



Bear River Band of the Rohnerville Rancheria

Tribal Court

**RULES OF COURT**

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## **CHAPTER ONE                      PRELIMINARY RULES**

### **Rule 1.1            Authorization and Scope**

The Bear River Band of the Rohnerville Rancheria (hereinafter referred to as the “Tribe”) Rules of Court apply to all civil cases in the Bear River Band Tribal Court (hereinafter referred to as the “Court” or “Tribal Court”) unless otherwise provided by Tribal Law. These Rules of Court (hereinafter referred to as “Rules”) are promulgated pursuant to the authority delegated to the Court in the Tribe’s Act Establishing the Judiciary, Section 6.0 (d), Power of the Courts.

### **Rule 1.2            Governing Principles**

The Bear River Band of the Rohnerville Rancheria Tribal Council and the Court is committed to the establishment of a judicial system that is uniquely Bear River Band of the Rohnerville Rancheria and provides a culturally appropriate forum for resolution of conflicts arising within or affecting the community.

These Rules will govern all actions in the Bear River Band Tribal Court. They are intended to provide for a just determination in every proceeding and shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense or delay. Enforcement of these Rules will be guided by the precepts that have from time immemorial guided decision making within the Tribe, including, but not necessarily limited to, the historic practice of having known parties act as decision makers and/or mediators in disputes that arose among the people.

### **Rule 1.3            Construction**

These Rules shall be liberally construed in order that justice might be served and cases resolved as promptly and as reasonably as possible. These Rules shall apply to all matters in the Court; provided, however, in cases where a Tribal Ordinance or Tribal Regulation contains more specific and/or contradictory provision, the applicable provisions of the subject Ordinance or Regulation shall apply. The foregoing applies, without limitation, to specific enforcement proceedings, timeframes, discovery rules, and rights of appeal that may be included in a Tribal Ordinance or Tribal Regulation.

### **Rule 1.4            Amendment**

These Rules may be amended from time to time, as needed, by the Chief Judge of the Court, with or without notice. Changes to these Rules, however, shall not be applied so as to deny someone due process of law or to materially prejudice their substantive rights under applicable law.

In the absence of a governing rule the Chief Judge may establish rules consistent with the governing principles set out above. The Chief Judge may delegate the creation of scheduling to the hearing court or may upon the motion of a party or the Court’s own motion establish Rules necessary for the operation of the Courts of the Bear River Band of the Rohnerville Rancheria.

**Rule 1.5 Court Location and Scheduling**

- (a) Unless another location is designated, proceedings shall be located at:

Bear River Band Tribal Court  
266 Keisner Road  
Loleta, California 95551

Phone: (707) 733-1900 Ext: 1321  
Fax: (707) 733-1719  
Email: [tribalcourt@brb-nsn.gov](mailto:tribalcourt@brb-nsn.gov)

- (b) The hours of the Court shall be from 9:00 a.m. to 2:00 p.m., Monday through Thursday, except on all Tribal and federal holidays. On occasion, the Court may have to close due to power outages, inclement weather, or other disasters. If the Court closes unexpectedly all attempts will be made to notify affected parties and a sign will be posted on the door.
- (c) The Court Clerk shall be responsible for coordinating Court proceedings and shall be responsible for all arrangements for courtroom and other facilities for the Court's business.

**Rule 1.6 Access to Court and Court Documents**

- (a) Hearings

- (1) As a general rule, Court hearings shall be open to the public. The Judge may, in his or her discretion, limit public access to a hearing as he or she deems appropriate to protect the interests of the parties and maintain judicial efficiency.
- (2) All hearings or other proceedings before a Judge shall be recorded by designated court personnel to establish the court record.
- (3) Hearings may not be photographed, recorded or broadcasted for media coverage without the written consent of the Judge.
- (4) Court personnel may photograph or videotape sessions for judicial education or publications.

- (b) Court Records

- (1) The Court Clerk shall keep a docket in such a form and style as the Clerk shall determine. Actions shall be assigned consecutive file numbers. The entry of an order or judgment shall show the date the entry is made. The Court Clerk shall also keep, in such form and manner as the Clerk shall determine, a correct copy of every order, and judgment, whether appealable or not, issued or entered by the Court. The Court Clerk shall also keep all other books and records as may be required by the Court or as the Clerk shall determine necessary for the orderly operation of the Court.
- (2) Records of all proceedings before the Court shall be kept under the supervision and control of the Court Clerk. All records are strictly confidential and maintained in a locked file cabinet, and shall be available for inspection only to the parties to the case, after a timely request.

- (3) Requests for access to court records shall be made orally or in writing to the Court Clerk. The Court Clerk must supervise access to files and ensure that no Court records are withdrawn from his or her custody.
- (4) Every non-party person or agency seeking to inspect or obtain court records must petition the Court for authorization.
  - (i) The specific records sought shall be identified based on knowledge, information, and belief that such records exist and are relevant to the purpose for which they are being sought. The petition must be served on all parties. In determining whether to authorize inspection or release of such records, in whole or in part, the Court shall balance the interests of the parties to the Court's proceedings, the interest of the petitioner, and the interest of the public/non-party.
  - (ii) The Court shall permit disclosure of, discovery of, or access to, Court records or proceedings, only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution and/or is in the furtherance of justice.
  - (iii) The Court may issue protective orders to accompany authorized disclosure, discovery, or access.
- (c) Child Cases – Special Proceedings and Rules
 

All child protection proceedings shall be confidential. No information about the case, including the names of the child and participating parties, shall be released to anyone who is not a party to the case, an employee or officer of the Court, or an officer of the law, without a court order. The Court will respect interagency agreements as to release of information to agencies with potential concurrent jurisdictional interests.

