

**WHITE EARTH BAND OF CHIPPEWA
RULES OF CIVIL PROCEDURE**

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WHITE EARTH BAND OF CHIPPEWA RULES OF CIVIL PROCEDURE

By order of the Chief Judge of the White Earth Tribal Court, these Rules of Civil Procedure are hereby established which shall govern all civil actions brought before the Court of the White Earth Band of Chippewa Indians.

RULE I. SCOPE AND CONSTRUCTION

Section 1. Scope.

Except when different rules are prescribed by statute, ordinance or order of the Court, these Rules shall govern the procedure and practice in trial and appellate courts of the White Earth 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.

Section 2. Construction.

- (a) These Rules shall be liberally construed to secure a just, speedy and inexpensive determination of every action and proceeding. At every stage of the proceeding, the Court may disregard any technical error or defect or a failure to comply with these Rules which does not affect the substantive rights of the parties, particularly those parties not represented by professional attorneys.
- (b) Any practice or procedure not addressed in these Rules shall be conducted in conformance with the applicable Federal Rule of Civil Procedure unless to do so would produce an unfair or unjust result. The citation of the Federal Rules of Civil Procedure herein shall not be deemed an action deferring to federal jurisdiction of any matter where such jurisdiction does not exist.
- (c) These Rules shall be known as the White Earth Band Rules of Civil Procedure and should be cited in all submissions to the Court as WEBRCP.

RULE II. ONE FORM OF ACTION

There shall be one form of action except in criminal cases, known as a "civil action."

RULE III. CITATION

These Rules shall be known as the White Earth Band of Chippewa Rules of Civil Procedure and may be abbreviated as WERCP.

RULE IV. EX PARTE COMMUNICATIONS

Ex parte communications with judges of the White Earth Band of Chippewa Court are strongly discouraged. All inquires shall be to the Clerk of Court, who shall confer with the judges.

RULE V. COMMENCEMENT OF ACTION; SERVICE OF PROCESS

Section 1. Commencement of Action.

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 and paying a filing fee of \$25.00. All complaints or petitions filed with the Court must be accompanied by an original certificate of service which demonstrates that the defendant or respondent has been served on that same date. The Court shall have jurisdiction from such time as the complaint or petition and summons are filed and the filing fee is paid.

Section 2. Service of Process—Generally.

- (a) Service of process shall consist of delivering to the party served a copy of the complaint or petition along with a summons, which need not be issued by the judge or clerk. The complaint or petition and summons shall advise the defendant or respondent that he or she is required to answer the complaint or petition within thirty (30) days or a default judgment will be entered against him or her.
- (b) 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 of court.

Section 3. Methods of Service.

- (a) **Personal Service.** Service may be made on a party by delivering the required papers to the party or his or her agent or employee, or upon some person of suitable age and discretion over sixteen (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.
- (b) **Service by Publication.** 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 (3) consecutive weeks and by leaving an extra copy of the complaint or paper with the Court for the party.
- (c) **Service by Law Enforcement Officer.** Service may be made by any law enforcement officer or other person, not a party, who is at least sixteen (16) years of age or older.

- (d) Service on the White Earth Band. Service upon the White Earth Band shall be made by delivering the required papers to the offices of the Chairman and/or Secretary of the White Earth Tribal Council at the Tribal Headquarters during normal business hours.
- (e) Service Jurisdiction. Service upon a person otherwise subject to the jurisdiction of the White Earth Tribal Court may be made anywhere in the United States.
- (f) Refusal of Service. If a person refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

RULE VI. SERVICE OF PAPERS OTHER THAN THE COMPLAINT OR PETITION

Service of all papers contemplated under these Rules may be made in any manner allowed by these Rules. Service of all papers contemplated by these Rules may be made on the party's counsel or advocate if the party has retained any counsel or advocate. All filings sent by one party to another except discovery documents shall also be sent to the Court. All filings sent to the Court shall also be sent to each party.

RULE VII. TIME

Section 1. Computation.

Unless otherwise provided in these Rules, in computing any period of time set forth herein, the day that the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, legal holidays or Band holidays in the period and any period which would otherwise end on a Saturday, Sunday, legal holiday or Band holiday will be deemed to end on the next day which is not a Saturday, Sunday, legal holiday or Band holiday.

