

St. Croix Tribal Council

TRIBAL COUNCIL

P.O. Box 287

Hertel, Wisconsin 54845

(715)349-2195

Fax (715)349-5768

vis Taylor
Chairman
Round Lake Community

David Merrill
Vice-Chairman
Round Lake Community

Curtis Bearhart
Secretary/Treasurer
Maple Plain Community

Leo Butler
Tribal Administrator
Sand Lake Community

Beverly Benjamin
Member
Danbury Community

EXECUTIVE SECRETARY

Mary Hartmann

HEALTH DIRECTOR

Phyllis Lowe

PERSONNEL DIRECTOR

Duane Emery

INTERSTATE

COUNTING CLERK

Richard Benjamin

COMPTROLLER

Rick Petersen

PLANNING DEPARTMENT

Richard F. Hartmann

JUDICIAL BRANCH

Louis Bearheart
Gloria Merrill
Judges

Julie Nelson Pettis
Court Clerk

TRIBAL ATTORNEY

Howard J. Bichler
George Morrison

ENTERPRISES

St. Croix Casino
Turtle Lake
The Wall Casino
Corners Cafe
Bingo
Round Lake Bingo
Maple Plain Bingo
Sand Lake Bingo & Casino
SCHA
St. Croix Ojibwa Construction Co.

St. Croix Tribal Council

RESOLUTION NO. 12-11-96-1

WHEREAS, the St. Croix Chippewa Indians of Wisconsin adopted a tribal court code by resolution 84-3-19-1; and

WHEREAS, the St. Croix Tribal Council desires to improve the Court Code and make it more responsive to the demands placed on tribal courts for increased activity;

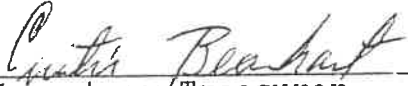
NOW, THEREFORE, BE IT RESOLVED, that the court code revisions designated as follows:

- Amendments to St. Croix Tribal Court Code-Fourth Draft: September, 1996
- Amendments to Chapter III - St. Croix Tribal Court Code - Rules of Evidence: July, 1996
- Amendments to Chapter II - St. Croix Tribal Court Code - Court of Appeals: June 1996

are enacted as law.

CERTIFICATION

I, the undersigned as Secretary of the St. Croix Tribal Council, do hereby certify that the Council is composed of five (5) members, of whom four (4) were present, constituting a quorum, at a meeting duly called, convened, and held this 11th day of December, 1996, and that the foregoing resolution was adopted at said meeting by an affirmative vote of four (4) members for, 0 against, and 0 members abstaining from the vote, and that said resolution has not been rescinded or amended in any way.


Secretary/Treasurer
St. Croix Tribal Council

St. Croix Tribal Council

P.O. Box 287

Hertel, Wisconsin 54845

(715)349-2195

Fax (715)349-5768

RESOLUTION NO. 93-6-7-1

TRIBAL COUNCIL

Don Saros
Tribal Chairman
Sand Lake Community

Kenneth Mosay
Vice-Chairman
Round Lake Community

Beverly Benjamin
Secretary/Treasurer
Danbury Community

Lewis Taylor
Member
Sand Lake Community

Mary A. Washington
Member
Maple Plain Community

EXECUTIVE SECRETARY

Mary Hartmann

COMPTROLLER

Grace E. Allard

CLERK

Thomas J. Murphy

PLANNING DEPARTMENT

Richard F. Hartmann

JUDICIAL BRANCH

David Merrill
Judge

Alternate Judge

TRIBAL ATTORNEY

Howard J. Bichler

BIOLOGIST

Elizabeth Greiff

ENTERPRISES

St. Croix Casino
Turtle Lake
Hole In The Wall Casino
Danbury
Chippewa Corners Cafe
Danbury Bingo
Lake Bingo
Plain Bingo

WHEREAS, the St. Croix Chippewa Indians of Wisconsin adopted a tribal court code by resolution 84-3-19-1; and

WHEREAS, section 102 of said code governs the jurisdiction of the St. Croix Tribal Court; and

WHEREAS, section 102(A) provides that the St. Croix Tribal Court shall have jurisdiction over: "All matters which the Tribal Council of the St. Croix Chippewa Indians of Wisconsin invests, by appropriate ordinance, the Court with jurisdiction;"; and

WHEREAS, section 102(A) of said code may be interpreted to limit the jurisdiction of the St. Croix Tribal Court to include only those matters arising under tribal ordinances having specific grants of jurisdictional authority; and

WHEREAS, the Tribal Council for the St. Croix Chippewa Indians of Wisconsin recognizes that such an interpretation may impair the power of the Tribal Court to adjudicate matters over which the St. Croix Chippewa Indians of Wisconsin retains sovereign authority to legislate; and

WHEREAS, the Tribal Council for the St. Croix Chippewa Indians of Wisconsin also recognizes that such an interpretation may deny aggrieved parties with an adequate legal remedy.

NOW THEREFORE BE IT RESOLVED, that section 102(A) of the St. Croix Tribal Court Code be amended to read: "All matters arising under the Constitution and laws of the St. Croix Chippewa Indians of Wisconsin;".

CERTIFICATION

I, the undersigned as Secretary of the St. Croix Tribal Council, do hereby certify that the Council is composed of five (5) members of whom three (3) were present, constituting a quorum, at a meeting duly called, convened and held this 7th day of June, 1993, and that the foregoing resolution was adopted at said meeting by an affirmative vote of three (3) members for, zero (0) against, and zero (0) members abstaining from the vote, and that said resolution has not been rescinded or amended in any way.


Beverly Benjamin, Secretary/Treasurer
St. Croix Tribal Council

St. Croix Tribal Court Rules of Civil Procedure

as approved by the St. Croix Tribal Council

Tribal Court Code

Appellate Code

Rules of Evidence

February, 1997

ST. CROIX TRIBAL COURT CODE
TABLE OF CONTENTS

CHAPTER I: THE ST. CROIX TRIBAL COURT

Sec. 101. Creation of the Court	1
Sec. 102. Jurisdiction of the St. Croix Tribal Court.	1
Sec. 103. Composition of the St. Croix Tribal Court	1
Sec. 104. Disqualification and removal of judges.	2
Sec. 105. Clerk of Court.	3
Sec. 106. Tribal Prosecutor	3
Sec. 107. Rules of Court.	3

CHAPTER II: THE ST. CROIX COURT OF APPEALS

Printed separately

CHAPTER III: RULES FOR ALL ACTIONS BEFORE TRIBAL COURT

Part One: General Provisions

Sec. 301. Witnesses	3
Sec. 302. Records of Court.	4
Sec. 303. Practice before the Court	4
Sec. 304. Fees and costs; waiver or suspension for indigents	5
Sec. 305. Conduct of tribal employees and officers.	5
Sec. 306. Laws applicable to civil actions	5
Sec. 307. Costs	5

Part Two: Proceedings before the Trial Court

Sec. 308. Statement of claim.	6
Sec. 309. Notice to defendant; answer	6
Sec. 310. Pre-trial resolution.	8
Sec. 311. Conduct of trial.	8
Sec. 312. Judgments; procedure.	10
Sec. 313. Court enforcement of judgment	10
Sec. 314. Fees.	12

Part Three: Summary Proceedings to Recover Possession
of Premises

Sec. 315. Jurisdiction of the Tribal Court.	12
Sec. 316. Demand for possession or payment.	12
Sec. 317. Complaint	13
Sec. 318. Notice	13
Sec. 319. Defenses.	13
Sec. 320. Conduct of trial.	13
Sec. 321. Counter-claim; claims for money judgment.	14
Sec. 322. Judgment for plaintiff.	14
Sec. 323. Writ of restitution	14
Sec. 324. Judgment for defendant.	14
Sec. 325. Fees.	14

Part Four: General Provisions

Sec. 326. Full faith and credit	15
Sec. 327. Contempt of court	16
Sec. 328. Power of court to punish contempt	16
Sec. 329. Summary procedure	16
Sec. 330. Nonsummary procedure.	16

Sec. 331. Sanctions authorized.	16
Sec. 332. Enforcement of monetary sanctions	16

Part Five: Rules of Evidence
Printed separately

CHAPTER IV: CIVIL REMEDIAL FORFEITURE PROCEEDINGS

Sec. 401. Purpose	17
Sec. 402. Party plaintiff	17
Sec. 403. Persons subject to this chapter	17
Sec. 404. Additional remedies	17

Part One: Civil Remedial Money Penalties

Sec. 405. Tribal ordinances affected.	17
Sec. 406. Institution of proceedings; citation.	17
Sec. 407. Notice to alleged violator; jurisdiction.	18
Sec. 408. Citation contents	18
Sec. 409. Stipulation of default; deposit	18
Sec. 410. Burden of proof.	19
Sec. 411. Default.	19
Sec. 412. Judgment	19
Sec. 413. Enforcement of judgment	19
Sec. 414. Monies tendered to the Tribal Court	10

Part Two: Civil Remedial Forfeiture of Property

Sec. 415. Tribal ordinances affected	20
Sec. 416. Institution of Proceedings; complaint	20
Sec. 417. Contents of complaint	20
Sec. 418. Service of complaint	20
Sec. 419. Seizure of property without order	21
Sec. 420. Seizure of property with order	21
Sec. 421. Bond for property seized.	21
Sec. 422. Hearing; time	21
Sec. 423. Hearing procedure	22
Sec. 424. Order to seize	22
Sec. 425. Contents of an order to seize	22
Sec. 426. Service of order to seize	23
Sec. 427. Existence of security interests in seized property	23
Sec. 428. Trial	23
Sec. 429. Sale of forfeited property	23
Sec. 430. Sale of perishable property	24

CHAPTER V: CONSERVATION CODE OF OFFENSES

Sec. 501. Jurisdiction	24
Sec. 502. Law applicable	24
Sec. 503. Institution of proceedings	24
Sec. 504. Notice to appear	24
Sec. 505. Appearance before the Tribal Court	24
Sec. 506. Default	25
Sec. 507. Rights of alleged violator	25
Sec. 508. Order of hearing procedure	25
Sec. 509. Judgment of the Tribal Court	25
Sec. 510. Appeal of decision	25

