

CHAPTER 4 – TRIBAL COURT

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4.1 **SECTION 1- GENERAL**

- 4.1.1 There is hereby established a Tribal Court vested with jurisdiction over all violation of this Code, and all disputes arising under the laws of the Red Cliff Band of Lake Superior Chippewa Indians.
- 4.1.2 The Court shall consist of a Chief Judge, two (2) Associate Judges, a Reserve Judge, and magistrates, as may be appointed by the Tribal Council. The Reserve Judge shall hear cases in the event that the Chief Judge and Associate Judges are unable to preside over a case, for whatever reason. Magistrates of the Red Cliff Tribal Court shall only preside in pre-trial hearings and forfeiture cases in which the maximum penalty does not exceed \$250.00.
- 4.1.3 Judges shall serve for an indefinite term and shall not be subject to removal by the Tribal Council except upon 2/3 vote and only for cause of illegal conduct or physical or mental inability to carry out the duties of his office.
- 4.1.4 The Red Cliff Tribal Court shall use the procedures outlined in this Red Cliff Code of Laws, if the Red Cliff Code of Laws is silent on the procedures for certain actions, the Red Cliff Tribal Court may adopt such rules of procedure from any federal, state or other tribal court rules of procedure as the Red Cliff Tribal Court deems appropriate on a case-by-case basis. **(12/2/96D)**
- 4.1.5 All proceedings in Tribal Court shall be conducted in conformity with the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301 – 1303.

4.2 **SECTION 2- PROSECUTOR**

- 4.2.1 The Red Cliff Tribal Council shall designate a person or persons to represent the Red Cliff Band in prosecuting cases before the court.
- 4.2.2 The Prosecutor shall be appointed by the Tribal Council, said appointment to remain in effect until rescinded.
- 4.2.3 The Prosecutor may be removed for cause by the Tribal Council.
- 4.2.4 The Prosecutor shall have the power to issue complaints on the basis of his own investigation or on the basis of information furnished by enforcement officers, or individual members or non-members.
- 4.2.5 The Prosecutor shall have discretion to decline to prosecute an action where he shall find that there is not sufficient justification for the complaint.

4.3 **SECTION 3- COURT CLERK**

- 4.3.1 The Tribal Council shall designate a person to serve as Court Clerk.

4.3.2 The Clerk's term and conditions of office shall be the same as those prescribed for Prosecutor.

4.3.3 The Clerk may be required to furnish a bond satisfactory to the Tribal Council.

4.4 SECTION 4- DUTIES OF COURT CLERK

4.4.1 The duties of the Court Clerk shall be as follows:

4.4.2 Maintain the court schedule.

4.4.3 Keep all case files safe and secure, and file accurately and promptly all relevant material, such as notices, affidavits, pleadings, written court orders and judgments.

4.4.4 Promptly notify parties of all relevant court actions, sending copies where such action is by written court order.

4.4.5 Attend all court hearings.

4.4.6 Where requested by a judge, prepare a written summary of a trial or other hearing.

4.4.7 Keep a careful account of all monies received and disbursed, and submit copies of such accounts together with all monies retained to the Tribal Treasurer at the end of each month.

4.5 SECTION 5- ENFORCEMENT AUTHORITIES

4.5.1 Red Cliff Law Enforcement (meaning the Red Cliff Police Department) is authorized to enforce all provisions of the on reservation Red Cliff Code of Laws.

4.5.2 Red Cliff Wardens are authorized to enforce all of the on-reservation code and the off-reservation code of the Red Cliff Code of Laws.

4.5.3 Great Lakes Indian Fish and Wildlife Commission Wardens are authorized to enforce the off-reservation code in the ceded territory. Great Lakes Indian Fish and Wildlife Commission Wardens are also authorized to enforce ordinances pertaining to Michigan water of Lake Superior.

4.5.4 Bayfield Public School attendance officers or their designee are authorized to enforce Chapter 33 of the Red Cliff Code of Laws.

4.5.5 Nothing herein shall prohibit any law enforcement officer from enforcing any provision of the Red Cliff Code of Laws in accordance with any cross-deputization agreement.

4.5.6 The Wisconsin State Patrol and the Bayfield County Sheriff's Department are authorized to issue citations to any person who violates Chapter 14 – Red Cliff Traffic Code. The citations shall be issued into the Red Cliff Tribal Court in accordance with the policies and procedures of the Red Cliff Tribal Court. (7/4/05H)

4.6 SECTION 6- EXEMPTION FROM LIABILITY

4.6.1 Red Cliff Tribal Council members and other Red Cliff Tribal Officials shall be exempt from liability for acts within their official capacity and within the scope of their authority, (3/3/91 G)

4.6.2 Members of the Court, and each enforcement officer, in the performance of his or her official duties, shall be exempt from any or all liability for acts done or property destroyed by authority of law. (3/3/97 G)

4.7 SECTION 7- ADVOCATES

4.7.1 A party to an action shall have the right to be represented by an advocate at all hearings, at his own expense.

4.7.2 No advocate shall be admitted to practice before the Red Cliff Tribal Court unless he has successfully passed a standard written examination given by the Tribal Court.

4.7.3 The examination shall test the advocate's knowledge of Indian Law and this Code of Laws.

4.7.4 Passing the examination entitles the advocate to be a member of the Red Cliff Bar Association and to practice before the Red Cliff Tribal Court.

4.7.5 The Court may provide an advocate for any party to the action who in the Court's determination is unable to afford an advocate.

4.8 SECTION 8- COLLECTION OF FEES

4.8.1 The Court shall set, and the Clerk of Court shall collect fees for the services of the Court, including but not limited to the following:

- (a) Filing of summons and complaint.
- (b) Mailing of summons and complaint.
- (c) Filing of foreign judgment.
- (d) Issuance of writ of execution.

(e) Provision of copies, and provision of certified copies.

(f) Provision of transcripts.

(g) Bar admission fees.

4.8.2 In all cases in which the Red Cliff Band of Lake Superior Chippewa Indians is the Plaintiff, filing fees shall be waived.

4.8.3 In addition to the fees set by the Court there shall be a suit tax of \$5.00 on all actions in the Tribal Court.

4.8.4 All monies received as filing fees or court costs shall be deposited by the Tribal Treasurer in a tribal account earmarked for the administration of courts.

4.8.5 In addition to such other costs as may be assessed when a trial is had, defendants found guilty in a forfeiture action shall be subject to the suit tax and a Clerk's fee.

4.8.6 The schedule of deposits shall include the cost set.

4.9 SECTION 9- FORFEITURE ACTIONS

4.9.1 All actions to recover forfeitures for violations are civil actions in the name of the Red Cliff Tribal Court.

4.9.2 A forfeiture action may be commenced either by issuance of a violation notice or by a complaint and summons.

4.9.3 Service upon a suspected violator of a violation notice by an enforcement officer in connection with a violation is adequate process to give the Red Cliff Tribal Court jurisdiction over the person, upon the filing of the violation notice with the Court and provided the violation notice states which regulation have been violated and the time and place that a hearing will occur.

4.9.4 Any person who have received a citation from a Red Cliff Enforcement Authority, as defined in RCCL Chapter 4, section 4.5, who fails to appear at the time set on the citation, or the time set by subsequent postponement, of which the defendant has been noticed, may be considered in default and the Court may determine that the person has entered a plea of no contest and submitted to a civil forfeiture, plus cost, and penalty assessment, not to exceed the amount of deposit listed on the citation.

