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**GRAND PORTAGE BAND OF CHIPPEWA JUDICIAL CODE**

**TITLE I. COURTS**

**CHAPTER I. ESTABLISHMENT AND OPERATION**

**SECTION 1. ESTABLISHMENT OF COURT.**

There is hereby established the Grand Portage Band of Chippewa Tribal Court. The Tribal Court shall consist of a Trial Court, Traditional Forum, and an Appellate Court. This Judicial Code supersedes any Code or Ordinance of the Band that established or otherwise organized a judicial body or court for the Grand Portage Band of Chippewa.

**SECTION 2. TRIBAL DESIGNATION.**

Wherever the formal designation "Band" appears in this Judicial Code, such designation shall also refer to the Grand Portage Band of Chippewa. Any reference to Tribe or Tribal shall refer to the Grand Portage Band of Chippewa or matters of the Grand Portage Band of Chippewa.

**SECTION 3. APPROPRIATIONS.**

(a) The Reservation Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Court for proper administration of justice within the Reservation and for the Band as determined by the Reservation Tribal Council.

(b) To assist the Reservation Tribal Council in making such appropriations, the Chief Judge of the Tribal Court shall submit proposed budgets and reports of expenses and expenditures to the Reservation Tribal Council, at such intervals and in such form as may be prescribed by the Reservation Tribal Council. Such budgets and reports shall include the operation of the office of the Clerk of Court.

(c) The Reservation Tribal Council may prescribe a system of

accounting for funds received from any source by the Courts of the Band and the Clerk of Court.

#### **SECTION 4. CONFLICT WITH OTHER LAWS.**

If the provisions of this Judicial Code conflict with other provisions in the laws of the Grand Portage Band of Chippewa, the provisions of this Judicial Code shall supersede such other provisions.

### **CHAPTER II. JURISDICTION**

#### **SECTION 1. GRAND PORTAGE BAND TRIBAL COURT JURISDICTION.**

The jurisdiction of the Tribal Court shall extend to:

- (a) All actions arising under the Grand Portage Hunting, Fishing, and Trapping Code, and to all persons alleged to have violated provisions of that Code, provided that the act\* [(vis)8.4(i)-2.6iiof-

actions involve or affect the Grand Portage Band of Chippewa or its members, and over persons who enter into consensual relationships with the Band or its members through commercial dealings, contracts, leases, or other arrangements. For the purposes of this Code, "person" shall mean all natural persons, corporations, joint ventures, partnerships, trusts, trust funds, public or private organizations, or any business entity of whatever kind, whether members or non-members of the Grand Portage Band of Chippewa.

**(d)** All civil causes of action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealings with the Band, its agencies, subentities, and corporations chartered pursuant to its laws, and all nuisance claims. The Court shall have original jurisdiction whether the common law cause of action is one which has been defined by the Tribal Court as Band common law, or is one which exists at common law in another jurisdiction and which is brought before the Tribal Court based upon reference to the law of that other jurisdiction. For the purposes of this Code, "common law" shall mean the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from the usages and customs, or from the judgements and decrees of courts recognizing and affirming such usages and customs, and as is generally distinguished from statutory law.

**(e)** The Court shall not have jurisdiction over domestic relations matters unless and until the Grand Portage Band adopts a domestic relations code. "Domestic relations matters" shall include marriage, ante-nuptial contracts, divorce, child custody and support, visitation, paternity, child welfare matters, and adoption.

**(f)** Other actions arising under the laws of the Grand Portage Band of Chippewa, as provided in those laws.

**(g)** The jurisdiction invoked by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

## **SECTION 2. NO ACCEPTANCE OF STATE JURISDICTION.**

Nothing in this Code shall be deemed to constitute acceptance of or deference to the jurisdiction of the State of Minnesota over any civil matter, where such jurisdiction does not otherwise exist.

## **SECTION 3. SUITS AGAINST THE BAND.**

(a) Sovereign Immunity of Band. The sovereign immunity from suit of the Band and every elected Reservation Tribal Council member or tribal official with respect to any action taken in an official capacity or in the exercise of the official powers of any such office, in any court, federal, state or tribal is hereby affirmed; nothing in this Code shall constitute a waiver of the Band's sovereign immunity. The Tribal Court shall have no jurisdiction over any suit brought against the Band in the absence of an unequivocally expressed waiver of that immunity by the Reservation Tribal Council.

(b) Tribal Action Not A Waiver of Sovereign Immunity. No enforcement action taken pursuant to this Code, including the filing of an action by the Band or any agency of the Band in the Tribal Court, shall constitute a waiver of sovereign immunity from suit of the Band, or any elected Reservation Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

(c) Waiver of Sovereign Immunity. The sovereign immunity of the Band and any elected Reservation Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, in any action filed in the Tribal Court with respect thereto, may only be waived by a formal resolution of the Reservation Tribal Council. All waivers shall be unequivocally expressed in such resolution. No waiver of the Band's sovereign immunity from suit may be implied from any action or document. Waivers of sovereign immunity shall not be general but shall be specific and limited as to the jurisdiction or forum within which an action may be heard, duration, grantee, action, and property or funds, if any, of the Band or any agency, subdivision or governmental or commercial entity of the Band subject thereto. No express waiver of sovereign immunity by resolution of the Reservation Tribal Council shall be deemed a consent to

the levy of any judgment, lien or attachment upon property of the Band or any agency, subdivision or governmental or commercial entity of the Band other than property specifically pledged or assigned therein.

#### **SECTION 4. INCLUSION OF LANGUAGE FROM OTHER LAWS.**

Inclusion of language, definitions, procedure, or other statutory or administrative provisions of the State of Minnesota or other state or federal entities in the Grand Portage Band of Chippewa Judicial Code shall not be deemed an adoption of that law by the Band and shall not be deemed an action deferring to state or federal jurisdiction within the Grand Portage Reservation where such state or federal jurisdiction may be concurrent or does not otherwise exist.

### **CHAPTER III. JUDGES**

#### **SECTION 1. NUMBER OF JUDGES.**

There shall be a Tribal Court consisting of a Chief Judge and two Associate Judges, at least two of whom shall be lawyers experienced in the practice of Tribal and federal Indian law and licensed to practice in the highest court of any state. By resolution, the Reservation Tribal Council may increase the number of Associate Judges.

#### **SECTION 2. SELECTION.**

All Judges of the Tribal Court shall be selected either by valid contract or appointment.

If selected by contract, selection shall be in accordance with and pursuant to the terms of a contract which authorizes individuals to act in the capacity of Tribal Judge and which authorizes and establishes the Tribal Court. The contract which establishes the Tribal Court shall be subject to the approval of Reservation Tribal Council, in accordance with the Article VI, Section 1 (c), of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota, as amended, and shall be terminated only upon ninety (90) days notice, followed by a referendum vote approving the contract cancellation, at which two-thirds (2/3) vote of all eligible voting members of the Band residing on the Reservation shall vote affirmatively for the cancellation, absent the conditions specified in Section 10, Removal, herein.

If selected by appointment, the two year terms specified in Section 3, Terms, shall only be canceled prior to expiration by a referendum vote terminating the appointment(s) at which

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two-thirds (2/3) vote of all eligible voting members of the Band residing on the Reservation shall vote affirmatively for termination, absent the conditions specified in Section 10, Removal From Office, herein.

### **SECTION 3. TERMS.**

The terms of judges may be established by two methods by the Reservation Tribal Council. One shall be by contract, the other by appointment.

(a) **By Contract.** If the panel of judges is established by contract, each Judge of the Tribal Court shall sit for a term specified in her/his contract which shall provide for the Judges, the Clerk of Court, and Court. Each Judge's term shall terminate only upon termination of the contract which provides for the Court. Vacancies on the Tribal Court will be filled in accordance with and pursuant to the terms of the contract which provides for the Court.