CHAPTER I

THE ST. CROIX TRIBAL COURT

101. Creation of the Court. There is hereby established the St. Croix Tribal Court.
102. Jurisdiction of the St. Croix Tribal Court. The Tribal Court shall have jurisdiction over:
- A. All matters arising under the Constitution and laws of the St. Croix Chippewa Indians of Wisconsin.
 - B. All actions brought under the provisions of this Code.
 - C. All other civil actions in which the locus of any element of any claim is on the reservation or other trust lands of the tribe, or which is based on any contract made on or providing for the delivery of goods or services on the reservation or other trust lands of the tribe.
 - D. Notwithstanding any other provision of this Code, the tribal court shall have jurisdiction in claims, counterclaims, or cross-claims against the Tribe or its officers acting in their official capacity only as follows:
 - (1) Against the Tribe, an action for a writ of habeas corpus to test the legality of a person's detention by the Tribe.
 - (2) Against an officer of the Tribe for actions taken within his or her official capacity, an action for prospective relief in which the officer has acted beyond the scope of his or her valid authority, in violation of applicable law.
 - (3) Against the Tribe, or against an officer of the Tribe for actions taken within his or her official capacity, where the Tribe has properly waived its sovereign immunity or that of its officers, by resolution, ordinance, agreement, or otherwise.
103. Composition of the St. Croix Tribal Court.
- A. Judges. The Tribal Court shall consist of one trial judge and one alternate trial judge. Three appellate judges may be added at the discretion of the St. Croix Tribal Council.
 - B. Selection of judges.
 - (1) The judges of the Tribal Court shall be selected by a majority vote of the St. Croix Tribal Council at a meeting in which a quorum is present.
 - (2) No person shall be eligible for selection as a judge unless he or she:
 - a. Is at least eighteen (18) years of age;

- b. Is of good moral character and integrity;
- c. Has never been convicted of an offense termed a felony under the laws of the State of Wisconsin or of the United States;
- d. Has not been convicted within the last twelve (12) months of an offense termed a misdemeanor under the laws of the St. Croix Band, the United States or the State of Wisconsin;
- e. Is capable of preparing papers and conducting hearings incident to the office of judge;
- f. Has demonstrated knowledge of the St. Croix Tribal Code and Ordinances and understanding of federal and state laws.

C. Terms of office. Each judge shall hold office for a period of three (3) years, unless sooner removed for cause, or by reason of resignation, death or incapacitation. A judge shall be eligible for reappointment.

104. Disqualification and removal of judges.

A. Disqualification.

(1) The trial judge shall be disqualified to sit on any case in which he or she has any direct interest, is or has been or reasonably may be a witness, or is a spouse, parent, child, grandparent, grandchild, brother, or sister of a party. In the event that more than one alternate trial judge has been appointed, the clerk of court shall randomly select one of the judges to serve. In the event all St. Croix trial judges are disqualified, the clerk of court shall randomly select from the list of appellate judges a judge to preside in the case.

(2) An appellate judge shall be disqualified to hear any appeal in any case in which he or she has sat as trial judge, has any direct interest, has been a witness, or is a spouse, parent, child, grandparent, grandchild, brother, or sister of a party. Upon disqualification, the clerk of the appellate court shall randomly select another judge from the court of appeals panel to serve on the case.

B. Removal of judge.

(1) A judge may be suspended from office upon written charges brought for his or her removal which recite good cause. A hearing shall be provided before the St. Croix Tribal Council within ten (10) days of the judge's receipt of written notice of the charges, at which time the judge shall be provided with the opportunity to respond to the charges against him, including the presentation of the testimony of witnesses in his or her behalf. A judge may be removed only for good cause shown at the hearing, and only upon a vote taken by secret ballot of a quorum of the Tribal Council.

(2) Upon the removal, resignation, death or physical or mental incapacitation of a judge, the St. Croix Tribal Council shall appoint an individual to the remainder of such judge's term of office.

105. Clerk of Court.

A. Appointment of clerks. The St. Croix Tribal Council shall appoint such clerks of court as many be required, upon such terms and conditions as are determined by the Council.

B. Duties. The clerk shall render assistance to the Court, to tribal enforcement personnel, and to all other persons having business with the Court in drafting complaints, subpoenas, warrants, notices of appeal, and other Court documents. The clerk shall attend and keep written records of all proceedings of the Court, and is authorized to administer oaths to witnesses and to collect fees, fines, forfeitures, costs and other monies. The clerk shall be bonded in an amount fixed by the Tribal Council, and shall transmit any and all monies received to the Tribal Treasurer. The clerk shall assure that a verbatim stenographic or electronic record is made of all proceedings in court.

106. Tribal Prosecutor. A Tribal Prosecutor shall be appointed by the St. Croix Tribal Council, for such term, and upon such conditions, as are determined by the Council. The Prosecutor shall represent the St. Croix Chippewa Indians of Wisconsin before the Court in all appropriate proceedings.

107. Rules of Court. The time and place of court sessions, and all rules of court procedure not prescribed by this Code, shall be established by rules of court adopted by the judges of the Tribal Court, subject to the approval of the Tribal Council.

CHAPTER II

COURT OF APPEALS *(Printed separately)*

CHAPTER III

RULES FOR ALL ACTIONS BEFORE THE TRIBAL COURT

Part One: General Provisions

301. Witnesses.

A. Subpoenas. The trial judge of the Tribal Court shall have the power to issue subpoenas for the attendance of witnesses either on his own motion or on the request of any of the parties to the case. Such subpoena may include direction to produce records and documents in the possession or under the control of the person named in the subpoena. The subpoena shall bear the signature of the judge issuing it.

B. Service of subpoena. Service of such subpoena shall be by a member of the Tribe appointed by the Court for that purpose, or by a member of the Tribe's law enforcement staff.

C. Penalty for failure to comply with subpoena. Failure to obey such subpoena shall be considered willful contempt and shall subject the perpetrator to the Court's remedial powers which are specified in this Chapter.

D. Witness fees.

(1) Each witness answering a subpoena shall be entitled to compensation for his or her reasonable expenses actually incurred for meals, loss of wages, child care, and transportation, at a maximum amount of \$50.00 for each day that the witness is required to be present in court. The fee shall be the responsibility of the party requesting the subpoena, unless such fee is held by the trial judge to constitute court costs

(2) Witnesses who testify voluntarily shall be paid by the party calling them.

302. Records of Court. The trial court and the Court of Appeals shall keep for public inspection, unless specifically excepted by this Code, a record of all proceedings in the Tribal Court, showing: the title of the case; the names and addresses of the parties, attorneys, and witnesses; the substance of the complaint; the day of the hearing or trial; the name(s) of the judge; the findings of the Court and the judgment; and any other facts or circumstances deemed of importance to the case.

303. Practice before the Court.

A. Admission to practice. No attorney or lay spokesman shall represent any person in an action before the Tribal Court unless such attorney or spokesman is duly admitted to practice before the St. Croix Tribal Court.

B. Procedure for admission.

(1) Any attorney wishing to practice before the Tribal Court shall file a written request for admission with the Clerk of Court, accompanied by a Certificate of Good Standing from the State Bar or Supreme Court of the State in which such attorney is duly licensed to practice law. Such request shall be accompanied by an admission fee of \$25.00.

(2) Any lay spokesman wishing to practice before the Tribal Court shall file a written request for admission with the Clerk of Court, accompanied by an affidavit reciting the qualification of such spokesman to represent another before the Court. Such request shall be accompanied by an admission fee of \$10.00.

C. Roster of attorneys. Upon the filing of the required documents and fee, the Clerk of Court shall enter the attorney or lay spokesman's name on the roster of those persons admitted to practice before the St. Croix Tribal Court. Such entry shall constitute certification to practice before the Court until such time as the attorney or lay spokesman shall

file a notice of retirement, shall die or become incapacitated, or shall be suspended or disbarred from practice by the St. Croix Tribal Court.

304. Fees and costs; waiver or suspension for indigents.

A. Suspension of fees for persons receiving public assistance.

Any natural person submitting to the Clerk of Court an affidavit that he or she is then receiving any form of public assistance, the payment of all fees and costs as to that person in the action, required to be paid by this Code or by court rule, shall thereupon be suspended.

B. Waiver or suspension of fees for indigent persons.

In instances where the person is not receiving public assistance, the Court shall order waiver of the payment of all fees and costs to a person in the action, or shall order the suspension of the payment of those fees or costs until the conclusion of the litigation, upon that person submitting to the Court an ex parte affidavit stating facts showing that person's inability to pay those fees and costs because of indigency.

305. Conduct of tribal employees and officers. No employee or officer of the St. Croix Chippewa Indians or Wisconsin shall obstruct, interfere with or control or attempt to interfere with or control the Court in any manner, directly or indirectly, or to influence or attempt to influence any judge of the Court or any member of the Court or person appointed by the Court, either directly or indirectly.

306. Law applicable to civil actions.

A. Laws applied. In all civil actions, the Tribal Court shall apply the applicable laws of the United States, any authorized regulations of the Department of the Interior which may be applicable, any ordinance of the St. Croix Chippewa Indians of Wisconsin, and any custom of the Chippewa Tribe not prohibited by the laws of the United States. For any matter not determined by the law of the tribe, federal law and the law of the State of Wisconsin shall be considered persuasive authority. Any action that may be brought under federal law or the law of the State of Wisconsin may be brought in tribal court.

B. Tribal customs. Where doubt arises as to the customs and usages of the Chippewa Tribe, the Tribal Court shall request the advice of persons familiar with these customs and usages.

307. Costs.

A. Assessment. The Court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses for voluntary witnesses for which either party is responsible under Section 301(D), and any further incidental expenses connected with the proceedings before the Court, as the Court may direct.

B. Enforcement. Costs, where allowed, shall be included as part of the final judgment and enforced in the same manner.

Part Two: Proceedings before the Trial Court

308. Statement of claim.

A. Contents. The statement of claim, by which a proceeding is instituted in the trial court, shall be in the form of an affidavit, the form of which will be provided by the Clerk of Court. The nature and the amount of the claim shall be stated in concise, non-technical language, and shall give the date or dates when the claim arose.