## **Rule 1.7 Courtroom Conduct**

- (a) Respect
 

The Court and all persons appearing in the Court shall treat each other respectfully. Respect is appropriate because the Court is an expression of the sovereignty of the Tribe. Respect is also necessary, so that the business of the Court can be conducted in an orderly fashion. Parties should address the Court, rather than talking to each other.
- (b) Dress and Other Conduct
 

All persons appearing before the Court shall dress appropriately. Hats should be removed on entering the courtroom. Parties shall conduct themselves in a manner consistent with doing the business of the Court. Chewing gum, profanity, arguing with the Court after a ruling, insults or threats, are all examples of inappropriate behavior.
- (c) Contempt of Court
 

Any party, party's attorney, party's spokesperson/representative, party's advocate, witness, or any other person in the courtroom who fails to maintain the respect due in the Court, who abuses or interferes with the process or proceedings of the Court, or who engages in rude or offensive conduct in the courtroom may be held in contempt of court and subject

to penalty, at the Court's discretion. A person held in contempt of court may face a fine in an amount not less than one thousand five hundred dollars (\$1,500.00) and/or restricted from representing litigants within the Bear River Band Tribal Court.

### **Rule 1.8 Frivolous Filings**

The Court may penalize any person who submits a frivolous filing or files a document for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The Court may impose penalties if it finds a filing to contain intentional misstatements or statements that omit material facts or law that the person knew or should have known were relevant to the action.

## **CHAPTER TWO FORMAT OF DOCUMENTS FILED WITH THE COURT**

The Court may, in its discretion, reject any documents that do not comply with the requirements set forth in this Chapter.

### **Rule 2.1 Paper and Format**

- (a) All documents filed with the Court must be on 8½ inch by 11-inch standard quality white paper, with typed matter not exceeding one-inch margins.
- (b) Only one side of a piece of paper may be used on all documents filed with the Court (do not copy or print double sided).
- (c) All documents filed with the Court must be typed or neatly and legibly handwritten in blue or black ink. Typed documents must use 12-point standard font equivalent to Courier, Times New Roman or Arial fonts.
- (d) The first page of each separate document shall contain:
  - (1) The title of the Court;
  - (2) The title of the action or proceeding;
  - (3) The file number of the action or proceeding; and
  - (4) The title of the document.
- (e) Each paper shall bear the date it is signed on the signature page.
- (f) Each page must be numbered consecutively at the bottom.

### **Rule 2.2 Preparation of Documents for Court**

- (a) Any document or pleading that is signed, said document must be the original if it is to be accepted for filing.
- (b) All papers presented for filing must be in duplicate (original is filed with the Court plus one copy, which is file stamped and returned to the filer).
- (c) Except with permission of the Court, no legal brief shall exceed twenty (20) pages in length, exclusive of pages containing a table of authorities or a table of contents or exhibits, and no reply brief shall exceed fifteen (15) pages. Any brief exceeding eight (8) pages shall contain: a table of contents with page references and a table of cases (arranged

alphabetically), statutes and other authorities cited, with references to the pages of the brief where they are cited. Cases cited shall be attached in full to the citing brief.

### **Rule 2.3 Exhibits**

Exhibits may be filed with and attached to any documents filed with the Court, must substantially comply with the format provided in Chapter Two.

### **Rule 2.4 Signatures on Documents**

- (a) Every document being filed or served must be signed by the attorney/advocate/spokesperson, self-represented litigant, or other person authorized by law to file or serve the document, as provided in this Rule. If a document is not signed or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the document had not been filed or served.
- (b) Any filer may file a document with an original, wet signature conventionally with the Court Clerk, either in person or by postal mail or electronic file.
  - (1) An original, wet signature is only required for certain documents to be filed with the Court. Those documents include:
    - (i) Declaration of Service, defined by Rule 3.8; and
    - (ii) Any document as ordered by a Judge.
- (c) Where an original, wet signature is not required on a document, an electronic signature may be used. Where an electronic signature is properly used, the document shall be considered an original document if the document is electronically signed by the filer in either one of the following ways:
  - (1) The typed symbol /s/ followed by the typed name of the registered filer submitting the document (example: /s/ Jane Doe); or
  - (2) A graphic representation of the filer's actual signature; and
  - (3) The document including the electronic signature also includes the following information:
    - (i) Name (in addition to name typed as part of electronic signature in sections (1) or (2) above);
    - (ii) Address;
    - (iii) Telephone number (if available);
    - (iv) E-mail address;
    - (v) Law firm (for attorneys only);
    - (vi) Bear River Band of the Rohnerville Rancheria Tribal Bar Association Number; and
    - (vii) State Bar Association Identification Number (for attorneys only).
- (d) Any party to a case may challenge the authenticity of an electronic signature filing an objection within ten (10) days after discovery that the signature is not authentic.



## CHAPTER THREE            COMMENCING A COURT ACTION

### Rule 3.1            Pleadings

(a) Defined

“Pleadings” are the written documents filed with the Court by the parties setting forth their respective claims and defenses. Pleadings include petitions, complaints, answers, cross-complaints and counter-complaints.

(b) Signatures

All pleadings submitted to the Court must be signed under penalty of perjury by the submitting party or his or her respective attorney or spokesperson.

### Rule 3.2            Filing and E-Filing

A case is started with the Court by the filing of the first papers with the Court Clerk and payment of filing fee, if required, by the party bringing the case.

(a) Documents can only be filed by the Clerk of the Court or a person designated as an associate clerk (or by a judicial officer of the Court) for the purposes of filing/receiving documents.

