MOHEGAN COURT SYSTEM

Mohegan Rules of Civil Procedure (MRCP)

Effective July 1, 2009

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EXPLANATORY NOTES

The Mohegan Court System Trial Court Rules of Civil Procedure were adopted by the Chief Judge of the Court pursuant to MTC §§ 1-51 and 3-27 with an effective date of July 1, 2009.

Amendments to the Rules will be effective upon adoption, MRCP § 63. As amendments are adopted, the history of the Rules will be updated.

HISTORY

Mohegan Court System Trial Court Rules of Civil Procedure

RULES	ADOPTION; AMENDMENT	EFFECTIVE DATE
G.D.C.P. §§ 1-70	Repealed and adopted MRCP §§ 1- 70	July 1, 2009
Moh.R.P. §§ 1-64	Repealed and adopted MRCP §§ 1- 70	July 1, 2009

MOHEGAN COURT SYSTEM
TRIAL COURT RULES OF CIVIL PROCEDURE

CHAPTER 1
SCOPE OF RULES

Preface: Applicability of Rules to Gaming Disputes Court and Mohegan Tribal Court.

The Mohegan Court System consists of the Gaming Disputes Court and Mohegan Tribal Court. References in these Rules to the Court or Trial Court shall be deemed to refer to the Gaming Disputes Trial Court or the Mohegan Tribal Trial Court, as appropriate.

§ 1. Scope of Rules

a. These Rules govern the practice and procedure in the Trial Courts of the Mohegan Court System in all actions except where specific procedures are otherwise provided by Mohegan Tribal Law. The Gaming Disputes Trial Court may employ the Connecticut Superior Court Civil Rules for any procedure, issue or matter not covered by these Rules or by Tribal Law, provided that such Superior Court Civil Rules so utilized do not contravene any principle of Mohegan Tribal Law or the sovereignty of the Mohegan Tribe.

b. To the extent not inconsistent with the provisions of MTC § 1-1 *et seq.,* these Rules, including §1(a), shall apply to and be followed in actions now pending or hereafter brought to the Mohegan Tribal Court. In any proceeding in the Mohegan Tribal Court, in the event of any conflict between the provisions of MTC § 1-1 *et seq.* and these Rules, the provisions of MTC § 1-1 shall control.

CHAPTER 2
ATTORNEYS

§ 2. Admission to Practice

The Chief Judge shall have the authority to admit attorneys to practice before the Gaming Disputes Court and spokespersons to practice before the Mohegan Tribal Court.

§ 3. Qualifications for Admission to the Bar of the Gaming Disputes Court

Applicants for admission to the bar must satisfy the following requirements:

a. The applicant is not less than 18 years of age and is of good moral character;

b. The applicant is an attorney who has been admitted to practice in any state of the United States or the District of Columbia;

c. The applicant is in good standing in all of the jurisdictions referred to in subparagraph b hereof, in which he or she has been admitted;

d. The applicant has passed an examination in law administered by the Gaming Disputes Court;

e. The applicant has filed an application that has been approved by the Court.

§ 3A. Representatives in Tribal Court

a. Spokespersons admitted to practice before the Mohegan Tribal Court shall be either attorney-spokespersons or non-attorney spokespersons. Any person in good standing of the bar of any state, federal Court or the District of Columbia who is qualified to be admitted as a spokesperson shall, upon admission,

be deemed an attorney-spokesperson. All other persons qualified and admitted to the Mohegan Tribal Court Bar shall be deemed a non-attorney spokesperson.

b. non-attorney spokespersons admitted to practice pursuant to these Rules may represent parties in Minor Civil Actions as defined in MTC § 1-22 before the Tribal Court, any Magistrate appointed pursuant to MTC § 1-23, and the Peacemaker Forum.

c. Attorney-spokespersons admitted to practice pursuant to these Rules may represent parties in all matters over which the Mohegan Tribal Court has jurisdiction.

d. Qualifications for admission to the Tribal Court Bar shall conform to the provisions of MTC § 1-37 *et seq.*

§ 4. Oath of Attorney and Spokesperson

a. Each applicant whose application for admission has been approved by the Chief Judge shall present himself or herself to the Gaming Disputes Court at a time and place to be set by the Court, to be sworn as an attorney of the Gaming Disputes Court.

b. The oath taken by all persons desiring to appear as spokesperson in the Mohegan Tribal Court shall be in accordance with the provisions of MTC § 1-38.

§ 5. Appearance Pro Haec Vice

Any member of the bar of any state, the District of Columbia, or the commonwealth of Puerto Rico, upon special and infrequent occasion and for good cause shown, may at the discretion of the Court be permitted to participate in the presentation of any cause or appeal in the Mohegan Court System. Any application for such appearance shall be presented by a member of the bar of the appropriate Mohegan Court, who shall at all times be associated in the presentation of such cause or appeal and who shall assume responsibility for the conduct of the cause and of the attorney to whom such privilege is accorded. Such application shall be accompanied by the affidavit of the attorney seeking such privilege setting forth whether he or she has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and if so, setting forth the circumstances concerning such action. The Court may at any time for good cause revoke such permission without hearing. The member of the Bar of the Mohegan Court System shall: (1) at all times be actively associated in said action with the attorney admitted *pro haec vice*, (2) be present at all proceedings and sign all pleadings, briefs and other filings with the Court, and (3) assume full responsibility for the conduct of the cause by such attorney.

CHAPTER 3
COMMENCEMENT OF ACTION

§ 6. Commencement of Action for Specified Proceedings in the Gaming Disputes Court and Mohegan Tribal Court

a. **Tort Claims Against the Mohegan Tribal Gaming Authority or The Mohegan Tribe**. An action is commenced against the Mohegan Tribal Gaming Authority or the Mohegan Tribe pursuant to the Mohegan Torts Code by filing a Summons and Complaint with the appropriate Mohegan Court together with the required filing fee. The Clerk of the Court shall file stamp the process, assign a docket number, and provide service upon the Mohegan Tribal Gaming Authority, if a party, by certified mail, return receipt requested. Service of Process upon the Mohegan Tribe shall be made pursuant to MTC § 1-3(e) and § 7B(a) of these Rules. Service upon defendants other than the Mohegan Tribal Gaming Authority or the Mohegan Tribe shall be made as provided in §§ 7A and 7B of these Rules.

b. **Claims not involving the Mohegan Tribal Gaming Authority or the Mohegan Tribe**. Tort claims or other actions that do not involve The Mohegan Tribe or The Mohegan Tribal Gaming Authority shall be

commenced by filing a Summons and Complaint with the Clerk of the appropriate Mohegan Court, who shall assign a docket number, file stamp the original Summons and Complaint, and return the original process to the Plaintiff or his or her attorney or spokesperson for service as provided in § 7A of these Rules.

c. **Discriminatory Employment Practices Claims**. An action is commenced against the Mohegan Tribe, the Mohegan Tribal Gaming Authority, its entities, agencies and instrumentalities pursuant to the Discriminatory Employment Practices Ordinance by filing a Summons and Complaint with the Clerk of the appropriate Court, on forms provided by the Clerk, together with the required filing fee. The Clerk shall assign a docket number, file stamp the original Summons and Complaint, and arrange for service of process on the defendant employer in the manner described in § 6(a). Service of process in actions against the Mohegan Tribe shall be made in accordance with § 7B of these Rules.

d. **License, Regulatory and Administrative Appeals to the Mohegan Court System**. A civil action pursuant to MTC § 3-221 *et seq.*, Appeal from Final Agency Decisions, is commenced by filing an appeal with the Clerk of the appropriate Court, who shall assign a docket number and serve the agency that rendered the final decision by certified or registered mail. Service of process on any party other than the agency that rendered the final decision shall be made by the person filing the appeal in the same manner as complaints are served in civil actions.

e. **Debt Collection**. An action is commenced pursuant to the Mohegan Tribe Debt Collection Ordinance by the filing of a Complaint with the Gaming Disputes Trial Court with the required filing fee. The plaintiff shall provide service in the manner set forth in the Debt Collection Ordinance, MTC § 2-121 *et seq.*

f. **Actions Against Additional (Non-Tribal) Defendants**. In actions where there are defendants in addition to the Mohegan Tribe or the Mohegan Tribal Gaming Authority, an action is commenced against such other defendant(s) by filing a complaint with the Clerk of the appropriate Mohegan Court together with the required filing fee. The Clerk shall file stamp the original Summons and Complaint, retain one copy, and return the original to the plaintiff or the plaintiff's attorney for service of process on such other defendants. The plaintiff shall thereafter provide service upon the additional defendant(s) as required by § 7A of these Rules.