B. Signature. The affidavit shall be signed by the plaintiff or his guardian if the plaintiff is an individual; by any one of the partners, if the plaintiff is a partnership; by any full-time employee having knowledge of the facts, if the plaintiff is a corporation; and by a tribal official having knowledge of the facts, or by tribal enforcement personnel, if the plaintiff is the tribe.

C. Statute of limitations. Any claim which but for tribal court jurisdiction may be brought in federal or state court may be presented to tribal court within the time period provided by the applicable federal or state statute of limitations. Where no limitation is otherwise provided, a claim may be presented to the tribal court within two years from the date of discovery of the claim or injury. The filing in federal or state court of any action which should properly be brought in tribal court tolls the limitation.

D. Burden of proof. 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.

309. Notice to defendant; answer.

A. How served. Upon the filing of the statement of claim, the plaintiff shall cause a copy thereof to be served upon each defendant residing on the reservation, together with a notice prepared by the Clerk of Court to each defendant to appear and answer before the Court. It shall also be the plaintiff's responsibility to serve copies of the statement of claim and notice to each defendant not residing within the exterior boundaries of the reservation. Service is adequate if accomplished in accordance with the laws of the state in which service is effected.

B. Contents. The notice issued by the Clerk of Court shall inform the defendant that suit has been instituted against him in the St. Croix Tribal Court and specify that he must answer to the claim against him within the proper time period as specified herein, or have a default judgment entered against him.

C. Answer. A defendant shall file his answer within 20 days after service of the notice and copy of the statement of claim upon him on the reservation. When service is made on a defendant residing outside the reservation boundaries, the defendant shall have 30 days within which to file his answer. The defendant must furnish the plaintiff with a copy of his answer. The answer shall admit, deny, or deny based on insufficient information each of the allegations of the complaint, however no

judgment shall be based on a technical failure of the defendant to meet each allegation. Included in the answer shall be any motion to dismiss and any counterclaim or cross-claim that the defendant wishes to assert.

D. Notice not served. If it shall appear to the trial court that the defendant did not personally obtain notice of the claim against him, the court shall dismiss the action.

E. Scheduling order. After the filing of defendant's answer, or upon the expiration of the time period within which defendant must answer, the court shall set a date for a scheduling conference. Any unrepresented party must appear in person, and at least one attorney must appear for any party with representation. After consultation the court shall issue a scheduling order including the following:

1. The time within which any other parties shall be joined.
2. The time within which any motions shall be filed.
3. The time within which any pleadings may be amended.
4. The time within which motion for default judgment may be heard.
5. The methods and timetables for the completion of discovery.
6. The time within which motion for summary judgment may be heard.
7. The time within which any motion in limine may be heard.
8. The date for a pretrial conference.
9. The date for trial.
10. Any other matters governing the conduct of the case that the court deems appropriate.

F. Status conferences. 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.

G. Time.

(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 10 days or less, Saturdays, Sundays, and tribal holidays are excluded in the computation.

(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.

(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) 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.

310. Pre-trial resolution.

A. Settlement. The parties to a case may settle their differences upon such terms as they agree. An agreement to dismiss a case or to enter judgment upon such terms as the parties agree shall be in writing and shall be signed by the parties and their attorneys or advocates, if any. The court may enter an order dismissing an action or entering judgment upon written stipulation.

B. Summary judgment. 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 after non-evidentiary hearing held on twenty days notice 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. 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 no less than five days before the date set for the hearing. Interlocutory summary judgment may be entered on some but not all claims or issues in a case.

311. Conduct of trial.

A. Appearance. If the parties appear, the judge shall conduct the trial in a formal or informal manner as the nature of the case, parties, and representation requires. The rules of evidence applicable to tribal court shall be followed, except where specific ordinance provides that they are not to be followed. Where this court code does not answer a question of practice or procedure, the tribal court shall fashion a ruling to do substantial justice to the parties and provide for the efficient administration of justice. In fashioning such a ruling the applicable federal and Wisconsin rules may be considered persuasive authority. A verbatim stenographic or electronic record shall be made and permanently retained for all proceedings in court. A transcript of proceedings need not be made unless it is requested by one of the

parties. The requesting party shall be responsible for the costs of preparing the transcript according to a fee schedule set by the court.

B. Non-appearance. If a defendant fails to appear, judgment may be entered by default where the claim is for a certain sum, or upon such proof by the plaintiff as the court may require. If the plaintiff fails to appear, the claim may be dismissed for want of prosecution, or the defendant may present his defense and obtain a judgment, or the case may be continued, as the court may direct. If all parties fail to appear, the claim may be dismissed for want of prosecution, or the court may order such other disposition as justice may require. A verbatim stenographic or electronic record shall be made and permanently retained for all proceedings in court. A transcript of proceedings need not be made unless it is requested by one of the parties. The requesting party shall be responsible for the costs of preparing the transcript according to a fee schedule set by the court.

C. Costs. Costs of the proceeding may be taxed against either or both parties by the trial court judge.

D. Telephone and audiovisual proceedings.

(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 conduct any proceeding by telephone or audiovisual means shall either secure the consent of the other party or shall provide notice to the other party that unless objection is received within the time set by the court the court may proceed by telephone or audiovisual means.

(2) In determining whether to conduct a proceeding 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) Any other factor the court deems relevant.

(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.

312. Judgments; procedure.

- A. Conclusiveness. All judgments of the Tribal Court shall be conclusive upon the plaintiff and defendant.
- B. Entry. Judgment shall be entered in the judgment record at the time of the judge's pronouncement of his decision.
- C. Effect. Entry of a judgment on the judgment record 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 within the exterior boundaries of the St. Croix reservation.
- D. Installment payments. 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,
- E. Stay of judgment. The filing of an appeal with the St. Croix Court of Appeals, pursuant to the requirements of Chapter II of this Code, shall prevent the enforcement of the judgment of the trial court when and if the notice of such appeal is filed with the Clerk of Court,

313. Court enforcement of judgment.

- A. Failure to pay judgment. If the losing party fails to pay the judgment according to the terms and conditions thereof, and the time for appeal has expired, the Clerk of Court, upon application of the prevailing party, shall certify such judgment to the Tribal Court.
- B. Power of the Court. Upon receipt of the certified judgment the Tribal Court may:
 - (1) Issue a writ of execution which shall command tribal enforcement personnel to collect the amount of the judgment from the losing party;
 - (2) 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;

(3) Issue a subpoena to the losing party, ordering him to appear before the Court at a time and place specified, and to testify under oath concerning his property, or any debts due or to become due to him, his 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.

C. Writ of execution. Upon receipt of the writ of execution, the tribal law enforcement personnel shall serve the writ upon the losing party and post notice of the writ in the tribal office. Within 30 days, the tribal law enforcement personnel shall cause a sale of the losing party's personal property, located within the exterior boundaries of the St. Croix reservation, which shall have been in the custody of the enforcement personnel until such sale. The proceeds of the sale shall be returned to the Tribal Court within the 30 days above prescribed. The provisions in Section 429, concerning disposition of such property, shall be followed by the Tribal Court.

D. Stay of writ. The losing party may prevent the issuance of a writ of execution under sub. (B)(1), or of judicial sale, by presenting to the Tribal Court sufficient proof that said party has made, or is willing to commence, payment of the judgment to the prevailing party. Upon such proof, the Tribal Court shall not issue a writ of execution, and, if one has been issued, shall rescind the order.

E. Property exempt from execution. The following property shall be exempt from levy and sale under any execution:

(1) All household goods, furniture, utensils, books and appliances, not exceeding \$1,000 in value;

(2) All wearing apparel of every person in the judgment debtor's household, and provisions and fuel for comfortable subsistence of each householder and his family for six (6) months;

(3) 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, not exceeding \$1,000 in value;

(4) A dwelling home and appurtenances thereto, owned in fee and occupied by the judgment debtor, not exceeding \$6,000 in value. This exemption does not apply to any mortgage on the homestead which is recorded at the agency office of the Bureau of Indian Affairs;

(5) The dwelling home of a family, after the death of the owner thereof, from the payment of his or her debts during the minority of his or her children.

(6) All other exempt property contained in Sec. 815.18, Wis. Stat., provided that the Tribal court code shall govern where the language is inconsistent with the tribal court code.

F. Interest on judgments. Any judgment not paid within the time prescribed by the court, or if no time is prescribed, within 30 days of the date of judgment, shall accrue simple interest on the balance not

paid at the rate of 1.5% per month. The filing of an appeal shall not stop the accrual of interest.

314. **Fees.** A fee of \$20.00 shall be charged and collected for the filing of the affidavit for the commencement of any action, unless a different sum is specified by a particular ordinance of the St. Croix Tribal Council or by another Chapter of this Code; a fee of \$2.00 shall be charged for each defendant to whom a copy of the affidavit is mailed or served by the Clerk. A fee of \$10.00 shall be charged and collected for the issuance of a writ of execution. A fee of \$10 shall be charged and collected for the filing of a foreign judgment.

Part Three: Summary Proceedings to Recover Possession of Premises

315. Jurisdiction of the Tribal Court.

A. The person or organizational entity entitled to any premises located within the exterior boundaries of the St. Croix reservation may recover possession thereof by summary proceedings in the following cases:

(1) When a person holds over any premises, after failing or refusing to pay rent due under the lease or agreement by which he holds, within seven days of a written demand for possession for nonpayment of rent due;

(2) When the person in possession willfully or negligently causes a serious or continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises which was discovered by the party seeking possession not earlier than 90 days before institution of proceedings under this section, or refuses for seven (7) days after a written demand to undertake the repair of the premises;

(3) When the person in possession has acted or failed to act in a manner which causes his right to continued possession to be forfeited under the terms of a written lease or agreement with the party seeking possession;

(4) When the person in possession occupies public housing whose tenancy or agreement has been terminated for just cause as provided by the lawful rules of the local housing commission or by federal law or regulation.

B. Summary proceedings under this section are the exclusive remedy of one seeking possession of any leased or rented premises. Any person who makes entry into or on such premises to evict a tenant without the above proceedings may subject himself to criminal penalties.