(b) Documents shall be considered filed with the Court on the date it is file stamped by the Court Clerk or in the case of electronic filing, the date the filing was transmitted to the Court email address.

(c) The Court allows the filing of documents by fax, provided the filing party contacts the Court Clerk to obtain the proper form, procedure and consent for such fax filings.

(d) The Court Clerk shall collect a filing fee set by the Court’s Fee Schedule. All requests for waiver of filing fee shall be made in writing on forms provided by the Court. The waiver form shall be filed with the Court Clerk.

(e) Late filing of material may be permitted by order of Court provided good cause is shown. Any late filing will need to conform to all other Rules of Court.

(f) Filing in any location or by any method other than as provided by this Rule is ineffective.

### Rule 3.3            Time Computation

(a) Whenever a Rule, or order of the Court requires that an action be taken within a certain number of days, the time computation does not include the day the order is given but begins as of the next day and runs until the last day specified, unless the last day falls on a weekend or tribally recognized holiday, in which event the due date is the next work day.

(b) This section does not apply to actions required prior to hearings (proof of service, service of summons, submissions of motions, reports, etc.), as those actions are counted by calendar days to include weekends, but would not include holidays.

(c) For noticing by delivery to a person by mail, it shall be presumed that delivery takes place five days after the day that notice is mailed.

### **Rule 3.4 Notice of Hearing and Summons**

#### (a) Defined

- (1) A “Notice of Hearing” is notice of a person’s right to appear in Court and shall contain a time and date for the scheduled Hearing.
- (2) A “summons” is a notice requiring a person to submit something to the Court and/or to appear in Court.

#### (b) Issuance

- (1) Upon receiving a Bear River Band Police Citation, if said citation does not contain a date or time for Hearing, the Court Clerk shall issue a Notice of Hearing to the citation recipient.
- (2) Upon filing of a complaint, the Court Clerk shall issue a summons to the respondent.

#### (c) Contents

- (1) The Notice of Hearing shall notify the citation recipient of the civil citation(s), Court File Number, Case Type, Hearing time and date, right to respond to the matter, and that failure to appear may result in a default judgment against the party cited.
- (2) The summons shall direct the opposing party to answer the complaint or otherwise appear and defend against the complaint. The summons shall notify the respondent that failure to answer in writing or otherwise appear and defend may result in a default judgment against the respondent. A copy of the complaint must be attached to the summons.

#### (d) Service

- (1) The Notice of Hearing shall be personally served at least ten (10) court days before the time stated for the appearance. Service by certified mail or publication may be made as necessary.
- (2) The Summons shall be personally served at least ten (10) Court days before the time stated for the appearance. Service by certified mail or publication may be made as necessary.

### **Rule 3.5 Petition, Complaint and Answer**

#### (a) Petition

A “petition” is the first document filed in an action where a party requests the Court to make a ruling on something. In some cases, the requirements for the contents of the petition will be as set forth in relevant Tribal Law. Otherwise, petitions must generally include a short plain but complete statement of the facts of the case, a statement of the way in which the rights of the party bringing the petition were violated, and a statement of the relief the party is seeking. The party bringing the case is called the “petitioner”.

#### (b) Complaint

A “complaint” is the first document filed in an action where a party requests the Court to award monetary damages or obligate the respondent to take some action. Any party may

file a complaint with the Court. A person who files a complaint is called a “petitioner”. The person against who the complaint is brought is called the “respondent”.

(c) Caption

All complaints submitted to the Court shall be in the format provided in Chapter Two and must include a caption (cover page) setting forth the following:

- (1) Name of the Court.
- (2) Name of the parties.
- (3) File number (if available).
- (4) Name, address and telephone number of the petitioner or his or her spokesperson or attorney, and, if relevant, the attorney's bar number for Tribe and/or state membership.

(d) Contents of Complaint

The complaint must include the following:

- (1) A brief and complete statement of the facts.
- (2) A statement of the rights that the petitioner claims have been violated by the respondent.
- (3) A statement of the relief the party is seeking (i.e., what the petitioner wants the Court to do).

(e) Answer and Time for Filing Answer

An “answer” is the document filed by the person who has been served with a complaint and is the respondent in that action. A written answer or other response shall conform to the format provided in Chapter Two and must be filed with the Court and served on the opposing party(ies) within thirty (30) days from the date of service of the complaint and summons, unless the parties agree to extend the time for filing and service (See Rule 3.8 – Service). Failure to respond in writing within the requisite time period may result in a default judgment against the respondent.

(f) Contents of Answer

The answer must respond to all statements contained in the complaint or petition. The answer should admit, admit in part, or deny each statement in the complaint or petition and set forth any affirmative defenses to the complaint or petition. Failure to respond to all statements in the complaint may result in a default judgment against the respondent.

(g) Interventions

In some cases, a person or entity may petition the Court to intervene in a case to become a party. If the Court grants the petition, the person becomes a party to the case and is called an “Intervenor”.

### **Rule 3.6 Responses, Amendments and Forms**

(a) Amendments

A party may without permission of the Court amend its pleadings once at any time before being served with a response. Otherwise, a party may amend his/her pleadings only by permission of the Court or by written consent of the adverse party.

(b) Use of Forms

The Court may from time to time approve forms to be used, so that users of the Court do not have to create their own pleadings. As forms are approved, they shall be added to and become part of these Rules. Forms are available with the Court Clerk.