4.10 SECTION 10- COMMENCEMENT OF FORFEITURE ACTIONS

4.10.1 All actions shall be commenced by the filing of a complaint with the Court and the issuance of a summons.

4.10.2 No complaint shall be valid unless signed by the complainant before a Judge or Court Clerk.

- 4.10.3 Upon the filing of the complaint with the Clerk, the Clerk will sign and serve a summons, directing the defendant to appear before the Court at a date, time and place specified.
- 4.10.4 The date set for a hearing in the summons or violation notice shall not be more than 31 days from the date of service.
- 4.10.5 Except as otherwise provided, the violation notice or summons and a copy of the complaint shall be served on the defendant by personal service, or by delivery to a member of the defendant's family who is at home at the defendant's residence.
- 4.10.6 Any person, 18 years of age or older, not a party to the action, may make personal service.
- 4.10.7 After service is made, the server shall execute an affidavit of service, which shall be filed with the Clerk and placed in the case file, where it shall constitute proof of personal service.
- 4.10.8 The affidavit shall state the date, time and place of service, the person served and the official status of the server, if any.
- 4.10.9 Any natural or corporate person doing business or employing person on the Reservation, and any non-member or non-resident member who enters the Reservation, shall be deemed to have irrevocably appointed the Secretary of the Tribal Council as his or her true lawful attorney upon whom may be served any legal process in any action or proceeding arising from the enforcement of this Code.
- 4.10.10 In all cases where the defendant is not a resident upon the Reservation or cannot be found thereon, service may be made by the Clerk's mailing a copy of the summons and complaint to the defendant's last known address by certified mail.
- 4.10.11 The Clerk shall retain the postal receipt and place it in the case file, where it shall constitute evidence of service.
- 4.10.12 In all cases where service by mail is employed or personal service outside the Reservation, the Secretary of the Tribal Council shall be served with the original summons and a copy of the complaint.
- 4.11** **SECTION 11- DEPOSITS**
- 4.11.1 Those accused of violation may be permitted to make a case deposit, in lieu of a court appearance, based upon a schedule of deposits adopted by the Tribal Council.
- 4.12** **SECTION 12- STIPULATIONS OF NO CONTEST**

- 4.12.1 A defendant who had made a deposit may stipulate to a plea of no contest, which, if accepted by the Court, shall result in forfeiture no greater than the amount of the deposit.
- 4.12.2 Such stipulation may be made by signing the violation notice in the appropriate place or by written notification to the Court Clerk.
- 4.12.3 If the Court declines to accept the no contest plea, it shall order that a summons be issued for the defendant to appear.
- 4.12.4 The defendant may move to withdraw the no contest plea by notifying the Court in writing at least 2 days prior to the scheduled court appearance, or by appearing in court, at the time specified in the violation notice or summons.

4.13 **SECTION 13- MONIES/FEES**

- 4.13.1 All forfeitures collected pursuant to this Code shall be deposited by the Tribal Treasurer in a tribal account earmarked for promoting the policies and administration of this code.

4.14 **SECTION 15- CONFISCATION**

- 4.14.1 Enforcement officers may confiscate all fish and game in the possession of a person they are citing for violation of the Fishing, Hunting, Trapping, of Endangered Species provisions of this code, and which they suspect to have been taken as a result of a violation.
- 4.14.2 Where feasible, such confiscated fish, and game other than alive, shall be donated to elderly feeding, and otherwise shall be sold, and the amount received deposited with the Court Clerk.
- 4.14.3 Enforcement officers may also confiscate fishing, hunting, trapping, and other equipment involved in a violation, and hold such equipment as evidence for trial.
- 4.14.4 Such equipment shall be returned to the defendant if the Courts shall find that he or she did not commit the violation.
- 4.14.5 If the defendant is found to have committed the violation, or enters a plea of no contest which is accepted by the Court, the confiscated equipment shall be returned when the forfeiture judgment is satisfied.
- 4.14.6 After a forfeiture judgment has remained unsatisfied for 15 days, the Court may order the equipment sold to satisfy the judgment, unless a prior arrangement for delayed payment has been made.

4.15 **SECTION 15- SUBPOENA POWER**

- 4.15.1 The Court shall have the power to issue subpoena to compel the attendance of witnesses and the production of physical evidence.

- 4.15.2 A judge shall sign such subpoenas.
- 4.15.3 Service of the subpoena shall be prescribed on sec. 4.10, except as otherwise provided.
- 4.15.4 The server shall serve a copy of the subpoena and return the original to the Clerk, to be placed in the file.
- 4.15.5 The server shall note the date, time and place of service on the back of the original, and sign his name, which signed notation shall constitute proof of service.
- 4.15.6 Absent a justification satisfactory to the Court, failure to obey a subpoena shall constitute contempt.

4.16 SECTION 16- CONTEMPT POWER

- 4.16.1 The Court shall exercise the inherent power of a court to enforce due regard for its dignity and lawful orders by finding those who disregard them to be in contempt.
- 4.16.2 Where the Court shall determine that a person has willfully disregarded a subpoena, injunction or other lawful order of the Court, the Court may find that the person is in contempt and order the person to forfeit a stated amount for each day he continues to disregard the order, or order the person to be jailed until he purges himself of the contempt.
- 4.16.3 In no case shall the Court order a forfeit greater than \$5,000 per day, nor shall any contemnor be jailed longer than 90 days on the basis of a single contempt order.
- 4.16.4 In civil cases the Court may requiring the contemtor to pay a sum of money sufficient to compensate for a loss or injury suffered by the party as a result of the contempt of court, including attorney's fees.
- 4.16.5 In all cases the Court may order any other sanction designed to insure compliance with a prior order of the Court if the Court specifically finds that these sanctions would be ineffectual to terminate a continuing contempt of court.
- 4.16.6 In civil cases A person aggrieved by a contempt of court may seek imposition of a sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a sanction.
- 4.16.7 Any sanction imposed under this code may be enforced by the court or aggrieved party by any procedure provided in this code.

4.17 SECTION 17- WARRANTS

- 4.17.1 Judges of the Court shall have the power to issue warrants for the arrest of persons, and for the search and seizure of premises and property.
- 4.17.2 An arrest warrant may be issued only after a violation notice, written complaint or contempt order has been filed.
- 4.17.3 In addition to a judge's signature, an arrest warrant shall contain the name or description of the offense charged, and the date of issuance of the warrant.
- 4.17.4 No search warrant shall be issued except on probable cause that a search will discover:
- a) Property taken, or held in possession, in violation of this Code; or
 - b) Property which has been, is being , or is about to be used to commit a violation; or
 - c) Property which constitutes evidence of a violation.
- 4.17.5 The search warrant shall state the name or description of the person, property or premises to be searched, a description of the articles or property to be seized, the date of issuance and the time limit within which the warrant is to be executed.
- 4.17.6 The search warrant shall be returned to the Clerk within the prescribed time limit, but in no case shall any search warrant be valid after 3 days from the date of issuance.
- 4.17.7 The enforcement officer making application for a search warrant shall support his application with an affidavit stating the grounds for probable cause.
- 4.17.8 Only enforcement officers shall execute warrants.
- 4.17.9 Interference with the execution of a lawful warrant shall constitute contempt.

4.18 SECTION 18- AFFIDAVITS

- 4.18.1 All affidavits required by this Code, by rule or order of the Court, or by regulations adopted pursuant to this code, shall consist of a written statement, sworn to and signed in the presence of a Tribal or state authorized notary, who shall subscribe his name, and affix his seal beneath the signature of the affiant.

4.19 SECTION 19- SEARCHES

- 4.19.1 Enforcement officers may conduct searches upon warrant, as provided in sec. 4.17. (2016)
- 4.19.2 No enforcement officer shall make a search without warrant unless the search is:

- a) Incident to making a lawful arrest; or
- b) Consented to; or
- c) The enforcement officer has probable cause to believe that violation has been committed, is being committed, or is about to be committed, has detained the suspect for temporary questioning, or to issue a violation notice, and reasonably suspects that he or another is in danger of physical injury.

4.20 **SECTION 20- ARRESTS**

4.20.1 Enforcement officers may make arrests in connection with violations, either upon warrants, or without warrants in certain circumstances.