(b) **By Appointment.** If the panel of judges is established by appointment, each Judge of the Tribal Court shall sit for a term of two years and shall be eligible for reappointment to successive terms of two years each. A person appointed to fill an existing vacancy created by the death, resignation, or removal for cause of a Judge shall be appointed initially only for the unexpired portion of the term for which the appointment is made, subject to eligibility for reappointment for the next full term. The first term of the initial Judges of the Tribal Court shall commence on the date on which the Code becomes effective, and those terms shall expire two years thereafter. All subsequent terms of Judges of the Tribal Court shall expire on the first day of the same month bi-annually thereafter. If the number of Associate Judges is increased pursuant to resolution, to be effective on some date other than the commencement of judicial terms as prescribed by this Code, the additional offices shall be filled by initial appointments as though they were vacancies, for the period of time prior to the commencement of the next full judicial term.

### **SECTION 4. QUALIFICATIONS.**

Subject to Section 1 of this Chapter, any person 25 years or older shall be eligible to serve as a Judge of the Tribal Court, except the following:

(a) The Clerk of Court, Assistant Clerks, and members of the Res-

ervation Tribal Council.

(b) Those who have been convicted by a court of the United States or of any State of the United States for a felony, as a felony is defined by the laws of that jurisdiction or misdemeanor within one year immediately preceding the proposed appointment or contract as judge or justice.

## **SECTION 5. SALARY.**

The Chief Judge and the Associate Judges shall be paid pursuant to the terms of a contract approved by resolution of the Reservation Tribal Council or a salary to be determined by the Reservation Tribal Council if such judges are appointed. The terms of any contract shall authorize the individual(s) to act in the capacity of Tribal Judge, and shall provide for compensation for reasonable and necessary expenses for the individuals acting in the capacity of Tribal Judge for travel and per diem, and shall include reasonable and necessary expenses for the administration of the Court. The compensation or salary of any Chief Judge or Associate Judge shall not be reduced during her/his contract term or appointment term.

## **SECTION 6. CONFLICTS OF INTEREST.**

No judge shall officiate in any proceeding in which she/he has any personal interest, or in which any party, witness or counsel is related to her/him by blood or marriage, within the third degree, or in which any party, witness or counsel stands or has previously stood in the relationship to the Judge of ward, attorney, client, employer, employee, landlord, tenant, business associate, creditor or debtor.

## **SECTION 7. DEPUTY JUDGES.**

The Reservation Tribal Council may by resolution contract with or appoint additional persons as Deputy Judges of the Tribal Court, except that only members of federally-recognized Indian tribes may be appointed to serve as Deputy Judges. Each appointment or contract shall be personal and shall not create an office which survives the death, resignation or removal of the appointee. After her/his appointment or execution of a valid contract, a Deputy Judge shall be responsible to the Chief Judge for the performance of such specific duties as may be assigned her/him by the Chief Judge or by resolution of the Reservation Tribal Council, and she/he shall serve until cases specifically assigned her/him have been completed, or pursuant to the terms of her/his contract.

(a) A Deputy Judge shall perform the duties and functions of a

Judge of the Tribal Court as may be designated by resolution of the Reservation Tribal Council, the Chief Judge, or the terms of her/his contract subject to any restrictions or limitations prescribed by resolution of the Reservation Tribal Council, the Chief Judge or the contract, as the case may be. The findings, rulings, opinions, and orders of a Deputy Judge in matters properly submitted to her/him shall be signed "Judge of the Tribal Court" and shall have the same force and effect as if made and entered by the Chief Judge or an Associate Judge.

**(b)** Subject to any restrictions or limitations imposed by resolution of the Reservation Tribal Council, the Chief Judge or the requisite contract, a Deputy Judge shall have all of the prerogatives and authority of office of an Associate Judge.

**(c)** The Reservation Tribal Council shall prescribe the compensation for each Deputy Judge when she/he is appointed or contracted with, which may be by salary, by per diem allowance while she/he is performing judicial duties, or other appropriate formula, including contract terms. The rate of compensation for an individual Deputy Judge shall not be reduced during her/his period of service in that office without the approval of the Reservation Tribal Council.

**(d)** The eligibility of a person to serve as Deputy Judge shall be the same as that prescribed by this Code for any other Judge of the Tribal Court in addition to the following requirements: prospective Deputy Judges must have a minimum of three years of Tribal/federal Indian law practice as either a judge or lawyer in order to be selected.

## **SECTION 8. APPELLATE PANEL.**

In any appeal from the decision of a trial Judge, whether Chief, Associate, or Deputy, an Appeals Tribunal of three justices may be constituted from the remaining judges, with the appointment of or contracting with one deputy justice to complete the panel. If the remaining judges cannot serve for any reason, including disqualification pursuant to Chapter III, Sections 6 or 10 herein, three deputy justices may be appointed or contracted with. A litigant shall have the right to file an affidavit of conflict of interest as provided in Chapter III, Section 6, against justices on an Appeals Tribunal so constituted or consisting of assigned or contracting Deputy Appeals Justices. Such justices of an Appeals Tribunal so constituted shall serve until cases specially assigned them have been completed pursuant to the terms of their contracts or assignments establishing the position of justice. Such justices of an Appeals Tribunal so constituted may only be removed prior to completion of assigned matters by the Reservation Tribal Council pursuant to the provisions of this Code

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for the removal of a judge of the Tribal Court, Section 10 of this chapter.

#### **SECTION 9. OATH OF OFFICE.**

Each person, prior to assuming the office of Judge or Justice of the Tribal Court, shall take the following oath before the Chairperson of the Reservation Tribal Council:

"I swear (or affirm) that I will support and defend the Constitution, By-laws, and laws of the Grand Portage Band of Chippewa, and the Constitution of the United States, and that I will faithfully and diligently perform the duties of (Chief Judge, Associate Judge, Deputy Judge, Appellate Justice, as applicable) of the Tribal Court, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served."

#### **SECTION 10. REMOVAL FROM OFFICE.**

The Reservation Tribal Council may remove any Judge or Justice of the Tribal Court for cause based upon any of the following grounds:

- (a) Misconduct or incompetence in the performance of her/his duties as Judge.
- (b) Personal conduct involving moral turpitude, whether or not related to judicial duties, or conduct which brings the prestige of her/his office or that of the Band into public disrepute.
- (c) Habitual neglect of her/his duties as Judge or Justice.
- (d) Persistent illness or other disability which renders her/him incapable or otherwise unable to regularly perform her/his duties as Judge or Justice.

Such removal shall be by an affirmative vote of two-thirds of the Reservation Tribal Council at a valid meeting called for the purpose of considering such removal, provided that the subject Judge or Justice shall be given a full hearing and fair opportunity to present testimony and evidence in her/his behalf, and to cross-examine and rebut all witnesses and evidence considered by the Reservation Tribal Council in support of removal. The subject Judge or Justice shall be given not less than ten days written notice in advance of the hearing, which notice shall include an itemization of the charges or grounds for removal which are to be considered. Such notice shall be served by registered or certified mail, or delivered personally to her/him by a party duly authorized by the Reservation Tribal Council. Contracts with Judges or Justices may be terminated for causes (a)-(d) above which shall constitute breaches of such contracts.

## **CHAPTER IV. CLERK OF COURT**

### **SECTION 1. APPOINTMENT, SALARY, DISCHARGE.**

The Clerk of the Tribal Court may be appointed by the Reservation Tribal Council or designated pursuant to a contract establishing Judges for the Grand Portage Band of Chippewa Tribal Court. The Reservation Tribal Council may appoint assistants for the Clerk. The Reservation Tribal Council shall prescribe the salaries of the Judges, Clerk of Court and any assistants which shall be paid by the Band. Any person serving as Clerk or as Assistant Clerk may be discharged from that position pursuant to unanimous vote of the Reservation Tribal Council.