### **Rule 3.7 Counterclaims and Cross-Claims**

#### **(a) Counterclaims**

A “counterclaim” is a claim that a respondent has against the petitioner who is the opposing party. A party may file a counterclaim, including any claim the party has against an opposing party arising out of the same transaction or occurrence that is the subject of the opposing party’s claim. A counterclaim may not require the presence of third parties over whom the Court cannot acquire jurisdiction. An individual commences a counterclaim by filing a counter-complaint containing all claims for relief and supporting facts with the Court.

#### **(b) Cross-claims**

A “cross-claim” is a claim against a co-party; in other words, if there are two respondents, one may file a cross-claim against the other. A cross-claim may be filed arising out of (1) the transaction or occurrence that is the subject matter of the original claim or counterclaim, or (2) any property that is the subject matter of the transaction.

### **Rule 3.8 Service**

#### **(a) Proof of Service**

A “proof of service” is a document prepared by a party telling the Court when and how documents were served on the other party or parties. Proof of service forms are available with the Court Clerk. All documents filed in Court must be served on adverse party(s).

#### **(b) Proof of service shall be signed by a person eighteen (18) years or older who is not a party to the case, stating that filed copies have been served on all parties or their attorney/advocate, either in person or by mailing to a true and correct address (as set forth in the pleading); or by email or facsimile transmission with a true copy to follow no later than one week from the date of the emailed/faxed copy.**

#### **(c) The initiating pleading in all cases must be personally served, or if not practicable, served by certified mail on all interested parties; provided the server submits an affidavit detailing attempts at personal service and the cause of impracticality of personal service. If personal service or certified mail is not available then the petitioner may request service by publication by Order of the Court.**

#### **(d) In any event, proof of service shall be served on all parties no later than five (5) days prior to the original trial date, unless exigent circumstances exist and/or the served party waives the right to said service. Any party who is not served in a timely fashion may request a continuance.**

#### **(e) Proof of service must be filed with the Court specifying the date, place and manner of service. If the Court orders substituted service, it shall specifically state the process and timelines for such substituted service consistent with due process.**

#### **(f) Failure to Serve**

If a party fails to serve and file a pleading as required under this Rule, the Court may dismiss the action.

**Rule 3.9 Supplemental Pleadings**

A party may seek leave of the Court to file a supplemental pleading during the course of an action. A supplemental pleading is a pleading where a party seeks to add to an earlier pleading either to correct a defect in the earlier pleading or address facts arising since the earlier pleading was filed.

**CHAPTER FOUR CASE MANAGEMENT**

**Rule 4.1 Scheduling**

(a) Scheduling Order

The Court may, in its discretion, confer with the parties to determine appropriate filing and discovery deadlines and hearing dates, all of which shall be set out in a court order called a scheduling order. A scheduling order may also include any other matters appropriate in the circumstances of the case, including an order requiring the parties to mediate the dispute before the Court hears the case.

(b) Time for Order

The Court shall issue a scheduling order within thirty (30) days after the complaint has been served on a respondent.

(c) Notification of Dates

The Court Clerk shall provide all deadlines and date assignments to all parties in writing.

**Rule 4.2 Consolidating Cases**

Unless otherwise ordered by the Court, where cases are consolidated, whether for trial only or otherwise, the caption of all papers filed after consolidation shall list first the name and docket number of the lowest numbered case in the group, with words showing a consolidation occurred. This shall be followed by a listing of the names and docket numbers of only those cases to which the papers apply. Attorney/advocate shall furnish copies of papers filed according to the numbers of the cases to which the papers apply.

**Rule 4.3 Pre-Trial Conferences**

In any action, the Court may in its discretion direct the parties, their attorneys or their spokespersons to appear before it for a conference or conferences before trial for any appropriate purpose under the circumstances of the case.

## **CHAPTER FIVE                      DISCOVERY**

### **Rule 5.1            Discovery**

(a) Generally

“Discovery” means the obtaining of information by a party to a legal action from another party, other person, or an organization. All parties have the right to have information which is relevant to his/her claim or defense provided by other parties and witnesses, unless the information is privileged, a witness or information is not subject to the jurisdiction of the Court.

(b) Right to Discovery

Every party shall have the right to discovery in accordance with these Rules.

(c) Court Discretion

Discovery may be expanded or limited by the Court at its discretion. Any party seeking discovery beyond that which is automatically discoverable pursuant to Rule 5.3 shall submit, either in writing or orally during a discovery conference, requests for such discovery. The party must clearly state the information sought and the reason or reasons why it is relevant to the case and needed by the requesting party.

### **Rule 5.2            Discovery Conference**

The Court may schedule a discovery conference upon request of any party or on its own. At the discovery conference, any party may submit requests for discovery. The Court shall expand or limit discovery at its discretion.

### **Rule 5.3            Automatic Discovery**

Any party shall have the right to (1) take the deposition of any opposing party, and (2) serve upon any opposing party interrogatories. A deposition is the taking of the testimony of another party under oath.

## **CHAPTER SIX                      LAW AND MOTION**

### **Rule 6.1            Motions**

(a) Generally

A “motion” is a request made to the Court to obtain an order directing some act to be done in connection with a pending case. Except for motions made by a party while Court is in session, all motions must be filed with the Court, must be in writing and should conform to the format requirements of Chapter Two. All motions shall state the order the moving party is requesting and the reasons why the motion should be granted. Unless an ordinance or another court rule provides otherwise, motions may be filed with the Court at the same time any pleadings are filed with the Court or at any time after the first pleading is filed.