Section 2. Enlargement.

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

Section 3. Service by Mail.

Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, legal holidays, or Band holidays to be counted in the time period if they would not otherwise have been counted.

RULE VIII. PLEADINGS, MOTIONS AND ORDERS

Section 1. Allowable Pleadings.

Pleadings shall consist of a complaint or petition, an answer, a counterclaim and a cross-claim. In the event a counterclaim or cross-claim is asserted, there shall be allowed an answer thereto.

Section 2. General Rules of Pleadings.

- (a) There shall be a complaint and an answer or a petition and a response. The complaint or petition shall consist of a short and clear written statement sufficient to advise the defendant or respondent and the Court of the Court's jurisdiction, the nature of the plaintiff's claim, the plaintiff's entitlement to the relief and the nature of the relief sought.
- (b) The defendant or respondent shall submit an answer to the complaint or petition within thirty (30) days of filing unless this time is extended by a judge upon written request showing good cause.
 - (1) The answer shall consist of a short and clear written statement sufficient to advise the plaintiff and the Court of the nature of the defense.
 - (2) The answer may deny the truth of statements in the complaint or petition, it may admit the truth of statements in the complaint or petition, or it may deny the knowledge of the truth or falsity of statements in the complaint or petition. The answer may also present matters not raised in the complaint or petition which defendant or respondent believes are relevant to the case.
 - (3) All affirmative defenses, counterclaims and cross-claims must be asserted in the answer or they will be deemed to have been waived.

Section 3. Form of Pleadings.

- (a) All pleadings filed with the Court shall bear a heading designating the White Earth Tribal Court and a caption designating the parties to the suit and the assigned court file number, if any.
- (b) All pleadings shall be submitted to the Court on 8.5" x 11" white paper and shall be double-spaced with one-inch margins on the left and right sides and two-inch margins on the top and bottom.
- (c) All pleadings, excepting discovery and motions, shall separately number each allegation or averment and shall separately number each paragraph. All affirmative defenses, counterclaims or cross-claims shall be separately set forth and shall be clearly designated as such.

- (d) Pleadings may incorporate exhibits provided those exhibits are attached to the pleading. Pleadings also may incorporate by reference previous allegations contained therein.

Section 4. Amendment of Pleadings.

- (a) Parties may amend their pleadings once without leave of Court and at any time up to thirty (30) days before a scheduled trial date. All other amendments shall require leave of the Court.
- (b) An opposing party may respond to a proposed amendment, and may request a postponement of a scheduled trial date where it alleges that the amendment may prejudice its readiness for such trial. Where substantial justice so requires, the Court on its own motion may postpone a scheduled trial date after an amendment is made.

Section 5. Orders.

- (a) An order is rendered when it is signed by the judge.
- (b) An order is entered when it is filed in the office of the clerk of court.

RULE IX. PARTIES

Section 1. Real Party in Interest.

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

Section 2. Suing by Fictitious Name or as Unknown; Partners' Names Unknown.

- (a) When the name or a part of the name of any defendant or respondent, or when any proper party defendant or respondent to an action to establish or enforce, redeem from or discharge a lien or claim to property is unknown to the plaintiff, such defendant or respondent may be designated a defendant or respondent by so much of the name as is known, or by a fictitious name, or as an unknown heir, representative, owner or person as the case may require, adding such description as may reasonably indicate the person intended. No person whose title to or interest in land appears of record or who is in actual occupancy of land shall be proceeded against as an unknown owner.
- (b) When the name of such defendant or respondent is ascertained, the process, pleadings, and all proceedings may be amended by an order directing the insertion of the true names instead of the designation previously employed.

- (c) In an action against a partnership, if the names of the partners are unknown to the plaintiff, all proceedings may be in the partnership name until the names of the partners are ascertained, whereupon the service of process, pleadings and all proceedings shall be amended by order directing the insertion of such names.

Section 3. Guardian Ad Litem.

When an infant, insane, or incompetent person is a party and has not had a guardian appointed, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

Section 4. Joinder of Parties.