316. **Demand for possession or payment.** A demand for possession or payment shall be in writing, addressed to the person in possession and shall give the address or other brief description of the premises. The reasons for the demand and the time to take remedial action shall be clearly stated. When nonpayment of rent or other sums due under the lease is claimed, the amount due at the time of the demand shall be stated. The

demand shall be dated and signed by the person or corporation entitled to possession.

317. Complaint. The complaint shall be in the form of an affidavit, the form for which will be provided by the Clerk of Court. It shall include, where applicable, the amount of unpaid rent or other money due and remaining unpaid as of the date of the affidavit, and the date the same became due, the rental rate and the rental period, and specific reference to local housing commission rules, or to federal law, which establish the basis for just cause for terminating a tenancy in housing operated by the Tribe. In addition, the affidavit shall have attached thereto a copy of the demand for possession or payment. The affidavit shall be signed by the plaintiff or his guardian, if the plaintiff is an individual, or by any full-time employee having knowledge of the facts, if the plaintiff is a corporation.

318. Notice.

A. How served. Upon filing of the affidavit, the Clerk shall cause a copy thereof to be served upon each defendant, together with a notice to appear and answer before the trial judge of the Tribal Court.

B. Contents.

(1) The notice shall inform the defendant when and where to appear, that he is to bring with him all books, papers, and witnesses needed to establish his defense; and that failure to appear will result in judgment against him for the relief asked for in the affidavit.

(2) The plaintiff also shall be notified by the Clerk of Tribal Court to appear at the time and place specified, and to have with him his books, papers, and witnesses necessary to prove his claim, and that if he fails to appear, the complaint will be dismissed.

C. Time of notice. The date for the appearance of the defendant, provided in the notice, shall be within five (5) days of the date of the notice.

319. Defenses. A judgment for possession of the premises for an alleged termination of the tenancy shall not be entered against the defendant if any of the following is established:

A. That the rent allegedly due and payable has been paid to the plaintiff by the defendant prior to or at the hearing;

B. That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement; or

C. That the alleged termination was of a tenancy in housing operated by the Tribe, and was terminated without cause.

320. Conduct of trial.

A. Appearance. If the parties appear, the judge shall conduct the trial in an informal manner so as to do substantial justice between the

parties. There need not be made a verbatim transcript of the proceedings.

B. Nonappearance. If the defendant fails to appear, judgment for the plaintiff shall be entered by default. If the plaintiff fails to appear, the complaint shall be dismissed.

321. Counter-claims: claims for money judgment. If either party has a claim for a money judgment, the trial judge may grant such party leave to file such claim and to hear evidence concerning it at the hearing, if the interests of justice are served thereby. The rules of Part Two of this Chapter apply to any such claim so filed.

322. Judgment for plaintiff. If the judge finds that the plaintiff is entitled to possession of the premises, judgment shall be entered in the judgment record in accordance with that finding, and may be enforced by a writ of restitution as provided herein. If it is found that the plaintiff is entitled to possession of the premises, due to nonpayment of any money due him under the tenancy, the judge shall determine the amount due or in arrears at the time of the hearing and shall cause it to be stated in the judgment. The statement in the judgment for possession shall only be for the purpose of prescribing the amount which, together with costs, shall be paid to preclude issuance of a writ of restitution.

323. Writ of restitution. A writ of restitution may be issued, commanding tribal law enforcement personnel to cause the plaintiff to be restored and put in full possession of the premises if the following conditions are met to the judge's satisfaction:

A. The tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continued injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially repair the premises; or

B. The defendant has failed to comply with the judgment, or to undertake compliance, within ten (10) days after entry of a judgment under Section 322.

324. Judgment for defendant. If the plaintiff fails to prosecute his complaint, or if upon hearing the plaintiff is found not entitled to possession of the premises, judgment shall be rendered to defendant for his costs.

325. Fees.

A. Filing fee. When the complaint is for recovery of possession only, the fee for filing an affidavit shall be \$15.00. When a claim for money judgment is joined, the plaintiff shall pay a supplemental filing fee of \$10.00.

B. Fee for writ of restitution. A fee of \$5.00 shall be charged for each writ of restitution or execution issued.

Part Four: General Provisions

326. Full faith and credit.

A. Definition. In this section "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.

B. Filing and status of foreign judgments. 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. 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.

C. Notice of filing.

(1) 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.

(2) Promptly 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 effect the enforceability of the foreign judgment if proof of mailing by the other is filed.

(3) No execution or other process for enforcement of a foreign judgment shall issue until 15 days after the foreign judgment is filed.

D. Stay.

(1) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished security for the satisfaction of the judgment as required by the court in which the judgment was rendered, or if no such security was required, upon furnishing security in an amount and kind satisfactory to the tribal court.

(2) If the judgment debtor shows the court any ground upon which the enforcement of the judgment should be stayed, the court shall stay the enforcement of the judgment for the appropriate period, upon requiring security in an amount and kind satisfactory to the tribal court.

327. Contempt of court. Contempt of court means any of the following:
- A. Misconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs respect for the court.
 - B. Disobedience, resistance, or obstruction of the authority, process, order, or judgment of the court.
 - C. Refusal as a witness to appear, be sworn, or answer a question.
 - D. Refusal to produce a record, document, or other object.
328. Power of court to punish contempt of court. The tribal court may impose a sanction for contempt of court.
329. Summary procedure. The judge presiding in an action or proceeding may impose a sanction upon a person who commits a contempt of court in the actual presence of the court. The judge shall impose the sanction immediately after the contempt of court and only for the purpose of preserving order in the court and preserving the authority and dignity of the court.
330. Nonsummary procedure. 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.
331. Sanctions authorized. The court may impose one or more of the following sanctions:
- A. Payment of a sum of money sufficient to compensate for a loss or injury suffered by the party as a result of the contempt of court.
 - B. A forfeiture not to exceed \$5,000 for each instance of contempt, not to exceed \$5,000 for all instances occurring in one calendar day or for each calendar day the contempt of court continues.
 - C. An order designed to insure compliance with a prior order of the court.
 - D. Expulsion from court.
 - E. An award of costs and attorney fees occasioned by the contempt of court.
 - F. A sanction other than the sanctions specified in subsections A through E if the court specifically finds that those sanctions would be ineffectual to terminate a continuing contempt of court.
332. Enforcement of monetary sanctions. Any sanction imposed under section 331 (A), (B), or (E) may be enforced by the court or aggrieved party by any procedure provided in section 313.

Part Five: Rules of Evidence (Printed separately)

CHAPTER IV

CIVIL REMEDIAL FORFEITURE PROCEEDINGS

401. Purpose. The purpose of this chapter is to provide for civil remedial forfeitures of money penalties and property for violation of tribal regulatory ordinances. The remedial measures of this chapter are civil in nature and are designed and intended to encourage compliance with tribal regulatory ordinances and to compensate the Tribe for damage to the peace, security, welfare, or resources of the St. Croix reservation. Said measures are not designed or intended to punish persons for breach of tribal regulatory ordinances.
402. Party plaintiff. Any proceeding instituted in Tribal Court under this chapter shall be brought in the name of the St. Croix Chippewa Indians of Wisconsin, as plaintiff.
403. Persons subject to this chapter. Any person who is concerned in the commission of a violation punishable under this Article is a principal and may be adjudged to have committed the violation although such person did not directly commit it and although the person who did directly do so has not been subjected to the remedial provisions of this Article. A person is concerned in the commission of a violation if such person:
- A. Directly commits the violation;
 - B. Aids and abets the commission of the violation; or
 - C. Is party to a conspiracy with one or more others to commit the violation or advises, hires, counsels, or otherwise procures another to commit the violation.
404. Additional remedies. The civil remedial forfeiture remedies governed by this chapter are not mutually exclusive remedies of the tribe for violation of its ordinances. Nothing in this chapter shall restrict or curtail the right of the tribe to prosecute or seek the criminal prosecution of any defendant or owner or to institute a civil action for damages in any court against a defendant or owner. In addition to the civil remedies provided in this chapter, the Tribal Court may order a defendant or owner to perform or refrain from performing such acts as may be necessary fully to protect the tribe, its members, its property or its natural resources. The Tribal Court may order abatement of a nuisance, restoration of a natural resources or other appropriate action designed to eliminate or minimize damage caused by a defendant or owner.

Part One: Civil Remedial Money Penalties

405. Tribal Ordinances affected. Whenever any ordinance of the St. Croix Chippewa Indians of Wisconsin shall provide for a civil remedial money penalty for the breach of such ordinance by any person, the Tribe shall proceed against such person according to the procedures set forth in this part.
406. Institution of proceedings; citation. Proceedings for the recovery of a civil remedial money penalty shall be instituted by the issuance of a

citation by an enforcing officer. Whenever said officer has reason to believe the a person subject to tribal authority has committed a breach of a tribal ordinance which provides for a civil remedial money penalty, such officer shall issue a citation to such person, and file a copy with the Tribal Court.

407. Notice to alleged violator; jurisdiction. The issuance of a citation by an enforcing officer in connection with a breach of a tribal ordinance is sufficient notice to the alleged violator that he is charged with a breach, and is adequate process to give the Tribal Court jurisdiction over the person allegedly violating the ordinance upon the filing of such citation with the Court.

408. Citation contents. The citation shall contain a complaint, a case history, and a report of court action on the case. It must appear on the face of the citation that there is a reasonable basis to believe that a breach of an ordinance has been committed and that the person charged (defendant) has committed the offense. The citation form shall contain the following:

A. The name of the person to whom the citation was issued, together with the person's age and address, if available;

B. The tribal permit or license number of the defendant, if applicable;

C. The name and tribal department or the issuing officer;

D. The offense alleged, the time and place of occurrence, a statement that the defendant committed the offense, the ordinance provision charged, and a description of the offense in language which can be easily understood;

E. The maximum civil remedial money penalty for which the defendant might be found liable;

F. A date, time, and place for the Tribal Court appearance, and a notice to appear;

G. Provision for a deposit and stipulation of default in lieu of court appearance;

H. Notice that if the defendant fails to appear at the time fixed in the citation, that he will be defaulted and judgment entered against him in an amount up to the maximum penalty;

I. Notice that if the defendant makes a deposit and stipulation of default, judgment will be entered against him in the amount of the deposit; and

J. Any other pertinent information.

409. Stipulation of default; deposit.

A. When made. A defendant to whom a citation is issued, or to whom a Notice to Appear is issued under Chapter I of this Code, may make a

deposit and stipulation of default in lieu of a court appearance at any time prior to the date set for his appearance before the Tribal Court.