Wherever the formal designation "Clerk" or "Clerk of Court" appears in this Judicial Code, such designation shall also refer to the Court Administrator. Any reference to Clerk or Clerk of Court refer to the Court Administrator. The terms Clerk of Court and Court Administrator shall be interchangeable in the Grand Portage Judicial Code.

### **SECTION 2. DUTIES.**

The Clerk shall be responsible for the administration of the Tribal Court, and for such other administrative and ministerial duties as may be prescribed by this Code or assigned to her/him by the Reservation Tribal Council or the Chief Judge. The duties of the Clerk shall include but shall not be limited to the following:

- (a) Maintaining records of all Tribal Court proceedings to include identification of the title and nature of all cases, the names of the parties, the substance of the complaints, the names and addresses of all witnesses, the dates of hearings and trials, names and addresses of all parties and witnesses appearing at all hearings and trials, all Tribal Court rulings and jury decisions, findings, orders and judgments, and any other facts or circumstances decided by the judges of the Tribal Courts or deemed of importance by the Clerk of Court.
- (b) Maintaining all pleadings, documents, and other materials filed with the Tribal Court.
- (c) Maintaining all evidentiary materials, transcripts, and records of testimony filed with the Tribal Court.
- (d) Establishing and administering a trust account into which all fines, fees, and other monies taken into custody by the Tribal Court shall be deposited. Funds in this trust account shall be used only for

expenses incurred by the Tribal Court, at the discretion of the Clerk of Court with the approval of the Chief Judge.

**(e)** Collecting and accounting for fines, fees, and other monies and properties taken into custody by the Tribal Court, and depositing them into the trust account.

**(f)** Preparing and serving notices, summons, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Code and as may be designated by the Judges of the Tribal Court.

**(g)** Assisting persons in the drafting and execution of complaints, petitions, answers, motions and other pleadings and documents for Tribal Court proceedings; provided, however, the Clerk and her/his assistants shall not give advice on questions of law, nor shall they appear or act on behalf of any person in any Tribal Court proceedings.

**(h)** Administering oaths and witnessing execution of documents.

**(i)** Maintaining a supply of blank forms to be prescribed by the Tribal Court for use by all persons having business before the Tribal Court.

**(j)** Providing copies of documents in Tribal Court files to other persons upon request, and upon receipt of a charge therefor to be prescribed by the Clerk to cover the costs of such services; provided, however, there shall be no charge for such service to the Judges of the Tribal Court, and provided further, no copies of documents or material shall be provided from files which are to be kept confidential or unavailable for public inspection pursuant to any provisions of this Code or other ordinance of the Reservation Tribal Council, or if prohibited by any court order.

**(k)** Providing security for all files, documents and materials filed with or in the custody of the Tribal Court, and insuring that they are not removed from the offices of the Clerk and the Tribal Courts except upon the specific instructions of a Judge of the Tribal Court.

**(l)** Maintaining a library of laws, regulations, orders, opinions, and decisions of the United States and its administrative agencies and courts, the Reservation Tribal Council and the Courts of the Band, and of the various states, insofar as they may be pertinent to the administration of justice for the Band, and within the Reservation. The acquisition of such materials shall be subject to appropriations of funds therefore by the Reservation Tribal Council. Materials in

the library shall be available for use in the office of the Clerk during normal working hours on subject to the jurisdiction of the Tribal Court, and her/his authorized representative.

- (m) Panel members shall not be removed during the term of any action in which a decision has been sought or given.

## **SECTION 2. DUTIES.**

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at the request of a Judge (7.7)-8.3(.)JTJ /F3 1 Tf 0 -3.18 TD -0.0037 T

## **SECTION 4. TRIBAL CUSTOMARY AND TRADITIONAL LAW.**

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## **SECTION 5. CONFIDENTIALITY.**

Whenever advice on tribal customary and traditional law is required or requested, the Panel of Elders shall provide such advice only to the Tribal Court, Reservation Tribal Council, and parties to the action or proceeding filed in the Grand Portage Band of Chippewa Tribal Court. Any, and all, advice provided or introduced in an action or proceeding shall remain strictly confidential and shall not be disclosed by any party to the action or proceeding, the Reservation Tribal Council or the Tribal Court to any person not a party to the action or proceeding.

## **CHAPTER VI. COUNSEL**

### **SECTION 1. LEGAL REPRESENTATION.**

Any person who is a party in any civil trial or proceedings before the Tribal court may represent herself or himself, or be represented by any other member of the Band, except the Clerk, an Assistant Clerk, a Judge of Tribal Court, a member of the Reservation Tribal Council, or a Tribal game warden; or be represented by a professional attorney who is not a member of the Band, but who is licensed to practice law before the Tribal Court.

### **SECTION 2. TRIBAL LICENSING OF PROFESSIONAL ATTORNEYS.**

Professional attorneys who are not members of the Band may appear on behalf of any party in any trial proceeding before the Tribal Court, provided they are licensed to practice law before the Tribal Court. Such license shall be issued upon compliance with the following:

- (a) Filing with the Clerk an affidavit that the applicant is licensed to practice law before the highest court of any state.
- (b) Filing with the Clerk of Court an affidavit that the applicant has studied and is familiar with the Constitution and By-laws of the Band, this Code, all other Ordinances of the Band, Title 25 of the United States Code, and Title 25 of the Code of Federal Regulations.
- (c) Paying an annual license fee of one hundred dollars (\$100.00).
- (d) Taking the following oath before the Clerk of Court, either in person or by affidavit:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and By-laws of the Grand Portage Band of Chippewa;

I will maintain the respect due to the Tribal Court and its judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly valid or debatable under the law;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and I will never seek to mislead any judge or jury by any artifice, or by false statement or misrepresentation of fact or law;

I will employ in the conduct of my duties the highest degree of ethics and moral standards with which my profession is charged, and I will be guided at all times by the quest for truth and justice;

In the conduct of my duties as an attorney I will not impugn the morals, character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to the honor or reputation of any person, unless required by the justice of the cause with which I am charged."

**SECTION 3. REVOCATION OF PROFESSIONAL ATTORNEY'S TRIBAL LICENSE.**

A license issued pursuant her goo.i4us a.5(m)-29(to)-260.9()-240.9.4(r1(vok(onf)1351(goo0.9()-2-260.9()

## **CHAPTER VII. CONTEMPT OF TRIBAL COURT**

### **SECTION 1. DEFINITION OF CONTEMPT.**

Willful misbehavior by any person which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding by the Tribal Court, or which obstructs or interferes with the administration of justice by the Tribal Court, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of the Tribal Court shall constitute contempt of Tribal Court. The willful failure of a party to comply with the terms of a judgment directed against her/him, with which she/he is able to comply, shall be contempt of the Tribal Court which shall be punished by the Tribal Court in the manner prescribed by this Code.

### **SECTION 2. CONTEMPT IN PRESENCE OF COURT.**

When contempt of Tribal Court is committed in the presence of a Tribal Judge it may be punished summarily by that Tribal Judge. In such case an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefor in accord with Chapter VII, Section 4 of this Title.

### **SECTION 3. CONTEMPT OUTSIDE PRESENCE OF COURT.**

When it appears to the Tribal Court that a contempt may have been committed out of the presence of the Court, the Tribal Court may issue a summons to the person so charged directing her/him to appear at a time and place designated for a hearing on the matter. If such person served with the summons fails to appear at the time and place so designated, the Tribal Court shall conduct a hearing, and if it finds her/him guilty of contempt, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefor in accord with Chapter VI, Section 4 of this Code.