4.20.2 A person may be arrested without a warrant when the arresting officer has probable cause to believe that the person is committing or has committed a violation, and:

- a) The person refuses to accept a violation notice or to make a deposit; or
- b) The person refuses to identify himself or herself satisfactorily, or the officer has reason to believe that the person is supplying false identification; or
- c) Arrest is necessary to prevent imminent bodily harm to the arresting officers or another.

4.20.3 In all cases the officer shall bring the person arrested before a judge without unnecessary delay.

4.21 **SECTION 21- BURDEN OF PROOF IN FORFEITURE ACTIONS**

4.21.1 In all actions for forfeiture under this Code, the complainant must convince the trier of fact of every element of the violation by evidence that is clear, satisfactory and convincing.

4.22 **SECTION 22- REVOCATIONS**

4.22.1 Where any violation involves the misuse of a license or permit, the Court shall have power to order revocation or suspension of such license or permit.

4.22.2 Where a license or permit issued pursuant to a chapter of this Code is revoked, the violator shall be barred from receiving any other license or permit under that Chapter for at least 1 year, except where the Code shall provide otherwise.

4.22.3 The Court may recommend to the Tribal Council that a person be excluded from the Reservation or denied the privilege of doing business or other privileges beyond those provided in this Code. Such recommendation shall be made only when the person has committed 3 violations within a 24-month period, at least 2 of which were serious enough to require forfeitures of \$100 or more.

4.23

SECTION 23- MAXIMUM FORFEITURES

4.23.1

Where not otherwise provided, the maximum forfeiture for any first violation shall be \$5,000.

4.23.2

Immobilization of Vehicles for Unpaid Fines and/or Forfeitures. In addition to any other remedy permitted by this Code, in all traffic-related matters where a fine or forfeiture remains unpaid for a period exceeding ninety (90) days under circumstances where satisfactory arrangements for repayment have not been made with the Court or where payment arrangements made with the Court have been breached, the Court may order that the motor vehicle used during the underlying offense forming the basis for the fine or forfeiture be immobilized until such time as the fine or forfeiture is paid in full. In addition, where appropriate the Court may order that any other vehicles owned by the Defendant be immobilized until such time as the fine or forfeiture is paid in full, at the discretion of the Court. In all such cases where the Court orders that a vehicles(s) be immobilized, the Court shall impose an additional forfeiture against the Defendant in an amount equal to the cost of the immobilization device. Tampering with an immobilization device resulting from an Order of the Court under this section is prohibited; any person who violates this section shall be subject to a fine not to exceed \$5,000. This section shall be subject to the restrictions contained in sec. 4.23.3.

4.23.3

Special Provision for Vehicles Not Owned by Defendant. In all instances where the motor vehicle used during the underlying offense forming the basis for the fine or forfeiture is not owned by the Defendant, the Court may not order the motor vehicle immobilized except upon hearing and notice to the owner of the vehicle at least thirty (30) calendar days in advance of the proposed immobilization order. At the hearing the Court may take testimony and evidence concerning the facts and circumstances surrounding the non-owner's use of the vehicle's owner (1) was aware of Defendant's use of the vehicle; (2) Defendant was using the vehicle with Owner's permission; and (3) the Owner of the vehicle knew or should have known that the Defendant had unpaid fines and forfeitures with the Court.

4.24

SECTION 24- IRREGULARITIES

4.24.1

Any violation notice, complaint, summons, warrant, or similar document whose matter does not literally conform to the requirement prescribed in this Code, shall not thereby be rendered invalid if the matter contained in the document substantially achieves the purposes of the Code prescriptions.

4.24.2

However, no such document shall be valid unless it contains such signature or signatures as are prescribed by this Code.

4.25

SECTION 25- TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

4.25.1 Temporary Restraining Orders. A written complaint must be filed with the Court before a temporary restraining order may be issued. A temporary restraining order may be granted only where:

- a) The applicant shows to the court clear, satisfactory and convincing evidence that immediate and irreparable injury, loss or damage will result to the applicant if the temporary restraining order is not granted;
- b) The adverse party has been given notice that the applicant has applied to the court for a temporary restraining order. The notice requirement contained in this section can only be waived where the applicant or his/her advocate certifies in writing to the court his/her efforts, if any, to provide the notice and the reasons supporting the claim that notice should not be required; and
- c) The applicant provides to the court a bond or other such security as the court deems proper to protect the interests of the adverse party and for payment of such costs and damages as may be incurred by any party found to have been wrongfully enjoined or restrained. No such security shall be required of the Red Cliff Band or of any officer of the Band acting in his/her official capacity.

4.25.2 Every injunction and/or temporary restraining order shall:

- a) Set forth, in writing, the reasons for its issuance;
- b) Be specific in its terms;
- c) Describe with specificity the act or acts that are to be restrained;
- d) Define the injury and state why it is irreparable;
- e) State the date and hour of its issuance;
- f) If granted without notice, state why it was granted without notice;
- g) Expire at a definite time, not to exceed ten calendar days, unless extended for good cause shown, or by consent of the adverse party.

4.25.3 On two days notice to a party who obtained a temporary restraining order without notice, or on such shorter notice as the court may prescribe, the adverse party may appear and move that the order be dissolved or modified.

4.25.4 The Red Cliff Tribal Court may issue permanent injunctions ordering the defendant to perform or restrain from certain acts only after a hearing with the notice to all parties affected, and upon a written complaint, filed with the court at least five calendar days prior to the hearing that states with specificity the act or

acts sought to be restrained and the reasons that support the relief sought. The court shall only grant an injunction after considering the following factors:

- a) The significance of the threat of irreparable harm to plaintiff if the injunction is not granted;
- b) The balance between this harm and the injury that granting the injunction would inflict on the defendant; and
- c) The public interest.

4.25.5 In granting an injunction, the court shall:

- a) Set forth, in writing, the reasons for its issuance;
- b) Be specific in its terms;
- c) Describe, with specificity, the act or acts that are to be restrained;
- d) Define the injury and state why it is irreparable; and
- e) State the date and hour of its issuance, and when it expires, if applicable.

4.25.6 Whoever violates a temporary restraining order or injunction issued under this section shall forfeit an amount set by the court, no to exceed \$5,000. Each day that a party is in violation of such order or injunction shall be considered a separate violation.

4.25.7 Notwithstanding the provisions of Section 4.51 of this Code the Court shall grant full faith and credit for domestic abuse restraining orders from other jurisdictions and shall enforce them as if they were issued by the Red Cliff Tribal Court once a certified copy of the order is filed with the Red Cliff Tribal Court and served upon the opposing party.

4.26 SECTION 26- PROCEDURE IN CIVIL ACTIONS

4.26.1 In all civil disputes arising under this Code the following rules of civil procedure shall apply unless otherwise stated in another provision of this Code.

4.26.2 **Summons and Complaint.** An action in Tribal Court is commenced by the filing of a summons and complaint as prescribed by this section.

- (a) The summons and complaint shall be a single document setting forth the following:
 - (1) The names and addresses, and tribal membership status of the parties

- (2) The case number assigned by the Clerk of Court.
- (3) A command to the defendant to appear at tribal court at a date, time and place specified by the Clerk of Court.
- (4) A brief statement, including approximate date and place, of the transaction or occurrence giving rise to the action.
- (5) The relief requested.
- (6) A statement that failure to appear may result in a judgment taken against defendant for the relief requested, plus costs and attorney fees.
- (7) The dated signature of the Clerk of Court and of the plaintiff or plaintiff's attorney or lay advocate.

4.26.3 The Clerk of Court shall make available forms of the summons and complaint.

4.26.4 The first appearance date shall be no less than 20 days and no more than 60 days from the date of issuance of the summons and complaint. Service, if by mail, shall be made no less than ten days prior to the first appearance date. Service, if personal, shall be made no less than seven days prior to the first appearance date.