B. Amount of deposit. The amount of the deposit shall be determined by an enforcing officer at the time of issuance of the citation, but shall not exceed the maximum penalty established in the Ordinance charged.

C. Effect of stipulation of default. By signing the stipulation of default, the defendant consents to the entry of Judgment against him for a penalty not to exceed the amount of the deposit.

D. Acceptance of the deposit and stipulation. The Clerk of Tribal Court or the enforcing officer issuing the citation shall accept the deposit and stipulation of default and shall prepare a receipt showing the purpose for which such deposit was made, which shall be transmitted to the defendant. In the event that acceptance of the deposit and stipulation is made by an enforcing Officer, said officer shall file the stipulation of default and a copy of the receipt with the Clerk of Tribal Court.

410. Burden of Proof. In all actions under this part, the Tribe shall have the burden of showing by a preponderance of the evidence that the defendant breached the Ordinance charged in the citation or, where applicable, the complaint. The Tribe shall not, however, be required to show that the defendant intended to breach the Ordinance charged.
411. Default. Upon the failure of the defendant to appear on the date indicated on the citation or the Notice to Appear, whichever is issued, an entry of default shall be made by the Clerk of Tribal Court and the Tribal Court may proceed with the hearing and enter judgment pursuant to this part.
412. Judgment. If, after the presentation of all the evidence, the defendant is found by the trial judge to have breached the Ordinance charged by a preponderance of the evidence, the Tribal Court shall enter judgment against the defendant and in favor of the Tribe for a monetary amount not in excess of the maximum civil remedial monetary penalty provided for said breach or, in cases in which a deposit and stipulation of default has been made by the defendant, for an amount not in excess of the amount of deposit. If the judgment is for an amount less than the amount of deposit, the balance shall be returned forthwith to the defendant.
413. Enforcement of judgment. All civil remedies are available to enforce the judgment or the Tribal Court, including the power of civil contempt. A judgment shall be a lien upon any available property of the defendant which is located within the St. Croix reservation or within the jurisdiction of the Tribal Court. When necessary, the Tribe may bring suit in any court on the judgment against the defendant or his property located beyond the jurisdiction of the Tribal Court.
414. Monies tendered to the Tribal Court. Deposits and money paid on judgments rendered pursuant to this paragraph shall be tendered to the Clerk of Tribal Court. Upon a receipt of monies, the Clerk shall immediately tender such sums to the Treasurer of the St. Croix Tribal

Council and such sums shall be deposited in the Tribal Court bank account.

Part Two: Civil Remedial Forfeiture of Property

415. Tribal ordinances affected. Whenever any ordinance of the St. Croix Chippewa Indians of Wisconsin shall provide for the civil remedial forfeiture of any property for the breach of such ordinance by any person, the Tribe shall proceed against the property according to the procedures set forth in this part, except that this part does not apply to any seizure or forfeiture that is incidental to the prosecution of a person for the violation of any ordinance, that is necessary to provide evidence in any case for any violation of an ordinance, or that is provided for in any ordinance as a penalty for its violation. The provisions of other chapters of this Code shall apply to proceedings to the extent not inconsistent herewith.
416. Institution of proceedings; complaint. Proceedings for the civil remedial forfeiture of property shall be instituted by the filing of a complaint in rem against the property in Tribal Court by an enforcing officer. A complaint shall be filed whenever such officer has a reasonable basis to believe that a tribal ordinance has been breached and that the property is forfeitable under tribal ordinance.
417. Contents of complaint. It must appear on the face of the complaint that there is a reasonable basis to believe that a tribal ordinance has been breached and that the property is forfeitable under said tribal ordinance. The complaint shall contain the following:
- A. A description of the property against which proceedings are instituted;
 - B. The ordinance provision allegedly breaches;
 - C. A description of the offense in language which can be easily understood;
 - D. The name, address, and other pertinent information about the owner of the property, if known, or a statement that the owner of the property is unknown;
 - E. A request for an order from the Tribal Court to seize the property; and
 - F. The name and signature of the complaining enforcing officer.
418. Service of complaint.
- A. Owner of property known. If the owner of the property is identified in the complaint, the complaint and notice to appear at a hearing on an order to seize shall be served on the owner as provided in Section 309 of this Code.
 - B. Owner of property unknown. If the owner of the property is not identified in the complaint or his present whereabouts are unknown and so recited in the complaint, service shall be made by posting the

complaint and notice to appear in the central tribal office and by publication once in a newspaper of general circulation in Polk, Burnett and Barron counties. An affidavit of publication and posting shall be filed with the Tribal Court.

419. Seizure of property without order.

A. Conditions necessary. Property may be seized by an enforcing office or prior to the filing of a complaint and issuance of an order to seize if one or more of the following circumstances exist:

(1) A tribal ordinance authorizes the immediate seizure of the property;

(2) The property seized presents a danger to persons, property, or a natural resource or the St. Croix reservation; or

(3) The enforcing officer has a reasonable basis to believe that without immediate seizure, the property will be removed from the jurisdiction of the Tribal Court.

B. Receipt. A receipt describing the property seized shall be issued to the person in possession of the property at the time of seizure, if such person is present.

420. Seizure of property with order.

A. Property subject to seizure. All property alleged to be subject to civil remedial forfeiture may be seized pursuant to an order to seize issued by the Tribal Court.

B. Custody of property. Any and all property seized, either under subsection A above, or under Section 419, shall be held by the Tribal Court pending disposition of the complaint or until a bond has been posted with the Tribal Court.

421. Bond for property seized.

A. Amount of bond. The Tribal Court may release the property to the owner upon the posting of a bond with the Court in the amount and under the conditions which the tribal judge determines is necessary to protect the interests of the St. Croix Chippewa Indians of Wisconsin. In no event shall the amount of the bond be set at an amount in excess of the fair market value of the property seized.

B. Posting of bond. Upon the posting of a proper bond, the property shall be returned to the owner. The bond shall be available to be levied against if the owner does not return the property to the custody of the Tribal Court in proper condition or if the Tribal Court determines after trial that the property is forfeited.

422. Hearing: time.

A. Seizure of property without order. When property has been seized prior to the issuance of an order to seize, a hearing on the order to seize shall be held within five (5) working days after said seizure. If

the hearing is not held within that time, the property seized shall be immediately returned to its owner, if known.

B. Hearing on request for order. The hearing on the order to seize, requested in the complaint filed with the Tribal Court, shall be heard within 30 days or the filing of the complaint. The date scheduled for hearing shall be included in the Notice to Appear issued to the owner under the provisions of Section 309 of this Code.

423. Hearing procedure.

A. Burden of proof. At the hearing on the order to seize, the Tribe shall have the burden of showing that there is a reasonable basis to believe that:

- (1) The property is subject to civil remedial forfeiture; and
- (2) The property is within the jurisdiction of the Tribal Court.

B. Evidence; how presented. The parties may present evidence through the testimony of witnesses. Affidavits will be accepted in lieu of testimony if, in the trial court's discretion, it is determined that the interests of justice would be best served thereby.

424. Order to seize.

A. Issuance. If, after the hearing, the trial judge finds that there is a reasonable basis to believe that the property is subject to civil remedial forfeiture under the tribal ordinance alleged in the complaint, and that the property is within the jurisdiction of the Tribal Court, he shall issue an order to seize, directing an enforcing officer to seize the property and hold it pending disposition of the complaint.

B. Denial of request to issue order. If, after hearing, the trial judge finds that there is not a reasonable basis to believe that the property is subject to civil remedial forfeiture under the tribal ordinance alleged or that the property is within the jurisdiction of the Tribal Court, he shall dismiss the complaint and, if property was seized prior to the hearing, order the property immediately released.

425. Contents of an order to seize. An order to seize shall contain the following:

- A. Description of the property subject to the order;
- B. Date of filing of a proper complaint for forfeiture, and the name and department of the complaining officer;
- C. A finding that the property is within the jurisdiction of the Tribal Court;
- D. A finding that there is a reasonable basis to believe that the property is subject to a civil remedial forfeiture, a brief factual narration of the grounds for the finding, and citation to the ordinance allegedly breached;

E. Notice of the date, time, and place of trial; and

F. Notice that the property may be released by the posting of a proper bond.

426. Service of order to seize. The order to seize shall be served as provided in Section 418 of this Code.

427. Existence of security interests in seized property. The enforcing officer shall make a reasonable effort prior to the hearing on the order to seize to ascertain whether a perfected security interest exists in the property, and if one does exist, shall give notice to the secured party of any hearing in the case, and shall also give the secured party a minimum of 15 days notice of the time and place of any sale conducted pursuant to Section 429 of this Code.

428. Trial.

A. Burden of proof. At trial, the Tribe shall have the burden of showing by a preponderance of the evidence that the property is forfeitable under the ordinance charged.

B. Failure to meet burden. If the Tribe fails to meet this burden, the Tribal Court shall dissolve the order to seize, enter judgment awarding title to the property to the owner, and order the immediate release of the property or discharge on the bond, whichever is appropriate.

C. Effect of meeting burden. If the Tribe shows that the property is forfeitable, the Tribal Court shall dissolve the order to seize, enter judgment awarding title to the property to the St. Croix Chippewa Indians of Wisconsin, and place the property in the hands of the Tribe for disposition or, if bond was posted, order the bond forfeited to the Tribe.

429. Sale of forfeited property.

A. Time. Within 30 days after entry of a judgment forfeiting property to the Tribe, but in no event less than 15 days after entry, the Tribe shall sell the property at the highest obtainable price.

B. Disposition of proceeds. The net proceeds of such sale, after deducting sale expenses, shall be remitted to the Treasurer of the St. Croix Chippewa Indians of Wisconsin, who shall place such sums in the Tribe's general account.