(b) Noticed Motions

A “noticed motion” is a written motion that is served on all other parties, allowing those parties to review the motion and respond in writing. The party making the motion is called the “moving party”. The procedure for a noticed motion is as follows:

- (1) The moving party must file a motion and all supporting documents with the Court at least ten (10) business days before the hearing to decide the motion.
- (2) The moving party must serve a copy of the motion and all supporting documents in person or by mail on all other parties at least ten (10) days before the hearing to decide the motion.
- (3) A response from any non-moving party to a noticed motion must be filed in Court and served on the party making the motion no later than five (5) business days after the motion was served on the non-moving party.
- (4) At the Court’s discretion, a motion may be heard on an expedited basis for good cause.

(c) Ex Parte Motion

(1) Generally

An “ex parte motion” is a motion that is not served on non-moving parties within the time provided by subsection (b) above, because great or irreparable injury will result to the moving party if an order is not entered immediately. In other words, an ex parte motion is used when a party needs the Court to consider the motion sooner than the soonest date on which a hearing could normally be scheduled.

(2) Application

In addition to the requirements of subsection (a) above, all ex parte motions shall include a written statement, signed by the moving party that declares the following:

- (i) The moving party has, within a reasonable time, informed the opposing party, the opposing party’s attorney or the opposing party’s spokesperson of when and where the motion would be made;
- (ii) The moving party has made a good faith attempt to inform the opposing party, the opposing party’s attorney, or the opposing party’s spokesperson but was unsuccessful, specifying the efforts made to contact them; or
- (iii) For some other specified reason, the moving party should not be required to inform the opposing party, the opposing party’s attorney, or the opposing party’s spokesperson.

(3) Standard

An ex parte motion shall not be granted unless it appears from the facts as shown by affidavit or verified complaint that great or irreparable injury will result to the moving party before the matter can be heard on a noticed motion.

## **Rule 6.2 Motion Hearings**

The Court may schedule a hearing on a motion at the request of a party or at its own discretion. In the interest of efficiency and economy, hearings on motions will usually be held as part of other scheduled hearings. However, for good cause shown by a party or on its own motion, the Court

may schedule a separate motion hearing. All hearings for pre-trial motions shall take place at least fifteen (15) days before the commencement of trial.

### **Rule 6.3 Video and Audio Conference Appearances**

A party may request to appear at a hearing or request the Court to conduct a hearing via video or audio conference. A party who is requesting to appear or is requesting that the Court conduct a hearing via video or audio conference shall notify the Court and all other parties at least three (3) days before the hearing. The Court, on a showing of good cause, may permit a party to appear at the hearing by video or audio conference even if the party has not given notice pursuant to this Rule.

### **Rule 6.4 Matters Requiring a Motion**

- (a) A Judge may inform the parties that the Judge will preside from a remote location by video or audio conference over all or any portion of a proceeding by notice served on all parties at least three (3) days before the hearing.
- (b) Participation by video or audio conference is generally considered for non-evidentiary proceedings unless the Court orders otherwise.
- (c) For extension of time for the performance of an act required or allowed to be done, provided the request for the motion is made before the expiration of the period originally prescribed or as extended by previous orders.
- (d) To continue a pretrial conference, hearing, motion, or the trial of an action.
- (e) To add additional parties.
- (f) To amend pleadings.
- (g) To file supplemental pleadings.
- (h) To appoint next friend of court or guardian ad litem.
- (i) To intervene.
- (j) For substitution of parties.
- (k) Joint motions to dismiss or consolidate.
- (l) Withdraw from counsel.
- (m) Small claims filed by unrepresented parties where the amount in dispute is less than \$10,000.00 A proposed order shall accompany each motion filed under this paragraph.

### **Rule 6.5 Provisional Relief**

“Provisional relief” is a court-ordered remedy that protects a party to a case against loss and irreparable injury before the entire case can be resolved. In any action before the Court, the Court may, upon a motion by one of the parties, grant provisional or other extraordinary relief if it appears from the pleadings, affidavits and/or sworn testimony that: (1) the party seeking the relief is likely to prevail on the merits of his or her claim; and (2) the party seeking the relief will suffer great or irreparable injury if the provisional relief is not granted. In its discretion, the Court may require the moving party to post a bond or provide other security before it grants an order for provisional relief. An order granting provisional relief on an ex parte basis shall automatically expire in thirty (30) days unless extended by court order.



**Rule 6.6 Appellate Writs**

[Reserved]

**CHAPTER SEVEN TRIAL**

**Rule 7.1 Trial**

A “trial” is the hearing of the case on its merits and is held after the parties have had a reasonable time to prepare their cases. The Court shall confer with the parties in setting the date for trial.

**Rule 7.2 Trial Briefs**

Although not required, a party may submit a trial brief describing what that party believes are the relevant facts, the evidence that will prove those facts, the applicable law and/or how the applicable law should be applied to the facts. If a party elects to provide a trial brief, it must be filed with the Court Clerk and served on the opposing party no less than ten (10) business days before the hearing and it shall be limited in length to no more than fifteen (15) pages, excluding any title page or table of contents or table of authorities, none of which are required. Either party may also submit reply briefs to the Court and the opposing party within five (5) days before trial, subject to the same Rules regarding trial briefs.

**Rule 7.3 Evidence**

(a) Federal Rules

The Court shall consider, but shall not be bound by, the Federal Rules of Evidence.

(b) Tribal Custom

Where any doubt arises as to the customs of the Tribe, the Court may request the advice of elders or other credible individuals familiar with those customs.

(c) Privileged Communications

Communications privileged in either a California federal court or a California state court may be considered as privileged in the Bear River Band Tribal Court. This includes, but is not limited to, the attorney-client, physician-patient, confidential marital communications and spousal privileges.

**Rule 7.4 Applicable Law**

The Constitution, codes, resolutions, common law, and customs and traditions of the Tribe will be used to liberally interpret Tribal Law to provide a fair hearing and fair enforcement of the laws of the Tribe.

