of the summons and complaint in a local newspaper of general circulation at least once per week for four weeks and in addition by leaving an extra copy of the summons and complaint or paper with the court and mailing copies of such to the party.

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- (4) Service may be made by any law enforcement officer or other person, not a party, who is 18 years of age or older.
- (5) Service upon a person otherwise subject to the jurisdiction of the Siletz Tribal Court may be made anywhere in the United States; otherwise, service shall be made within the territorial jurisdiction of the Court.
- (6) If a person personally refuses to accept service, service shall be deemed perfected if the person is informed of the purpose of the service and offered copies of the papers served.
- (7) All papers required to be filed shall be served as under this rule or, except for the summons and complaint, may be served upon the spokesman or attorney of a party. Service of all papers except the complaint may be made by mail, first class postage prepaid and properly addressed.

§ 3.024 **TIME**

(a) **Computation.** In computing any period of time set forth herein, the day that the period is to commence shall not be counted and the last day of the period shall be counted; provided however, that any time period will count only regular business days, Monday through Friday, and will not include intermediate Saturdays, Sundays, or legal holidays. This section pertains to timeframes of ten days or less. If more than ten days, then all days shall be counted.

(b) **Enlargement.** The court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

(c) **Notice of Motions.** Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served not later than seven (7) days prior to the time specified for hearing.

(d) **Service By Mail.** Whenever service is accomplished by mail, three (3) additional days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period.

§ 3.025 **PLEADINGS, MOTIONS AND ORDERS**

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(a) **Pleadings.** There shall be a complaint and an answer; and/or a responsive pleading. A responsive pleading shall be allowed whenever by cross claim, counterclaim or otherwise, a party is first claimed against unless the court shall otherwise order.

(b) **Amendments.** The Court may, in its sole discretion, grant to the Parties reasonable time, not to exceed ten (10) days, within which a Complaint, answer and/or response thereto can be amended.

(c) **Responsive Pleadings.** A Defendant shall have twenty (20) days from the date a Summons and Complaint is served upon them to file a responsive pleading. If the Complaint is amended, the Defendant shall have fifteen (15) days from the date the amended Complaint is received to file their response. The responsive pleading shall fully respond to the allegations in the complaint and set forth any grounds that show why the Complaint has not set out a triable issue. A response may be supported by affidavits. Copies of the response shall be served on the Plaintiff and filed with the Court Clerk.

(d) **Preliminary Review.** The Chief Judge shall review the Complaint and response to determine if sufficient facts have been alleged to create a triable issue. If no triable issue is alleged, the Petition shall be dismissed.

(e) **Pretrial Conference.**

- (1) A pretrial conference as provided herein may be held in all civil cases once the case is at issue.
- (2) The Chief Judge by order, or on the motion of any party, may at his or her discretion direct counsel for the parties and/or the parties to appear before the court for a pretrial conference in civil cases to consider:
 - (A) the simplification of the issues;
 - (B) the necessity or desirability for amendments to the pleadings;
 - (C) possibility for admissions of fact and of documents that will avoid unnecessary proof;
 - (D) the limitation of the number of expert witnesses; and

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- (E) such other matters as may aid in the disposition of the action.
- (3) There shall be no record or transcript made of the proceeding of the pretrial conference nor shall any statement made therein by any person be used for any purpose should the case ultimately come to trial. If agreement is reached on some or all of the issues presented in the case, such agreement shall be recorded by the Judge conducting the pretrial conference or the Court Clerk at the Chief Judge's direction, and may be embodied in a final or interlocutory order or judgment or in a pretrial order prepared to govern the conduct of any trial subsequently held.
- (4) Pretrial conferences as provided herein shall not be open to the public nor shall spokespersons be allowed to attend as representatives of the parties unless the parties themselves are present.
- (f) **Settlement Conference.**
- (1) The Chief Judge will determine if one or more settlement conferences are appropriate in each civil action. The clerk of the court will notify each party if a settlement conference is to be held. The notice will specify the date, time, and place of the conference; the name of the judge or judge pro tempore who will conduct the conference; and whether the parties are required to attend the conference.
- (2) The Judge conducting the settlement conference shall listen to the positions of the parties and attempt to work out a settlement of all or some of the issues of the case. Those in attendance should be ready to seriously consider the possibility of settlement and other matters which may promote the fair and prompt disposition of the case.
- (3) If the parties agree to settle the case, to limit the issues, or to other matters to promote the prompt and fair disposition of the case, the settlement Judge may issue an order consistent with the agreement of the parties. Such agreement shall be reduced to writing and signed by the parties thereto. If the settlement order fully settles the case the Court Clerk will immediately issue the mandate to the Trial Court with directions to enter judgment as indicated in the order.

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- (4) If the parties cannot settle the matter, the Chief Judge shall set the issues for trial before a Judge who did not hear the settlement conference.
- (5) Nothing said in the settlement conference shall be admissible in a subsequent hearing except written agreements and orders. No order shall be entered by the Judge unless both sides to the complaint voluntarily agree, at the time of the settlement conference.

§ 3.026 MOTIONS AND ORDERS

(a) **Motions.** An application to the court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefor stated with particularity. A motion and notice thereof may be set forth together.

(b) **Pretrial Motions.** From the time an action is commenced, the Tribal Court acquires jurisdiction for all purposes, including the power to control its own calendar and records. The Tribal Judge, at any time or place, on such notice (if any) as he or she may consider reasonable may make orders for the advancement, conduct, and hearing of actions.

(c) **Orders.** An order includes every direction of the court whether included in a judgment or not, and may be made with or without notice to adverse parties and may be vacated or modified with or without notice.