§ 6A. Commencement of Action for Specified Proceedings in the Mohegan Tribal Court

a. **Filing Procedure Generally**. In the Mohegan Tribal Court, a civil action is commenced by filing a summons and complaint with the Clerk of the Court. The summons and complaint shall be on forms adopted by the Mohegan Tribal Court, and shall be completed and delivered by the Plaintiff to the Clerk, together with such supporting documentation and fees as may be required by Tribal law.

b. **Petition for Recognition of Foreign Child Support Order**. Upon the filing of a completed form provided by the Clerk of the Court and pursuant to MTC § 3-1, the Clerk shall schedule a hearing thereon and shall make service on the Mohegan Tribe as an interested party in accordance with the provisions of § 7B(a) of these Rules. The Petitioner shall arrange for service on the Respondent, in accordance with § 7A(1). In the event that the address of the Respondent is unknown, the Petitioner may request that service be made by the Council of Elders, in which case the Clerk shall proceed in accordance with the provisions of § 7B(d).

c. **Petition for Distribution from Minor Child's Trust Fund**. Petitions seeking distributions from a Minor Child's Trust fund pursuant to MTC § 2-183(h)(5) shall be on forms adopted by the Mohegan Tribal Court. Upon the filing of a completed form, the Clerk shall make service on the Mohegan Tribe as an interested party in accordance with the provisions of § 7B(a).

d. **Procedures in Traffic Cases**. Upon receipt by the Mohegan Tribal Court of a certified copy of the file of the Department of Public Safety transmitted to the Court pursuant to MTC § 1-57(a)(2), the Clerk shall notify the defendant of such filing. The plaintiff in each traffic case shall notify the Clerk whether the matter is contested or is one in which a judgment by default will be sought. If the matter is contested the Clerk, upon request, shall set the same down for a hearing. If a judgment by default is sought, the Clerk, upon

motion may grant the same and render judgment in accordance with MTC § 1-57. In contested cases, the Court shall follow the procedures and evidentiary provisions set forth in MTC § 1-57(c).

§ 6B. Proceedings in the Mohegan Tribal Court Involving Minor Children

a. **Proceedings in Mohegan Tribal Court in Petitions Seeking Recognition and Enforcement of Foreign Child Support Orders**. Upon the filing of a completed petition pursuant to MTC § 3-1, the Clerk of the Court shall schedule a hearing thereon and shall make service on the Mohegan Tribe in accordance with § 7B(a) of these Rules. The Petitioner shall arrange for service on the Respondent, except where service is made pursuant to Council of Elders Resolution No. 2005-9-E, as the same may be amended from time to time. Any financial disclosure forms filed in connection with such Petition shall be placed under seal and shall not be available to the public unless otherwise ordered by the Court. Access to any sealed document or other material shall be limited to the parties and their attorney-spokespersons unless otherwise ordered by the Court. Further dissemination of such sealed documents and materials is prohibited unless specifically permitted by Order of the Court.

b. **Proceedings in Mohegan Tribal Court in Petition for Distribution from Minor Child's Trust Fund Pursuant to MTC § 2-183(h)(5); Appointment of Guardian Ad Litem; Matters to be Placed Under Seal; Closing of Hearings to Preserve Confidentiality of Medical and Related Information.**

1. Upon the filing of a petition seeking distribution from a minor child's trust fund, the Clerk of the Mohegan Tribal Court shall, from a list approved by the Tribal Council, appoint a Guardian Ad Litem pursuant to Resolution No. 2008-26, as the same may be amended from time to time. The Guardian Ad Litem so appointed shall conduct such investigation as is warranted and shall file with the Clerk of the Mohegan Tribal Court:

(A) A report of the investigation conducted by the Guardian Ad Litem and factual findings related thereto; and

(B) Recommendation(s) as to whether there exist such limited extraordinary circumstances so as to justify the requested distribution or any portion thereof, and any conditions or restrictions deemed appropriate in connection therewith.

2. The report so filed shall be placed under seal by the Clerk and shall not be available to the public. The recommendation(s) shall be filed by the Clerk as part of the record; provided that the Court, after consideration of the best interests of the minor child and any confidential information with respect to said minor child contained in said recommendation(s), may order all or any portion of said recommendations to be placed under seal by the Clerk. Any financial disclosure forms filed in connection with such Petition shall be placed under seal and shall not be available to the public unless otherwise ordered by the Court. Access to any sealed document or other material shall be limited to the parties, their attorney-spokespersons, and the Guardian Ad Litem appointed by the Court unless otherwise ordered by the Tribal Court. Further dissemination of such sealed documents and materials is prohibited unless specifically permitted by Order of the Court.

3. Upon the motion of Petitioner, a Guardian Ad Litem, the Mohegan Tribe, or upon its own motion, the Court may order that all or a portion of the hearing on such petition be conducted in a closed courtroom from which the public is excluded, if and only if the Court determines that during the course of the hearing, confidential financial information or confidential medical, psychiatric or other health care information concerning the minor child or children from whose trust fund distribution is sought is likely to be revealed, and that the public's interest in attending such proceeding is outweighed by the interest of the minor child or children in preserving the confidentiality of such information. The Court shall first consider reasonable alternatives to any such order, and any such order shall be no broader than necessary to protect the confidentiality of such information. In the event that such order is issued, the Court may direct that documents or other references concerning the confidential information be placed under seal or redacted, as appropriate.

c. **Redaction of Names of Minor Children**. In all decisions of the Mohegan Tribal Court involving minor children, published or submitted to any decision reporting service or news organization, the Clerk of the Court shall redact the names of such minor children, substituting therefor such pseudonyms or initials as the Clerk deems appropriate.

CHAPTER 4
PROCESS

§ 7. Process; Return Day of Process; Time For Service and Return

a. **Summons**. Process in civil actions shall be a writ of summons on a form approved by the Court, describing the parties, the Court to which it is returnable and the time and place of appearance and shall be accompanied by the plaintiff's complaint. For actions brought to the Gaming Disputes Court, the summons shall be signed by an attorney who has been admitted to practice before the Gaming Disputes Court or by a Clerk of the Court. For actions brought to the Mohegan Tribal Court, the summons shall be signed by an attorney-spokesperson admitted to practice before the Mohegan Tribal Court, by a Clerk of the Court or by a non-attorney spokesperson for process commencing a Minor Civil Action as defined in MTC § 1-22. If service is made by plaintiff's attorney or spokesperson, such attorney or spokesperson shall deliver to the person who is to make service one copy of the summons and complaint upon which to make return of service and sufficient additional copies of the summons and complaint for service upon each defendant, which shall be true copies of the summons and complaint filed with the appropriate Mohegan Court.

b. **Return Day of Process**. Process in civil actions may be made returnable on any Tuesday in any month. All process shall be made returnable not more than 60 days after the date of the process.

c. **Time for Service. Return of Process**. Any process to be served by the plaintiff shall be served at least 12 days inclusive before the return day, and shall be returned to the Clerk on or before the return day. A return of process shall be made by filing an affidavit of service or return of service containing the name of the process server, the date, and place of service. It shall state the manner in which service was made and shall be filed with the Clerk, together with a true copy of the process served.

d. **Persons Who May Serve Process**. Process may be served by a process server appointed by the Mohegan Tribal Council, any officer of the Mohegan Tribal Police Department, a Connecticut State Marshal, a Connecticut municipal constable or any other proper officer authorized by Connecticut statute. Any of the foregoing persons may, in lieu of filing proof of service by affidavit as provided in these Rules, file proof of service by State Marshal's return or Proof of Service Form approved by the appropriate Mohegan Court. Process may also be served by such other persons as may be authorized by tribal law to serve process.

e. **Amendment**. The Court, in its discretion, may permit any process or proof of service thereof to be amended, unless it clearly appears that the substantial rights of any party shall be prejudiced thereby.

§ 7A. Manner of Service Generally

Service shall be made in the manner prescribed by The Mohegan Tribe Code. Unless otherwise provided therein, service shall be made upon the defendant(s) as hereinafter set forth.

a. Personal Service.

1. Upon an individual who is not a minor or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process. The Court, upon motion and a showing that personal service as provided herein cannot be made

with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by certified mail or by publication.

2. Upon a minor under the age of 18, by delivering a copy of the summons and of the complaint personally both to: (a) the minor and (b) the minor's guardian, if known to the plaintiff, or if not known to the plaintiff, then to the minor's father or mother or other person having guardianship or custody of the minor, or with whom the minor resides, or if service cannot be made upon any of them, then upon such person as the Court designates.

3. Upon an incompetent person, by delivering a copy of the summons and complaint personally (a) to the guardian or conservator of the incompetent person, or if the incompetent person is living in an institution then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the Court and (b) unless the Court otherwise orders, also to the incompetent person.

4. Unless otherwise provided by tribal law, upon the Mohegan Tribe, by delivering a copy of the summons and complaint to the tribal chairperson, either (a) personally or (b) by registered or certified mail return receipt requested; and upon the Mohegan Tribal Gaming Authority by delivering a copy of the summons and complaint to the chairperson of the Mohegan Tribal Gaming Authority either (a) personally or (b) by registered or certified mail return receipt requested.