C. Existence of security interest. If there exists a perfected security interest in the forfeited property, and the breach which occasioned the forfeiture was not committed with the knowledge, consent, or connivance of the secured party, there shall also 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 for such purpose after deducting other sale expenses any amount remaining shall be paid over.

430. Sale of perishable property. Any perishable property seized pursuant to this Part may be sold by an enforcing officer at the highest available price, and the proceeds of the sale shall be tendered to the Tribal Court to await such Disposition of the proceeds as the Tribal Court shall direct.

CHAPTER V

CONSERVATION CODE OF OFFENSES

501. Jurisdiction. The Tribal Court shall have jurisdiction concerning acts or omissions prohibited by the Conservation Code and its implementing regulations.
502. Law applicable. In proceeding under the Chapter, the Tribal Court shall apply the provisions of the Conservation Code of the St. Croix Chippewa Indians of Wisconsin and its implementing regulations, promulgated by the regulatory body designated by the Tribal Council.
503. Institution of proceedings.
- A. Conservation Complaint. Any person who personally observes an act or omission prohibited by the Conservation Code or its implementing regulations shall file a signed Conservation Complaint with the Clerk of Tribal Court which shall set forth plainly the facts which allegedly give rise to a violation of the Conservation Code and its implementing regulations.
- B. Citation. Authorized enforcement personnel, as defined in the Conservation Code, may issue a citation pursuant to Part One of Chapter IV of this Code to a person subject to tribal authority who is found to be violating the Conservation Code or its implementing regulations. A copy of such citation shall be filed with the Conservation Division.
504. Notice to appear. Upon the filing of a Conservation Complaint, the Tribal Court shall cause a copy thereof to be served upon the alleged violator, together with a Notice to appear and answer before the Tribal Court within five (5) days of his receipt of said notice. The Notice may be served in person or by registered mail, with a return receipt.
505. Appearance before the Tribal Court.
- A. Answer. At the time of the alleged violator's appearance before the Tribal Court, he shall answer the Conservation Complaint by indicating his intent to contest or not to contest the allegations contained in said Complaint. The alleged violator shall answer the Citation in the manner provided in Part One of Chapter IV of this Code.
- B. No contest answer. If the alleged violator answers "No Contest", the Tribal Court shall then announce its decision as to the penalty to be imposed pursuant to Section 510.
- C. Contest of complaint. If the alleged violator indicates his desire to contest the allegations contained in the Complaint, the Tribal Court shall then inform him of a date for hearing before the Judge, said date being set to allow sufficient time for him to prepare his defense.

506. Default. The provisions of this Code in Chapters III and IV concerning default shall apply to proceedings before the Tribal Court.
507. Rights of alleged violator. The alleged violator shall have the right, in any proceeding before the Tribal Court, to defend himself in person, through a lay advocate, or by counsel at his own expense; to confront witnesses; to have compulsory process served to obtain witnesses in his behalf; and to a speedy public hearing.
508. Order of hearing Procedure. In all proceedings before the Tribal Court, whether instituted by the filing of a Conservation Complaint or by the filing of a citation, the following procedure shall be followed:
- A. Evidence of Tribe. The hearing shall be opened with the evidence in support of the charge of violation presented by the Tribal Prosecutor appearing on behalf of the St. Croix Chippewa Indians of Wisconsin. The alleged violator or his legal representative shall have the right to question any witness called to testify by the Tribal Prosecutor.
- B. Alleged violator's evidence. The alleged violator, his lay advocate, or his attorney, may then offer evidence in support of his case. The Tribal Prosecutor shall have the right to question any witness called to testify nor the alleged violator.
- C. Decision of the Tribal Court Judge. After all the evidence has been presented the Judge shall make his decision as to whether or not the evidence has shown that a violation of the Conservation Code or its implementing regulations occurred, and that the person charged did perpetrate the violation.
509. Judgment of the Tribal Court. In addition to the powers to effect judgment conferred on the Tribal Court by other provisions of this Code, the Court may make the following judgments upon finding a violation has occurred:
- A. Money judgment. The Tribal Court may enter judgment against the defendant and in favor of the St. Croix Chippewa Indians of Wisconsin for a monetary amount not to exceed \$500 and not less than \$20. Court costs may also be assessed against the defendant.
- B. License revocation. In addition to any monetary judgment the Tribal Court, may, in its discretion, revoke the hunting, fishing, trapping, or wild rice license of any defendant, when such adjudicated violator has been duly licensed by the Tribe.
510. Appeal of decision.
- A. Procedure. A defendant found to have violated the provisions of the Conservation Code or of its implementing regulations may appeal that determination to the Court of Appeals or other body designated to hear appeals under the procedures detailed in Chapter II of this Code.
- B. Status pending appeal. During the pendency of the defendant's appeal, the determination of the Tribal Court and the penalty imposed as a result thereof shall be in full force and effect. Upon receipt of

notice of the defendant's appeal, however, the Tribal Court shall keep secure any property of defendant which was transferred to the Division in carrying out its judgment.

file: stctco6.wps

St. Croix Tribal Court Code

Chapter II: The St. Croix Court of Appeals

Adopted by St. Croix Tribal Council Resolution 12-11-96-1

Sec. 201. Creation of the St. Croix Court of Appeals. A Court of Appeals is hereby established, consisting of the judges of other tribal courts who from time to time consent to sit on a panel of three judges to hear appeals cases.

Comment:

Interpretive comments follow many sections of this chapter. They are not part of the chapter but are furnished as guides to understanding the chapter. The Tribal Court and the Court of Appeals may use these comments to the extent they deem appropriate.

Sec. 202. Maintenance of Court of Appeals roster. The Clerk of the Court of Appeals shall maintain a roster, which shall be updated from time to time, of the judges who have consented to serve on the Court of Appeals.

Section 203. Definitions.

- (a) "Appellant" means the party filing an appeal.
- (b) "Court of Appeals" means the Tribe's appellate court as established by this chapter.
- (c) "Respondent" means the party responding to another party's appeal.
- (d) "Tribal Council" means the tribal council of the Tribe.
- (e) "Tribal Court" means the trial level court of the Tribe.
- (f) "Tribe" means the St. Croix Chippewa Indians of Wisconsin.

Section 204. Exclusive Jurisdiction.

(a) The Court of Appeals shall have exclusive jurisdiction to review all decisions of the Tribal Court as provided herein. The decision of the Court of Appeals shall be final as to all such review.

(b) The jurisdiction of the Court of Appeals shall include the authority to determine the constitutionality of acts of the Tribal Council.

Comment:

Subsection (a) safeguards the authority of the Court of Appeals to perform its review function without interference from other governmental agencies either before or after it has acted.

Subsection (b) establishes the authority of the Court of Appeals to review the constitutionality of Tribal Council acts of whatever nature. Because tribal constitutions do not typically provide for a separation of powers between the judiciary and the other functions of the government, some question may be raised as to the implicit authority of the courts to review the acts of tribal government. Whatever the correct answer is to that question, this subsection delegates whatever authority is necessary to perform such review.

Section 205. One form of review.

There shall be one form of review in the Court of Appeals, to be designated an appeal.

Comment:

This ordinance provides the only method of obtaining review in the Court of Appeals. This section eliminates any argument that any Anglo-American common law writs may be pursued for extraordinary relief

Section 206. Who may appeal.

Any party aggrieved by a decision of the Tribal Court may initiate an appeal.

Comment:

Only a party in the case below, who is in some way harmed by the decision below, may appeal.

Section 207. What may be appealed.

Any final judgment or order of the Tribal Court may be appealed to the Court of Appeals. A final judgment or order is one which disposes of all issues in litigation between at least two parties to a case.

Comment:

All final judgments and orders may be appealed. Nothing but a final judgment or order may be appealed. If an order in a case leaves other matters to be decided, and does not completely settle all disputed issues between the parties, so that the Tribal Court still has work to do, then the order is not final and an appeal cannot be filed. In cases involving multiple parties, an order or judgment may dispose of all issues between two or more of the parties, and would therefore be appealable. In cases involving multiple issues, an order disposing of one or more issues may leave others as yet unresolved and would therefore not be appealable.

Section 208. When an appeal may be taken.

(a) A notice of appeal must be filed with the Clerk of the Tribal Court, and served on all other parties, no later than 30 days after the entry of the judgment or order from which the appeal is taken. If one party has timely and properly filed a notice of appeal, any other party may file a notice of appeal within 15 days of service of the initial party's notice of appeal.

(b) A judgment or order is entered when it is filed with the Clerk of Court.

(c) Failure to file a notice of appeal as provided in this section deprives the Court of Appeals of subject matter jurisdiction in the appeal.

Comment:

The appeal is started by filing the notice of appeal, a simple form for which a model is provided as Official Form no. 1. A party other than the initial appellant may decide to appeal in light of the initial appellant's appeal and is therefor allowed additional time to do so after service of the first notice of appeal. The interest of parties in the security of judgments entered by the court requires that an appeal must be filed within the time prescribed or be forever waived.

Calculation of time is prescribed by Sec. 116.

Proper methods of service are prescribed by Sec. 117.

Section 209. How an appeal may be taken.

(a) A notice of appeal shall be filed by any party seeking review of a final judgment or order of the Tribal Court. The notice of appeal shall be filed and served, together with the request for transcript required by section 209(c), within the time prescribed by sec. 208 of this chapter. The notice of appeal shall bear the caption and case number of the case in the Tribal Court and shall be labeled "Notice of Appeal." The notice of appeal shall identify by date, judge, and case number the judgment or order appealed, and shall state the substance of the judgment or order and whether the appellant appeals from the entirety of the judgment or order or from only part thereof. and if the latter, shall specify the part thereof. The notice of appeal shall also include a brief statement of the grounds for appeal and shall specify the precise relief sought. No appeal shall be dismissed for any formal defects in the notice of appeal as long as the matter appealed is clearly identified and filing and service are timely and properly made. If a notice of appeal does not contain every item required by this subsection , the Court of Appeals may make such orders as the interests of justice require.