### **SECTION 4. PUNISHMENT FOR CONTEMPT.**

Any person found in contempt of court or of any ordinances of the Band is amenable to a civil fine not to exceed \$500.00 as may be determined by a Judge of the Tribal Court.

## **CHAPTER VIII. GENERAL COURT PROCEDURES**

### **SECTION 1. ASSIGNMENT OF CASES TO JUDGES.**

The Chief Judge shall be responsible for assignment of cases and other matters for determination or disposition to the respective Judges of the Tribal Court.

### **SECTION 2. COURT RULES AND PROCEDURES.**

The Chief Judge and Associate Judges of the Tribal Court may establish and promulgate rules of procedure for the conduct of its proceedings which are not inconsistent with this Code or other governing and applicable law.

### **SECTION 3. SESSIONS OF COURT.**

The Tribal Court shall hold sessions of courts as deemed necessary, commencing at such time as designated by the Clerk in consultation with presiding judges for a particular case. Such sessions shall be held at a designated Courtroom of the Band. The Chief Judge or Clerk shall provide notice to the parties by appropriate method as to the days so assigned. Special sessions of the Tribal Court may be called by the Chief Judge at any time or, in her/his absence by an Associate Judge. Individual Judges may conduct trials or other proceedings for individual cases assigned to them at such times as they may designate, and such trials or proceedings may be recessed and reconvened from time to time by the Judges until they are completed.

### **SECTION 4. MEANS TO CARRY JURISDICTION INTO EFFECT.**

When jurisdiction is vested in the Court, all the means necessary to carry such jurisdiction into effect are also included; and in the exercise of its jurisdiction, if the course of proceedings is not specified in this Code per the rules promulgated by the Court pursuant to this Title or Title 2 of this Code, the Court may adopt any suitable process or mode of proceeding which appears to the Court to be fair and just and most consistent with the spirit of Grand Portage Band of Chippewa Tribal law.

### **SECTION 5. BIA RELATIONS WITH THE COURTS.**

No employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the Court, nor shall she/he influence such functions in any manner.

## **SECTION 6. LAW APPLICABLE IN CIVIL ACTIONS.**

(a) In all civil actions the Tribal Court shall first apply tribal customary and traditional law, and second shall apply this Code, all amendments thereto and all tribal laws enacted heretofore or hereafter.

(b) In the event any doubt arises as to the customs and usages of the Band, the Court may request the advice and assistance of the Panel of Elders.

(c) In the event that an issue arises in an action which is not addressed by all customs and usages of the Band, this Code, all amendments thereto, or all tribal laws presently existing or hereafter enacted, the Court may apply statutes, regulations and case law of any tribe or the federal government or of any state. Application of such law shall not be deemed an adoption of such law or an action to defer to the jurisdiction from which that law originates.

## **CHAPTER IX. TRADITIONAL FORUM**

### **SECTION 1. SCOPE.**

This Chapter shall apply to all actions arising under the laws of the Grand Portage Hunting, Fishing, and Trapping Code, and to all Band members alleged to have violated provisions of that Code.

### **SECTION 2. ESTABLISHMENT OF TRADITIONAL FORUM.**

The Grand Portage Reservation Tribal Council shall appoint five persons meeting the eligibility requirements in Section 4 of this Chapter to serve as a Traditional Forum to hear disputes arising under the Grand Portage Hunting, Fishing, and Trapping Code. Compensation for the Traditional Forum members shall be set by Reservation Tribal Council resolution.

### **SECTION 3. OPERATION.**

The Reservation Tribal Council shall designate one member of the forum to be the presiding member of the Traditional Forum. Three members of the Traditional Forum shall hear each case, and the presiding member shall determine which three members shall hear each

case. No member shall be permitted to hear a case in which he or she has a conflict of interest, as defined by Chapter III, Section 6 of this Title. If more than three panel members have conflicts of interest in any one case, the Reservation Tribal Council shall appoint one or two temporary Traditional Forum members, as necessary, to hear that case.

#### **SECTION 4. QUALIFICATIONS.**

Those sitting on the Traditional Forum shall:

- (a) be members of the Grand Portage Band of Chippewa who are at least 18 years old and reside on the Grand Portage Reservation;
- (b) have a personal knowledge of the Band's traditions and customs relating to hunting and fishing; and
- (c) be familiar with the Grand Portage Hunting, Fishing, and Trapping Code.

Members of the Traditional Forum may serve on the Panel of Elders while serving on the Traditional Forum, though members of the Traditional Forum need not serve on the Panel of Elders.

#### **SECTION 5. TERMS.**

Each member of the Traditional Forum shall serve for a period of two years and shall be eligible for reappointment to successive terms of two years each. A person appointed to fill an existing vacancy created by the death, resignation, or removal for cause of a member of the Traditional Forum shall be appointed initially only for the unexpired portion of the term for which the appointment is made, subject to eligibility for reappointment for the next full term. The first term of the initial forum members shall commence on the date on which the Judicial Code becomes effective, and those terms shall expire two years thereafter. All subsequent terms of the members of the Traditional Forum shall expire on the first day of the same month bi-annually thereafter.

#### **SECTION 6. REMOVAL.**

Members of the Traditional Forum are subject to removal by the Reservation Tribal Council for the same grounds and in the same way as Judges of the Tribal Court are subject to removal pursuant to Chapter III, Section 10 of this Title. Members of the Traditional Forum may only be terminated for reasons other than those enumerated in Chapter III, Section 10 by a referendum vote at which two-thirds (2/3) vote of all eligible voting mem-

bers of the Band residing on the Reservation shall vote affirmatively for termination.

#### **SECTION 7. RULES OF PROCEDURE.**

The Traditional Forum shall not be constrained to follow the rules of procedure governing this Court, but shall insure that due process of law is guaranteed to all who appear in the Traditional Forum. The Traditional Forum shall have the authority to promulgate its own rules of procedure.

#### **SECTION 8. CHOICE OF FORUMS.**

Any member of the Grand Portage Band of Chippewa may choose to have her/his case arising under the Grand Portage Hunting, Fishing, and Trapping Code heard in the Traditional Forum, in accordance with the traditional values and practices of the Grand Portage Band of Chippewa as handed down from time immemorial. Band members shall select a forum by completing a form prescribed by the Clerk of Court, and must make their selections when they file their notices of appeal from Hunting, Fishing, and Trapping Code enforcement actions to the Tribal Court.

#### **SECTION 9. NO APPEAL.**

Decisions of the Traditional Forum shall be final, and shall not be appealable to any body or court. The form by which Band members indicate their choice of forums shall state clearly on its face that decisions of the Traditional Forum are not appealable.

#### **SECTION 10. CONFIDENTIALITY.**

All matters heard in the Traditional Forum shall be confidential and heard in closed session. In all Traditional Forum proceedings, the members of the Traditional Forum shall exclude all persons except the Band member who chose the Traditional Forum, the Band member's attorney, the Band's Game Warden, witnesses while they are testifying, and, with the permission of the members of Traditional Forum sitting for that proceeding, others having a direct interest in the matter.



**GRAND PORTAGE BAND OF CHIPPEWA JUDICIAL CODE  
(AS AMENDED)**

**TITLE II. RULES OF CIVIL PROCEDURE**

**RULE 1. SCOPE OF RULES**

(a) Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in the trial and appellate courts of the Grand Portage Band of Chippewa, in all actions, suits and proceedings of a civil nature, in all special proceedings established by law, and in criminal matters to the extent no different rule is specified.

(b) These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

(c) There shall be one form of action, except in criminal cases, known as a “civil action.”