(a) Order of Preference

Tribal Law, including Tribal custom, shall be looked to first by the Court to resolve any question before it. If Tribal Law does not resolve the question, the Court shall next look to the law of other Tribes, and then, if necessary, to Federal law. As a last resort, the Court shall look to California law by way of example. California law shall not be binding.

## (b) Custom

In any civil case where all parties are in agreement and where there is no Bear River Band Tribal Court case law, ordinance or policy to the contrary, the customs and traditions of the Tribe may be used exclusively to resolve the dispute. Where any doubt arises as to the customs and traditions of the Tribe, the Court may, in its discretion, request the advice and input of impartial elders familiar with tribal customs and traditions. This advice may be provided either through formal testimony or any other procedure mutually agreed upon by the Court and the parties.

**Rule 7.5 Presence of Parties and Witnesses**

## (a) Subpoena

A “subpoena” is a document that requires a witness to appear in Court and give testimony or that requires someone to provide the Court with documents or other items. Preparation and service of the subpoena is the responsibility of the party seeking to have the Court issue the subpoena. Subpoena forms can be obtained from the Court Clerk. A party representing herself or himself may seek assistance of the Court in the preparation and service of the subpoena. The Court may, in its discretion, require such party to submit a subpoena to the Court for approval prior to service.

## (b) Time for Issuance of Subpoenas

Subpoenas shall be issued by the Court within a reasonable amount of time before the hearing or trial.

## (c) Notice

A party shall use its best efforts to notify any witness who has been subpoenaed to appear in Court. The party shall give sufficient prior notice of the hearing date so that the witness may make necessary arrangements to appear.

## (d) Failure to Appear

If a person who has been properly served with a subpoena fails to appear or produce required documents or items, the case may be postponed or dismissed, judgment may be entered against the absent party if the person who failed to appear is a party, or the Court may proceed to hold the hearing or trial. The person who fails to appear or produce documents may also be held in contempt of court and fined in accordance with Rule 1.7 (c), Contempt of Court.

## (e) Witnesses

All witnesses, prior to their testimony, shall be administered an oath by the Court Clerk or Judge similar to as follows: “You do now solemnly swear (or affirm) the testimony you are to give in the matter now pending before this Court to be true and nothing but the truth.” If a person is called as a witness and it appears to the Court that the testimony or other evidence being sought may tend to incriminate the witness, the Court shall advise the witness of the privilege against self-incrimination, the possible consequences of testifying, and the right to retain their own legal counsel in such cases.

**Rule 7.6 Postponement**

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

**Rule 7.7 Statement of Decision**

After the trial, the Court shall render and announce its decision in accordance with Rule 8.4, Entry of Judgment.

**CHAPTER EIGHT JUDGMENT**

**Rule 8.1 Default Judgment**

A "default judgment" is a judgment granted by the Court against a respondent who has failed to file a written answer or otherwise defend against a claim. Any party pursuing a claim may request a default judgment be entered through a noticed motion after the time to answer an initial pleading has expired. The Court may enter a default judgment against any party who has been properly served with notice and who fails to answer an initial pleading. The Court shall enter a default judgment in accordance with Rule 8.4, Entry of Judgment.

**Rule 8.2 Summary Decision (Summary Judgment and Adjudication)**

A "summary decision" is a judgment granted on a claim or defense where there is no genuine issue of fact for the Court to resolve and the moving party is entitled to prevail on the claim or defense as a matter of law. Any time after thirty (30) days from the commencement of an action, any party may file a noticed motion for a summary decision. The Court may render a summary decision in favor of the moving party on any claim or any defense where there is no genuine issue of fact for the Court to resolve and where the moving party is entitled to judgment as a matter of law. If the Court is able to render a decision on all issues in a case and no issues of fact remain for the Court to resolve, the Court shall enter a summary judgment in accordance with Rule 8.4 – Entry of Judgment. If the Court is unable to render a decision on all issues in the case, it shall enter a summary adjudication for those issues it can resolve and then try the remaining issues of fact.

**Rule 8.3 Dismissal of Actions**

(a) Generally

A "dismissal" is the termination of an action or claim without further hearing by the Court. A dismissal may be with "prejudice" or "without prejudice". A dismissal without prejudice does not bar a party from refileing the same case with the Court. A dismissal with prejudice bars a party from refileing the same case with the Court.

(b) Voluntary Dismissal

A "voluntary dismissal" is dismissal of a lawsuit at the request of the petitioner or by agreement of all the parties. A petitioner may file a notice of voluntary dismissal with the Court at any time prior to the filing of an answer by any respondent. Upon receipt of the

notice of voluntary dismissal, the Court shall dismiss the case without prejudice if an answer has not been filed with the Court.

(c) Motion to Dismiss

Any party may file a noticed motion to dismiss all or part of a case. The Court may dismiss a claim or an entire case if:

- (1) The Court lacks jurisdiction to hear a claim;
- (2) A petitioner moves to dismiss a claim it has filed after an answer has been filed by a respondent;
- (3) A party's pleadings fail to establish a right of relief under the law, even assuming that all factual allegations made by the party's pleadings are true;
- (4) A party fails to comply with Court Rules or an order of the Court; or
- (5) There has been no action taken by any party regarding the case for nine (9) months.

As an alternative to granting a motion to dismiss, the Court may grant a party permission to amend its pleadings to allow the party to properly establish a right of relief under the law. The Court may dismiss a case with or without prejudice.