- (a) To the extent possible, all persons or parties interested in a particular action shall be joined in the action.
- (b) The 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.
- (c) Where joinder of an interested person is not possible, the Court shall attempt to fashion a resolution so as to do the greatest justice possible under the circumstances.

Section 5. Substitution of Parties.

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

RULE X. INTERVENTION

- (a) Upon motion the Court may permit anyone to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.
- (b) Upon motion the Court may permit anyone to intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for claim or defense upon any statute, ordinance or executive order or rule administered by a federal or tribal government officer or agency or upon any regulation, order, rule, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely motion may be permitted to intervene in the action.

- (c) A person desiring to intervene shall serve and file a motion to intervene upon the parties as provided in (a) and (b) above. The motion shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.
- (d) Motions to intervene may be made at any time before the scheduled trial date. In exercising its discretion regarding motions to intervene, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. If a motion to intervene is granted, the Court may upon motion of a party or its own motion, delay the trial as fairness and justice may require.

RULE XI. 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 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 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) day's 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 White Earth 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 White Earth 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 himself or herself to the jurisdiction of the Court and irrevocably appoints the Clerk or the Court as his or her agent upon whom any paper affecting his or her liability on the bond or undertaking may be served. His or her liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court who shall forthwith mail copies to the persons giving the security if their addresses are known.
- (e) Every order granting an injunction and every restraining order 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 XII. 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 or his or her 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 he or she is entitled and from which he or she 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.
- (b) 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 XIII. MOTIONS

Section 1. Form.

- (a) All motions shall be made in writing, unless made orally during a court proceeding and on the record. All written motions shall conform to the form requirements for pleadings under this Rule.
- (b) All motions shall specify the rule and/or substantive law upon which they are based, and shall state clearly and succinctly the relief sought and the factual and legal basis for the motion.

Section 2. Notice and Filing.

- (a) All motions shall be accompanied by a notice of motion which shall state where the motion will be heard and the date and time which has been set for the hearing. The notice and motion shall be served on the opposing parties consistent with the deadlines set forth in Sections 4(b)(3) and 4(c)(3) below. Notices and motions served outside of these timelines may be rejected by the Court.
- (b) All notices and motions must be filed with the clerk of court within the deadlines set forth in Sections 4(b)(3) and 4(c)(3) below, and shall be accompanied by an original certificate of service. Notices and motions filed outside of these timelines or without an original certificate of service may be rejected by the Court.

Section 3. Obtaining a Hearing Date.

- (a) Prior to serving or filing a notice of motion and motion the moving party must obtain a hearing date from the clerk of court. The date and location set by the clerk for hearing must be prominently noted on the moving party's notice of motion.
- (b) When the moving party obtains a hearing date, he or she shall indicate whether the hearing is to be in person or by telephone conference. The movant's notice of motion shall prominently indicate whether the motion hearing is to be in person or by telephone conference.
- (c) In the event no hearing is scheduled, the motion shall be considered by the Court at the next scheduled court hearing.

Section 4. Dispositive and Non-Dispositive Motions.

- (a) There are two types of motions under these Rules: dispositive and non-dispositive.
- (b) Dispositive Motions.
 - (1) Definition: Dispositive motions are those in which a party requests that the Court dispose of some or all of the claims asserted in a complaint, petition, counterclaim or cross-claim.
 - (2) Filing of Documents.
 - (i) Moving Party's Submission: A party making a dispositive motion must file all of the following documents with the Court and serve them on all opposing parties:
 - (aa) Notice of motion;

- (bb) Motion;
 - (cc) A memorandum;
 - (dd) All exhibits and affidavits; and
 - (ee) A proposed order.
 - (ii) Opposing Party's Response: A party opposing a dispositive motion must file all of the following documents with the Court and serve them on all opposing parties:
 - (aa) A memorandum;
 - (bb) All exhibits and affidavits; and
 - (cc) A proposed order.
 - (iii) Moving Party's Reply: A party making a dispositive motion may file a memorandum in reply only to the issues raised in the opposing party's response.
- (3) Service and Filing Deadlines.
- (i) A party making a dispositive motion must serve and file all documents required no later than twenty (20) days before the scheduled hearing date.
 - (ii) A party opposing a dispositive motion must serve and file all documents required no later than ten (10) days before the scheduled hearing date.
 - (iii) If the moving party submits a memorandum in reply it shall be served and filed no later than five (5) days before the scheduled hearing date.
- (4) Relaxation of Time Limits. Where justice requires, the Court may, on written motion of a party, modify the time limits set forth in (3) above.
- (5) Memoranda Page Limits.
- (i) The moving party may file an opening memorandum of up to fifteen (15) pages, double-spaced and with appropriate margins.
 - (ii) The opposing party may file a responsive memorandum of up to fifteen (15) pages, double-spaced and with appropriate margins.