5. Upon a corporation, limited liability company, or limited liability partnership of this or any other state established under the laws of any other state or country or under tribal law, and upon a partnership or unincorporated association, (a) by delivering a copy of the summons and complaint to any officer, director, partner or agent or managing agent or by leaving such copies at an office or place of business of the corporation or partnership; or (b) by delivering a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation or partnership. If after diligent search, a person attempting to serve a corporation incorporated under tribal law cannot locate any officer or agent of such corporation upon whom to serve process, service may be made by leaving two copies of the summons and complaint with the office of the Mohegan Tribal Chairman.

6. Procedure in Statutory Appeals.

A. Upon the filing of an appeal from and order of the Workers' Compensation Commission, service of process by the Clerk of the appropriate Mohegan Court shall be made in accordance with the provisions of MTC § 4-207(c).

B. Upon the filing of an appeal from a final decision of the Mohegan Tribal Employment Rights Commission (TERO), service of process shall be made in accordance with the provisions of MTC § 4-110(c) and MTC § 3-321 *et seq.*

b. Personal Service Outside Tribal Territory. A person who is subject to the jurisdiction of the Mohegan Court System may be served with the summons and complaint outside the Mohegan Reservation in the same manner as if such service were made within the Mohegan Reservation, by any person authorized to serve civil process by Tribal Law or the laws of the place of service. An affidavit by the person making service or a State Marshal's return shall be filed with the Court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the Mohegan Reservation.

c. Service Outside Tribal Territory by Certified Mail or by Publication. The Court, on motion and finding that service cannot with reasonable diligence be made by another prescribed method or that the whereabouts of the defendant(s) is unknown, may order service by certified mail or by publication.

1. Where service by certified mail is ordered, the plaintiff shall mail a copy of the summons and complaint to the defendant(s) by certified mail, return receipt requested. Service by certified mail is complete when the certified mail is delivered and the return receipt is signed. The plaintiff shall file with the Court the return receipt and an affidavit by the person making service attesting that service was made, the

date and time of service, the person on whom and the manner in which service was made and the fees for service, if any.

2. Where service by publication is ordered, it shall be provided in a newspaper of general circulation in the area of the last known address of the person to be notified, or if no such address is known, in a newspaper of general circulation in the region where the Court is located. The order shall also direct its publication at least two times, the last of which is to be at least twelve days before the return date in the action; and shall include the names of the parties; a brief statement of the object of the action; the time for the defendant's appearance; and the name and address of the Court. Service by publication is complete on the twelfth day after the final publication date. The plaintiff shall file with the Court an affidavit that publication has been made.

§ 7B. Service of Process in Actions Brought to the Mohegan Tribal Court

a. **Service of Process on the Mohegan Tribe**. Service on the Mohegan Tribe shall be either in-hand service by Mohegan Tribal Police or in-hand delivery by a Clerk of the Mohegan Court System to the Office of the Chairman of the Mohegan Tribe and the Office of the Attorney General of the Mohegan Tribe.

b. **Service of Process on the Council of Elders**. Unless otherwise provided by the Mohegan Tribe Code, service of process on the Council of Elders shall be by in-hand service by Mohegan Tribal Police or by in-hand delivery by a Clerk of the Mohegan Court System to the Office of the Chairman or Vice-Chairman or to such person as may be designated by the Council of Elders for receipt of service of process.

c. **Service of Process on a Commission or Tribal Entity**. Unless otherwise provided by the Mohegan Tribe Code, service of process on any Mohegan Tribal Commission shall be by in-hand service by Mohegan Tribal Police or other Officer authorized by Tribal Law or these Rules to serve process, upon the Chairman or Vice-Chairman or such Commission, or such other individual as may be authorized by such Commission or Tribal Entity to accept service of process.

d. **Service of Process on a Member of the Mohegan Tribe Whose Address is Unknown Pursuant to Resolution No. 2005-9-E.**

1. In the event that Petitioner, after diligent search, has been unable to determine the address of Respondent, Petitioner may request on a form provided by the Clerk that service of process be made at the direction of the Council of Elders.

2. The Clerk, upon receipt of an Affidavit and Request for Service of Process, shall forward the same to the Council of Elders. Upon review of the Affidavit and Request, the Council of Elders shall determine whether the furnishing of Respondent's last known address as shown on the Tribe's Membership Roll is appropriate. The Council of Elders shall promptly return all documents to the Clerk, together with Respondent's last known address, if deemed appropriate, for service of process as prescribed by law. The Council of Elders shall designate whether the Respondent's last known address, if provided, shall remain confidential, and if so designated, the Clerk, and not the Plaintiff or Petitioner, shall arrange for service of process and shall not disclose such address to anyone other than the designated process server, without order of the Court.

3. If the Council of Elders has provided Respondent's last known address and, for any reason, service of process at such address is not possible, upon a finding by the Court that all reasonable efforts to make service at such address have been exhausted, service of process shall be deemed to be effective.

§ 8. Bond in all actions brought in the Gaming Disputes Court

In all actions in which the Mohegan Tribe or the Mohegan Tribal Gaming Authority is a defendant, there shall be filed with the complaint a cash or written bond or undertaking with at least two sufficient sureties, who by their signature consent to be subject to the jurisdiction of the Court, in the amount of $500.00, conditioned for payment of such costs, charges and reasonable attorneys fees to be fixed by the Court as may be awarded against the plaintiff in said action, should the plaintiff not prevail in such action.

For actions against defendants other than the Mohegan Tribe or the Mohegan Tribal Gaming Authority, there shall be filed a bond or Recognizance in the amount of $250.00.

§ 9. Remedy for Failure to Give Bond

When there has been a failure to comply with the provisions of § 8 of these Rules, the validity of the process and service shall not be affected unless the neglect is made a ground of a motion to dismiss. If the Court, upon hearing of the motion to dismiss, or upon its own motion, directs the plaintiff to file a bond to prosecute in accordance with the provisions of § 8 hereof, the action shall be dismissed unless the plaintiff complies with the Court order within two weeks of the order.

CHAPTER 5
PARTIES AND APPEARANCES

§ 10. Appearances

a. **Appearances filed in the Mohegan Court System.**

1. **Appearance for the Plaintiff in Gaming Disputes Court**. When a summons and complaint have been signed by an attorney admitted to practice in the Gaming Disputes Court, such summons and complaint shall contain the attorney's name, mailing address and telephone number, all of which shall be typed or printed on the summons and complaint, and the attorney's appearance shall be entered for the plaintiff, unless such attorney by endorsement thereon shall otherwise direct. An appearance entered on behalf of a law firm shall be construed as an appearance on behalf of all members of such firm who have been admitted to practice before the Gaming Disputes Court. The signature on the complaint of any person proceeding without the assistance of counsel shall be deemed to constitute the appearance *pro se* of such party.

2. **Appearances for Plaintiff in Mohegan Tribal Court**. The signature by a spokesperson on a Summons and Complaint shall be deemed an appearance by such spokesperson on behalf of the plaintiff and shall constitute a certification that representation in such action is within the capacity of such spokesperson as defined in MTC § 1-22 - § 1-24.

b. **Appearances for Defendant(s); Time to File Appearances**. After the summons and complaint have been filed, the attorney or spokesperson for any party to the action, or any party himself or herself, may enter his or her appearance in writing with the Clerk of the Court. Except where otherwise prescribed herein or by law, an appearance for a party should be filed on or before the second day following the return date. An appearance entered on behalf of a law firm shall be construed as an appearance on behalf of all members of such firm who have been admitted to practice before the Court. An appearance filed on behalf of a party after the entry against such party of a nonsuit or judgment after default for failure to appear shall not affect the entry of the nonsuit or any judgment after default. An appearance by a spokesperson shall conform to the provisions of MTC § 1-22 - § 1-24.

c. **Form and Signing**. Each appearance shall (1) be typed or printed on 8-1/2" x 11" paper; (2) be headed with the name and docket number of the case and the name of the Court; (3) be legibly signed by the individual preparing the appearance with the individual's own name; and (4) state the party or parties for whom the appearance is being entered, and the name of the individual attorney whose appearance is being entered.

d. **Filing with the Clerk**. Whenever an appearance is filed, except one entered in accordance with subparagraph (a) hereof, an original shall be filed with the Clerk and copies served on all other counsel and *pro se* parties in the action. All *pro se* parties, attorneys, and spokespersons are required to notify the Court of any change of mailing address, telephone number or facsimile number.

e. **Consequence of Filing Appearance**. Except by leave of judicial authority, no attorney, *pro se* party, or spokesperson shall be permitted to appear in Court to be heard on behalf of a party until his or her appearance has been entered. After the filing of an appearance, the attorney, *pro se* party or spokesperson who filed such appearance shall receive copies of all notices required to be given to parties by tribal law or by these Rules.

f. **Appearance for Represented Party**. Whenever an attorney, *pro se* party, or spokesperson files an appearance for a party, or the party files an appearance for himself or herself, and there is already an appearance on file for that party, the attorney, *pro se* party, or spokesperson filing the new appearance shall state thereon whether such appearance is in lieu of or in addition to the appearance or appearances already on file. If the new appearance is stated to be in lieu of any appearance or appearances on file, the party filing that new appearance shall serve, in accordance with § 16 hereof, a copy of the appearance on any attorney, *pro se* party, or spokesperson whose appearance is to be replaced by the in lieu of appearance. Unless a written objection is filed within ten days after the filing of an in lieu of appearance, the appearance or appearances to be replaced by the in-lieu-of appearance shall be deemed to have been withdrawn and the Clerk shall make appropriate entries for such purpose on the file and docket.

g. **Withdrawal of Appearance**.