(d) Court Motion for Dismissal

On its own motion, the Court may move to dismiss an action. The Court may dismiss an action for any reason provided in Rule 8.3 (c) – Motion to Dismiss. When making its own motion, the Court shall provide both parties with written notice that unless good cause is shown why the case should not be dismissed, the case will be dismissed in thirty (30) days. The Court shall review any response by a party to such written notice. In its discretion, the Court may set a hearing to adjudicate its own motion.

#### **Rule 8.4 Entry of Judgment**

A “judgment” is a final order of the Court which disposes of an entire case or claim. The Court shall enter all judgments into the record in written form. All judgments shall be in writing and must be entered within twenty (20) days after a trial or hearing or after the filing of any post-hearing or post-trial briefs. Default judgments, summary judgments and dismissals of actions shall be considered judgments and, as such, shall be entered into the Court record in written form.

#### **Rule 8.5 Motion for Reconsideration**

Any party may file a noticed motion requesting the Court to amend or reconsider any judgment entered pursuant to Rule 8.4 – Entry of Judgment, including a request to the Court to grant a new hearing or trial. A party requesting a motion for reconsideration must file the motion within ten (10) days from the entry of judgment. The Court may deny the motion without a hearing, may grant the motion without a hearing or may schedule a hearing to adjudicate the motion. If the Court grants the motion, it shall enter a new judgment into the court record pursuant to Rule 8.4 – Entry of Judgment.

#### **Rule 8.6 Final Judgment**

A judgment will be considered a final judgment when the time for filing a motion for reconsideration has passed and no party files such a motion or when the Court denies a motion for

reconsideration. The Court Clerk shall enter the date when a judgment becomes final into the docket book of the Court.

#### **Rule 8.7 Costs in Civil Action**

The Court may assess costs of the case against the person against whom judgment is given. Such costs shall include the expenses of voluntary witnesses for which either party may be responsible under these Rules, and any further incidental expenses or fees connected with the procedure required by these Rules as the Court may direct. Unless provided by a Tribal Law or ordinance, costs do not include attorney fees.

#### **Rule 8.8 Satisfaction of Judgment**

Unless a party requests the Court to enforce a judgment, the Court shall take no action to satisfy or enforce a judgment. A party may request the Court to enforce a judgment if the party against whom judgment has been entered fails to comply with the judgment within a reasonable time after the judgment becomes final.

#### **Rule 8.9 Judgments of Other Jurisdictions**

- (a) Any person may apply to the Court by written application for an order accepting a civil judgment from another tribal court or a state or federal court as a judgment of the Court. Child support orders shall proceed per the Tribe's agreements, if any, with local jurisdictions, and wage garnishment orders shall be filed with the Court for review and enforcement.
- (b) Review by Court  
The Judge shall review the application within thirty (30) days of its filing. The Judge shall then decide whether to enter the judgment of the other court as a Court judgment. Unless prohibited by federal law, the Judge shall have discretion to decide whether to accept the judgment of a foreign court and shall be guided by the best interests of the Tribe and the parties.
- (c) Payment by Court  
Upon the entry of the order declaring the other court's judgment to be a judgment of the Tribal Court, all provisions of these Rules regarding judgments shall be applicable. The Court shall issue a satisfaction of judgment once the judgment has been paid in full.

### **CHAPTER NINE APPELLATE RULES**

#### **Rule 9.1 Appeal from Final Judgment**

Subject to the limitations set forth in the Bear River Band of the Rohnerville Rancheria's Act Establishing a Judiciary, and these Rules, any party who has a good faith belief that the Court made a mistake in interpreting the law or made a decision that was not supported by substantial evidence and such error materially affected the outcome of his or her case may file a motion for reconsideration, or appeal a final judgment of the Court. In cases where a Tribal Ordinance

establishes appellate procedures that vary from the Rules set forth in this Chapter, the procedures and terms of such ordinance shall govern.

**Rule 9.2 Limitations on Appeal**

(a) Non-Final Judgment

Subject to the provisions of Rule, Provisional Relief, any judgment, ruling or order issued by the Court which is not final may not be appealed.

(b) Minor Cases

[Reserved]

(c) Tax Cases

Any party contesting a judgment for taxes owed to the Tribe may not appeal a tax decision until such party either pays the assessed tax or judgment or provides security equal to the amount of such assessment or judgment.

**Rule 9.3 Filing and Notice of Appeal**

(a) Filing an Appeal

Any party who wishes to appeal a final judgment of the Court must file a written notice of appeal with the Court within twenty (20) days after the judgment becomes final. Such notice of appeal must comply with the format provided in Chapter Two and shall contain the reasons why the party appealing believes the Court misinterpreted the law and such misinterpretation materially affected the outcome of the case.

(b) Notice of Appeal

Within five (5) days after a notice of appeal has been filed with the Court, the Court Clerk shall send a notification of appeal to the trial Judge who heard the case and to all parties involved. The notification shall contain the names of the parties, the case docket number, the date of judgment, the nature of the judgment and the reasons for the appeal provided by the party appealing the final judgment.

**Rule 9.4 Stay of Judgment**

Upon filing an appeal with the Court pursuant to Rule 9.3 – Filing and Notice of Appeal, a party may make a motion to the trial Judge that the judgment be stayed until the appeal is heard by the Appellate Court. In the event a stay is granted, the party filing the appeal must post a bond or other undertaking in an amount set by the Court to secure compliance with the judgment, unless the Court waives this requirement for good cause.

**Rule 9.5 Hearing**

(a) Appellate Court

An appellate judge from the Appellate Court shall hear all appeals from final judgments of the Trial Court.

(b) Schedule and Notice of Hearing

The Court Clerk shall schedule the hearing no sooner than forty-five (45) days and no later than one hundred twenty (120) days from the date the notice of appeal is filed pursuant to Rule 9.3 (b) – Notice of Appeal. The Court Clerk shall provide notice of the appellate hearing to all parties at least thirty (30) days before the appellate hearing.