- (iii) The moving party may file a reply memorandum of up to five (5) pages, double-spaced and with appropriate margins.
 - (iv) Upon motion of a party and only in exceptional cases, the Court may allow the parties to exceed the page limits set forth above.
 - (6) Oral Argument Required. All dispositive motions shall be granted an oral argument if requested.
- (c) Non-Dispositive Motions.
 - (1) Definition: Non-dispositive motions are all motions in which a party does not request the Court to dispose of a claim asserted in a complaint, petition, counterclaim or cross-claim.
 - (2) Filing of Documents.
 - (i) Moving Party's Submission: A party making a non-dispositive motion must file all of the following documents with the Court and serve them on all opposing parties:
 - (aa) Notice of motion;
 - (bb) Motion;
 - (cc) A memorandum; and
 - (dd) All exhibits and affidavits.
 - (ii) Opposing Party's Response: A party opposing a non-dispositive motion must file all of the following documents with the Court and serve them on all opposing parties:
 - (aa) A memorandum; and
 - (bb) All exhibits and affidavits.
 - (3) Service and Filing Deadlines.
 - (i) A party making a non-dispositive motion must serve and file all documents required no later than ten (10) days before the scheduled hearing date.

- (ii) A party opposing a non-dispositive motion must serve and file all documents required no later than five (5) days before the scheduled hearing date.
- (4) Memoranda Page Limits.
 - (i) The moving party may file an opening memorandum of up to ten (10) pages, double-spaced and with appropriate margins.
 - (ii) The opposing party may file a responsive memorandum of up to ten (10) pages, double-spaced and with appropriate margins.
- (5) Oral Arguments Not Required. By motion of the parties or the Court's own motion a non-dispositive motion may be decided without oral argument.

RULE XIV. 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 XV. CASE ASSIGNMENT AND TRIAL MANAGEMENT

Section 1. Civil Cases Decided by Judge.

All civil cases shall be decided by a trial judge. There shall be no right to trial by jury in civil cases, except that as given by statute.

Section 2. Assignment of Judge and Trial Date.

The Chief Judge shall determine which judge shall hear a case, and shall provide a policy 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.

Section 3. Postponement.

Upon written request of a party, the trial court judge may, in his or her discretion, postpone a trial or proceeding upon good cause shown.

Section 4. Pretrial Meetings.

- (a) Within fifteen (15) days of case assignment, the trial judge shall schedule a pretrial meeting between the parties and their counsel or advocate, if any.
- (b) During such meetings the parties and the trial judge may consider any matters which will aid in the simplification, clarification, or disposition of the case. The parties and the trial judge may develop procedures to be followed at the trial, and the trial judge may encourage the parties to explore the possibility of settling their dispute. The trial judge may participate in settlement discussions to the extent that his or her impartiality at any eventual trial will not be affected.
- (c) At his or her discretion, the trial judge may, at the request of a party or on his or her own motion, provide for the use of formal discovery. Such discovery may include those methods identified in Rule XIV. However, to the extent practicable, the trial judge shall encourage the parties to use informal methods of discovery.

- (d) The trial 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 and filed with the clerk.

RULE XVI. 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 his or her claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his or her 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 cross claim 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 his or her 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 IX; 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 _____, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule _____.

The Court may order a moving party to dismiss his or her own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading

state, and may order payment of costs in other circumstances where such is deemed appropriate.

RULE XVII. 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. Scheduling and briefing of such motions shall be governed by Rule XIII.

RULE XVIII. TRIAL PROCEDURES

Section 1. Generally.