(d) **Hearings on Motions and Orders.** A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

§ 3.027 GENERAL RULES OF PLEADING

(a) **General Content of Claims and Defenses.** Claims and defenses shall be simply, concisely, and directly stated, but may be stated in the alternative form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

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(b) **Defenses and Denials.** A party shall state in plain concise terms the grounds upon which he/she bases their defense to claims pleaded against him/her, and shall admit or deny the claims and statements upon which the adverse party relies. If he/she is without information or knowledge regarding a statement or claim, he/she shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the part could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

(c) **Affirmative Defenses.** Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counter-claim or vice versa, the court may treat the pleading as if it had been properly designated if justice so requires.

(d) **Construction of Pleadings.** All pleadings shall be construed so as to do substantial justice.

§ 3.028 FORM OF PLEADINGS

(a) **Caption.** Every pleading shall contain a caption heading, the name of the court, the title of the action, the court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties, except the name of the first party on each side may be used on pleadings other than the complaint.

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

§ 3.029 DEFENSES AND OBJECTION

(a) **When Presented.** A defendant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon him to answer or respond to the claim.

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(b) **Motions.** Motions to dismiss or make the opposing party's pleadings more definite may be made before answering a claim and a response will not be due until ten (10) days after the disposition of the motion by the Court.

§ 3.030 COUNTERCLAIM OR CROSSCLAIM

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

(b) **Crossclaim.** A party against who a claim is made may assert any claim he/she has against a co-party and have such claim resolved at trial.

(c) **Third Party Claim.** A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

§ 3.031 AMENDMENT OF PLEADINGS

(a) **Amendment Before Trial.** A party may amend his pleadings once before the opposing party has replied or if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.

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

§ 3.032 PARTIES

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

(b) **Guardian Ad Litem.** When an infant, insane, incapable or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

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(c) **Class Actions.**

- (1) If the allegations in the Complaint indicate that several persons were affected similarly by the alleged actions of the Defendant, the review shall be treated as a class action and the Court Clerk shall notify all potential parties of the pending review and an opportunity to argue that class action is not appropriate. The relief, if any, awarded by the Court shall apply to all such parties not expressing to the Court, in writing, prior to the rendering of a decision, a desire not to participate in the proceeding. Persons electing not to participate in the proceeding are bound by the judgment therein but they may request alternative relief which may be considered by the Court.
- (2) The parent or parents or guardian of any minor child who has a right of action under this code may bring an action on behalf of such minor and shall be deemed the plaintiff for the purposes of these procedures.

(d) **Joinder of Parties.** To the greatest extent possible given the limited jurisdiction of the Siletz Tribal Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court lacks jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

§ 3.033 DISCOVERY

(a) **Interrogatories.** A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within thirty (30) days of receipt of same.

(b) **Depositions.** A party may take oral deposition of an adverse party or non-party witness under oath upon not less than ten (10) days written notice, specifying the time and place on the reservation where such will occur.

(c) **Production, Entry, or Inspection.** A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within twenty (20) days reply as to whether or not such will be allowed and if not, why not.

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(d) **Extent of Discovery.** Parties may obtain discovery regarding any matter not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's spokesman or attorney.

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

(f) **Failure to Make Discovery.** If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the court may award costs to the non-defaulting party. If a Party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party in an aggravated case.

(g) **Use of Discovery.** Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

§ 3.034 POSTPONEMENT

Upon motion of a party, the court may in its discretion, and upon such terms as it deems just, postpone a trial or proceeding upon good cause shown.

§ 3.035 CONSOLIDATION; SEPARATE TRIALS

(a) **Consolidation.** The court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

(b) **Separate Trials.** The court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

§ 3.036 EVIDENCE

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- (a) **Form and Admissibility.** At all hearings and trials, the testimony of witnesses I shall be taken orally under oath, unless otherwise provided in these rules.
- (b) **Examination and Cross Examination.**
- (1) party may use leading questions against an adverse party Or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.
 - (2) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action unless a privilege applies. A party may impeach his own witness.
 - (3) Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.
- (c) **Physical Evidence.** Written documents and other physical evidence shall be received upon being identified, authenticated, and no privilege and a showing of relevance to the action.
- (d) **Official Documents.** Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be, or if other sufficient indicia of reliability and official, such as a seal of the government, appear on the document.
- (e) **Record of Excluded Evidence.** In an action tried to a jury, excluded evidence, may upon request, be included in the record for purposes of appeal, and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the court, the judge may receive such excluded testimony into the record.

§ 3.037 SUBPOENAS

- (a) **Issuance.** Subpoenas for attendance of witnesses or production of documents or things shall be issued and served by a Tribal law enforcement officer, or any person over 18

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years of age authorized by the Court. when a summons or other civil process is served by one other than a law enforcement officer, the certificate of service shall include the name, telephone number, and address of the person who served the summons or process.

(b) **Failure to Appear.** A person who has been properly served with a subpoena and fails to appear or produce documents or things may be deemed in contempt of court and/or the Court may order his arrest for the offense of Failure to Obey a Lawful Order of the Court.

(c) **Subpoena Unnecessary.** A person present in court, Or before a judicial officer, may be required to testify in the same manner as if he/she were in attendance upon a subpoena.

§ 3.038 HEARING ON THE MERITS

Within three (3) working days of a determination by the Chief Judge that a triable issue is alleged, the Clerk shall notify the Plaintiff and the Defendant in writing of the date the hearing will be held. Copies of such notice shall be sent to the Tribal Chairman in actions involving the Tribal Council, Tribal Officer, or Employer, or cases in which action taken by the Tribe are at issue. Unless an expedited hearing is granted or other good cause is shown by a party, or by order of the court, the hearing will be held not less than ten (10) days or more than thirty (30) days from the date of such notice. The parties shall be notified of the date, time and place of the hearing, the right to present oral and/or physical evidence, the right to be represented by counsel at their own expense, and the right to utilize the Court's authority to compel the appearance of witnesses and tangible documents. Notice of the hearing shall be posted in all tribal area offices.