1. An attorney, *pro se* party, or spokesperson whose appearance has been filed shall be deemed to have withdrawn such appearance if a written objection has not been filed within 10 days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney, *pro se* party, or spokesperson.

2. An attorney, *pro se* party, or spokesperson may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subparagraph shall state that such an appearance has been entered and that such party or parties are being represented by such other counsel at the time of the application. Such an application may be granted by the Clerk as of course, if such an appearance by other counsel has been entered.

3. Except as provided in subparagraphs (g)(1) and (g)(2), no attorney, *pro se* party, or spokesperson shall withdraw his or her appearance after it has been entered upon the record of the Court without the leave of the Court.

4. Motion to Withdraw Appearances. No motion for withdrawal of appearance shall be granted unless good cause is shown and until the judicial authority is satisfied that reasonable notice has been given to the party or parties represented by the attorney, *pro se* party, or spokesperson and to other attorneys of record.

5. A motion to withdraw appearance shall include the last known address of any party as to whom the attorney or spokesperson seeks to withdraw his or her appearance and shall have attached to it a notice to such party advising of the following: (A) the attorney or spokesperson is filing a motion which seeks the Court's permission to no longer represent the party in the case; (B) if the party wishes to be heard, he or she should contact the Clerk's office to find out the date and time of the hearing on such motion; (C) the party may appear in Court on that date and address the Court concerning the motion; (D) if the motion to withdraw is granted, the party should either obtain another attorney or spokesperson or file an appearance on his or her own behalf with the Court; (E) if the party does neither, the party will not receive notice of Court proceedings in the case and a nonsuit or default judgment may be rendered against such party. The attorney's appearance for the party shall be deemed to have been withdrawn upon the granting of the motion without the necessity of filing a withdrawal of appearance.

§ 11. Suit by Real Party in Interest

An action may be brought in all cases in the name of the real party in interest, but any claim or defense may be set up which would have been available had the plaintiff sued in the name of the nominal party in interest.

§ 12. Joinder of Parties

a. **Interested Persons as Plaintiffs**. All persons having an interest in the subject of the action and in obtaining the judgment demanded may be joined as plaintiffs, except as otherwise expressly provided; and if one who ought to be joined as plaintiff declines to join, he or she may be joined as a defendant, with the reason therefor being stated in the complaint.

b. **Joinder of Plaintiffs.** All persons may be joined in one action as plaintiffs in whom any right of relief in respect to or arising out of the same transaction or series of transactions is alleged to exist either jointly or severally when, if such persons brought separate actions any common question of law or fact would arise; provided, if upon the motion of any party, it would appear that such joinder might embarrass or delay the trial of the action, the Court may order separate trials, or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for the relief to which he, she or they may be entitled.

c.**Interested Persons as Defendants**. Any person may be made a defendant who has or claims to have an interest in the controversy, or any part thereof, adverse to the plaintiff, or whom it is necessary to make a party for a complete determination or settlement of any question involved therein.

§ 13. Addition or Substitution of Parties

a. **Additional parties summoned by the Court**. If a complete determination of the controversy as between the parties before the Court cannot be made without the presence of other parties, the Court may direct that such parties be brought in. If a person not a party has an interest, which the judgment will affect, the Court, on motion, shall direct that person to be made a party.

b. **Nonjoinder and Misjoinder**. Except as otherwise provided in these Rules, no action shall be defeated by nonjoinder or misjoinder of parties. New parties may be added and summoned in and parties misjoined may be dropped by order of the Court at any stage of the cause, as it deems the interests of justice require.

c. **Substituted Plaintiff**. When any action has been commenced in the name of the wrong person as plaintiff, by mistake, the Court may order any other person to be substituted or added as plaintiff. If a party dies, the Court may order substitution of the proper party or parties.

CHAPTER 6
PLEADINGS AND MOTIONS

§ 14. Pleadings Allowed and Their Order

a. The order of pleadings shall be as follows: (1) the plaintiff's complaint; (2) the defendant's motion to dismiss the complaint; (3) the defendant's request to revise the complaint; (4) the defendant's motion to strike the complaint; (5) the defendant's answer (including any special defenses) to the complaint; (6) the plaintiff's request to revise the defendant's answer; (7) the plaintiff's motion to strike the defendant's answer; (8) the plaintiff's reply to any special defenses.

b. Except as otherwise ordered by the Court, the filing of any pleading provided for in subparagraph (a) will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided at herein.

§ 15. Motions, Objections and Hearings

a. **Filing Generally.** All motions and objections filed with the Court are subject to the following requirements:

1. The party filing a motion or objection shall indicate at the bottom of the first page of the motion or objection whether or not a hearing is requested.

2. Any request for hearing by an opposing party shall be filed not later than 15 days after the filing of the motion or objection.

3. Motions for Continuance or for Extension of Time shall indicate whether the opposing party consents, objects, or takes no position with respect to such motion.

b. **Oral Argument.** Oral argument on all motions and objections shall be at the discretion of the judicial authority.

c. **Hearings.** The judicial authority may schedule a hearing on a motion or objection even if no request for hearing is filed.

d. **Memorandum of Law and Memoranda in Opposition**. A memorandum of law outlining the claims of law and pertinent authority shall be filed and served with (1) motions to dismiss; (2) motions to strike; and (3) motions for summary judgment. Memoranda of law in opposition shall be filed not later than five days prior to the hearing of the motion or as otherwise ordered by the Court. A party failing to request a hearing or to file a memorandum in opposition, in the discretion of the Court, may be deemed to have waived all objections to the motion.

e. **Form of Motions and Requests**. Every motion, request or objection thereto, unless made during trial, shall be in writing and every motion and objection to a request shall have annexed to it a proper order. Such motions, requests or objections shall be served on all parties in accordance with § 16 of these Rules and the fact of such service shall be endorsed thereon. In the case of any motion for continuance, the party seeking a continuance shall determine the position of opposing counsel with respect to such proposed continuance, and shall set forth in such motion that opposing counsel consents, has no objection, takes no position, or objects to the granting of such motion for continuance. If the moving party cannot ascertain the position of opposing counsel with respect to the proposed continuance, the motion shall so state and shall set forth facts as to why such position is not available.

§ 15A. Motion for Telephonic Hearing

A party upon whom personal appearance at a hearing would cause undue hardship may move the Court for permission to appear telephonically. Said motion shall set forth the reason why personal appearance would not be feasible, the date and time of the scheduled hearing, and a telephone number that will be available for contact by the Clerk. Such telephonic appearance shall be at the discretion of the Court, taking into account the reason(s) why personal appearance is not feasible, the adequacy of telephonic appearance under the circumstances of the hearing, and any prejudice to the opposing party.

The party making such motion is responsible for ensuring that the specified telephone line will be free and operative at the date and time of the hearing. Failure of such party to appear for the telephonic hearing will subject said party to the same discipline as failure to appear in person had the motion not been granted.

§ 16. General Rules of Pleading; Service of Pleadings

a. **Time to Plead**. Except as otherwise provided by Tribal Code, commencing on the return day of the summons and complaint, pleadings shall first advance 30 days from the return day, and subsequent pleadings and requests shall advance at least one step within each successive period of 15 days from the preceding pleading or Court ruling thereon, provided however, that the periods of time required for any answer, reply or other pleading or response of any kind due from the Mohegan Tribe or its subdivisions shall be double the period specified in these Rules.

b. **Form of Pleading**. All pleadings shall be typed or printed on 8-1/2" x 11" paper. Every pleading shall contain a caption that includes the title and docket number of the case, the name of the Court and the date, and shall include a designation of the particular pleading.

c. **Signing of Pleadings**. Every pleading of a party represented by an attorney or spokesperson shall be signed by at least one attorney or spokesperson of record in the individual attorney's or spokesperson's name, whose address shall be stated. A party who is not represented by an attorney or spokesperson shall sign the party's pleading and state the party's address. The signing of any pleading, motion, objection or request shall constitute a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information and belief that there is good ground to support it and that it is not interposed for delay.

d. **Service of Pleadings and Other Papers**. It is the responsibility of the party filing any pleading, subsequent to the original complaint, to serve a copy of the same on each party who has appeared. When a party is represented by an attorney or spokesperson, service shall be made upon such attorney or spokesperson. Motions for default for failure to appear shall be served upon the party against whom the default for failure to appear is sought.