4.26.5 The Clerk of Court shall not accept for filing any summons and complaint that does not bear the dated signature of the plaintiff or plaintiff's attorney, or that is not accompanied by the filing fee and, if applicable, the mailing fee, as required by Sec. 4.8.

4.27 SECTION 27- SERVICE OF THE SUMMONS AND COMPLAINT IN CIVIL ACTIONS

4.27.1 Service of the summons and complaint may be by the following methods:

(a) Natural Person. The plaintiff may cause personal service to be made upon the defendant by hand delivery to the defendant in person or to any person of apparent normal understanding no less than 16 years old residing within the residence of the defendant.

(b) Natural Person under Disability. When the defendant is a minor under the age of 18 years, service shall be made upon the minor's parent or guardian. When a minor defendant is 14 years of age or over, service shall also be made on the minor. When the defendant is an adult who is known by the plaintiff to have a guardian, service shall be made on the defendant and on the defendant's guardian. Service may be made personally as provided in subsec. (a) above.

(c) Service on Tribe. When the defendant is the Tribe, service may be made by delivering a copy of the summons and complaint to the Chairman, Vice-

Chairman, or Secretary –Treasurer of the Tribe, or to the Tribal Attorney or the Chairman’s administrative assistant.

(d) Service on other governmental bodies. When the defendant is a governmental body other than the Tribe, service shall be made on the agent of the governmental body as designated under the law of the State in which service is made; however, service may be made either personally or by certified mail as provided in this section. If service is made personally, it may be made upon the agent so designated or upon the person apparently in charge of the agent’s office.

(e) Service on domestic or foreign corporations or limited liability companies. When the defendant is a domestic or foreign corporation or limited liability company, service shall be made on the agent of the domestic or foreign corporation or limited liability company as designated under the law of the State in which service is made; however, service may be made either personally or by certified mail as provided in this section. If service is made personally, it may be made upon the agent so designated or upon the person apparently in charge of the agent’s office.

(f) Service by Certified Mail. A plaintiff may request the Clerk of Court to make service by certified mail, in which case the Clerk of Court shall mail a copy of the summons and complaint to each defendant, other individual, or agent as designated according to defendant’s status under subsections (a) – (e), above. Mail shall be certified, return receipt requested, return requested if not claimed within five days. The Clerk shall charge the plaintiff the fees provided by Sec. 4.8 for service by certified mail, receipt requested, return postage guaranteed. Service by mail shall be complete upon mailing unless the envelope enclosing the summons and complaint is returned unopened by the post office to the Clerk of Court prior to the date of the first appearance.

(g) Service by Publication. If service cannot reasonably be made under subsec. (a) - (f), service by publication may be made. Plaintiff shall cause a summons to be published in a newspaper of general circulation in the area of the defendant’s last known residence. The summons for publication shall inform the defendant that a lawsuit has been filed against the defendant in Red Cliff Tribal Court, and shall give the names of the parties, the case number, and the address of the Clerk of Court, with the advice that a copy of the full summons and complaint may be obtained at that address. Publication shall occur once each week for three consecutive weeks. The plaintiff shall file an affidavit showing the required publication and an affidavit detailing attempts to personally serve the defendant and to serve the defendant by mail and the reasons why such attempts failed and why the plaintiff does not believe additional attempts will be successful.

(h) Who may serve. Any person over eighteen years of age, not a party to the action, may make personal service. In the case of personal service, an affidavit of service shall be returned to the Clerk of Court and shall constitute proof of

service. If service is disputed, the person making personal service may be required to testify as to the circumstances of the service.

4.28 **SECTION 28- ANSWERS, COUNTERCLAIMS, CROSS-COMPLAINTS,
AND THIRD-PARTY COMPLAINTS IN CIVIL ACTIONS**

4.28.1 All parties shall appear on the first appearance date specified in the summons and complaint. All answers, counterclaims and cross complaints may be made orally or in writing. If made in writing, any such pleading shall be filed with the Clerk of Court with copies served on all parties. A third-party complaint must be made in writing and shall be filed with the Clerk of Court and served on the third-party defendant on or before the return date or at such later date as the Court allows.

4.28.2 Written pleadings shall not substitute for personal appearance or appearance by an attorney or lay advocate on the first appearance date. Failure of any party to appear may result in judgment as provided in Sections 4.40. (2016)

4.28.3 Upon the first appearance date, the court shall determine whether the defendant wishes to make a defense to the complaint. If the defendant does not wish to make a defense or raise a counterclaim, judgment may be entered in favor of the plaintiff. If the defendant does wish to make a defense, the court shall determine whether the parties wish to settle their differences without trial. If such settlement is made, the court shall enter judgment, or dismiss the complaint, as called for by the settlement. If the parties do not make such a settlement, a trial date shall be set or a scheduling order under Sec. 4.30 shall be entered depending on the complexity of the case. Trial may be had on the date of the first appearance if all parties and the court consent.

4.28.4 Any party may request a substitution of judge for cause upon written motion to the Court.

4.28.5 The court may in its discretion adjourn the first appearance as the interests of justice require.

4.29 **SECTION 29- FILING AND SERVICE OF PAPERS AFTER SUMMONS
AND COMPLAINT IN CIVIL ACTIONS**

4.29.1 The service of any papers in an action subsequent to the summons and complaint may be made by first-class mail or facsimile transmission to the party and to the party's attorney or lay advocate who has filed a notice of appearance in the action, or by delivery to such person, the person's home, or the person's office. No filing may be made by electronic facsimile (fax) unless permitted by specific order of a judge or magistrate.

4.29.2 No party shall file any paper in an action without also serving a copy on every other party in the action, except for a party in default.

4.29.3 Parties to an action are under a continuing obligation to maintain current contact information with the Court.

4.29.4 No pleading, motion, or other paper may be filed to harass or cause unnecessary delay or needless increase in expense, or that is not well-grounded in fact and warranted by existing law, or by a good faith argument for the extension, modification, or reversal of existing law. The court may impose sanctions, including a requirement that any party, attorney, or lay advocate who makes any such filing pay reasonable attorney fees to the other party, dismissal of a complaint or petition, or any other remedy fashioned by the Court.

4.30 **SECTION 30- SCHEDULING ORDER IN CIVIL ACTIONS**

4.30.1 On or after the first appearance date, the Court may enter a scheduling order, and may from time to time thereafter amend the order. The entry of any scheduling order shall occur after a scheduling conference which may be held either as part of the first appearance or as a separate scheduling conference. At any such conference, any unrepresented party must appear in person, and at least one attorney or lay advocate must appear for any party who has such representation. After consultation the court shall issue a scheduling order including such of the following as are applicable to the circumstances and complexity of the case:

- (a) The time within which any other parties shall be joined.
- (b) The time within which any motions shall be filed.
- (c) The time within which any pleadings may be amended.
- (d) The time within which motion for default judgment may be heard.
- (e) The methods and timetables for the completion of discovery.
- (f) The time within which motion for summary judgment may be heard.
- (g) The date for a pretrial conference.
- (h) The date for trial.
- (i) Any other matters governing the conduct of the case that the court deems appropriate.

4.31 **SECTION 31- STATUS CONFERENCES IN CIVIL ACTIONS**

4.31.1 The court may on its own motion or upon request of a party set a status conference whenever useful to the advancement of a case.

4.32 **SECTION 32- PRE-TRIAL DISCOVERYIN CIVIL ACTIONS**

4.32.1 The methods and timetables for pre-trial discovery shall be set by the Court in a scheduling order. Discovery shall be tailored to allow adequate case assessment and trial preparation, but shall not be permitted to harass or oppress a party, to unreasonably increase expense, or to waste time.

4.32.2 A party seeking discovery who has served a proper demand as permitted by a scheduling order and whose demand has not been timely met by another party, may seek an order compelling the other party to comply with the demand and may be awarded its costs and fees necessitated by the failure to comply, and other relief as the Court deems appropriate.