§ 3.039 PRESIDING JUDGE

Hearings will be held before the Chief Judge. If the Chief Judge has a conflict of interest, or cannot hear the case for good cause, the Acting Chief Judge shall hear the case. If the Acting Chief Judge has a conflict of interest, or cannot hear the case for good cause, an Associate Judge or a Pro Tempore Judge shall be appointed by the Chief Judge to preside at the hearing on the merits. The Judge hearing the case shall be termed the Presiding Judge, and he or she shall exercise all duties of the Chief Judge. A party shall be entitled to challenge a Judge for cause and upon a showing of bias or prejudice by the challenging party, such Judge shall not hear the case.

§ 3.040 CONDUCT OF THE HEARING ON THE MERITS

(a) The cases for each party shall be presented in three phases:

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- (1) Opening statements
- (2) Evidence
- (3) Closing arguments

The Plaintiff shall be first to present each phase of the case. Unless additional time is granted by the Presiding Judge, each party shall have twenty (20) minutes to present the opening statement, and twenty (20) minutes to present the closing arguments. The Plaintiff may reserve a portion of time from the closing argument to present rebuttal to the closing argument of the defendant.

§ 3.041 BURDEN OF PROOF

Unless otherwise provided by Tribal Law, the Plaintiff shall have the burden of proving his or her case by a preponderance of the evidence. This means that the trier of fact must be persuaded, considering all the evidence in the case, that the proposition on which a party has the burden of proof is more probably true than not true.

§ 3.042 RULES OF EVIDENCE

Evidence presented must be relevant to the issue in dispute, i.e., it must tend to prove or disprove a matter in issue. A witness, including a Party, may testify as to a statement made by a person not before the Court if the witness heard the statement when it was uttered by the person alleged to have made the statement. The Court may inquire into the circumstances surrounding the failure of the party offering the statements to present the actual speaker and such circumstances may be considered in determining the credibility of the evidence. Whenever practical, documents presented as evidence are to be originals, if the existence of the document itself is an issue. All issues regarding the admissibility shall be decided by the Presiding Judge, who shall have discretion to exclude any evidence for good cause.

§ 3.043 PRIVILEGED COMMUNICATIONS

Specific Privileges

(a) **Attorney – Client Privilege**

- (1) An attorney or other spokesperson shall not, without the consent of his or her client, be examined as to any communication made by the client to

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him or her or his or her advice given thereon in the course of professional employment.

- (2) The privilege can only be asserted by the client as the holder of the privilege.

(b) Psychologist – Client Privilege

- (1) The confidential communication between a client and a psychologist shall be privileged against compulsory disclosure.
- (2) Any person reporting or testifying in a judicial proceeding concerning alleged child abuse or neglect shall be immune from liability.

(c) Physician – Patient Privilege

- (1) A physician or surgeon shall not, without the patients consent, be examined in a civil action, or criminal proceeding, as to information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient. It must be demonstrated that the patient claiming the privilege consulted the physician or surgeon for treatment, diagnosis, or medical advice. The privilege does not extend to physicians consulted for purposes of litigation.
- (2) The patient is the holder of the privilege which may only be waived by the patient.

(d) Priest – Penitent Privilege

- (1) A clergyman or priest shall not be examined as to any confession made to the clergyman or priest in professional character in the course of discipline of his or her church without the consent of the person making the confession.
- (2) The clergyman, as well as the penitent, is considered to be the holder of the privilege.

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- (A) An exception to the priest - penitent privilege grants immunity from liability for reporting or testifying concerning child neglect or abuse.

- (e) **Marital Privilege.** Marital privilege consists of two types of privileges; testimonial privilege and confidential communications privilege.
 - (1) As long as there is a valid marriage existing at the time a spouse is to be examined or against the other spouse, the testimonial privilege applies.
 - (2) The husband - wife testimonial privilege does not apply to persons engaged in other, quasi-marital relationships.
 - (3) Confidential communications privilege provides that neither husband nor wife shall be examined as to any communication made by one to the other during the marriage without the consent of the other.
 - (4) The confidential communications privilege survives the marriage. The only requirement is that the communication was made during the existence of a valid marriage.
 - (5) The confidential communications privilege is held only by the communicating spouse, who may waive the privilege; a spouse to whom the communication is directed has no privilege.
 - (6) The marital privileges shall not apply to civil actions or proceedings between spouses.
 - (7) The marital privileges do not apply in actions for non-support, or family desertion; and are inapplicable in domestic violence proceedings.

- (f) **Journalists Privilege**
 - (1) This is a qualified privilege under the First Amendment for reporters and their employers against compulsory disclosure of confidential news sources in civil actions.
 - (2) The journalist privilege may not be invoked unless the following 4 factors are shown:

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- (A) the communication must originate in a confidence that it will not be disclosed;
 - (B) the element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
 - (C) the relation must be one which in the opinion of the community ought to be uncompromisingly fostered; and
 - (D) the injury that would inure to the relation of the disclosure of the communication must be greater than the benefit thereby gained for the correct disposal of litigation. the journalist privilege the following must be shown;
- (3) To defeat the journalist privilege the following must be shown;
- (A) the claim must be meritorious;
 - (B) the information sought must be necessary and critical to the claim; and
 - (C) a reasonable effort must be made to acquire the information by other means.
- (g) **Privilege Against Self -Incrimination**
- (1) The privilege against self-incrimination may be invoked in a civil proceeding.
 - (2) In a civil case it is possible for unfavorable inferences to be drawn when the privilege against self-incrimination is invoked.
- (h) **Public Officers Privilege**
- (1) Is a conditional privilege for public officers providing that a public officer shall not be examined as a witness to communications made to him in official confidence when the tribe's interest would suffer by the disclosure.