- (a) The trial judge may develop procedures through pretrial meetings or otherwise to secure a fair and efficient trial in each case. No such procedures shall deprive any party of the opportunity to present his or her case fairly nor shall any such procedures deprive any party of the right of cross-examination, nor shall any such procedure allow any party or witness to testify except under oath.
- (b) Trials generally shall be conducted in accord with the procedures authorized by these Rules. The procedure, however, may be varied by the trial judge in appropriate cases as the interests of justice may require.

Section 2. Consolidation.

The Court may, upon request of any party or on 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 to the actions or if such will tend to avoid unnecessary cost or delay.

Section 3. Separate Trials.

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

Section 4. Subpoenas.

- (a) Issuance. Subpoenas for attendance or witnesses or production of documents or things may be issued and served as provided for elsewhere in these Rules.
- (b) Failure to Appear. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court and the Court may order his or her arrest for the offense of Failure to Obey a Lawful Order of the Court.

- (c) Subpoena Unnecessary. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he or she was in attendance upon a subpoena.
- (d) Costs of Persons Subpoenaed. The cost of preparing and serving subpoenas shall be the responsibility of the party requesting the subpoena.

Section 5. Judge's Right to Question Witnesses.

During the trial, the trial judge shall have the right to ask questions of any witness in order to develop more fully the facts of the case.

Section 6. Verbatim Transcription of Court Proceedings.

All court proceedings shall be transcribed verbatim by the clerk of court or court reporter.

Section 7. Harmless Error Rule Applicable to All Court Rulings.

No error in either the admission or the exclusion of evidence, and on error or defect in any ruling or order 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.

Section 8. Open Court Proceedings.

All trials and all hearings at which oral testimony is to be presented shall be held in open court unless the matter is deemed by statute, ordinance, or court order to be confidential.

Section 9. Stipulations.

No agreement, stipulation, or consent between the parties or their attorneys or advocates, in respect to the proceedings in an action or special proceeding shall be binding unless made in court and entered in the minutes or recorded by the court reporter or made in writing and subscribed by the party to be bound thereby or the party's attorney or advocate and recorded by the clerk of court or court reporter.

Section 10. Use of Copies of Pleadings and Other Papers.

If any original paper or pleading is lost or withheld by any person, the Court may authorize a copy thereof to be filed and used instead of the original.

Section 11. Borrowing and Use of Court Files.

The clerk of court shall not permit any paper filed in his or her office to be taken therefrom unless upon written order of the judge presiding on the involved case.

RULE XIX. 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

- (b) Plaintiff may then call his or her witnesses to testify under oath. Witnesses may rely on exhibits or documents which shall be available for inspection or copying. Witnesses shall testify by answering questions posed by plaintiff or plaintiff's counsel or advocate. After a witness has testified, the witness shall be subject to cross-examination by defendant or respondent or defendant's or respondent's counsel or advocate.
- (c) After plaintiff's witnesses have been examined and cross-examined, plaintiff shall rest his or her case.

Section 2. Defendant's or Respondent's Case.

- (a) Defendant or respondent, if he or she has reserved his or her opening statement, may make such statement after the plaintiff makes his or her case.
- (b) Defendant or respondent may then call witnesses to testify under oath. Witnesses may rely on exhibits or documents which shall be available for inspection or copying. Witnesses shall testify by answering questions posed by defendant or respondent or by defendant's or respondent's counsel or advocate. After a witness has testified, the witness shall be subject to cross-examination by plaintiff or by plaintiff's counsel or advocate.
- (c) After defendant's or respondent's witnesses have testified and have been cross-examined, defendant or respondent shall rest his or her case.

Section 3. Closing Statements.

Closing statements may be made by plaintiff to be followed by any closing statements of the defendant or respondent.

RULE XXI. CONTINUANCE OF TRIAL

If upon conclusion of any trial proceeding it appears that further testimony or opportunity to examine documents is required, the trial judge may order and schedule a continuance of trial. A continuance may be requested by any party or it may be granted upon the Court's own motion. Procedures for any continuance of trial shall be the same as those used during the trial where practicable. The trial judge may limit the nature of the factual matters to which testimony is to be addressed during a continuance of trial.