Comment:

The essence of the notice of appeal is to give fair notice to the other parties that what would otherwise be a final disposition of a case will not be final, and to allow the other parties to begin preparation for responding to the appeal or for filing a cross-appeal. The notice of appeal provided for in this section also requires a statement of the grounds for appeal and the relief sought, in the event an appellant appearing *pro Se* elects not to file a brief. Any party including in the notice of appeal the items listed in this subsection will be deemed to have clearly identified the matter appealed. A notice of appeal that fails to include all of the items listed in this subsection, may cause the Court to expand the time for response, dismiss the appeal, or make other appropriate orders.

(b) Unless waived, the filing fee prescribed by Sec. 218(a) shall be paid to the Clerk of the Tribal Court at the same time the notice of appeal is filed. The Clerk of Court shall not accept for filing a notice of appeal that is not accompanied by the filing fee or an order waiving fees. No filing fee shall be required in an appeal filed by the Tribe.

(c) A request for transcript shall be filed with the Clerk of the Tribal Court at the same time the notice of appeal is filed. The request for transcript shall specify those proceedings, or parts thereof, to which any reference will be made in the appeal proceedings and for which the official transcript will be required by the Court of Appeals for its review. Any other party may request transcription of additional proceedings or parts thereof by filing a request no later than 15 days after service of the appellant's notice of appeal and request for transcript. No fee shall be required for any transcript requested by the Tribe.

(d) The filing of an appeal does not constitute an automatic stay of the tribal court's judgment or order. A motion seeking a stay may be addressed to the tribal court before or after the filing of the notice of appeal.

Section 210. Clerical functions upon filing of appeal.

(a) Upon receipt of the notice of appeal, filing fee, and request for transcript, the Clerk of the Tribal Court shall forward to the Clerk of the Court of Appeals the notice

of appeal and filing fee and shall prepare the record on appeal. The record on appeal shall consist of all papers filed by the parties or the court, and the transcript requested by appellant or any other party, unless limited by stipulation of the parties.

Comment:

The Court of Appeals will receive the entire Tribal Court written record, and a transcript of the trial or hearings that pertain to the appeal, unless the parties agree that the Court need not have the entire record.

Any party requesting a transcript may be charged the per page rate provided at Sec. 218(b).

(b) Upon receipt of the notice of appeal and the filing fee, the Clerk of the Court of Appeals shall docket the appeal and shall randomly select, from the roster maintained pursuant to section 202 of this chapter, a panel of three judges to serve on the appeal. If any judge refuses to serve or is disqualified from serving under sec. 104(A)(2) of the Court Code, the clerk will randomly select another judge to replace him or her.

(c) The Clerk of the Tribal Court shall file the completed record on appeal with the Clerk of the Court of Appeals, and shall serve notice thereof, together with a copy of any transcript included in the record, on each of the parties.

Section 211. Briefing and oral argument.

(a) If the appellant intends to submit a brief, he or she shall file and serve a brief within 45 days of the filing of the record on appeal.

(b) If the respondent intends to submit a brief, he or she shall file and serve a response brief within 30 days of service of appellant's brief, or within 75 days of the filing of the record on appeal, whichever occurs first.

(c) The appellant may file and serve a reply brief within 15 days of service of respondent's brief.

(d) Briefs shall contain an argument and conclusion specifying the precise relief sought. The initial brief filed shall also include a statement of the case and statement of the issues presented on appeal and how the Tribal Court decided them.

(e) Briefs shall be typewritten, double-spaced, on white 8 ½ by 11 inch paper, and shall not exceed 50 pages in length, except that reply briefs shall not exceed 15 pages in length, exclusive of any table of contents and table of authorities included. The original and three copies of each brief shall be filed with the Clerk of the Court of Appeals.

(f) Oral argument may be permitted in the discretion of the Court. Whether argument is allowed, and if so the length of argument allowed, shall be set by the panel of the Court of Appeals hearing the appeal.

Comment:

¹ The above rules are considered the minimum necessary for allowing the Court of Appeals to conduct its business in an efficient and just fashion. Briefing rules are purposely looser than in other jurisdictions to allow non-lawyers to represent themselves, or if otherwise permitted by the rules of the Tribal Court (see sec. 219), to represent others. Briefs are made optional, in recognition that some parties appearing *pro se* may not wish to file briefs but may rather wish to present their cases solely in oral argument.¹ The notice of appeal (see Sec. 209(a)) accordingly requires a short statement of the grounds for appeal and of the relief sought. A party may or may not be disadvantaged by failure to file a brief.

Section 212. Decisions.

(a) All decisions of the Court of Appeals shall be in writing, shall specify the relief granted, if any, and the Court's rationale therefore. The Clerk of Court of Appeals shall, within two days of their filing, furnish copies of the decision and any order of the Court of Appeals to the Tribal Court, the parties, and, for publication and distribution, to the *Indian Law Reporter* and the Great Lakes Indian Fish and Wildlife Commission.

(b) All decisions and dissents shall be written by the most senior judge voting with the majority or dissent, unless assigned by that judge to another judge. Any judge dissenting or concurring shall file a written opinion, or join in a written opinion filed by another judge. The most senior judge is the judge having the longest term of continuous service as a judge at the time.

(c) A petition for reconsideration may be filed by an aggrieved party within 15 days of the filing of any decision or order of the Court of Appeals. The petition for reconsideration shall state the specific change in the decision sought, and all reasons, and the authority therefor, for the change. Any non-petitioning party shall have 15 days from the date of service of the petition to respond. Oral argument on a petition for reconsideration is discretionary with the Court.

(d) The Tribal Court shall in all respects be bound by the decisions and orders of the Court of Appeals.

(e) The *Indian Law Reporter* is designated the official reporter of the decisions of the Court of Appeals.

Section 213. Standard of review.

The Court of Appeals shall apply the following standards of review.

(a) A finding of fact by a judge shall be sustained unless it is clearly erroneous.

(b) A finding of fact by a jury shall be sustained if there is any credible evidence to support it.

(c) A factual inference drawn by a judge or jury shall be reviewed as a finding of fact as long as more than one reasonable inference can be drawn from the facts.

(d) A finding, explicit or implicit, of witness credibility shall be reviewed as a finding of fact.

(e) Conclusions of law are reviewed *de novo* by the Court of Appeals.

(f) A stipulated, uncontested, or documentary fact is reviewed as conclusion of law.

(g) The meaning of an unambiguous contract is reviewed as a conclusion of law.

(h) A mixed issue of fact and law is reviewed according to the appropriate standard for each part.

(i) Whether a finding of fact or a conclusion of law has been properly labeled as such by the Tribal Court is reviewed as a conclusion of law.

(j) A discretionary determination shall be sustained if the record reflects that the Tribal Court exercised discretion and applied the appropriate legal standard to the admissible facts of record.

(k) Sentencing and the imposition of fines, forfeitures and other penalties or remedial measures, not including the assessment of damages, shall be reviewed as a discretionary determination.

(l) The Court of Appeals shall not substitute its judgment for that of the Tribal Court on a matter committed to the discretion of the Tribal Court.

Comment:

The standard of review defines the relationship between the trial court and the appeals court. The standard of review seeks to allocate to each court that part of the judicial work which it can best do. The trial court is in the best position to weigh the evidence and assess witness credibility and is therefore sustained on such matters unless its findings are clearly erroneous. The trial court is in no better position to interpret the law than the appeals court; in fact, the appeals court has the luxury of being able to analyze the law away from the heat of trial and can better perform this task itself. The appeals court can therefore look at questions of law afresh and need not defer at all to the trial court. Discretionary questions by their nature, can result in different decisions when put to different decision makers. The function of the appeals court in reviewing a discretionary decision is not to itself decide the result it would choose, but to determine whether the trial court in fact exercised discretion and made a decision based on the applicable facts

and law. The exercise of discretion is more than bald decision making and it is the task of the appeals court to see that the appropriate process was followed.

Specific instances of common standard of review problems are listed in this section; for instance the definition of sentencing as a discretionary determination. These instances are not exclusive. The Tribal Council may provide by ordinance and the courts by decision the classification of other matters as factual, legal, or discretionary.

Section 214. Obligations of the tribal court.

(a) In all matters tried to a judge without a jury, the judge shall make separate findings of fact and conclusions of law. It is sufficient if the findings and conclusions are made orally on the record in open court, or if they are contained in a written opinion.

(b) In all civil matters tried to a jury, the jury shall return a special verdict on each issue of fact placed before it.

(c) If the Tribal Court fails to make findings of fact, the Court of Appeals may affirm the judgment if the record supports it, reverse if the record does not support it, or remand for findings and conclusions.

Comment:

In order for the appeals court to properly perform its review function, it must have an adequate basis for understanding the trial court's decision.

Section 215. Preservation of issues for appeal.

(a) Absent a compelling reason, issues not raised before the Tribal Court will not be heard before the Court of Appeals.

(b) An issue raised but not argued orally or by brief is deemed abandoned.

(c) A moot issue will not be reviewed unless it is capable of repetition yet due to its nature is likely to evade appellate review.

(d) No facts not in the trial record may be presented in any manner to the Court of Appeals.

Comment:

Subsections (a) and (d) preserve the basic function of the appeals court as a court of review, not a court of initial determination. The trial court should have the first opportunity to consider all issues in litigation and to see as only it can do that the record is fully developed.

Subsection (b) protects the court and parties from expending energy on issues that an appellant has no intention of pursuing.

Subsection (c) states the principle that a court will not decide issues over which there is no current controversy. The controversy that existed during trial may be dispelled by the time of appeal. The exception to this rule is the type of case that may occur again but is likely never to survive long enough to receive appellate review. For instance, an individual may wish to challenge a court's suspension of his hunting and fishing rights for a period of three months, but by the completion of the appellate briefing schedule the suspension would be ended and the case moot. Since the issue could recur, but would always become moot before it was ready for decision, the mootness doctrine would be set aside.

Section 216. Time.

(a) In computing any period of time prescribed or allowed by this ordinance or by order of the Court of Appeals, the day of the act, event, or default from which the period of time begins to run is not included. The last day of the period is computed unless it is a Saturday, Sunday, legal holiday, or day upon which the office of the Clerk of Tribal court is not open for business. When the period of time is less than 11 days, Saturdays, Sundays, legal holidays, or days upon which the office of the Clerk of Tribal Court is not open for business shall not be included in the period.