(d) Any procedures or matters not specifically set forth herein shall be addressed in a manner substantially similar to the Federal Rules

## **RULE 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS**

**(a)** A civil action is commenced by filing a complaint or petition and serving a copy of such on the defendant or respondent as provided herein. The Court shall have jurisdiction from such time as the complaint or petition and summons are filed. The complaint or petition must be properly served upon the defendant or respondent and a return of service must be filed with the Clerk.

**(b)** Service of process shall consist of delivering to the party served a copy of the complaint or petition and summons, issued by the Clerk, which advises the defendant or respondent that she/he is required to answer the complaint or petition within 20 days or a default judgment will be entered against her/him.

**1.** The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the 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 16 years old at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of a non-individual party.

**3.** Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for three weeks and by leaving an extra copy of the complaint or paper with the Court for the party.

**4.** Service may be made by any law enforcement officer so authorized by the Court or other person, not a party, 18 years of age or older.

**5.** Service upon a person otherwise subject to the jurisdiction of the Grand Portage Band of Chippewa Tribal Court may be made anywhere in the United States.

**6.** If a person personally refuses to accept service, it shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

**7.** Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint or petition, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties or their attorneys of reference.

**(c)** In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

Service by facsimile upon other parties is not allowed. Filing with the Court by facsimile may be allowed with permission of the Court.

**(d)** All papers required to be filed or served shall be deemed filed or served on the date of mailing via U.S. Mail (with the exception of those papers requiring personal service as provided in these Rules or by order of the Court), or on the date of facsimile with court permission, in which case originals must be received by the Court within five (5) days.

**(e)** An action shall be commenced by filing a complaint or petition with the Clerk of Court. The Clerk shall collect a filing fee of twenty-five dollars (\$25.00) for filing any complaint or petition which commences an action. No filing fee shall be charged for amendments to a previously filed complaint, or for the filing of other pleadings or documents contemplated by these Rules. Filing may be accomplished in person or by mailing to Roger James, Grand Portage Band of Chippewa Tribal Court, P.O. Box 367, Grand Portage, MN 55605; Phone (218) 475-0188; Facsimile (218) 475-2455.

### **RULE 3. TIME**

(a) In computing any period of time set forth herein, the day from which 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 under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will extend to end of the next day which is not a Saturday, Sunday or legal holiday.

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

(c) Whenever service is accomplished by mail, three 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 if they would not otherwise have been counted.

### **RULE 4. PLEADINGS, MOTIONS AND ORDERS**

(a) There shall be a complaint and an answer or petition and response. 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. The Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

(b) 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 of motion may be set forth together.

(c) 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) 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.

## **RULE 5. MOTIONS PRACTICE**

### **(a) Scope and Application**

This rule shall govern all civil motions.

Motions are either dispositive or non-dispositive, and are defined as follows:

**i.** Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment, and motions under Rule 17(b).

**ii.** Non-Dispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

### **(b) Obtaining Hearing Date; Notice to Parties**

A hearing date and time shall be obtained from the Clerk of Court or an Assistant Clerk of Court. A party obtaining a date and time for a hearing on a motion or for any other calendar setting, shall promptly give notice advising all other parties who have appeared in the action so that cross motions may, insofar as possible, be heard on a single hearing date.

### **(c) Dispositive Motions**

**i.** No motion shall be heard until the moving party serves a copy of the following documents on opposing counsel and files the original with the Clerk of Court at least 28 days prior to the hearing:

**(1).** Notice of motion and motion;

**(2).** Proposed Order;

**(3).** Any affidavits and exhibits to be submitted in conjunction with the motion; and

**(4).** Memorandum of law.

**ii.** The party responding to the motion shall serve a copy of the following documents on opposing counsel and shall file the originals with the Clerk of Court at least 9 days prior to the hearing:

**(1).** Memorandum of law; and

**(2).** Supplementary affidavits and exhibits.

**iii.** Reply Memoranda. The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the Clerk of Court at least 3 days before the hearing.

**iv.** Additional Requirement for Summary Judgment *Motions*. For summary judgment motions, the memorandum of law shall include:

**(1).** A statement by the moving party of the issues involved which are the grounds for the motion for summary judgment;

**(2).** A statement identifying all documents (such as depositions or excerpts thereof, pleadings, exhibits, admissions, interrogatory answers, and affidavits) which comprise the record on which the motion is made. Opposing parties shall identify in their responding Memorandum of Law any additional documents on which they rely.

**(3).** A recital by the moving party of the material facts as to which there is no genuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page

and paragraph of an exhibit. A party opposing the motion shall, in like manner, make a recital of any material facts claimed to be in dispute. Such recitals shall be excluded from the page limitations of this rule; and

(4). The party's argument and authorities. These additional requirements also apply to a motion under Rule 18 if factually based.

**(d) Non-Dispositive Motions**

**i.** No motion shall be heard until the moving party serves a copy of the following documents on the other party or parties and files the original with the Clerk of Court at least 14 days prior to the hearing:

(1). Notice of motion and motion;

(2). Proposed order;

(3). Any affidavits and exhibits to be submitted in conjunction with the motion; and

(4). Any memorandum of law the party intends to submit; and

**ii.** The party responding to the motion shall serve a copy of the following documents on the moving party and other interested parties and shall file the original with the court administrator at least 7 days prior to the hearing:

(1). Any memorandum of law the party intends to submit; and

(2). Any relevant exhibits and affidavits.

**iii. Reply Memoranda.** The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion,

by serving a copy on opposing counsel and filing the original with the Clerk of Court at least 3 days before the hearing.

**(e) Motions on Which No Hearing is Scheduled**

If a motion is filed and no hearing date thereon is scheduled, the non-moving party(ies) have fifteen (15) days to respond to the motion, and the moving party shall have seven (7) days to file any reply. These time limits shall apply to all motions on which no hearing is scheduled unless otherwise agreed by the parties or ordered by the Court. The page limits set forth in Rule 5(f) shall apply to this subsection.

**(f) Page Limits**

No memorandum of law submitted in connection with either a dispositive or non dispositive motion shall exceed 35 pages, exclusive of the recital of facts required by Rule 5(c)(iv)(3), except with permission of the court. For motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests and the response or objection thereto which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except with the permission of the court.

**(g) *Failure to Comply***

If the moving papers are not properly served and filed, the hearing may be canceled by the court. If responsive papers are not properly served and filed in a non-dispositive motion, the court may deem the motion unopposed and may grant the relief requested without a hearing. For a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may allow reasonable attorney's fees, or may take other appropriate action.

**(h) Relaxation of Time Limits**

If irreparable harm will result absent immediate action by the court, or if the interests of justice require otherwise, the court may waive or modify the time limits established by this rule, but only if requested by motion of one of the parties, which must be properly served.

**(i) Witnesses**

No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain prior consent of the court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses which that party intends to call at the motion.

**(j) Telephone Hearings**

When a motion is authorized by the court to be heard by telephone conference call, the moving party shall be responsible either to initiate the conference call or to comply with the court's instructions on initiation of the conference call. If necessary, adequate provision shall be made by the court for a record of the telephone hearing.

**(k) Settlement Efforts**

No motion will be heard unless the parties have conferred, either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate the conference. The moving party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for inability to comply, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the court.

**(l) Time limits for Injunctions and Temporary Restraining Orders**

This Rule shall not apply to motions or applications for injunctions or temporary restraining orders. Briefing and hearing schedules for motions or applications for injunctions or temporary restraining

orders shall be set by the Court on a case-by-case basis.

## **RULE 6. GENERAL RULES OF PLEADING**

**(a)** A pleading which sets forth a claim for affirmative relief shall contain:

**(1).** A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;

**(2).** A short, plain statement of the claim showing that the pleader is entitled to relief; and

**(3).** A demand for judgment for the relief to which the pleader considers herself/himself entitled. Such claim for relief can be in the alternative or for several types of relief.