RULE XXII. WRITTEN DECISION OF TRIAL JUDGE

At the conclusion of a trial, the trial judge shall take the case under advisement. Within forty-five (45) days the trial judge shall issue a written opinion, including findings of fact, conclusions of law, order and judgment. The trial judge may, where he or she deems it appropriate, supplement the findings, conclusions and order with a memorandum.

RULE XXIII. JUDGMENT AND COSTS

Section 1. Definition.

A judgment is any final order of a trial judge made after a trial from which an appeal is available. No special form of judgment is required.

Section 2. Types of Relief Which May be Granted.

(a) Generally.

(1) 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.

(2) Judgment may consist of an order of the Court:

(i) awarding money damages to be paid to the injured party;

(ii) directing the surrender of certain property to the injured party;

(iii) directing the performance of some act or the ceasing and desisting from performance of some act for the benefit of the injured party;

(iv) granting any other relief which the Court deems appropriate.

(b) Judgment by default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the complaint or petition.

Section 3. Costs.

The Court may, in its discretion assess the costs of the case against the party or parties against whom judgment is given. However, such an assessment should not be made as a matter of course but should be made only in exceptional circumstances.

Section 4. Attorney's or Advocate's Fees.

The Court shall award attorney's or advocate's fees in a case where such has been specifically provided by contract or agreement of the parties under dispute, unless it has been clearly and convincingly shown that the case has been prosecuted in bad faith for purposes of harassment only, and that there was no reasonable expectation of success on the part of the affirmatively

claiming party. Attorney's or advocate's fees shall be awarded when provided by statute. Attorney's or advocate's fees may be awarded at other times in the Court's discretion.

Section 5. Entry of Judgment.

- (a) Signed and Filed and Recorded. Judgments shall be signed by the judge and filed with the clerk. 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.
- (b) Death of a Party. If a party dies after a decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

Section 6. Satisfaction of Judgment.

- (a) Full or Partial Satisfaction; Filing. A judgment may be satisfied, in whole or in part as to any or all of the judgment debtors by the owner thereof or his or her attorney or advocate of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction of judgment and noting the amount thereof in the register of actions and the judgment docket.
- (b) Effect of Satisfaction; Limitation. A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for ten (10) years or until satisfied. An action to renew the judgment remaining unsatisfied may be obtained at any time prior to the expiration of ten (10) years and will extend the limitations an additional ten (10) years and may be thereafter further extended by the same procedure.

RULE XXIV. DEFAULT JUDGMENT

Section 1. Entry of Default.

When a party against whom a judgment for relief is sought has failed to plead or otherwise defend, his or her 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.

Section 2. Judgment by Default.

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 within the exterior boundaries of the White Earth 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 White Earth Band of Chippewa.

Section 3. Setting Aside Default.

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

RULE XXV. RELIEF FROM JUDGMENT OR ORDER

Clerical mistakes in judgment, orders or other parts of the record and errors herein arising from oversight or omission may be corrected by the Court at any time on its own initiative or on the motion of any party. After such notice as the Court may direct, mistakes may be corrected before an appeal is docketed in the Court of Appeals, and thereafter while the appeal is pending mistakes may be corrected with leave of the Court of Appeals.

RULE XXVI. 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 judge; 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 XXVII. EXECUTION OF JUDGMENT

Section 1. Time.

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 Court of Appeals 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 White Earth Indian Tribal Police to execute on the personal property of the judgment debtor as provided for herein.

Section 2. Procedure.

The Court shall order the judgment debtor to appear before it and answer under oath inquiries regarding all of his or her personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the White Earth Tribal Police 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 the White Earth Tribal Police after giving at least ten (10) days public notice posted in at least three (3) conspicuous places within the exterior boundaries of the White Earth Reservation. 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 his or her 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.

Section 3. Exemption from Execution.

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 may be subject to execution and not property of his or her family.

Section 4. Redemption from Sale.

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

RULE XXVIII. STAY OF PROCEEDING TO ENFORCE A JUDGMENT

Section 1. Stay Upon Entry of Judgment.

Except for unusual circumstances, proceedings to enforce a judgment should ordinarily be stayed during the period in which any party is allowed to appeal to the Court of Appeals. During this period, the trial court may establish such conditions as are necessary to protect the interests of any party in receiving judgment.

Section 2. Stay Upon Appeal.