e. **Method and Proof of Service**. Service upon an attorney, spokesperson or *pro se* party shall be made by delivering a copy to the attorney, spokesperson or *pro se* party or by mailing it to the last known address of the party. Service by mail is complete upon mailing. Proof of service shall be made by certificate of the party serving in substantially the following form:

> I hereby certify that a copy of the above was mailed on (date) to all counsel and *pro se* parties of record. (List name and address of each party served). (Signature of attorney, spokesperson or *pro se* party).

f. **Electronic Filing**. Except as may be otherwise provided by Tribal Law or these Rules, any pleading, document or other paper to be filed with the Court may be filed by facsimile transmission. A party filing any pleading, document or other paper by facsimile transmission shall cause the transmitting facsimile machine to print a transmission record of each transmission which shall be retained by the sending party. Upon receipt by the Clerk, the facsimile transmission shall be deemed an original and shall be considered signed by the sending party under these Rules. The sending party shall retain a signed copy of the pleading, document or other paper that was sent by facsimile transmission during the pendency of the action and any appeal period and any appellate process, and shall certify thereon that the document is a true copy of the pleading, document or other paper that was transmitted by facsimile to the Clerk. Upon request of the Court, such signed and certified copy shall be produced. Upon failure to produce such signed and certified copy, the Court may take any action and impose any sanction it deems appropriate. Facsimile transmissions shall be deemed complete upon receipt of the entire transmission by the Clerk. Facsimile transmissions completed after the business hours of the Court shall be deemed to have been filed on the next day the Clerk's office is open for business.

g. **Exceptions to Electronic Filing**. Facsimile transmission shall not be permitted for any pleading, document or other paper requiring an oath or affirmation (except as to certifications under § 16(e) hereof), or to any pleading, document or other filing that: (a) commences an action, or (b) must be accompanied by any fee or other payment.

§ 17. Failure to Plead

Parties failing to plead according to the Rules and orders of the Court may be nonsuited or defaulted.

§ 18. Implied Admissions

Every material allegation in any pleading which is not denied by the adverse party shall be deemed admitted, unless the adverse party avers that he or she has insufficient knowledge or information to form a belief.

§ 19. Complaint

The first pleading of the plaintiff shall be known as the complaint. It shall contain a concise statement of the facts constituting the cause of action. Where separate and distinct causes of action are joined, each shall be stated in a separate count of the complaint.

§ 20. Motion to Dismiss

a. The motion to dismiss shall be used to assert:
   1. Lack of jurisdiction over the subject matter;
   2. Lack of jurisdiction over the person;
   3. Insufficiency of process;
   4. Insufficiency of service of process;
   5. Improper venue.

b. Each motion shall be filed with a supporting memorandum of law and supporting affidavits where appropriate. A party objecting to this motion shall file a memorandum in opposition within the time set forth in § 15d of these Rules.

c. Any claim of lack of jurisdiction over the person or improper venue or insufficiency of process or insufficiency of service of process is waived if not raised by a motion to dismiss filed within 30 days of the defendant's appearance.

d. Whenever it appears after suggestion of the parties or otherwise that the Court lacks subject matter jurisdiction, the Court shall dismiss the action.

§ 21. Request to Revise

a. A timely request to revise may be filed by any party who desires to obtain (1) a more complete statement of the adverse party's allegations; (2) deletion of any redundant, immaterial, impertinent, scandalous or other improper allegations; (3) the separation of improperly combined causes of action or defenses; (4) any other appropriate correction in the adverse party's pleading.

b. The request to revise shall set forth for each requested revision, the portion of the pleading sought to be revised, the requested revision and the reasons therefore, and shall be followed by sufficient space for an answer or objection to be inserted.

c. Any objection thereto shall be filed within 30 days and in the absence of objection shall be deemed automatically granted and shall be complied with within 30 days of filing. Objections shall be inserted on the request to revise in the space provided and shall be filed with a cover sheet indicating which requests are objected to.

§ 22. Motion to Strike

a. A motion to strike may be filed by any party to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross-claim or any count thereof for failure to state a claim upon which relief can be granted; (2) the legal sufficiency of any prayer for relief; (3) the legal sufficiency of any complaint, counterclaim or cross-claim because of nonjoinder of any necessary party; (4) the improper joining of two or more causes of action; (5) the legal sufficiency of any answer or part thereof.

b. Each motion to strike shall be accompanied by a memorandum of law; and any memorandum in opposition shall be filed within the time set forth in § 15d of these Rules.

c. A new pleading may be filed by the party whose pleading has been stricken within 15 days after the granting of a motion to strike; upon failure to re-plead where an entire complaint, counterclaim or cross-complaint has been stricken, the Court may enter judgment on the stricken pleading.

§ 23. Answer

a. **Form.** The defendant in his answer shall specially deny such allegations of the complaint as the defendant intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations in which case he or she may deny them generally. As to the remaining allegations, the defendant shall either admit the truth thereof, or state that defendant is without knowledge or information sufficient to form a belief as to the truth thereof.

b. **Content**. Denials must fairly meet the substance of the allegation denied. Express admissions and denials must be direct, precise and specific and not argumentative, hypothetical or in the alternative. A pleader wishing to admit or deny only a portion of a paragraph shall recite that portion, and the remainder thereof may be denied or admitted without recital.

c. **Failure to Deny**. Allegations in a pleading to which a responsive pleading is required, are admitted when not denied in the responsive pleading.

d. **Denials; Special Defenses**. No facts may be proved under either a general or special denial except such as to show that the plaintiff's statements of facts are untrue. Facts consistent with such statements but which show that the plaintiff has no cause of action must be specially alleged. The following must be specially pleaded: accord and satisfaction, arbitration and award, duress, fraud, illegality, infancy, that defendant was non-compos mentis, payment, release, the statute of limitations and res adjudicata.

e. **Pleading Comparative Negligence**. Comparative negligence, if relied upon as a defense, shall be affirmatively pleaded by the defendant, and the defendant shall specify the negligent acts or omissions on which he or she relies.

f. **Pleading Collateral Source Payments; Pleading Jurisdictional Limitations**. No pleading shall contain any allegations regarding receipt by a party of collateral source payments as described in MTC § 3-251(c) or Conn. Gen. Stat. §§ 52-255b. Jurisdictional limits imposed by The Mohegan Tribe Code on awards or relief that may be ordered by the Court, such as those set forth in the Mohegan Torts Code, shall not be pleaded as a special defense but shall be raised by postjudgment motion pursuant to § 47 of these Rules if not otherwise ruled on during the course of trial and decision.

g. **Setoffs and Counterclaims.** The defendant may plead a counterclaim or right of setoff against the plaintiff's demand in plaintiff's answer and the same shall be pleaded and replied to according to the Rules governing complaints and answers.

§ 24. Reply

a. The plaintiff's general denial of a special defense puts the burden of proof thereof on the defendant. The plaintiff's reply pleading may admit some and deny other allegations of the defendant's special defenses.

b. Matters in avoidance of affirmative allegations in an answer or counterclaim shall be specially pleaded in the reply.

§ 25. Joining, Consolidating and Separating Claims

a. **Joinder of Claims**. Each complaining party in a case must join all claims arising from the same set of circumstances in one action. The plaintiff may join all claims against the defendant in one action even if the claims are from a different set of circumstances.

b. **Consolidation of Claims**. The Court, on its own motion or upon motions of a party, may order a joint hearing or trial of any and all claims in an action and of multiple actions to avoid unnecessary costs or

delay. The Court may also separate claims in an action for the convenience of the Court and to avoid prejudice or delay.

c. **Separate Trials**. The Court may order separate trials and make such other orders as may be expedient to prevent undue delay in the trial of an action and as will prevent an injustice to the plaintiff or the party sought to be impleaded, including without limitation, dismissal of the third party claim, the ordering of separate trials, or such other orders to prevent delay or prejudice.

§ 25A. Counterclaims and Cross-Claims

a. In any action, any defendant may file counterclaims against any plaintiff and cross-claims against any codefendants provided that each counterclaim and cross-claim arises out of the transaction or one of the transactions which is the subject of the plaintiff's complaint and does not require for its adjudication the presence of third parties over whom the Court cannot acquire jurisdiction.

b. A defendant may also file a counterclaim or cross-claim under this section against any other party to this action for the purpose of establishing that party's liability to the defendant for all or part of the plaintiff's claim against that defendant.

c. Persons other than those made parties to the original action may be summoned in to answer any counterclaim or cross-claim.