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- (2) In determining whether the tribe's interest would suffer from disclosure of communications made to a public officer in confidence, the Court must balance the potential harm to the tribe against the right of the litigant to adequately prepare his or her case. The judicial controls imposed on the dissemination of the information confidentially communicated should also be considered in the balancing process.
- (3) Matters discussed in executive session of the Tribal Council, and other matters protected by tribal or federal law shall not be disclosed.

§ 3.044 CONTINUANCES

At any stage of the proceeding, the Court may grant a reasonable continuance upon its own motion or upon a request of a party after a showing of good cause. The Court shall consider the objections of any party to a continuance.

§ 3.045 REMEDIES

In cases against the Tribal Council, if the petitioner meets the burden of is just and practical, the Court shall award the remedy sought to the extent possible. The Court shall award remedies that place the parties in the same position they would have occupied absent the wrongful act or acts committed. If such remedy is not practical, or does not fully compensate the prevailing plaintiff, the Court shall award a monetary judgment calculated to be fair compensation, not to exceed actual monetary loss to the plaintiff and in no case more than five thousand dollars (\$5000.00). The Court may remand back to the Tribal Council for further action if the Council can avoid monetary loss to the Plaintiff. In appropriate cases, where the actions by the plaintiff warrant, the Court may order the Plaintiff to pay costs and attorney fees to a prevailing party. In all other cases, the remedy shall be prescribed by the ordinance under which the action is brought.

§ 3.046 MOTIONS FOR DIRECTED VERDICT AND FOR A JUDGMENT NOT WITHSTANDING THE VERDICT

(a) **Motion for Directed Verdict.** A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefor and may be granted by the court without the assent of the jury.

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(b) **Motion for Judgement Notwithstanding the Verdict.** A party who has made a motion for a directed verdict at the close of all evidence, which motion has been denied or not granted, may, within ten (10) days after entry of judgment, move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been verdict, the party may so move within ten (10) days after the jury has been discharged. A motion for a new trial may be made in the alternative. The court shall enter judgment or make any orders consistent with its decision on the motions.

§ 3.047 FINDINGS BY THE COURT

In cases tried without a jury, except cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the court in support of all final judgments. Upon its own motion or the motion of any party within ten (10) days of the entry of judgement, findings may be amended or added to and the judgment may be accordingly.

§ 3.048 JUDGMENT; COSTS

(a) **Definition.** A judgment includes any final order from which an appeal is available and no special form of judgment is required.

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

(c) **Demand for Judgement.**

(1) Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

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(2) **Judgment By Default.** A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment in the Complaint.

(d) **Costs.** Unless the court shall otherwise direct, the court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the court a verified memorandum which is a specific and detailed list of his costs and necessary disbursements within five (5) days of the entry judgment and serve a copy of such on the opposing party, and if such are not objected to within ten (10) days, they shall be deemed to be a part of and included in the judgment rendered. The appellate court may award costs in a like manner.

(e) **Attorney's Fees.** The court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties under dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively claiming party.

(1) In any action in which the Siletz Tribe and/or any of its officers or employees are sued for a cause of action arising out of or in the course of, the performance of a tribal function or duty, or in any action, except by the Siletz Tribe, against the bond of any such officer or employee, if judgment shall be against the Plaintiff the Court may award a reasonable attorney's fee against such Plaintiff and in favor of the Defendant or Defendants.

§ 3.049 DEFAULT

(a) **Entry of Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the Court Clerk and judgment by default granted. Once the default is entered no further notice to the defaulting party of any action taken or to be taken need be given.

(b) **Judgment by Default.** Judgment by default may be entered by the Court Clerk if a party's claim against the opposing party is for a sum of money, which is or can by computation, be made certain, and if the opposing party has been personally served within the jurisdiction of the court. Otherwise, judgment by default can be entered only by the court upon receipt of whatever evidence the court deems necessary to establish the claim. No judgment by default shall be entered against the Siletz Tribe.

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(c) **Setting Aside Default.** The court may, for good cause shown, set aside either a default or a default judgment.

§ 3.050 DECLARATORY JUDGMENT

A declaratory judgment permits bringing a complaint for a declaration of rights if there is an actual controversy between the parties. The judgment is binding as to present and future rights of the parties to the action. It provides a remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his or her legal rights. It is a binding adjudication of the rights and status of the parties. even though no relief is awarded.

§ 3.051 SUMMARY JUDGMENT

Any time twenty (20) days after commencement of an action, any party may move the court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than ten (10) days prior to the hearing on said motion, shall be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least ten (10) days prior to the hearing.

§ 3.052 ENTRY OF JUDGMENT

(a) **Judgement.** Judgment upon verdict of a jury shall be signed by the Court Clerk and filed. All other judgments shall be signed by a judge and filed with the Court Clerk.

(b) **Effectiveness; Recordation.** A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Court Clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

(c) **Death of a Party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

(d) **Satisfaction of Judgement.** A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his counsel of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A judge may order the entry of satisfaction upon proof of

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payment and failure of the judgment creditor to file a satisfaction. The Court Clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.

(e) **Effect of Satisfaction; Limitation.** A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained anytime prior to the expiration of eight (8) years and will extend the period of limitations an additional eight years and may be thereafter further extended indefinitely by the same procedure.

§ 3.053 NEW TRIALS; AMENDMENTS OF JUDGMENT

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

- (1) error or irregularity which prevented any party from receiving a fair trial;
or
- (2) misconduct of the court; or
- (3) accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial; or
- (4) damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice; or
- (5) insufficiency of the evidence to justify the verdict or that it is contrary to the law; or
- (6) error in law.