**(b)** A party shall state in plain, concise terms the grounds upon which she/he based her/his defense to claims pleaded against her/him, and shall admit or deny the claims and statements upon which the adverse party relies. If she/he is without information or knowledge regarding a statement or claims, she/he 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 party 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)** Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical 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.

**(d)** Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the

pleadings as if it had been properly designated if justice so requires.

(e) All pleadings shall be construed so as to do substantial justice.

#### **RULE 7. FORM OF PLEADINGS**

(a) 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 all pleadings except the complaint. See Appendix of Forms.

(b) All averments of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(c) 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 written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Insofar as is possible, pleadings and other papers filed in any action shall be on 8 1/2" x 11" paper, double spaced, except for matters customarily single spaced, contain at least a 2-inch top margin and a 1-inch left and right side margin, and contain the Court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

#### **RULE 8. DEFENSES AND OBJECTIONS**

(a) 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 her/him to answer or respond to the claim.

(b) Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until 10 days after the disposition of the

motion by the Court.

**RULE 9. COUNTERCLAIM OR CROSSCLAIM**

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

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

(c) 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.

**RULE 10. AMENDMENT OF PLEADINGS**

(a) A party may amend 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 may be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.

(b) 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.

**RULE 11. PARTIES**

(a) 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 her/his own name without joining the party for whose benefit the action is maintained.

(b) When an infant, or an insane 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. A guardian ad litem is considered an officer of the Court to represent the interests of the infant, insane or incompetent person,

in the litigation.

(c) To the greatest extent possible 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 has no 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.

#### **RULE 12. INTERVENTION**

A person may intervene and be treated in all respects as a party to an action in cases in which property in which she/he has an interest may be affected or a question of law or fact common to a claim of hers/his may be litigated.

#### **RULE 13. SUBSTITUTION OF PARTIES**

If a party dies or becomes incompetent or transfers her/his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

#### **RULE 14. DISCOVERY**

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

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

(c) A party may request another party to produce any documents or things in her/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-five (25) days reply as to whether such will be allowed and if not, why not.

(d) 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. The work product of a party's counselor or attorney is not discoverable.

(e) A party against whom discovery is sought may move the Court for 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) 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) 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.

(h) Discovery documents need not be filed with the Court.

## **RULE 15. JURY TRIALS**

(a) Trials of all civil actions shall be to the Tribal Court without a jury unless a party to the action files a request for a jury trial and a fee of twenty-five dollars (\$25.00) not less than twenty-five (25) days prior to the scheduled date of trial. A judge may, upon good cause shown, waive payment of the required fee.

(b) Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues she/he wants tried to the jury, and any other party may specify, not less than five (5) days before the date scheduled for trial, any other issues she/he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

(c) A judge may, upon her/his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether the parties have requested such.

(d) A judge may, upon motion of any party or its own initiative, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.

(e) A judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

#### **RULE 16. ASSIGNING CASES FOR TRIAL**

(a) The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the Court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

(b) Upon motion of a party, the Court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

#### **RULE 17. DISMISSAL OF ACTIONS**

(a) Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment of such claim, the party making the claim may file a notice of dismissal and her/his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss her/his own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a crossclaim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute her/his claim independently without undue additional hardship.

(b) A party against whom a claim has been made may move the

Court to dismiss the claim of the adverse party upon any of the following grounds:

- (1). Lack of jurisdiction over the subject matter; or
- (2). Lack of jurisdiction over the person; or
- (3). Insufficiency of process; or
- (4). Insufficiency of service of process; or
- (5). Failure to join a party pursuant to Rule 11 (c);  
or
- (6). Failure to state a claim upon which relief may be granted.

Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 29, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 29

- (c) The Court may order a moving party to dismiss her/his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

#### **RULE 18. PRETRIAL MEETINGS**

Upon written request of either party or upon his own motion the Tribal Judge may schedule a pretrial meeting between the parties, and their counsel, if any. Such meetings may be held or requested either before or after

the case is scheduled for trial.

During such meetings the parties and the Tribal Judge may consider any matters which will aid in the simplification, clarification, or disposition of the case. The parties and the Tribal Judge may develop procedures to be followed at the trial. The Tribal Judge may encourage the parties to explore the possibility of settling their dispute and the tribal Judge may participate in settlement discussions to the extent that her/his impartiality at any eventual trial will not be affected.

If it appears to the Tribal Judge that the case is highly complex or involves a sum of money in excess of \$1,000.00, the Tribal Judge may, at the request of a party or on her/his own motion, provide for the use of discovery techniques to aid in the fair and efficient administration of justice. Such discovery techniques may include interrogatories, production of documents, depositions, or any other means of discovery noted in the Federal Rules of Civil Procedure. To the extent practicable, the Tribal Judge shall encourage the parties to use informal methods of discovery, but the Tribal Judge shall have the power to order use of formal discovery techniques under the supervision of the Court.

The Tribal Judge shall prepare a written memorandum of each pretrial meeting setting forth the actions taken at the meeting. Copies of this memorandum shall be distributed to the parties.

#### **RULE 19. CONSOLIDATION; SEPARATE TRIALS**

- (a) 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) The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

#### **RULE 20. EVIDENCE**

- (a) At all hearings and trials, the testimony of witnesses shall be

taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Federal Rules of Evidence or as specified in this Tribal Code shall be admissible and the competency of witnesses to testify shall be similarly determined.

(b) A 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.

(c) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach her/his own witness.

(d) 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.

(e) Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action.

(f) 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.

(g) 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.

## **RULE 21. SUBPOENAS**

(a) Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in

the Grand Portage Band of Chippewa Judicial Code.

(b) A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court and amenable to civil sanctions of Title 1, Chapter VI.

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

## **RULE 22. JURORS**

(a) Any enrolled member of the Grand Portage Band of Chippewa, between the ages of 18 and 75, who has not been convicted of a felony and who resides on the Grand Portage Band of Chippewa Reservation, shall be eligible to be a juror. Judges and other officers or employees of the Court shall not be eligible to be jurors while thus employed. The Chief Judge may by rule adopt procedures whereby non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.

(b) There shall be six jurors chosen to hear a case and the Court may allow one additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen and hears the case, she/he shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.

(c) A jury foreperson will be chosen by a majority vote of the jury panel.

(d) The Court shall permit the parties or the attorneys to conduct the examination of prospective jurors and may itself examine the jurors.

(e) A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.

(f) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.

**(g)** Challenges for cause shall be made against a potential juror on the grounds that she/he is not entitled or qualified to be a juror, she/he is familiar with the case or has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair and impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

**(h)** The clerk shall draw lots to determine potential jurors and shall replace jurors for whom a challenge is sustained until a full panel is completed. Upon completion, the clerk shall administer the oath to the jurors, the form of which shall be prescribed by rule of the Court.

**(i)** If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform her/his duty, the alternate juror shall take her/his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.

**(j)** The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a dispute or otherwise relevant event.

**(k)** Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

**(l)** Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have a verdict, and she/he shall prevent others from improperly communicating with the jury.

**(m)** The jury may take with them when deliberating any of the following:

**(1).** The Court's instructions;

(2). Papers or things received in evidence as exhibits;

(3). Notes taken by the jurors themselves, but not notes taken by non-jurors.

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

(o) If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retried.

(p) When all of the six jury members agree on a verdict, they shall so inform the officer who shall notify the Court. This jury shall be conducted into the courtroom and the clerk shall call the jury roll; the verdict shall be given in writing to the clerk and then read by the clerk to the Court; inquiry shall be made by the Court to the jury foreperson as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the clerk or foreperson, the jury shall retire to correct the verdict.