4.32.3 A party who has received a discovery demand that is not authorized by a scheduling order or that is otherwise improper may seek a protective order against the demand and may be awarded its costs and fees necessitated by discovery demand, and other relief as the Court deems appropriate.

4.33 **SECTION 33- TELEPHONE AND AUDIOVISUAL PROCEEDINGS**

4.33.1 On its own motion or motion of any party the court may conduct any proceeding by telephone or audiovisual means. Any party seeking to appear in person or by counsel by telephone or audiovisual means shall secure the consent of the Court. Any party may object to such appearance, and the Court shall then determine if such appearance shall be allowed. Any party wishing to present evidence by telephone or audiovisual means shall either secure the consent of the other party or provide notice to the other party that unless objection is received within the time set by the court the court may receive such evidence by telephone or audiovisual means.

4.33.2 In determining whether to conduct a proceeding, allow an appearance, or allow evidence to be presented by telephone or audiovisual means the court shall consider the following:

- (a) Whether all parties have requested or consented to such procedure.
- (b) The availability of adequate equipment.
- (c) Whether any undue surprise or prejudice would result.
- (d) Whether there is good reason for the individual appearing by telephone or audiovisual means not to be physically present in court.
- (e) The convenience and expense to the court, parties, and witnesses.

(f) Whether the appearance of a witness by telephone or audiovisual means will allow full and effective cross-examination and access to relevant documents and other exhibits.

(g) The importance of presenting the testimony of a witness in open court, in order to observe demeanor, or in order to maintain the solemnity of proceedings and impress on the witness the duty to testify truthfully.

(h) Where the judge is participating by telephone or audiovisual means, the above factors as applicable, and the cost/benefit comparison of proceeding by telephone or audiovisual means or otherwise.

(i) Any other factor the court deems relevant.

4.33.3 If testimony is offered by telephone or audiovisual means, the proceeding shall be simultaneously recorded either by stenographic or electronic means. Any proceeding required to be conducted in open court shall be conducted in such a way that any interested observers may hear the proceedings.

4.34 SECTION 34- COMPUTING TIME

4.34.1 In computing any period of time prescribed or allowed by this court code, or any other ordinance or statute, or by order of the court, the day of the act, event, or default from which the designated time period begins to run shall not be included. The last day of the period shall be included unless it is a day that the clerk of court's office is closed, in which case the period shall extend until the day that the clerk of court's office is open next. When the period of time prescribed or allowed is ten days or less, Saturdays and Sundays are excluded in the computation.

4.34.2 When an act is required to be done at or within a specified time, the court may order the period enlarged on motion for cause and upon just terms. No motion filed after the expiration of the specified time shall be granted unless excusable neglect is shown.

4.34.3 A written motion, other than one which may be heard ex parte, shall be served with notice of hearing on the motion not later than five days before the hearing unless a shorter time is provided by ordinance or order of the court. A shortened time may be sought for cause by ex parte motion and affidavit.

4.34.4 Whenever a party has a right or is required to do some act or take some proceedings within a prescribed period of time after the service of a notice or other paper on the party, the party shall have three additional days if the notice or paper is served by mail or reputable express carrier, or one additional day if the notice or paper is served by facsimile transmission completed between 4:00 p.m. and midnight.

4.35 **SECTION 35-STATUTE OF LIMITATIONS**

4.35.1 Unless a specific limitation on an action is provided by tribal ordinance, all claims must be filed within (36) months of the date of the event or occurrence-giving rise to a cause of action under this Code or be forever barred. The filing in federal court of any action which should properly be brought in Tribal Court tolls the limitation.

4.36 **SECTION 36- TRIAL TO COURT**

4.36.1 All trials in Tribal Court shall be to the court without a jury.

4.37 **SECTION 37-EVIDENCE**

4.37.1 Evidence shall be admitted as provided in the Red Cliff Rules of Evidence. In cases where circumstances warrant, the court may waive the Rules of Evidence, or particular provisions, or the particular application thereof, except those related to privilege under section 4.56. An essential finding of fact may not be based on hearsay unless it would be admissible under section 4.76. (2016)

4.38 **SECTION 38- COURT CONTROL**

4.38.1 Trials shall be conducted by the Court with the degree of formality necessitated by the circumstances. Circumstances which the court may consider in determining the degree of formality to be used include the number of parties, the complexity of the case, the representation or lack thereof of the parties, and such other factors as the Court deems appropriate. In all cases, each party shall be allowed to present evidence and argument and to examine witnesses to the extent deemed appropriate by the Court for full disclosure of the pertinent facts.

4.38.1 The judge shall establish the order of proof and argument consistent with the fair and prompt resolution of the dispute.

4.38.2 The judge may question witnesses.

4.39 **SECTION 39- BURDEN OF PROOF IN CIVIL ACTIONS**

4.39.1 Where none is otherwise stated, the burden of proof shall be on the party asserting a claim or affirmative defense to prove each element of the claim or affirmative defense by a preponderance of the evidence.

4.40 **SECTION 40- FAILURE TO APPEAR**

4.40.1 If the plaintiff fails to appear at the first appearance or for trial, the court may dismiss the complaint. Dismissal shall be without prejudice unless a complaint filed by the plaintiff arising from the same transaction or occurrence has been dismissed on the same grounds once before.

4.40.2 If the defendant fails to appear at the first appearance or at trial, the court may enter judgment for plaintiff upon due proof of facts which show the plaintiff is entitled to judgment.

4.41

SECTION 41- SUMMARY JUDGMENT IN CIVIL ACTIONS

4.41.1

At any time not barred by a scheduling order in the case, a party may move for summary judgment on any claim, counterclaim, cross-claim or third-party claim, which shall be granted if the pleadings, depositions, answers to interrogatories, admissions, and evidentiary affidavits on file show that there is no genuine issue as to any material fact and that the moving or opposing party is entitled to judgment as a matter of law. The court may, in its discretion, hold a non-evidentiary hearing on the motion. Any material upon which the motion is based which is not on file at the time of the filing of the motion shall be filed with the motion. Any counter affidavits or other material in opposition to the motion shall be filed and served within the time set by scheduling order, or if none is in effect, no more than 21 days after service of the motion and supporting papers on the responding party. If the court holds a hearing on the motion, it shall be no sooner than five days after the last date allowed for filing responsive materials. Interlocutory summary judgment may be entered on some but not all claims or issues in a case. The court may enter summary judgment in favor of a party even though the party has not moved for summary judgment, if the materials submitted in support of and opposition to another party's motion for summary judgment show that summary judgment is appropriate under the standards set by this section.

4.42

SECTION 42- JUDGMENT AFTER TRIAL

4.42.1

After trial, the court may give its decision orally immediately, or it may file written findings of fact, conclusions of law, and judgment, no later than 30 days following trial.

4.43

SECTION 43- REOPENING CIVIL JUDGMENTS

4.43.1

A Judgment may be reopened at any time within one year of judgment in any case where service was by mail or publication, the defendant did not receive actual notice of the action and did not appear in the action or otherwise submit to the jurisdiction of the court, and the defendant petitions the court to reopen the judgment within 15 days of receiving actual notice of the action or judgment. Such petition shall be verified and shall state the facts upon which the petitioner bases the claim to reopen under this subparagraph. After hearing, the court may grant the petition to reopen, in which case a trial date shall be set.

4.43.2

A Default judgment may be reopened on all grounds other than failure of actual notice, by petition for good cause shown within six months of entry of judgment.

4.44

SECTION 44- COSTS

4.44.1

The court, in its discretion, may assess costs against a defendant found guilty of violating a tribal ordinance, and may, in its discretion, apportion and assess costs against the respective parties to a civil action. Such costs shall not include attorney fees, except as specifically provided by ordinance. Such costs shall be included in the judgment.