(b) **Harmless Error.** A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial or other decision, justice.

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(c) **Support for Motion.** Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits may be filed.

(d) **Court Initiative.** The court may, on its own initiative, not later than (10) days after entry of judgment, order a new trial on any grounds assertible by a party to the action, and affidavits may be filed.

(e) **Motion to Alter or Amend Judgment.** A motion to alter or amend a judgment shall be served not later than ten (10) days after entry of the judgment.

§ 3.054 HARMLESS ERROR

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

§ 3.055 STAY OF PROCEEDINGS TO ENFORCE A JUDGEMENT

(a) **Stay Upon Entry of Judgement.** Proceedings to enforce a judgment may issue immediately upon the entry of the judgement, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

(b) **Stay on Motion for New Trial or for Judgement.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings.

(c) **Injunction Pending Appeal.** when an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

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(d) **Stay Upon Appeal.** When an appeal is taken the appellant by giving a bond in an amount set by the court may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or within ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is approved and is received by the court.

(e) **Stay in Favor of the Siletz Tribe, or Agency Thereof.** When an appeal is taken by the Siletz Tribe, or an officer or agency of the Siletz Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

(f) **Power of Appellate Court Not Limited.** The provisions in this rule do not limit any powers of an appellate court or of a Judge or Justice thereof to stay proceedings during the pendency of an appeal Or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgement subsequently to be entered.

(g) **Stay of Judgement Upon Multiple Claims.** When a court has ordered a final judgment on some but not all of the claims presented in the action upon the courts specifically finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided nor will the appeal period begin to run. The court may stay enforcement of that judgement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

§ 3.056 DISABILITY OR DISQUALIFICATION OF A JUDGE

(a) **Disability.** If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may, at his discretion, grant a new trial.

(b) **Disqualification.** Whenever a party to any action or proceedings, civil or criminal, or his attorney shall make and file an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his counsel or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter. Every such affidavit shall state

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the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another Judge (naming him or her), who shall then pass upon the legal sufficiency of the affidavit. If the Judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the Judge to whom the affidavit is certified, finds that it is legally sufficient, another Judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one affidavit, and no such affidavit shall be filed unless accompanied by a certificate that such affidavit and application are made in good faith.

§ 3.057 INJUNCTIONS

(a) **Preliminary Injunction; Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(b) **Temporary Restraining Order; Notice; Rehearing; Duration.** No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the court clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed fifteen (15) days as the court fixes, unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matter of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he/she does not do so, the court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

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(c) **Security.** Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required if the United States, the Siletz Indian Tribe, or if an officer, or agency, of either, nor shall it be required of a married person in a suit against the other party to the marriage contract. A surety upon a bond or undertaking under this rule submits her or himself to the jurisdiction of the court and irrevocably appoints the Court Clerk as his or her agent upon whom any papers affecting his or her liability on the bond or undertaking may be served. His or her liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the Court Clerk who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and Scope of Injunction or Retraining Order; Service.** Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Grounds for Injunction.** An injunction may be granted:

- (1) when it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;
- (2) when it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;
- (3) when it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;
- (4) in all other cases where an injunction would be proper in equity.

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§ 3.058 DUTY TO MITIGATE DAMAGES

Any person who alleges that his or her rights have been violated has the duty to take steps to reduce any harm resulting from the alleged violations, provided the steps are reasonable and will not cause unreasonable financial harm or inconvenience.

§ 3.059 COMPLAINTS

All complaints shall be filed by mail or in person with the Court Clerk. The complaint shall be signed by the party bringing the action or his or her spokesperson, and specify their current address and telephone number. This person shall be called the Plaintiff. The complaint shall name the party against whom it is filed, who shall be called the Defendant. It shall set forth, briefly, but specifically, in plain language, all facts supporting the claim, how the action violated the plaintiff's rights, the precise nature of the alleged harm and the remedies sought. A complaint may be supported by affidavits. The Court clerk, with the permission of the Chief Judge, may assist the petitioner in the preparation of the Complaint if assistance is requested. In no event shall the Court Clerk be liable for erroneous advice.

§ 3.060 OPEN PROCEEDINGS

All proceedings shall be open to the public and press unless the presiding judge determines that, due to the highly sensitive nature, testimony by young children or other circumstance which could cause extreme embarrassment to witnesses or parties, the proceeding should be closed.

§ 3.061 EXCLUSION OF WITNESSES

Upon motion of either party, the presiding Judge shall exclude witnesses not actually testifying from the room where the proceedings are being held.

§ 3.062 EXPEDITED HEARINGS

(a) **Request for Expedited Hearing.** Any party may request that a hearing be held within five (5) days of the filing of a Complaint in cases where the alleged harm can be

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prevented and the damage will be irreparable. Requests for expedited hearings, and the reasons therefor, must be presented in writing to the Clerk of the Court.

(b) **Decisions to Invoke Expedited Hearing Procedures.** The Chief Judge shall decide whether good cause exists to hold an expedited hearing. Decisions normally shall be based solely on the allegations in the complaint and the written request. In extraordinary circumstances, the Chief Judge may discuss the case with the Plaintiff and defendant before granting an expedited hearing. A decision to grant or deny a request for an expedited hearing must be made within forty-eight (48) hours of the request being submitted to the Clerk.

(c) **Expedited Hearing.** Hearings under these provisions shall be held at the earliest possible time, not to exceed five (5) days from the filing of the request and shall be conducted in the same manner as a Hearing On The Merits.

§ 3.063 REMEDIES

In any case where the Court determines that the Plaintiff has met the burden of proof, the Court shall grant a remedy which will prevent the alleged harm from continuing, recurring and/or place the parties in the same position they would have occupied absent the alleged violation. In appropriate cases, the Court may enjoin the offending party from taking action which would create further harm. Remedies against the Tribe or its officials are limited as set forth in this code.