### **RULE 23. SPECIAL VERDICTS AND INTERROGATORIES**

The Court may require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

### **RULE 24. INSTRUCTIONS TO THE JURY; ARGUMENTS**

(a) At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear argument

thereon out of the hearing of the jury.

(b) Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole triers of the facts.

**RULE 25. MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT**

(a) 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.

(b) A party who has made a motion for a directed verdict at the close of all the 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 her/his motion for directed verdict; or if there has been a 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.

**RULE 26. FINDINGS BY THE COURT**

In cases tried without a jury, and except in 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 judgment, findings may be amended or added to and the judgment may be amended accordingly. Upon receipt of a motion to amend judgment, the non-moving party wishing to file a response shall do so within ten (10) days, but shall not be required to file a response. (See Rule 32(e)).

**RULE 27. JUDGMENT; COSTS**

(a) A judgment includes any final order from which an appeal is

available and no special form of judgment is required.

(b) 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 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 commence to run.

(c) 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.

(d) A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

(e) The Court may allow necessary costs and disbursements to the prevailing party or parties upon the filing of a verified memorandum of her/his costs and necessary disbursements within five (5) days of the entry of judgment and serving a copy of such on the opposing party. 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.

(f) 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 to the 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 or if the Court determines that such award is appropriate in equity.

## **RULE 28. DEFAULT**

(a) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, her/his default may be entered by the 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 may be entered by the 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 on the Reservation. 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 Grand Portage Band of Chippewa

(c) The Court may, for good cause shown, set aside either an entry of default or a default judgment.

#### **RULE 29. 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 twenty (20) days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be filed with the motion. Response to such motions must be filed within ten (10) days of service of the motion.

#### **RULE 30. DECLARATORY JUDGMENT**

(a) In a case of actual controversy within the jurisdiction of the Grand Portage Band of Chippewa Tribal Court, the Tribal Court may, upon the filing of an appropriate pleading, declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) The right to a trial by jury may be demanded in accordance with Rule 17. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is

appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

### **RULE 31. ENTRY OF JUDGMENT**

(a) Judgment upon a jury verdict shall be signed by the clerk and filed. All other judgments shall be signed by the judge and filed with the clerk.

(b) A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket. The clerk shall provide notice of entry of judgment to all parties without counsel or to all counsel if parties are so represented.

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

(d) A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or her/his attorney 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 payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.

(e) 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 (8) years and may be thereafter further extended by the same procedure.

### **RULE 32. NEW TRIALS; AMENDMENTS OF JUDGMENT**

(a) Any party may petition for a new trial on any or all of the issues presented by filing and 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 jury or jury member(s); or

(3). Accident or surprise, or newly discovered evidence against which ordinary prudence could not have been found and 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). Error in law.

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

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

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

(e) A motion to alter or amend a judgment shall be filed and served not later than ten (10) days after entry of the judgment.

### **RULE 33. RELIEF FROM JUDGMENT OR ORDER**

(a) Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the

Appellate Court, and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.

**(b)** Upon motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or her/his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1).** Mistake, inadvertence, surprise, or excusable neglect;
- (2).** Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 32(a);
- (3).** Fraud, misrepresentation or other misconduct of an adverse party;
- (4).** When, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;
- (5).** The judgment is void;
- (6).** The judgment has been satisfied, released, or discharged; or a prior judgment should have prospective application; or
- (7).** Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three (3) months after the judgment, order, or proceeding was entered or taken. A motion under subsection (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**RULE 34. 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 ground 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.

**RULE 35. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT**

- (a) Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.
- (b) 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 a directed verdict, or of a motion for amendment to the findings or for additional findings.
- (c) 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.
- (d) 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 received and approved by the Court.
- (e) When an appeal is taken by the Band, or an officer or agency of

the Band, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) When a Court has ordered a final judgment on some but not all of the claims presented in the action, the Court may stay enforcement of that judgment 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.

(g) In all cases, the parties may, by written stipulation, waive the requirements of this Rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order is equivalent to the filing of the undertaking.

#### **RULE 36. DISABILITY OR DISQUALIFICATION OF A JUDGE**

(a) 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 the Chief Judge shall assign any other judge regularly sitting in or assigned to the Court to perform those duties; but if such assigned judge is satisfied that she/he cannot perform those duties because she/he did not preside at the trial or for any other reason, she/he may in her/his discretion grant a new trial.

(b) Whenever a party to any action or proceedings, civil or criminal, or her/his attorney shall make and file an affidavit that the judge before whom such action or proceedings is to be tried or heard has a bias or prejudice, pursuant to Title 1, Chapter 3, Section 7, either against such party or her/his attorney 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 unless subsection (c) is invoked.

(c) Every such affidavit shall comply with Title 1, Chapter III, Section 7 of the Grand Portage Band of Chippewa Judicial Code and

shall state 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, she/he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming her/him), which judge 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 such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

### **RULE 37. INJUNCTIONS**

(a) No preliminary injunction shall be issued without notice to the adverse party.

(b) 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:

- (1). be endorsed with the date and hour of issuance;
- (2). be filed forthwith in the clerk's office and entered of record;
- (3). define the injury and state why it is irreparable and why the order was granted without notice;
- (4). expire by its terms within such time after entry, not to exceed fifteen (15) days, as the Court fixes, unless within the time 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 of all matters except older matters 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 preliminary injunction and, if she/he 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.

(c) 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 of the United States, the Grand Portage Band of Chippewa, or of 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. Nothing in this section shall be construed to give the Grand Portage Band of Chippewa Tribal Court jurisdiction over the United States or its employees operating within the scope of their employment.

(d) A surety upon a bond or undertaking under this rule submits herself/himself to the jurisdiction of the Court and irrevocably appoints the clerk of the Cs12(t)-5.(a)3.3(s)-25171(h)-07(ler)-7i7(s)-25171(age)136.7nh(t)-apver afetvingehis iabilit(y)-240.2pon the bondrundy s . 9 ( e ) 1 ( r ) - 7 v n e d . H e r h i s i a b thætion at the Ctay sæ the k ofthe ourt(o)-597.9(s)93.1(h-0.1(all)-216.9(f)34.1(or))6.9(hw(itn)-236.9mailt)-216.9(c)-56.9(pin

shall be specific in terms; shall describe in reasonable detail, and not 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.

(f) 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 of 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 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.

### **RULE 38. EXTRAORDINARY WRITS**

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

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

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

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

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

(a) No extraordinary writ may issue against the Band, or Tribal officer or official, or any entity owned by the Band in its governmental capacity absent an unequivocally expressed waiver of the Band's sovereign immunity from suit.

### **RULE 39. EXECUTION OF JUDGMENT**

(a) If within sixty (60) days after entry of a judgment awarding money damages and/or costs against a party, or within sixty (60) days after final resolution of an appeal to the appellate court from such a judgment, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall upon motion of the judgment creditor, heard ex parte, order the local law enforcement to execute on the personal property of the judgment debtor as provided herein.

(b) The Court shall order the judgment debtor to appear before it and answer under oath regarding all her/his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the local police department to

seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance. Sale of the seized property shall be at public auction conducted by local law enforcement officials designated by the Court after giving at least ten (10) days public notice posted in at least three conspicuous public places. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone such in her/his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

(c) The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor herself/himself may be subject to execution and not property of her/his family.

(d) At any time within six (6) months after sale under this Rule, the judgment debtor may redeem her/his property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight (8) percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

(e) Any order of the Court to local law enforcement officials within the Court's jurisdiction, in aid of execution of judgments, shall only be valid upon the execution of a cooperative agreement between the Band and the appropriate governing entity if such law enforcement is not Grand Portage Band of Chippewa.