4.45 **SECTION 45- DISCLOSURE OF ASSETS**

4.45.1 When a judgment for money damages is entered under this chapter, the court shall order that the judgment debtor execute, under penalty of contempt, a statement which includes: their residence, mailing address, employer, employer's address, frequency of pay, gross and net earnings per pay period, any non-USA trust real property interests, cash on hand, bank accounts and any other property worth more than \$100.00 dollars owned by the debtor or held by any other person for them, within 15 days of the entry of judgment unless the judgment is satisfied sooner.

4.46 **SECTION 46- EFFECT OF JUDGMENT**

4.46.1 Entry of a judgment entitles the prevailing party to enforcement by the Tribal Court on its terms. A judgment for a sum certain may be enforced by writ of execution against property of the losing party which is located on the Red Cliff Reservation.

4.47 **SECTION 47- INSTALLMENT PAYMENTS**

4.47.1 Upon the request of the party against whom judgment is entered, which can be made orally at the time of the hearing or by petition, and after such inquiry as the judge deems proper, the judge may order the payment of such judgment by installments, in such amounts and such times as the judge deems just and reasonable. Such order shall also provide for a stay of further proceedings to collect the judgment during said party's compliance with the order.

4.48 **SECTION 48- EFFECT OF APPEAL ON JUDGMENT**

4.48.1 The filing of an appeal with the Red Cliff Court of Appeals, pursuant to the requirements of Chapter 31, shall not prevent the enforcement of the judgment of the trial court, unless the trial court on its own motion or that of a party orders a stay of enforcement pending the appeal.

4.49 **SECTION 49- ENFORCEMENT OF JUDGMENTS**

4.49.1 Upon entry of judgment the Tribal Court may upon application of the prevailing party:

(a) Issue a writ of execution which shall command tribal enforcement personnel to collect the amount of the judgment from the losing party;

(b) Issue a writ of execution which shall command any natural or legal person, partnership, or limited liability entity, or the tribe to pay over to the prevailing party any asset or income held by any such person, partnership, entity or the tribe that is owned by or which may accrue to the benefit of the losing party, provided that no such writ shall run against tribal assets or income without the consent of the tribe;

(c) Issue a subpoena to the losing party, ordering the party to appear before the Court at a time and place specified, and to testify under oath concerning property,

or any debts due or to become due to him, place of employment, name of employer, and the amount of wages received, and other pertinent matters that would enable the prevailing party to collect the judgment.

4.50 **SECTION 50- WRIT OF EXECUTION**

4.50.1 Upon receipt of the writ of execution, tribal law enforcement personnel shall serve the writ upon the losing party and take possession of any non-exempt property as ordered by the Tribal Court. Within 30 days, the tribal law enforcement personnel shall cause a sale of such property. The proceeds of the sale shall be returned to the Tribal Court within the 30 days above prescribed. The net proceeds of such sale, after deducting sale expenses and amounts due any secured party under subsec. (b), shall be remitted to the prevailing party.

4.50.2 If there exists a perfected security interest in the sold property, there shall be deducted from the proceeds of sale the amount due under the security agreement, and such amount shall be paid to the secured party. In the event a sufficient amount does not remain to satisfy the total amount due under the security agreement, after deducting other sale expenses any amount remaining shall be paid over to the secured party.

4.50.3 The losing party may prevent the issuance of a writ of execution or judicial sale, by presenting to the Tribal Court sufficient proof that said party has made payment of the judgment to the prevailing party, or is willing to commence payment of the judgment to the prevailing party, upon terms acceptable to the prevailing party and the Court. Upon such proof, the Tribal Court shall not issue a writ of execution, and, if one has been issued, shall rescind the order.

4.50.4 The following property shall be exempt from levy and sale under any execution:

(a) All interests in property held in trust by the United States.

(b) All assets and income of the Tribe, unless specially pledged.

(c) All personal consumer goods, clothing, furniture, utensils, books and appliances, and the like, kept for the personal use of the debtor or the debtor's dependents;

(d) The tools, implements, materials, stock, apparatus, or other things needed by the judgment debtor to carry on his profession, trade, occupation, or business in which he is principally engaged;

(e) A dwelling home and appurtenances thereto, owned in fee and occupied by the judgment debtor;

(f) All other exempt property contained in sec. 815.18, Wis. Stats., provided that the Tribal Court Code shall govern where the language is inconsistent with the Tribal Court Code.

4.50.5 Unless provided for in other law there shall be no interest on civil judgments issued by the Red Cliff Tribal Court.

4.51 SECTION 51- FOREIGN JUDGMENTS

4.51.1 In this chapter "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in the tribal court. "Judgment debtor" means any person against whom a judgment was entered in any court, and against whom enforcement is sought in Red Cliff Tribal Court.

4.51.2 A certified copy of any foreign judgment may be filed with the clerk of court. The clerk of court shall treat the foreign judgment in the same manner as the judgment of the Tribal Court once notice of filing has been served and the time for objections has passed. A judgment so filed has the same effect and is subject to the same procedures and status as a judgment of tribal court, and may be enforced or satisfied in like manner.

4.51.3 At the time of filing of the foreign judgment, the judgment creditor or lawyer shall make and file with the clerk of court an affidavit setting forth the name and last-known post office address of the judgment debtor, the judgment debtor's lawyer, if any, the judgment creditor, and the judgment creditor's lawyer, if any.

4.51.4 Upon filing of the foreign judgment and affidavit, the clerk shall mail notice of the filing to the judgment debtor and the judgment debtor's lawyer as named in the affidavit, and shall record proof of such mailing in the file. The notice shall include the name and address of the judgment creditor and the judgment creditor's lawyer, if any. The judgment creditor may also mail such notice and file proof of such mailing with the clerk of court. Failure of either the clerk or the judgment creditor to mail notice as provided in this section shall not affect the enforceability of the foreign judgment if proof of mailing by the other is filed.

4.51.5 Unless a timely objection the judgment of the foreign court shall be entered as a tribal court judgment.

4.51.6 Within 15 days of the mailing of the notice of the filing of a foreign judgment the judgment debtor may file in writing an objection to enforcement of the foreign judgment. Upon receipt of the objection the Clerk shall schedule a hearing on the objection and shall mail a copy of the objection and a notice of hearing to all parties and their attorneys if any.

4.51.7 An objection to the enforcement or filing of a foreign judgment may only be upheld if the judgment debtor can show that an appeal from the foreign judgment

is pending or will be taken, or that a stay of execution has been granted. If an objection is upheld the case shall be stayed until such time as the foreign court has resolved any appeals or lifted any stay.

4.51.8 No execution or other process for enforcement of a foreign judgment shall issue until 15 days after the foreign judgment is filed, except that at the time of filing a foreign judgment a judgment creditor may also file for garnishment pursuant to Chapter 35 of the Red Cliff Code of Laws, however no order may be issued until the time for objection to the foreign judgment has passed. (2016)

4.52 **SECTION 52- PERSONNEL APPEALS**

4.52.1 The Red Cliff Tribal Court shall have jurisdiction and authority to decide appeals from the final decision of the Red Cliff Personnel Selection Committee in connection with grievances initiated under the Red Cliff Personnel Policies and Procedures. Nothing in this section shall be interpreted to provide any right to appeal a hiring decision by the Red Cliff Tribal Council.

4.52.2 The trial court shall accept the facts as developed at the Personnel Selection Committee hearing, and shall not decide contested factual issues unless the decision of the Personnel Selection Committee was clearly erroneous. Issues not raised before the Personnel Selection Committee shall not be heard by the trial court. The trial court shall not decide issues not raised by the parties.

4.52.3 Appeals commenced under this section shall comply with the requirements of this chapter, including, but not limited to the rules governing Commencement of Actions (section 26), Subpoena Power (section 15), and Burden of Proof (section 39). (2016)

4.52.4 In all actions under this section, the Tribe shall be represented by either the Personnel Manager, or another representative of the Tribal Administration. For appeals under this section, the requirements of this Chapter 4, section 4.7 shall not apply.