§ 26. Impleading Third Parties

a. **When Defendant May Bring in Third Party**. At any time after the commencement of the action, a defendant as a third-party plaintiff may cause to be served a writ, summons and complaint upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against third-party plaintiff. The person upon whom it is served, hereinafter called third-party defendant, shall have available all remedies available to an original defendant, including the right to assert defenses and counterclaims against the third-party plaintiff and cross-complaints against any other third-party defendant. The third-party defendant may also assert against the plaintiff any defenses which the third-party plaintiff has to plaintiff's claim and may assert against the plaintiff any claim within the subject matter jurisdiction of the Court arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim within the subject matter jurisdiction of the Court against the third-party defendant arising out of the transaction or occurrence which is the subject matter of the original complaint, and the third-party defendant shall thereupon have available to him all remedies available to an original defendant. A third-party defendant may proceed under this section against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

b. **When Plaintiff May Bring In Third Party**. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances, which under this section would entitle a defendant to do so.

c. **Court Orders for Protection and Prevention of Delay**. The Court may make such orders regarding the trial of the action in which a third party has been brought in as will do justice to the parties and expedite the final disposition of the case.

§ 27. Amendments

Any pleading requiring a responsive pleading may be amended once as a matter of course at any time before such responsive pleading is filed. Thereafter, a party may amend the party's pleading in the following manner: (a) by order of the Court; or (b) by written consent of the adverse party; or (c) by filing a written request for leave to file such amendment, with the amendment appended thereto, which shall be served upon each party and have proof of service endorsed thereon. An opposing party may object thereto, or to any part thereof, by filing an objection specifying the particular paragraphs objected to and the reasons

therefor, within 15 days after the filing of the request for leave to amend. In the absence of objection within 15 days after filing of the request, the amendment shall be deemed to have been filed with the consent of the adverse party.

The Court may restrain such amendments as necessary to compel the parties to join issue in a reasonable time for trial or to prevent undue prejudice or surprise to the opposing party.

CHAPTER 7
DISCOVERY AND DEPOSITIONS

§ 28. Scope of Discovery; Stipulations Regarding Discovery and Deposition Procedures

a. **In General**. Parties may obtain discovery of information or disclosure, production and inspection of papers, books or documents, not privileged, and material to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence, and which are within the knowledge, possession or power of the party or person to whom the discovery is addressed can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure.

b. **Frequency; Continuing Duty to Disclose**.

1. Unless the Court orders otherwise, the frequency of use of any discovery under this chapter is not limited.

2. If subsequent to compliance with any request or order for discovery and prior to or during trial, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection, or discovers that the prior compliance was totally or partially incorrect or though correct when made, is no longer true and the circumstances are such that are a failure to amend the compliance is in substance a knowing concealment, the party shall promptly notify the other party or party's attorney and shall file and serve in accordance with § 16 of these Rules a supplemental or corrected compliance.

c. **Materials prepared in Anticipation of Litigation; Statements of Parties**. Subject to the provisions of subparagraph (d) hereof a party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (a) hereof and prepared in anticipation of litigation or for trial by or for another party or by or for the other party's representative only upon showing that the party seeking discovery has substantial need of the materials in the preparation of that party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall not order disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing, a statement concerning the action or its subject matter made by that party and of any non-privileged statement of any other party concerning the action or its subject matter.

d. **Experts**. Discovery of facts known and opinions held by experts, otherwise discoverable under subparagraph (a) hereof and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

1. (A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is

expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(B) Unless otherwise ordered by the Court upon motion, a party may take the deposition of any expert witness disclosed pursuant to this subparagraph in the manner prescribed in §§ 34-36 of these Rules.

2. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in § 31 hereof or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

3. Unless manifest injustice would result, (A) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subparagraphs (1)(B) and (2) of this paragraph; and (B) with respect to discovery obtained under subparagraph (1)(B) of this paragraph the Court may require, and with respect to discovery obtained under subparagraph (2) of this paragraph the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

4. In addition to and notwithstanding the provisions of subparagraphs (1), (2), and (3) of this paragraph, any plaintiff expected to call an expert witness at trial shall disclose the name of that expert, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, to all other parties within a reasonable time prior to trial. Each defendant shall disclose the names of his or her experts in like manner within reasonable time from the date the plaintiff discloses experts, or, if the plaintiff fails to disclose experts, within a reasonable time prior to trial. If disclosure of the name of any expert expected to testify at trial is not made in accordance with this subparagraph, or if an expert witness who is expected to testify is retained or specially employed after a reasonable time prior to trial, such expert shall not testify if, upon motion to preclude such testimony, the Court determines that the late disclosure (A) will cause undue prejudice to the moving party; or (B) will cause undue interference with the orderly progress of trial in the case; or (C) involved bad faith delay of disclosure by the disclosing party.

e. **Protective Orders**. Upon motion by a party or by a person from whom discovery is sought, and for good cause shown, the Court may make such orders as justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

f. **Filing of Discovery**. Unless otherwise ordered by the Court or necessary for use in the proceeding, interrogatories; requests for production, inspection and examination; requests for admission; and answers and responses thereto, shall be served on other parties but shall not be filed with the Court. Notices of interrogatories, and notices of requests for production, inspection and examination, shall not be filed with the Court; notices of requests for admission filed pursuant to § 32 of these Rules shall be filed with the Court.

g. **Stipulations Regarding Discovery and Deposition Procedure**. Unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person at any

time or place, upon any notice, and in any manner and when so taken may be used as other depositions and (2) modify the procedures provided by this chapter for other methods of discovery.

§ 29. Interrogatories

a. **Availability; Form.**

1. Any party may serve in accordance with § 16 of these Rules written interrogatories upon any other party, without leave of Court, at any time after the return date.

Except as provided in subsection (a)(3), the party serving interrogatories shall leave sufficient space following each interrogatory in which the party to whom the interrogatories are directed can insert his answer. In the event that an answer requires more space than that provided, it shall be continued on a separate sheet of paper, which shall be attached to the completed answer.

2. Interrogatories may relate to any matter which may be inquired into under § 28 of these Rules, and the answers may be used at trial to the extent permitted by the rules of evidence. In all tort claims alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the maintenance or control of real property or of any gaming facilities, the interrogatories shall be limited to those set forth in Forms 201, 202, and 203 of the Appendix of Forms to the Connecticut Practice Book, unless upon motion the judicial authority determines that such interrogatories are inappropriate or inadequate in the particular action. Any such motion seeking permission to file non-standard interrogatories and/or requests for production shall specify the necessity therefor and whether the party to whom the same is directed consents to, objects to, or takes no position with respect to each non-standard interrogatory or request for production. Nothing contained herein shall prevent the serving of non-standard interrogatories and requests for production by agreement of the parties.

3. In lieu of serving the interrogatories set forth in Forms 201, 202, and 203 of the Appendix of Forms to the Connecticut Practice Book, the moving party may serve on such party a notice of interrogatories to be answered, which shall not include the actual interrogatories to be answered, but shall instead set forth the number of the Practice Book Form containing such interrogatories and the name of the party to whom the interrogatories are directed.

b. **Answers**. Each interrogatory shall be answered in writing, under oath, unless it is objected to, and signed by the person responding. The party answering interrogatories shall not file them with the Court, unless the party objects to one or more interrogatories, in which case only the cover sheet shall be filed. The cover sheet shall set forth those interrogatories to which the party objects and the reason for the objection. The party upon whom the interrogatories or notice of interrogatories, has been served shall serve a copy of the answer, and objections if any, within 30 days after service of the interrogatories, unless (1) the Court upon motion allows a longer time; or (2) the parties by written stipulation extend the time; or (3) the party to whom the interrogatories are directed files a request for extension of time for not more than 30 days within the initial 30 day period, which shall be deemed to have been automatically granted unless objected to within 10 days after filing; or (4) objections are filed and served within the 30 day period.

In responding to interrogatories, a party shall set forth each interrogatory in full immediately preceding the party's answer or objection thereto. The party serving interrogatories may move for an order under § 33 of these Rules with respect to any failure to answer an interrogatory.

c. **Objections**. Objections to interrogatories shall be set forth on a cover sheet and be immediately preceded by the interrogatory objected to and signed by the party making them.

No objection shall be heard by the Court until either counsel file an affidavit certifying that a conference has been held to attempt to resolve the subject matter of the objection and that counsel have been unable to reach an accord. Objections are subject to the procedures set forth in § 15a of these Rules. The affidavit shall recite: the date of the objection; the name of the party who filed the objection; the name of the party to whom the objection is addressed; the date, time and place of the conference and the participants; and if no conference was held the reasons therefore.

If any objection is overruled, the answer to the interrogatory shall be filed within 30 days after the Court's ruling.

Any interrogatory otherwise proper is not objectionable merely because it involves more than one fact or relates to the application of law to facts.

§ 30. Production, Examination and Inspection

a. **Scope; Form**. Any party may serve in accordance with § 16 of these Rules on any other party a request (1) to produce and permit the party making the request to inspect, copy or photograph any designated documents (including without limitation, writings, drawings, graphs, charts and photographs) or to inspect and copy, test or sample any tangible things within the scope of § 28 of these Rules and which are in the possession, custody or control of the party upon whom the request is served, or (2) to permit entry upon designated land or other property for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon within the scope of § 28.