**Part IV RULES FOR APPEALS OF TRIBAL DEPARTMENT
ADMINISTRATIVE ACTIONS**

§ 3.064 REVIEW OF TRIBAL ADMINISTRATIVE DECISIONS

(a) **Jurisdiction.** The Tribal Court shall have jurisdiction to review any final administrative action involving any Tribal Department taken pursuant to the Tribal Administrative Procedures Ordinance (APO). Jurisdiction shall vest in the Tribal Court only when all administrative remedies have been exhausted. Prior to assuming jurisdiction over any appeal from an administrative action, the Court must make a finding that the facts alleged demonstrate a clear violation of the Indian Civil Rights Act or a clear violation under the standard of review set out in section 3.005 of the Siletz Tribal Court Rules and Procedures. The Tribal Court shall defer to the factual determinations made at the administrative level and factual determinations should take place at the administrative level. If the Tribal Court determines that a violation of law has occurred, the usual remedy should be remand to the administrative level for

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new factual and legal findings consistent with applicable law. The Tribal Court will sit as an appellate court in reviewing tribal administrative actions. For purposes of this Part, actions include any decision, order, or declaratory judgment issued by a Tribal Department. However, the Tribal Court shall not have jurisdiction to hear claims that a Tribal Department has not yet promulgated rules or regulations in the manner set out in APO sections titled “Departmental Authority to Develop Rules and Regulations” and “Public Notice and Comment on Rules”; and Tribal Departments may operate under existing Tribal Council approved policies, regulations, manuals or rules in a manner consistent with the procedural framework of other sections of the APO.

(b) **Who Appeals Heard By.** Appeals of administrative actions of Tribal Departments shall be heard by the Chief Judge. If the Chief Judge is unable for any reason to hear the appeal, the Chief Judge shall appoint an Associate Judge to hear the appeal.

(c) **Notice of Appeal.** A person or party aggrieved by a final administrative action of a Tribal Department shall file his or her Notice of Appeal, in a form provided by the Department to the person or party with the final administrative action, within thirty (30) days of receipt of said action. Any person or party who is the subject of a final administrative action by a Tribal Department shall be notified of his or her right of appeal to the Tribal Court, and shall be provided in writing with the procedures necessary to make an appeal. The Notice of Appeal shall be filed with the Tribal Court Clerk, and a copy shall be served on the Tribal Department whose action is being appealed. The Notice of Appeal will include the names and addresses of all affected parties and a summary of the issue or issues being appealed.

(d) **Time for Oral Argument; Written Argument.** Upon receipt of a Notice of Appeal under this Part, the Tribal Court will set a date, time and place for oral argument on the hearing, and a schedule setting forth the deadlines when written arguments and responses, if any, shall be submitted to the Court. Argument shall be set no more than sixty (60) days from the date the Notice of Appeal was filed with the Tribal Court and served on the Tribal Department. Written arguments submitted by any party shall be served on all other parties to the appeal. The Tribal Court will distribute in writing its order setting the argument and briefing schedule; said notice will include notice of the right of affected parties to be represented by counsel in the appeal at their own expense.

(e) **Extension of Deadlines.** For good cause shown or upon the Court's own motion, deadlines set out in this Part may be modified or extended.

(f) **Oral Argument.** Each affected party to a final administrative action issued by a

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Tribal Department, and the Department, may present oral arguments at the hearing, in person or through counsel of the party's choosing. Argument will be limited to twenty (20) minutes for each party unless additional time is granted by the Tribal Court.

(g) **Record From Final Administrative Action.** Upon receipt of a Notice of Appeal from a final administrative action by a Tribal Department, the Tribal Department shall file with the Tribal Court, within ten (10) days, a record of the proceeding or proceedings within the Tribal Department, including any recording or summary of the proceeding itself, the actions taken by the Department at any level, including any opinion rendered, and all evidence submitted by any party.

(h) **New Evidence; Hearing.** Parties appealing a final administrative action of a Tribal Department will not be allowed to call witnesses or to present evidence in the appeal proceeding, or to present or argue evidence or arguments not presented in the administrative proceeding, absent extraordinary circumstances. The appeal of a final administrative action by a Tribal Department will generally be considered only on the record made below. A request to present evidence or to call witnesses at the appellate argument shall be made in writing at least five (5) days prior to the scheduled date for argument, and will be ruled upon by the Tribal Court at least three (3) days prior to said argument. Nothing in this section shall prevent additional evidence from being presented at the administrative level upon remand.

(i) **Amicus Briefs.** The Tribal Court may, in its sole discretion, allow parties to submit amicus briefs on an appeal of a final administrative action of a Tribal Department. An "amicus brief" means "friend of the court brief", which is a written statement by a non-party who would likely be affected by the decision.

(j) **Decision of the Court.** The Tribal Court shall render a decision in writing within thirty (30) days of the date of oral argument, and shall serve a copy of the decision on all affected parties. The Court may affirm, reverse, remand, or modify the final administrative action of the Tribal Department. If the administrative action is not affirmed, the usual remedy is remand. The written decision will set forth the decision, the reasons therefore, and the remedy, if any, granted. Any appeal from the decision of the Tribal Court shall take place in accordance with the procedures set forth in Part IV of this Ordinance.

PART V RULES OF APPEAL TO APPELLATE COURT FROM TRIBAL COURT

§ 3.065 APPEALS FROM TRIBAL COURT - APPELLATE RULES

Adopted: 1/15/84

Amended: 5/1/99, 3/16/01, 8/19/05,
9/16/05, 5/8/09.

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(a) **Scope of Rules.** These rules shall govern appeals from decisions of the Siletz Tribal Court in civil and criminal cases, and appeals from other tribal proceedings specifically providing for appeal under the Siletz Civil and Criminal Codes, or under any of the ordinances of the Siletz Tribe.