(b) Whenever a party has a right or is required to do some act within a prescribed period of time following service of a notice or paper on the party, and when that notice or paper is served by mail, 3 days shall be added to the prescribed period.

Section 217. Service.

(a) Any paper filed with the Clerk of Tribal Court or the Clerk of the Court of Appeals shall be served upon each other party. Filing constitutes the certification of the party or the party's attorney that service has been properly made.

(b) Service shall be made upon a party's attorney, if any, or if the party is not represented by counsel upon the party.

(c) Service may be made personally or by first class mail. Service made by mail is complete upon mailing.

Section 218. Fees.

The Clerk of the Tribal Court shall collect the following fees:

(a) For filing of the notice of appeal, \$25.00.

(b) For the preparation of a transcript, \$2.50 per page, for the original, to be filed with the Court, and the first copy. Subsequent copies may be ordered for 50 cents per page.

(c) The Tribal Court may order the waiver of the fees provided for in this section, upon the filing of a sufficient affidavit of indigency.

Comment:

Fees are necessary to partially defray the costs of court operations and to discourage frivolous appeals. Fees should not however prevent an appellant who cannot afford them from filing an arguably meritorious appeal. Official Forms 2 and 3 prescribe the substance of a sufficient affidavit of indigency and an order waiving fees.

Section 219. Practice before the Court of Appeals.

Any individual authorized to practice before the Tribal Court shall be authorized to practice before the Court of Appeals.

Section 220. Motions before the Court of Appeals.

Any party to an appeal may file such motions as appear necessary, together with supporting briefs and affidavits, as appropriate. Such motions shall be filed with the Clerk of the Court of Appeals. All motions before the Court of Appeals shall be placed on a briefing schedule by the chief judge, who may order oral argument at his or her discretion.

Section 221. Frivolous Appeals.

The Court of Appeals may in its discretion order a party, his or her attorney, or both, filing or pursuing a frivolous appeal, to pay the costs and reasonable attorney fees incurred by the other party or parties in responding to the appeal.

Comment:

Law is developed by appeals cases which push against the limits of previously accepted doctrine. This section should not be lightly applied, or used in such a way that arguably meritorious appeals are discouraged. Frivolousness may be found, however, when an appeal is grounded neither on existing law nor on a good faith argument for extension, modification, or reversal of existing law.

file: stcapp96.wps

St. Croix Tribal Court Code

Chapter III, Part Five: Rules of Evidence

Adopted by St. Croix Tribal Council Resolution 12-11-96-1

CHAPTER 350 - GENERAL

Section 350.1. Scope. 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 Federal Rules and Wisconsin Rules shall not be controlling.

Section 350.2. Rulings on Evidence. No appeal may be predicated 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.

CHAPTER 351 - RELEVANCY

Section 351.1. Definition. "Relevant evidence" is any evidence tending to make the existence of any fact of consequence more or less probable.

Section 351.2. Admissibility. Only relevant evidence is admissible.

Section 351.3. Exclusion of relevant evidence: general rule. 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.

Section 351.4. Exclusion of relevant evidence: specific rules.

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.

CHAPTER 352 - PRIVILEGES

Section 352.1. General.

- (a) 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.
- (b) A confidential communication is one not intended to be disclosed to any third party except the agents or colleagues of the person to whom the disclosure is made, in the course of furthering the purpose for which the disclosure was made.
- (c) A privilege may be asserted by the person making the communication, or 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.

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

(e) No inference shall be drawn from the assertion of a lawful privilege.

Section 352.2. Attorney-client privilege.

A client has a privilege to refuse to disclose and to prevent any other person from disclosing any confidential communication between the client and the attorney or attorney's agent, made for the purpose of obtaining legal assistance, except:

(a) When such communication was used to commit or plan a crime.

(b) When two or more parties claim some right through the same deceased client, and the communication is relevant to the claim.

(c) When the communication is relevant to a claim by the client against the attorney or by the attorney against the client.

(d) When the attorney attested to a document and a communication is relevant to an issue related to the attested document.

(e) When an issue exists between two or more joint clients, and a relevant communication to the attorney was made in their common interest by one of the clients.

Section 352.3. Health care provider-patient privilege.

A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication between the patient and a physician, registered nurse, licensed psychologist, psychiatric social worker, or chiropractor, or any person reasonably believed by the patient to be one of the above, made for the purpose of obtaining diagnosis or treatment of the patient's physical, mental or emotional condition, except:

(a) When the physical, mental, or emotional health of a patient is relied on by the patient as an element of his claim or defense.

(b) When the court orders a physical, mental, or emotional examination of the patient, and the results of the examination, including any review of records conducted, are offered in the proceeding for which the examination was ordered.

(c) When an examination of a physically or emotionally abused or injured child creates a reasonable ground for an opinion that the condition was other than accidentally caused, or was inflicted by another.

(d) When the results of chemical tests for intoxication or blood alcohol concentration are offered.

Section 352.4. Husband-wife privilege.

A person has a privilege to prevent his or her spouse or former spouse from testifying against him or her as to any confidential communication made by him or her to the other during the marriage, except when both spouses are parties to the action.

Section 352.5. Spiritual advisor privilege.

A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication to his or her spiritual advisor in the advisor's capacity as such.

Section 352.6. Honesty testing devices.

A person has a privilege to refuse to disclose, and to prevent another from disclosing, any oral, written, or other communication made in the course of, and any results deriving from, any polygraph, voice stress analysis, psychological stress evaluator, or other test purporting to test honesty, in which the person was the test subject.

Section 352.7. Ballot.

A person has a privilege to refuse to disclose and to prevent another person from disclosing his or her vote in any secret ballot, unless the ballot was cast illegally.

CHAPTER 353 - WITNESSES

Section 353.1. Oath.

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.

Section 353.2. Personal knowledge.

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

Section 353.3. Opinions.

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.

Section 353.4. Judge as witness.

The judge presiding at a trial may not testify as a witness.

Section 353.5. Character evidence.

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.

Section 353.6. Impeachment by conviction of crime.

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

Section 353.7. Prior statements.

(a) 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.

(b) 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.

Section 353.8. Court control.

(a) The court shall exercise control over the mode and order of interrogating witnesses to avoid waste of time and to protect witnesses from harassment.

(b) The scope of cross-examination extends to all relevant matters. The court may limit cross examination to those matters inquired into upon direct examination.

(c) Leading questions may not be used on direct examination except in introductory matters, matters not in dispute, or as deemed necessary by the court to develop testimony. A party may call an adverse party or a witness identified with him or her and interrogate him or her by leading questions.

(d) The court may call witnesses on its own motion, subject to cross-examination by the parties, and may interrogate witnesses.

Section 353.9. Exclusion of witnesses.

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.

CHAPTER 354. WRITINGS.

Section 354.1. Writings used to refresh recollection.

(a) 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.

(b) 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.

(c) If a claim is made that for any reason the writing cannot be made available to an adverse party, the judge shall examine the writing in camera and shall make such orders as justice requires, including striking all testimony of the witness subsequent to the use of the writing.

Section 354.2. Recorded recollection.

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.

Section 354.3. Specific writings

Writings of the character set forth in this section are admissible, subject to the authentication requirements of Section 354.4.

(a) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts events, 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, unless the sources of information or other circumstances indicate lack of trustworthiness.

(b) Health care records.

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

(2) When witness unnecessary. 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 notifies all appearing parties at least 10 days before the trial or hearing that such records for the stated period have been filed.

(3) Subpoena limitations. Hospital records are subject to subpoena only if the hospital is a party to the action, or if authorized by an ex parte order of a judge for cause shown and upon terms, or if upon a properly authorized request for an attorney, the hospital 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 be 10 cents per record page and \$2 per x-ray copy.

(c) Public records and reports. 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, unless the sources of information or other circumstances indicate lack of trustworthiness.

(d) Records of vital statistics. 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.

(e) Records of religious organizations. Statements of births, marriages, divorces, deaths, whether a child is marital or nonmarital, 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.

(f) Marriage, baptismal, and similar certificates. 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.

(g) Family records. 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.

(h) Records of documents affecting an interest in property. 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.

(i) Statements in documents affecting an interest in property. A statement contained in a document purporting 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.

(j) Statements in ancient documents. Statements in a document in existence 20 years or more whose authenticity is established.

(k) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(l) Learned treatises. 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.

(1) 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 40 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.

(2) 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. (a) or such other time as set by the court, serve notice similar

to that provided in par. (a) upon counsel who has served the original notice. He shall deliver with the notice a copy of the document or of the portion thereof to be offered.

(3) 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.

(m) Judgment of previous conviction. 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 pendency of an appeal may be shown but does not affect admissibility.

(n) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(o) Former testimony. 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.

Section 354.4. Authentication.

(a) 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.

(b) 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 supreme court.

(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 of 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 354.3(b).

(11) Subscribing witness's testimony. The testimony of a subscribing witness is not necessary to authenticate a writing that is otherwise admissible.

CHAPTER 355 - HEARSAY

Section 355.1. Definitions.

- (a) Statement. A "statement" is (a) an oral or written assertion or (b) nonverbal conduct of a person, if it is intended by him as an assertion.
- (b) Declarant. A "declarant" is a person who makes a statement.
- (c) Hearsay. "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.
- (d) Hearsay exclusions. A statement is not hearsay if:
 - (1) 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:
 - (i) Inconsistent with his testimony, or
 - (ii) 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
 - (iii) One of identification of a person made soon after perceiving him; or
 - (2) Admission by party opponent. The statement is offered against a party and is:
 - (i) His own statement, in either his individual or a representative capacity, or
 - (ii) A statement of which he has manifested his adoption or belief in its truth, or
 - (iii) A statement by a person authorized by him to make a statement concerning the subject, or

(iv) 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

(v) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

(3) Any writing specified in Section 354.3.

Section 355.2. Hearsay rule.

Hearsay is admissible only if facts and circumstances indicate that it has a sufficiently high degree of trustworthiness to justify its admission.

CHAPTER 356 - JUDICIAL NOTICE

Section 356.1. Adjudicative facts.

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.

Section 356.2. Foreign law.

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

Section 356.3. Legislative facts.

This section does not control the taking of judicial notice of legislative facts.

file: stcev96.wps