In all tort claims alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the maintenance or control of real property or of any gaming facilities, the requests for production shall be limited to those set forth in Forms 204, 205, and 206 of the Appendix of Forms of the Connecticut Practice Book. Non-standard requests for production shall conform to the procedures specific in § 28(2)(2) relating to non-standard interrogatories.

b. **Procedures**. Requests for production may be served without leave of Court, at any time after the return date of the action.

The request shall clearly designate the items to be inspected either individually or by category and shall specify a reasonable time, place and manner of making the inspection. Unless the Court orders otherwise, the frequency of use of requests for production is not limited, except in actions for which the requests for production are limited to those set forth in Forms 204, 205, and 206 of the Appendix of Forms of the Connecticut Practice Book. In lieu of serving the requests for production set forth in Forms 204, 205, and 206 on a party who is represented by counsel, the moving party may serve on such party a notice of requests for production, which shall not include the actual requests, but shall instead set forth the number of the Appendix form containing such requests and the name of the party to whom the requests are directed.

The party upon whom the requests for production or notice of requests for production has been served shall serve a written response thereto, and objections if any, within thirty days after service of the requests, unless (1) the Court upon motion allows a longer time; or (2) the parties by written stipulation extend the time; or (3) the party to whom the requests are directed files a request for extension of time for not more than thirty days within the initial thirty day period, which shall be deemed to have been automatically granted unless objected to within ten days after filing; or (4) objections are filed and served within the thirty day period. The response shall state as to each item or category, that inspection will be permitted as requested, unless the request is objected to and the reasons for the objections stated. The party serving the request may move for an order under § 33 of these Rules with respect to failure to respond to a request under § 30 of these Rules.

c. **Objections**. Objections to requests for production and inspection may be filed in the same manner asset forth in § 29(c) of these Rules and are subject to the procedures set forth in § 15a of these Rules.

§ 30A. Procedure for Compliance with Subpoena of Confidential Tribal or Other Materials

a. **Delivery Under Seal for In Camera Review**. Materials in the custody or control of the Mohegan Tribe, the Mohegan Tribal Gaming Authority, or other Tribal Entity, which materials are subject of a subpoena duces tecum issued in the course of legal proceedings in the Mohegan Court System, including but

not limited to video security and surveillance recordings, and which are determined by the keeper thereof to be confidential or whose public release would be contrary to the effective regulation of Gaming or the best interest of the Mohegan Tribe, may be delivered by the recipient of said subpoena to the Clerk of the Mohegan Court in which said proceedings are pending, and shall be placed under seal by the Clerk pending in camera review by the Court. Such materials shall not be open to inspection by any person except by order of a Judge of the Mohegan Court system.

b. **Motion for Protective Order**. The Mohegan Tribe, the Mohegan Tribal Gaming Authority, or other Tribal Entity which has been served with such subpoena may file with the Mohegan Court in which such proceedings are pending, prior to or contemporaneously with the delivery of the subpoenaed materials, a Motion for Protective Order seeking to prohibit or limit the dissemination or inspection of the subpoenaed materials, or such other orders with respect thereto as are deemed appropriate to protect the confidentiality of Tribal materials, the effective regulation of Gaming or otherwise as may be in the best interest of the Mohegan Tribe. Nothing contained in this Section shall limit the availability of a Motion for Protective Order pursuant to § 28(e).

c. **Restriction on Dissemination; Challenge to Restriction or Objection to Protective Order**. In lieu of the filing of a motion for a protective order, the keeper of the subpoenaed materials may designate the same may be viewed by counsel of record and *pro se* parties to the pending legal proceedings in the office of the Clerk in which the same are pending, but shall not be subject to further dissemination, review, or release except upon the order of a Judge of the Mohegan Court System. Such materials shall not be subject to inspection or review by the public unless otherwise ordered by a Judge of the Mohegan Court System. Any party may by motion challenge such restriction on dissemination or object to any Motion for Protective Order on grounds that he or she is prejudiced thereby and that such restriction is excessive, unnecessary, not filed in good faith, that the materials are not confidential, or that further dissemination would not deleteriously affect the effective regulation of Gaming or be contrary to the best interests of the Mohegan Tribe.

d. **Procedure Generally**. Except as hereinabove provided, materials that are subject to a subpoena duces tecum issued in the course of legal proceedings in the Mohegan Court System shall be subject to production unless a Motion for Protective Order is filed with the Court pursuant to § 28(e).

§ 31. Physical and Mental Examination

a. **Order for Examination**. When the physical or mental condition of a party, or of a person in the custody of or under the control of a party, is material to the prosecution or defense of an action, the Court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or control.

In the case of an action to recover damages for personal injuries, any party adverse to the plaintiff may file and serve a request that the plaintiff submit to a physical or mental examination at the expense of the requesting party. That request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. Any such request shall be complied with by the plaintiff unless, within ten days from the filing of said request, the plaintiff files in writing an objection thereto specifying to which portions of said request, objection is made and the reasons for said objection. Objections are subject to the procedures set forth in § 15a of these Rules. The Court may make such order as is just in connection with the request. No plaintiff shall be compelled to undergo a physical examination by any physician to whom he objects in writing.

In any other case, such order may be made only on motion for good cause shown after hearing by the Court. The motion shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

b. **Report of Examining Physician.**

1. The party causing the examination to be made shall deliver to the party examined, or his or her attorney, a copy of a written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made, or who has voluntarily agreed to an examination, a like report of any examination, previously or thereafter made, of the same condition. The Court on motion may make an order requiring delivery by a party of a report on such terms as are just, and if a physician fails or refuses to make a report the Court may exclude his testimony if offered at the trial.

2. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives, in that action, or in any other action involving the same controversy, any privilege he may have regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

3. This section does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other section of this chapter.

§32. Requests for Admission

a. Service of Requests for Admission. A party may serve in accordance with § 16 of these Rules upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of § 28 hereof set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the existence, due execution and genuineness of any documents described in the request. The party serving a request for admission shall separately set forth each matter of which an admission is requested and shall leave sufficient space following each request in which the party to whom the requests are directed can insert an answer or objection. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of Court, be served upon any party at any time after the return date. Unless the Court orders otherwise, the frequency of use of requests for admission is not limited.

The party serving such request shall not file it with the Court but shall instead file a notice with the Court which states that he has served a request for admission on another party, the name of the party to whom the request has been directed and the date upon which service upon the party to whom the request has been directed was made.

Each matter for which an admission is requested shall be set forth in separate paragraphs, with sufficient space following each request for insertion of an answer or an objection.

Each matter for which an admission is requested is admitted unless, within thirty days after the filing of the notice required by this section, or within such shorter or longer time as the Court may allow, the party to whom the request is directed files and serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. Any such answer or objection shall be inserted directly on the original request. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may deny the matter or set forth reasons why he cannot admit or deny it. The responding party

shall attach a cover sheet to his response, which shall specify those requests to which answers and objections are addressed.

The party who has requested the admission may move to determine the sufficiency of the answer or objection. No such motion shall be heard by the Court until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the motion and that counsel have been unable to reach an accord. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this rule, it may order that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial.

b. **Effect of Admission**. Any matter admitted under this section is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. The Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

The admission of any matter under this section shall not be deemed to waive any objections to its competency or relevancy. An admission of the existence and due execution of a document, unless otherwise expressed, shall be deemed to include an admission of its delivery, and that it has not since been altered.

§ 33. Failure to Comply with Discovery; Orders for Compliance and Sanctions

a. **Motion for Order Compelling Discovery**. If a party has failed to answer interrogatories or to answer them fairly; or has failed to respond to requests for production; or has failed to submit to a physical or mental examination; or has failed to appear and testify at a deposition noticed under this chapter; or has failed to comply with any other discovery order under this chapter, the discovering party may move for an order compelling such discovery or for sanctions under subparagraph (b) hereof. The motion shall include a certification that the moving party has in good faith conferred or attempted to confer with the person or party failing to make discovery in an attempt to obtain the material or information without Court action.

b. **Orders for Compliance and Sanctions**. The Court may, on the filing of motion under subparagraph (a) hereof, make such orders, as the ends of justice require including the following:

1. The entry of a non-suit or default against the party failing to comply;
2. The award to the discovering party of the costs of the motion, including a reasonable attorney's fee;
3. The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
4. The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence;
5. If the party failing to comply is the plaintiff, the entry of a judgment of dismissal;
6. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment against the non-complying party.

The failure to comply as described in this section may not be excused on the ground that the discovery is objectionable unless written objection as authorized by this chapter has been filed.

c. **Expenses on Failure to Admit**. If a party fails to admit the genuineness of any document or the truth of any matter requested under § 32 of these Rules, and if the party requesting the admissions

thereafter proves the genuineness of the document or the truth of the matter, he or she may apply to the Court for an order requiring the other party to pay the reasonable expenses in making that proof, including reasonable attorneys fees. The Court shall make the order unless it finds that: (1) the admission sought was of no substantial importance or (2) the failure to admit was reasonable.