#### **Rule 9.6        Briefs**

Although not required, any party to an appellate hearing may submit an appellate brief at least fifteen (15) days before an appellate hearing. Appellate briefs should conform to the format provided in Chapter Two. Unless leave of court is granted, appellate briefs may not be longer than fifteen (15) pages excluding the first page, table of authorities and table of contents. Appellate briefs should explain the legal reasons why the party believes the Trial Court either made a reversible error or did not make such an error. Either party may also submit reply briefs not less than five (5) days before an appellate hearing, subject to the same Rules for appellate briefs.

#### **Rule 9.7        Evidence**

The Appellate Court shall not hear any new testimony or allow any new evidence to be introduced at the appellate hearing. The Appellate Court may only consider the record created during trial, written appellate briefs and oral arguments of the parties.

#### **Rule 9.8        Grounds for Reversal**

A final judgment of a Trial Court shall be reversed or modified only if the record indicates that the Trial Court incorrectly applied the law in a manner that materially affected the outcome of the case or if the final judgment is not supported by substantial evidence in light of the record taken as a whole. Substantial evidence is more than a mere scintilla of evidence and is enough evidence for a reasonable mind to accept the conclusions of the Court. No judgment of a Trial Court shall be reversed where the record shows that the same result would have occurred even if the Trial Court had not made the alleged error(s).

#### **Rule 9.9        Final Decision**

An Appellate court may affirm a judgment, modify a judgment, reverse a judgment or vacate a judgment and remand the case back to the Trial Court for further proceedings. An Appellate Court may also dismiss an appeal for failure to comply with the Bear River Band of the Rohnerville Rancheria’s Act Establishing the Judiciary, or the Rules of Court. After an appellate hearing, the Appellate Court shall issue a written opinion explaining its decision. Unless an ordinance provides otherwise, the decision of the Appellate Court is final and no further appeal is allowed.

### **CHAPTER TEN                    ADMINISTRATIVE RULES**

#### **Rule 10.1        Code Keeper**

##### **(a) Code Keeper for the Tribal Court**

The Court Clerk shall act as the Code Keeper for the Court.

(b) Official Copies of Tribal Laws

Official copies of all Tribal Law shall be maintained by the Code Keeper at the Tribal Court, and at such other locations as the Tribal Council may designate. Said copies shall be presumed to be the official and binding statements of the laws they include; this presumption may be overcome by clear and convincing evidence of error or inaccuracy.

(c) Copies of Tribal Law

The Code Keeper shall be responsible for providing copies of Tribal Law to the Court and the public through the Tribe's website.

(d) Custom

The Code Keeper shall keep a journal of all customary law obtained and/or applied in any proceeding.

(e) Roster of Tribal Court Bar Membership

The Code Keeper shall maintain a roster of all persons admitted to the Tribal Court Bar.

**Rule 10.2 Appearance and Representation**

Any person eighteen (18) years of age or older who is legally competent may represent herself or himself in the Court. Any person who is not at least eighteen (18) years of age, or who is not legally competent, must appear through a parent or legal guardian. The parent or legal guardian may designate a spokesperson or attorney on the minor/legal incompetent's behalf. All persons appearing in the Court shall have the right to be represented by a spokesperson or attorney so long as the spokesperson or attorney is not currently an employee of the Tribe or a member of the Tribal Council.

**Rule 10.3 Court Reporter**

A Court proceeding may be transcribed by a certified court reporter who shall submit a certified copy of all recorded proceedings to the Court Clerk. Otherwise, proceedings shall be digitally recorded.

**Rule 10.4 Interpreters**

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

- (a) An interpreter shall interpret or translate the material thoroughly and precisely;
- (b) An interpreter shall use the level of communication that best conveys the meaning of the source and shall not add or omit anything or interject the interpreter's personal moods or attitudes;
- (c) No interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend or relative of an opposing party unless the opposing party agrees otherwise;



- (d) No interpreter shall render services in any matter in which the interpreter has an interest, financial or otherwise; and
- (e) Except in the interpreter's official capacity, no interpreter shall discuss, report or comment upon a matter before the Court.

**Rule 10.5 Practitioners in Tribal Court**

(a) Trial Attorney

The Trial attorney will be responsible for the case. All notice, and other communications with respect to the case, will be directed to the trial attorney; an attorney may be designated as the trial attorney. Therefore, all communications from the Court will go to the attorney of record, and noticing the opposing attorney is proper service. If a party desires to change their attorney, a new attorney must be promptly designated or the party prepared to proceed pro se.

(b) Advocate

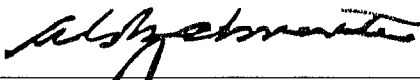
To practice as an advocate in the Bear River Band Tribal Court, a person must be a member in good standing of the Bear River Band Bar Association. Persons may be specially admitted for the purposes of limited appearances or for any other reason deemed sufficient by the Chief Judge by order of the Court.

(c) Spokesperson/Representative

A spokesperson/representative may be allowed to act as such at the discretion of a hearing judge. If a dispute arises as to the qualifications/abilities of such a person to function in that role the Chief Judge will resolve the dispute.

## Certification

The undersigned Judge of the Bear River Band Tribal Court hereby certifies that the foregoing Rules of Court is a true and correct copy of the Rules of Court for the Bear River Band Tribal Court that was duly adopted by the Bear River Tribal Court on September 15, 2020.

  
\_\_\_\_\_  
Chief Judge

MAR 01 2021

\_\_\_\_\_  
Date