(b) **Court of Appeals Composition.** A panel of three judges selected by the Tribal Council to sit as the Siletz Court of Appeals to sit when necessary to hear appeals. The Tribal Council shall select judges who meet the eligibility requirements under the Tribe's Civil Code.

(c) **Conflict of Interest.** No person shall be qualified to sit on a panel of the Court of Appeals in any case in which he or she has a direct interest, or wherein any relative by marriage or blood, in the first, or second degree is a party. The trial judge who heard the case appealed from shall not sit on the appellate panel.

(d) **Appeal as a Matter of Right.** My aggrieved party may seek review of a final order, commitment or judgement of the Siletz Tribal Court in the Court of Appeals. The Siletz Tribe shall not be deemed an aggrieved party under this section as to final judgements of acquittal of a criminal defendant.

(e) **Appeal by Permission.** An aggrieved party may seek appellate review of acts of the Tribal Court which are not final by filing a notice for permission to appeal in the court of Appeals. Permission may be granted if;

- (1) The Tribal Court has committed an obvious error which would render further proceedings useless; or
- (2) The Tribal Court has committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act; or
- (3) The Tribal Court has departed so far from the usual and accepted course of judicial proceedings as to call for review by the Court of Appeals.

(f) **Basis for Court of Appeals Decision.** The Court of Appeals shall review the record of proceedings from Tribal Court, appellate briefs of the Appellant and Respondent and oral arguments of the parties in rendering its decision.

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(g) **Issues of Law and Fact.** The Court of Appeals shall limit its review to issues of law except that the Court of Appeals may review findings of fact in cases tried before a judge sitting without a jury and shall set aside such findings of fact if they are clearly erroneous.

(h) **Notice of Appeal.** A notice of appeal must be filed with the Tribal Court and with the Court of Appeals within fifteen (15) days after the entry of the decision of the Tribal Court which the party filing notice wants reviewed, and be sent to opposing and interested parties.

(i) **Filing Fees.** A filing fee of fifty (\$50.00) dollars must accompany any notice of appeal. The filing fee may be waived by the Court of Appeals upon a written request of the party with a showing of good cause.

(j) **Service of Notice.** Within thirty (30) days of filing notice of, an appeal, the party filing shall cause a copy of the notice be served on all parties and return affidavit of service to the Court of Appeals, or file for an extension of time.

(k) **Contents of Notice.** The notice of appeal or notice for permission to appeal shall be titled as such and shall:

- (1) Specify the party seeking review;
- (2) State the grounds for appeal; designate those parts of the decision which the party wants reviewed;
- (3) Name the appellate court to which the review is taken; and
- (4) Include the names and addresses of all parties and their spokespersons, if any.

(l) **Acceptance of an Appeal as a Matter of Right.** The Court of Appeals will conduct a preliminary review of any appeal submitted, to determine if an appealable issue exists. If no such issues exists, the appeal will be dismissed, with proper notification.

(m) **Acceptance of an Appeal by Permission.** The Court of Appeals accepts review of an appeal by permission upon granting a motion for permission to appeal. A party seeking permission to appeal must file a motion and accompanying order in the Court of Appeals within ten (10) days of filing a notice for permission to appeal. The Court of Appeals may hold a

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hearing on the motion and shall give written notice of its decision to the parties and to the Tribal Court. A denial of a motion for appeal by permission shall not affect a party's right to appeal as a matter of right.

(n) **Stay of Judgement.** A motion for an order to stay the judgement or order rendered by the Trial Court, may be made pending an appeal. The motion shall be made first to the Trial Court at the time of filing a notice of appeal or notice for permission to appeal. If the Trial Court denies the motion it may be filed with the Court of Appeals. Stays shall be liberally granted.

(o) **Appeal Bond.** A stay may, in the Court's discretion, be conditioned on filing cash or a bond in amount set by the deciding court. The amount shall be sufficient to guarantee performance of the judgment or order plus interest and costs of appeal. Any surety On a bond must be approved by the deciding court.

(p) **Release in Criminal Cases.** A motion for release following a conviction in a criminal case shall be filed in the Trial Court. If the motion is denied, a motion may be filed in the Court of Appeals. The motion shall be considered promptly upon such papers and affidavits as the parties present and after reasonable notice to all parties. The burden of establishing that the defendant shall not flee or pose a danger to society rests with the defendant.

(q) **Motions.** An application for an order or other relief shall be made in a motion to the Court of Appeals with proof of service on all other parties.

All motions shall include:

- (1) A statement of the relief sought;
- (2) A statement of the grounds for the relief sought;
- (3) Supporting argument.

All motions shall be accompanied by an appropriate order prepared by the moving party. Any party may file a response in opposition to a 'motion within fifteen (15) days after service of the motion. The Court may shorten or extend the time allowed for responding to a motion. No motion shall be accepted for filing unless accompanied by proof of service on opposing parties.

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(r) **Appeal Conference Order.** The parties must be prepared to consider settlement in civil appeals, limitations of the issues to be presented for review, and other matters which may promote the prompt and fair disposition of the appeal. If agreement to these matters is reached, the judge conducting the conference shall enter an order consistent with the agreement, signed by the parties, which shall be binding on the parties during the review process. The judge selected for settlement determination shall not be selected to hear the appeal.

(s) **The Appeal Record-Contents and Filing.** Within twenty (20) days after notice of appeal is filed or after acceptance of review, the party making the appeal shall obtain a copy of the trial record from the Court Clerk and shall file it with the Court of Appeals. The record shall contain the original papers and exhibits filed in the Trial Court, a written transcript of the proceedings, if any, three (3) copies of the tape recording of the proceedings and a copy of the docket entries prepared by the Court Clerk.