4.52.5 Notwithstanding this Chapter 4, Section 4.35, all appeals from final decisions of the Personnel Selection Committee initiated under this Chapter must be commenced within ten (10) business days from the receipt of the Personnel Selection Committee's written decision by the Appellant or be forever barred. (8/4/03C)

4.53 **SECTION 53- 401(K) PLAN ADMINISTRATOR DECISION APPEALS.**

4.53.1 The Red Cliff Tribal Court shall have jurisdiction and authority to decide appeals from the decision of the Red Cliff 401(K) Plan Administrator in connection with claims initiated under section **12.4 CLAIMS** of the Red Cliff Band of Lake Superior Chippewa Government 401(K) Plan.

- 4.53.2 The trial court shall accept the facts as developed by the 401(K) Plan Committee under section **12.4 CLAIMS** of the Red Cliff Band of Lake Superior Chippewa Government 401(K) Plan, and the administrative record as developed by the Committee shall be considered complete and final. The Trial Court shall not decide contested factual issues unless the decision of the Plan Administrator was clearly erroneous.
- 4.53.3 Issues not raised on appeal at the Committee level under the Red Cliff Band of Lake Superior Chippewa Government 401(K) Plan, shall not be heard by the trial court. The trial court shall not decide issues not raised by the parties.
- 4.53.4 Appeals commenced under this section shall comply with the requirements of this Chapter, including, but not limited to the rules governing Commencement of Actions (Section 26), Subpoena Power (Section 15), and Burden of Proof (Section 39) except as otherwise expressly indicated in this section. (2016)
- 4.53.5 In all actions under this section, the Tribe shall be represented by the individual designated by the tribal administration to handle the appeal for the Tribe. For appeals under this section, the requirements of this Chapter 4, section 4.7 shall not apply.
- 4.53.6 Notwithstanding this Chapter 4, section 4.35, all appeals from decisions of the Plan Administrator initiated under this Chapter must be commenced within thirty (30) days from the receipt of the Plan Administrator's written decision by the Appellant or be forever barred. (2016)
- 4.53.7 Appellate decisions shall be accompanied by a written opinion by the Court no later than thirty (30) days after conclusion of the hearing. Written opinion shall briefly state the issues as they appeared to the Court and the basis for the decision.
- 4.53.8 The decisions of the Tribal Court are final and conclusive, and not further appeal may be taken.(07/06/09A)
- 4.54** **SECTION 54- GENERAL PROVISIONS OF EVIDENCE**
- 4.54.1 These rules shall apply to all proceedings in Tribal Court. The Tribal Court, subject to the decisions of the Court of Appeals, shall interpret and apply these rules. The policies and rationales underlying the Federal Rules of Evidence and the Wisconsin Rules of Evidence may be cited as persuasive authority, but the Court may base its rulings on alternative policies and rationales that are more suited to the Tribe, and the Federal Rules and Wisconsin Rules shall not be controlling. The Tribal Court shall in all cases be allowed to adjust the application of these rules to fit the circumstances of the case as provided in Sec. 4.38.
- 4.54.2 No appeal may be based on an evidentiary ruling unless a substantial right of a party is affected and:

(a) An objection or motion to strike is timely made, stating the specific ground of objection, unless the specific ground was clear from the context; and

(b) In the case of a ruling excluding evidence an offer of proof in the form prescribed by the court is made.

4.55

SECTION 55- ADMISSIBILITY OF EVIDENCE

4.55.1

"Relevant evidence" is any evidence tending to make the existence of any fact of consequence more or less probable. Only relevant evidence is admissible.

4.55.2

Relevant evidence may be excluded if its admission would violate any other section of this chapter, or if its probative value is substantially outweighed by the danger of unfair prejudice, or confusion of the issues, or if it would be cumulative, a waste of time, or cause undue delay.

4.55.2

Evidence of the following is not admissible, even if relevant:

(a) Statements made in settlement negotiations or mediation, compromises, or offers to compromise, when offered to prove liability or the lack thereof.

(b) Corrective measures taken after an event, which would have made the event less likely to occur, when offered to prove negligence or culpability.

(c) Payments, offers to pay, and promises to pay for medical, hospital, or disability expenses, when offered to prove liability.

(d) Pleas of no contest or subsequently withdrawn pleas of guilty, in any court, when offered against the person making the plea, to prove liability.

(e) Existence of insurance against liability, or lack thereof, when offered to prove negligence or culpability.

4.56

SECTION 56- PRIVILEGES

4.56.1

Except as provided by this section, the Indian Civil Rights Act, or the United States Constitution, as applicable, no person is privileged to refuse to be a witness, to refuse to disclose any matter, to refuse to produce any object or writing, or to prevent another from doing any of the above.

4.56.2

Privilege may be asserted by the person making the communication, or by the person to whom the communication was made, on behalf of that person, unless the person making the communication has validly waived the privilege.

4.56.3

Any person making a communication may waive the privilege by so testifying in open court.

4.56.4 No inference shall be drawn from the assertion of a lawful privilege.

4.56.5 The Red Cliff Tribal Court recognizes privileges to the same extent and with the same limitations on such privileges as the Wisconsin State Courts.

4.57 **SECTION 57- WITNESSES**

4.57.1 Prior to testifying, every witness shall indicate by solemn oath or affirmation, in a form prescribed by the Tribal Court, that he or she shall testify truthfully. A child or other person who may not understand the significance of an oath or affirmation may be allowed to testify if the court is satisfied that the witness understands the difference between truth and falsity and understands that he or she must tell the truth.

4.57.2 A witness may only testify as to facts within his or her personal knowledge.

4.57.3 A witness may testify as to an opinion or inference only to the extent that the witness's observations, experience, education, and training qualify the witness to offer the opinion or inference.

4.57.4 The judge presiding at a trial may not testify as a witness. No advocate or attorney representing a party in a case may testify as a witness in the case.

4.57.5 A witness's character for truthfulness may be attacked by evidence of reputation, opinion, or the testimony of the witness on direct or cross-examination, and if so attacked may be supported by evidence of the types listed above.

4.57.6 The credibility of a witness may be impeached by evidence of the witness's conviction of a crime.

4.57.7 A witness examined about a prior statement made by him or her need not be shown the statement during the examination, but the statement shall be shown to opposing counsel upon completion of that part of the examination. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness was examined so as to give him or her an opportunity to explain or deny the statement, or as the interests of justice require.

4.57.8 At the request of a party, the Court shall order witnesses excluded from the courtroom except while testifying, shall order witnesses to be kept separate from each other, shall order witnesses not to communicate with each other, and shall order such other measures as in the court's discretion shall prevent undue influence or taint upon testimony.

4.58 **SECTION 58- WRITINGS, PHOTOGRAPHS AND OTHER DOCUMENTARY EVIDENCE GENERALLY**

4.58.1 No writing, photograph, or other documentary evidence may be admitted unless evidence is supplied sufficient to prove that the matter in question is what it purports to be.

4.59 **SECTION 59- REFRESHING RECOLLECTION**

4.59.1 A witness may refer to any writing if necessary or helpful to refresh his or her recollection for the purpose of testifying, and any writing so referred to, either before or during testimony, shall be made available to an adverse party upon conclusion of that part of the examination. An adverse party may cross-examine the witness on the writing, and may introduce in evidence those portions of the writing that relate to the witness's testimony.

4.60 **SECTION 60- RECORDED PRESENT SENSE IMPRESSION**

4.60.1 Any writing shown to have been made by the witness when the matter was fresh in his or her mind, and shown to reflect that knowledge correctly, concerning a matter about which the witness now has insufficient recollection to enable him or her to testify fully and accurately, is admissible.

4.61 **SECTION 61- BUSINESS RECORDS**

4.61.1 A memorandum, report, record, or data compilation, in any form, of acts event conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony of the custodian or other qualified witness are admissible, unless the sources of information or other circumstances indicate lack of trustworthiness.