#### **RULE 40. APPEAL**

(a) All appeals from the Grand Portage Band of Chippewa Tribal Court shall be heard by the Grand Portage Band of Chippewa Appellate Court. The Chief Judge of the Grand Portage Band of Chippewa Tribal Court shall appoint a Chief Judge of the Grand

Portage Band of Chippewa Court of Appeals for each matter heard by the Court of Appeals.

**(b)** Any party who is aggrieved by a final order, commitment or judgment of the trial court may appeal in the manner prescribed by this Rule.

**(c)** Within twenty (20) days from the entry of the order of judgment appealed from the party taking the appeal must file with the trial court a written notice of appeal specifying the parties to the appeal, the order or judgment which is being appealed, and a short statement of the reason or grounds for the appeal. The clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address.

**(d)** The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the appellees. The name of the case shall be the same as that used in the Tribal Court.

**(e)** At the time of filing the Notice of Appeal, the appellant shall also file cash or a bond in an amount set by the trial court sufficient to guarantee performance of the judgment if such performance is stayed on appeal plus, in any event, sufficient to guarantee payment of such costs or interest as the appellate court may award unless to do so would require manifest injustice.

**(f)** In any case in which an appeal is perfected as required by this Rule, the appellant may petition the trial court for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom.

**(g)** The clerk of the trial court shall also serve as the clerk of the Appellate Court. Within five (5) days after a Notice of Appeal is filed, the clerk shall prepare, certify and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the appellate court in which shall be recorded each stage of the proceedings on each case appealed.

(h) The presiding justice of the appellate court shall, when hearing a case, have authority to compel the production of documents where such is deemed necessary to the rendition of the Court's opinion. There shall not be a new trial in the appellate court. The appellate court may review both the factual findings and conclusions of law of the Trial court.

(i) Within thirty (30) days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum or statement in support of her/his appeal. An original and three copies shall be filed with the clerk and one additional copy shall be served upon or mailed to each other party or her/his counselor or attorney. The appellee shall have thirty (30) days after receipt of the appellant's brief, memorandum or statement within which to file a response, memorandum or statement. A reply brief, memorandum or statement of appellant shall be allowed without leave of Court. Such reply brief shall be filed within ten (10) days of the receipt of the appellee's response.

(j) The Appellate Court shall decide all cases upon the briefs, memoranda and statements filed plus the record of the trial court without oral argument unless either party requests oral argument and shows to the Court that such will aid the Court's decision, or unless the Court decides on its own motion to hear oral argument.

(k) The Appellate Court shall issue a written decision and all judgments on appeal shall be final.

#### **RULE 41. APPEALABLE ORDERS**

An appeal may be taken to the Grand Portage Band of Chippewa Court of Appeals:

(a) from a judgment entered in the Grand Portage Band of Chippewa Tribal Court;

(b) from an Order which grants, refuses, dissolves or refuses to dissolve and injunction;

- (c) from an Order vacating or sustaining an attachment;
- (d) from an Order denying a new trial, or from an Order granting a new trial if the Grand Portage Band of Chippewa Tribal Court expressly states therein that the Order is based exclusively upon errors of law occurring at trial, and upon no other ground; and the Tribal court shall specify such errors in its Order or memorandum, but upon appeal, such Order granting a new trial may be sustained for errors of law prejudicial to Respondent other than those unspecified by the Grand Portage Band of Chippewa Tribal Court;
- (e) from an Order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;
- (f) from a final Order or Judgment made or rendered in proceedings supplementary to execution; and
- (g) if the Tribal Court certifies that the question of law presented is one for which there is substantial ground for difference of opinion, wherein an immediate appeal from the order may materially advance the ultimate termination of the litigation; from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted; or from an order which denies a motion for summary judgment.

**RULE 42. EX PARTE COMMUNICATIONS**

Ex parte communications with judges of the Grand Portage Band of Chippewa Court are strongly discouraged. All inquiries shall be directed to the Clerk of Court, who shall confer with the judge(s).

**RULE 43. CITATION**

These Rules shall be known as the Grand Portage Band of Chippewa Judicial Code Rules of Civil Procedure and may be abbreviated G.P.R.C.P.

**RULE 44. SEVERABILITY**

If any provision of this title, or the application thereof, to any person, busi-

ness, corporation or state government or any political subdivision or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provisions, and to this end the provisions of this title are declared severable.

**RULE 45. AMENDMENT**

These rules may be amended by a majority of the judges of the Grand Portage Band of Chippewa Tribal Court and Court of Appeals as necessary to ensure fundamental fairness and substantial justice.

**GRAND PORTAGE BAND OF CHIPPEWA JUDICIAL CODE**

**TITLE III. FULL FAITH AND CREDIT**

**CHAPTER I. PURPOSE**

The purpose of this Ordinance is to set forth the circumstances under which orders, judgments, decrees and other judicial proceedings from courts other than the Grand Portage Band of Chippewa Tribal Court ("the Tribal Court") will be given full faith and credit in the jurisdiction of the Grand Portage Band of Chippewa ("the Band"), and to define the procedures of the Tribal Court for giving full faith and credit to those orders, judgments, decrees and other judicial proceedings.

**CHAPTER II. DEFINITIONS**

**SECTION 1. BAND.**

"Band" shall mean the Grand Portage Band of Chippewa.

**SECTION 2. BAND RESERVATION.**

"Band Reservation" shall mean all those lands and waters defined in Title 1, Chapter II, Section 1(b) of this Judicial Code.

**SECTION 3. TRIBAL COURT.**

"Tribal Court" shall mean the Grand Portage Band of Chippewa Tribal Court.

### **CHAPTER III. SUBSTANTIVE REQUIREMENTS FOR GIVING FULL FAITH AND CREDIT TO ORDERS, JUDGMENTS, DECREES, AND OTHER JUDICIAL PROCEEDINGS**

Orders, judgments, decrees and other judicial proceedings from courts other than the Tribal Court may be given full faith and credit in the Tribal Court after the party seeking full faith and credit establishes by clear and convincing evidence that:

Section 1. The other court had jurisdiction over both the subject matter and the parties;

Section 2. The order, judgment, decree or other proceeding was not fraudulently obtained;

Section 3. The order, judgment, decree or other proceeding was obtained by a process that assures the requisites of an impartial administration of justice including but not limited to due notice and a hearing;

Section 4. The order, judgment, decree or other proceeding complies with the laws, ordinances and regulations of the jurisdiction from which it was obtained; and

Section 5. The order, judgment, decree or other proceeding does not contravene the public policy of the Grand Portage Band of Chippewa or interfere with the Band's right to make its own laws and be governed by them.

### **CHAPTER IV. PROCEDURAL REQUIREMENTS FOR GIVING FULL FAITH AND CREDIT TO ORDERS, JUDGMENTS, DECREES, AND OTHER JUDICIAL PROCEEDINGS**

A party seeking to have full faith and credit given to an order, judgment, decree or other judicial proceeding from a court other than the Tribal Court shall file a petition with the Tribal Court requesting that full faith and credit be given to the order, judgment, decree or other judicial proceeding. Notice shall be given to the other party(ies) to the order, judgment, decree or other judicial proceeding in accordance with the Rules of Civil Procedure for the Tribal Court applicable to other petitions for relief. The other party(ies) to the order, judgment, decree or other judicial proceeding in the foreign jurisdiction shall have an opportunity to respond to the peti-

tion in accordance with the Rules of Civil Procedure for the Tribal Court applicable to responsive pleadings. The Tribal Court may hear oral argument on the petition at its discretion. The Tribal Court shall enter an order finding that the requirements under Chapter 1 of this Ordinance have or have not been met within ten days of: (1) the date of hearing; or (2) filing of the response to the petition for full faith and credit if no hearing is ordered; or (3) if no response is filed, within ten days of the date a response could have been filed pursuant to the Rules of Civil Procedure for the Tribal Court.