(t) **Cost of Preparing the Record.** The party making the appeal shall pay the costs incurred by the Trial Court in preparing and transmitting the record. The Trial Court Clerk shall submit a bill of the costs to the party making the appeal for payment. The costs of preparing and transmitting the record may be waived by the Trial Court upon a showing of indigence, or other reason indicating substantial injustice.

(u) **Statement of Proceedings Absent Transcript.** If a record of the proceedings is not available, the party seeking review may prepare a statement of the proceedings using the best available means, including his recollections. The statement shall be served on the respondent who may file objections or amendments within ten (10) days after service. Settlement and approval of the statement shall be made by the Trial Court.

(v) **Filing of Briefs.** Within thirty (30) days of filing a notice of appeal or acceptance of review by permission, the party making the appeal shall file with the Court of Appeals a written brief, memorandum or statement in support of his appeal and serve a copy on all parties. The Court of Appeals may allow a longer time for filing briefs, in its discretion. The respondent shall have thirty (30) days after service of appellant's brief in which to file a reply brief, memorandum or statement and shall serve a copy on each party. A response shall be allowed a party on leave of Court. All briefs shall be accompanied by an affidavit of service on opposing parties.

(w) **Content of Appellant's Brief.** The brief of a party making the appeal should be typed and organized as follows:

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- (1) Cover page. The front cover page shall state the name of the Court and the number of the case, the title of the document (e.g. Brief for Appellant) and the name and address of the spokesperson, if any, and the name and address of the appellant.
- (2) Tables. A table of contents, with page references and a table of cases cited in the brief, a list of other authorities relied upon with reference to the page of the brief where used.
- (3) Assignments of error. A separate concise statement of each error the party contends was made by the Trial Court, together with the issues pertaining to the assignments of error.
- (4) Statement of the Case. A fair statement of the facts and procedure of the trial which are relevant to the issues presented for review, without argument.
- (5) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.
- (6) Conclusions. A short conclusion precisely stating the relief sought.
- (7) Amicus Curiae Brief: An amicus curiae brief may be filed by a person or Tribe interested in the case by leave of the Court of Appeals. Time for filing shall be set by the Court. A party may file a brief in response to the amicus curiae brief.

(x) **Oral Argument.** The Court Clerk shall advise all parties of the time and place at which oral argument shall be heard. Each side is allowed thirty (30) minutes for oral argument. Additional time may be granted by the Court where it is deemed necessary. Amicus Curiae may present oral argument at the discretion of the Court.

(y) **Form of Judgment.** The court of Appeals may reverse, affirm or modify the Trial Court decision being reviewed and take any other action as the merits of the case and the interest of justice may require.

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- (1) **Entry of Judgement:** Entry of judgement shall be made by the Court Clerk by notation in the docket at the direction of the Court. The clerk shall mail notification of the entry of judgement and a copy of opinion, if any, to the Trial Court and to all parties.

(z) **Costs.** Costs on appeal are those incurred by a party in having the record prepared and transmitted, the premiums paid for any appeal bonds and the fee paid for filing the appeal. Costs of review shall be determined and awarded by the Court of Appeals. Appellant shall pay the costs of review if the appeal is dismissed or if the judgement is affirmed. Respondent shall pay the costs if the judgement is reversed. In any other case the costs shall be awarded only as ordered by the Court. The Court may waive costs, if petitioned.

- (1) **Bill of Costs.** A party desiring costs to be assessed shall submit an itemized and verified bill of costs which shall be filed with proof of service on all parties within ten (10) days of being notified of entry of judgement. Objections may be filed within ten (10) days of service.
- (2) **Damages for Frivolous Appeal.** If the Court of Appeals deems that an appeal is frivolous, it may award damages and costs to the respondent.

(NOTE): violation of Rule: Failure to comply with the rules set forth herein may result in revocation of the party's right to participate in the review process.

PART VI CONTEMPT, EXPULSION & CONSTRUCTION

§ 3.066 CIVIL CONTEMPT OF COURT

- (a) Any person may be charged in contempt of court for any of the following reasons:
- (1) Disorderly, contemptuous or insolent behavior, committed in immediate view and presence of the court and directly tending to interrupt Court proceedings or impair the respect due the court;
- (2) Any noise or disturbance that interrupts the Court proceedings;
- (3) The failure to obey or resist any lawful writ, process, order, decree or command of the Court;

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- (4) Unlawful refusal of any person to be sworn or affirmed or refusal to answer any material questions except where refusal is based upon grounds Indian Civil Rights Act of 1968 (82 Stat.77), 25 U.S.C.A. { 1301}. contempt is committed, it may be punished summarily. In such event, a written order shall be made reciting the facts constituting the contempt, adjudging the person guilty of contempt and prescribing the punishment therefor. The Tribal Court Judge may impose immediate sentence of imprisonment for a period not to exceed ninety (90) days or a fine not to exceed one-thousand (\$1000.00) dollars or both jail sentence and fine. Such order shall be final and conclusive.

§ 3.067 EXPULSION OF COUNCIL MEMBERS

Tribal Council members expelled under Article VII, Section 4 of the Tribal Constitution may bring an action within ten (10) days of expulsion and shall be heard pursuant to the rules governing hearings on the merits of a cause within thirty (30) days of the filing of the action.

§ 3.068 CONSTRUCTION

(a) The following principles of construction will apply to all Court Rules and Procedures to answer in the When a and the Law and Order Code unless a different construction is obviously intended.

- (1) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.
- (2) If any provision of these Rules and Code or the application of any provision or circumstance is held invalid, the remainder shall not be affected thereby and to this end the provisions of this Code and Rules are declared to be severable.
- (3) Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing error or omission is otherwise reasonably certain.