A party may obtain a stay when he or she appeals from the decision of the trial court by posting a bond or giving adequate assurance to the trial judge that he or she will satisfy the judgment if it is affirmed. Upon fulfillment of these conditions, the judge shall grant the stay. When a party has obtained a stay, the judgment of the trial judge shall not be executed until final disposition of the case by the Court of Appeals.

Section 3. Stay in Favor of the Band or Agency Thereof.

When an appeal is taken by the White Earth Band of Chippewa, 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.

RULE XXIX. SETTLEMENT

Section 1. Settlement Offers—Effect.

If there is an offer of settlement by the plaintiff under this Rule which is not accepted and the plaintiff recovers a judgment which is greater than or equal to the amount specified in the offer of settlement, the party is entitled to interest at the rate of ten percent (10%) per annum on the amount recovered from the date of the offer of settlement until the amount is paid in full.

Section 2. Settlements on Behalf of Minors; Judgments.

- (a) A compromise or settlement of an action or proceeding to which a minor or mentally incompetent person is a party may be made by the guardian, the guardian's attorney or advocate if the guardian is represented by an attorney or advocate, or the guardian ad litem with the approval of the court in which such action or proceeding is pending.
- (b) A cause of action in favor of or against a minor or mentally incompetent person may, without the commencement of an action thereon, be settled by the guardian with the approval of the court appointing the guardian, the guardian's attorney or advocate if the guardian is represented by an attorney or advocate, or by the guardian ad litem with the approval of any court of record. An order approving a

settlement or compromise under this subsection and directing the consummation thereof shall have the same force and effect as a judgment of the Court.

RULE XXX. DISABILITY OR DISQUALIFICATION OF A JUDGE

Section 1. Disability.

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties of the Court under these Rules, any other judge may perform those duties, but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, he or she may in his or her discretion grant a new trial.

Section 2. Disqualifications.

A judge shall disqualify himself or herself from hearing any matter in which he or she has a direct interest or in which any party to the matter is a relative by blood to the fourth degree (first cousin), or where he or she feels that he or she will not be able to render a just decision.

Any party to a legal proceeding may request a substitution of judge to hear the proceeding by filing a written affidavit of prejudice giving sufficient reasonable grounds why the judge assigned should not hear the case. The affidavit shall be presented to the judge assigned to hear the case who shall rule on the sufficiency of the affidavit, and, if sufficient, either disqualify himself or herself or forward the affidavit to the Chief Judge for a decision as to whether a different judge should be assigned. All requests for disqualification of a judge shall be made within five (5) days after the initial appearance or joinder date. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel or advocate of record that such affidavit and application are made in good faith.

RULE XXXI. APPEALABLE ORDERS

An appeal may be taken to the White Earth Band of Chippewa Court of Appeals:

- (a) from a judgment entered in the White Earth Band of Chippewa Tribal Court;
- (b) from an order which grants, refuses, dissolves or refuses to dissolve an 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 White Earth 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 defendant or respondent other than those unspecified by the White Earth 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 XXXII. SEVERABILITY

If any provision of this title, or the application thereof, to any person, business, 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 XXXIII. AMENDMENT

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

RULE XXXIV. 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 the application thereat:

- a) 1974.5(t)20.7 the other courts having jurisdiction over the subject matter, and the applicable provisions of the tribal court rules;
- c) 1987(t)g mens, decrees, proceedings, judgments, decrees, and other judicial proceedings.

- (d) the order, judgment, decree or other proceeding complies with the laws, ordinances and regulations of the jurisdiction from which it was obtained; and
- (e) the order, judgment, decree or other proceeding does not contravene the public policy of the White Earth Band of Chippewa or interfere with the Band's right to make its own laws and be governed by them.

**RULE XXXV. PROCEDURAL REQUIREMENTS FOR GIVING FULL FAITH AND
CREDIT TO ORDERS, JUDGMENTS, DECREES, AND OTHER JUDICIAL
PROCEEDINGS**

ORDER

These Rules of Civil Procedure are hereby adopted by the White Earth Tribal Court. It is so ordered by the Court.

Date: June 11, 1998

/s/ Anita Fineday

Anita Fineday
Chief Judge
White Earth Tribal Court

Amended 8-18-98