4.62 **SECTION 62- HEALTH CARE RECORDS**

4.62.1 "Health care records" are those records maintained by a hospital, physician, licensed psychologist, psychiatric social worker, or dentist.

4.62.2 A custodian or other qualified witness is unnecessary if the party who intends to offer hospital records into evidence at a trial or hearing files with the court at least 10 days before the trial or hearing an accurate, legible and complete duplicate of the hospital records for a stated period, certified by the record custodian, and noticed to all appearing parties at least 10 days before the trial or hearing that such records for the stated period have been filed with the Court.

4.62.3 Health care records maintained off the Reservation are subject to subpoena only as provided by the law of the state in which the records are located. Health care records maintained on the Reservation are subject to subpoena only if the health care agency is a party to the action, or if authorized by an ex parte order of a judge for cause shown and upon terms, if upon a properly authorized request from an attorney, the health care agency refuses, fails, or neglects to supply within 2 business days a legible certified duplicate of its records at a minimum charge of \$5 per request. The rate shall not exceed 20 cents per record page and \$5 per x-ray copy.

4.63 **SECTION 63- PUBLIC RECORDS AND REPORTS**

4.63.1 Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law, or (c) in civil cases and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, are admissible unless the sources of information or other circumstances indicate lack of trustworthiness.

4.64 **SECTION 64- RECORDS OF VITAL STATISTICS**

4.64.1 Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the record thereof was made to a public office pursuant to requirements of law are admissible.

4.65 **SECTION 65- RECORDS OF RELIGIOUS ORGANIZATIONS**

4.65.1 Statements of births, marriages, divorces, deaths, whether a child is marital or non-marital, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization are admissible.

4.66 **SECTION 66- MARRIAGE, BAPTISMAL, AND SIMILAR CERTIFICATES**

4.66.1 Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter are admissible.

4.67 **SECTION 67- FAMILY RECORDS**

4.67.1 Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings or rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like are admissible.

4.68 **SECTION 68- RECORDS OF DOCUMENTS AFFECTING AN INTEREST IN PROPERTY**

4.68.1 The record of a document purporting to establish or affect an interest in property, as proof of the content of the original record document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office is admissible.

(a) Statements in documents affecting an interest in property. A statement contained in a document significant to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

- 4.69** **SECTION 69- STATEMENTS IN ANCIENT DOCUMENTS**
4.69.1 Statements in a document in existence 20 years or more whose authenticity is established are admissible.
- 4.70** **SECTION 70- MARKET REPORTS, COMMERCIAL PUBLICATIONS**
4.70.1 Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations are admissible.
- 4.71** **SECTION 71- LEARNED TREATISES**
4.71.1 A published treatise, periodical or pamphlet on a subject of history, science or art is admissible as tending to prove the truth of a matter stated therein if the judge takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as an expert in the subject.
4.71.2 No published treatise, periodical or pamphlet constituting a reliable authority on a subject of history, science or art may be received in evidence, except for impeachment on cross-examination, unless the party proposing to offer such document in evidence serves notice in writing upon opposing counsel at least 30 days before trial, or within such other time as set by the court. The notice shall fully describe the document which the party proposes to offer, giving the name of such document, the name of the author, the date of publication, the name of the publisher, and specifically designating the portion thereof to be offered. The offering party shall deliver with the notice a copy of the document or of the portion thereof to be offered.
4.71.3 No rebutting published treatise, periodical or pamphlet constituting a reliable authority on a subject of history, science or art shall be received in evidence unless the party proposing to offer the same shall, not later than 20 days after service of the notice described in par. 4.71.2 or such other time as set by the court, serve notice similar to that provided in par. 4.71.2 upon counsel who has served the original notice. The party shall deliver with the notice a copy of the document or of the portion thereof to be offered.
4.71.4 The court may, for cause shown prior to or at the trial, relieve the party from the requirements of this section in order to prevent a manifest injustice.
- 4.72** **SECTION 72- JUDGMENT OF PREVIOUS CONVICTION**
4.72.1 Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest), adjudging a person guilty of a crime to prove any fact essential to sustain judgment, or to impeach the credibility of a witness is admissible. The pendency of an appeal may be shown but does not affect admissibility.

4.73 **SECTION 73- JUDGMENT AS TO PERSONAL, FAMILY OR GENERAL HISTORY, OR BOUNDARIES**

4.73.1 Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, are admissible if the same would be provable by evidence of reputation.

4.74 **SECTION 74- FORMER TESTIMONY**

4.74.1 Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, at the instance or against A party with an opportunity to develop the testimony by direct, cross-, or redirect examination, with motive and interest similar to those of the party against whom now offered, by a witness who is now physically unavailable to testify, refuses to testify, or lacks memory sufficient to testify on the subject, is admissible.

4.75 **SECTION 75- SELF AUTHENTICATING DOCUMENTS**

4.75.1 No extrinsic evidence of authenticity is required for any of the following:

(1) Public documents under seal. A document bearing a seal purporting to be that of any tribe of or of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department officer or agency thereof, and a signature purporting to be an attestation or execution.

(2) Public documents not under seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in sub. (1), having no seal, if the public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Public documents of foreign countries. A document purporting to be executed or attested in his official capacity by a person authorized by the law of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the judge may, for good cause shown, order

that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make certification, by certificate complying with sub. (1), (2) or (3) or complying with any statute or rule adopted by the Tribal Court or Court of Appeals.

(5) Official publications. Books, pamphlets or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged and authenticated documents. Documents accompanied by a certificate of acknowledgment under the hand and seal of rubber stamp of a notary public or other person authorized by law to take acknowledgments or any public officer entitled by virtue of his public office to administer oaths or authenticated or acknowledged as otherwise authorized by statute.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by the Uniform Commercial Code.

(10) Health care records. Records filed with the court pursuant to Section 4.62.

4.76

SECTION 76- HEARSAY

4.76.1

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted and is not admissible unless facts and circumstances indicate that it has a sufficiently high degree of trustworthiness to justify its admission.

4.76.2

A statement meeting the requirements of 4.76.1 will nevertheless not be considered hearsay if it qualifies under one of the following exceptions:

(a) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

- (1) Inconsistent with his testimony, or
- (2) Consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or
- (3) One of identification of a person made soon after perceiving him; or
- (b) Admission by party opponent. The statement is offered against a party and is:
 - (1) His own statement, in either his individual or a representative capacity, or
 - (2) A statement of which he has manifested his adoption or belief in its truth, or
 - (3) A statement by a person authorized by him to make a statement concerning the subject, or
 - (4) A statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or
 - (5) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.
- (6) Any writing specified in Sec. 4.58.

4.77

SECTION 77- AUDIO AND VISUAL RECORDINGS

4.77.1

No audio recording, and no audio portion of a visual video tape, film, or digital recording, and no transcript or other recitation or presentation of the contents thereof, is admissible in evidence unless all adults whose voices are heard on the recording (except for incidental and non-consequential voices) consented to the recording, or unless the recording was validly made by a law enforcement agency.

4.77.2

The Court may also exclude the visual portion of a video tape, film, or digital recording recorded without the consent of all adults who appear on the recording (except for incidental and non-consequential appearances) based on the circumstances of the recording and the purpose for which the recording evidence is offered, unless the recording was validly made by a law enforcement agency or unless the recording was made for security purposes at a commercial, governmental, or other public place.

4.77.3

The party propounding the audio or visual recording evidence bears the burden of showing consent by a preponderance of the evidence.

4.78

SECTION 78- JUDICIAL NOTICE

4.78.1

The court may at any time in a proceeding take judicial notice of an adjudicative fact that is not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the court or is capable of accurate and ready

determination by resort to sources whose accuracy cannot reasonably be questioned.

4.78.2 The court may take judicial notice of any foreign law properly authenticated.