§ 34. Persons Before Whom Depositions May Be Taken

a. **Persons Before Whom Depositions May Be Taken**. Depositions may be taken before a notary public licensed by the State of Connecticut or a person appointed by the Court. A person so appointed has the power to administer oaths and to take testimony.

b. **Stipulations Regarding Discovery Procedure**. Unless the Court otherwise orders, the parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

§ 35. Place of Depositions

a. Any party to an action may be compelled by notice as provided in § 36(c) of these Rules, to give a deposition at the following locations:

1. At any location within Connecticut which is within 60 miles of the Court;
2. Within 30 miles of his or her residence or place of employment;
3. Such other place as may be fixed by order of the Court.

b. Any non-party deponent may be compelled by subpoena served within Connecticut to give a deposition at a place within 30 miles of his or her residence, or if a non-resident, within any county in Connecticut in which he or she is personally served or at such other place as may be fixed by the Court.

§ 36. Depositions

a. **When Depositions May Be Taken**. Leave of Court granted with or without notice must be obtained only if the party seeks to take a deposition prior to the expiration of 20 days after the return date, except that leave is not required (1) if the defendant has served a notice of taking a deposition or otherwise sought discovery, or (2) if special notice is given as provided herein. Leave of Court is not required for the taking of a deposition by a party if the notice states (1) the person to be examined is about to go out of state and will be unavailable for examination unless his deposition is taken before the expiration of the twenty day period; and (2) sets forth facts to support the statement. The party's attorney shall sign the notice and such signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information and belief the statement and supporting facts are true.

b. **Attendance; Subpoena of Witnesses.** The attendance of witnesses may be compelled by subpoena. A subpoena issued for the taking of a deposition may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents or tangible things which pertain to matters within the scope of § 28 of these Rules.

c. **Notice of Deposition. General Requirements; Non-Stenographic Recording; Production of Documents and Things; Depositions of Organizations**.

1. A party who desires to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 10 days before the date of the deposition, unless the Court upon application with or without notice and for good cause shown prescribes a shorter notice.

2. The notice of deposition shall state:

(A) The time and place for taking the deposition;

(B) The name and address of each person to be examined if known, and if the name is not known, a general description sufficient to identify such persons or the particular class or group to which he or she belongs;

(C) The person before whom the deposition will be taken;

(D) The method by which the deposition will be recorded which shall be one of the methods in subparagraph c(5) hereof.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

3. Notices of deposition shall not be filed with the Court but shall be served upon each party or each party's attorney by personal service or by registered or certified mail.

4. The Court for good cause shown may increase or decrease the time for taking depositions.

5. A deposition may be recorded by:

(A) Stenotype machine;

(B) Tape recording with multi-track tape;

(C) Video camera recording;

(D) Any other method agreed to by the parties or approved by the Court.

All methods for recording a deposition shall assure an accurate and trustworthy recording, which clearly identifies each separate speaker, and allows for prompt preparation of a written transcript or prompt copying of any audio or video tape if ordered by the Court.

6. Any objections to the method of the taking of a deposition shall be filed at least three days prior to the taking of the deposition. Where such objection is so filed, the deposition shall not be taken until the Court Rules on the objection.

7. The notice to a party deponent may be accompanied by a request made in compliance with § 30 of these Rules for the production of documents and tangible things at the taking of the deposition. The procedure of § 30 shall apply to the request.

8. A party may in the notice and in his subpoena name as the deponent a public or private corporation or a partnership or an association or a governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization or officer so named shall designate one or more officers, directors, or managing agents, or other person who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude the taking of a deposition by any other procedure authorized by these Rules.

9. The parties may stipulate in writing, or the Court may upon motion order that a deposition be taken by telephone.

d. **Examination and Cross-Examination; Record; Oath; Objection**. Examination and cross-examination of deponents may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means permitted by subparagraph (c)(5) hereof. If the testimony is taken stenographically, it shall be transcribed at the request of one of the parties.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

In lieu of participating in oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

e. **Motion to Limit or Terminate Examination**. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Court in which the action is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in § 28(e) of these

Rules. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Court in which the action is pending. Upon demand of the objecting party or the deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order under § 28(e).

f. **Submission to Deponent for Signing; Changes**. When the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance, which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefore; and the deposition may then be used as fully as though signed unless on a motion to suppress the Court holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

g. **Certification of Deposition; Exhibits; Copies**

1. The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the deponent. The officer shall then promptly deliver or mail it to the party at whose request it was taken and give notice to all other parties that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the sealed deposition with the Court at the time of trial. If the deposition was recorded electronically and not transcribed, the certification and other materials required herein shall be filed within the electronically preserved record at the time of trial.

Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (1) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition to the Court, pending final disposition of the case.

2. The party on whose behalf a deposition is taken shall at his or her expense provide a copy of the deposition to each adverse party.

§ 37. Use of Deposition in Court Proceeding

a. **General Provisions.** At the trial, or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were there present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

1. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

2. The deposition of any physician, psychologist, chiropractor, naturopathic physician, osteopathic physician or dentist licensed under the laws of any state or country may be received in evidence in lieu of the appearance of such witness at the trial or hearing whether or not the person is available to testify in person at the trial or hearing.

3. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or employee or a person designated under § 36(c)(8) of these Rules to testify on

behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

4. The deposition of a witness other than a person falling within the scope of subparagraph (a)(2) hereof, whether or not a party, may be used by any party for any purpose if the Court finds:

(A) That the witness is dead; (B) That the witness is at a greater distance than 60 miles from the place of trial or hearing, or is out of the United States and will not return before the termination of the trial or hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) That the parties have agreed that the deposition may be so used; (F) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open Court, to allow the deposition to be used.

5. If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and when an action in any Court of the United States or of any state or Indian Tribe or Nation has been dismissed and another action involving the same subject matter is hereafter brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

b. **Objections to Admissibility**. Subject to the provisions of subparagraph (c)(3) hereof, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

c. **Effect of Errors and Irregularities in Deposition**.

1. As to Notice: All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving notice.

2. As to Disqualification of Officer: Objections to taking a deposition because of disqualification of the officer before whom it is to be taken are waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

3. As to Taking of Deposition: (A) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time. (B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct or parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

4. As to Completion and Return of Deposition: Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

CHAPTER 8
PRETRIALS AND TRIALS

§ 38. Pretrials

a. **Assignment for Pretrial.**

1. Cases may be assigned for pretrial by the Clerk.

2. If there are reasons why a case scheduled for pretrial cannot be pretried effectively, for example, cases in which the extent of the injuries are unknown or discovery has not been completed, the Court in its discretion may continue the case to a date certain for pretrial and may limit the time for completion of discovery.

b. **When Cases Not Disposed of at Pretrial.** If the pretrial does not result in the disposition of the case by settlement, judgment by stipulation, or withdrawal, then the case shall be marked pretried and the Court (1) may order one or more additional pretrials, if deemed necessary, or (2) may order the case assigned for trial on a date selected by the Clerk which shall, if reasonably possible, be agreeable to the parties.

c. **Pretrial Procedure**. The Chief Judge or the Clerk may designate one or more available Judges to hold pretrial sessions. Parties and their attorneys or spokespersons shall attend the pretrial except that, with the prior permission of the Court, a party may be available by telephone. Each party claiming damages, or his or her attorney or spokesperson, shall obtain from the Clerk a pre-trial memo form, shall complete the form prior to the pretrial session and shall file with the Clerk a copy at least one day prior to the pretrial and distribute copies of the completed form to each party at the commencement of the pretrial. The defendant shall file its position statement with the Clerk prior to the day of the pretrial. The following matters shall be considered:

1. A discussion of the possibility of settlement;
2. Simplification of the issues;
3. Amendments to the pleadings;
4. Admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial;
5. The limitation of number of expert witnesses;
6. Inspection of hospital records and x-ray films;
7. Exchange of all medical reports, bills and evidences of special damage which have come into possession of the parties or of counsel since compliance with previous motions for disclosure and production or inspection.

d. **Pretrial Orders**. The Court may make any appropriate order at pretrial and such orders shall control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice. Failure to abide by any such order may subject the offending party to a nonsuit or default.

e. **Cases Settled at Pretrial**. Any case, which is settled at pre-trial, shall be withdrawn within 30 days or shall be dismissed thereafter, unless the Court for good cause shown extends the time for withdrawal.

f. **Sanctions**. If a party or party's attorney or spokesperson fails to obey a pre-trial order or if no appearance is made on behalf of a party at a scheduled pretrial conference, the Judge may make such orders with regard thereto as are just, including the orders provided in § 33(b)(1) and (2) of these Rules.

§ 38A. Use of Peacemaker Forum in Mohegan Tribal Court Proceedings

a. **Persons Who May Request Peacemaking**. Any individual who consents to the jurisdiction of the Mohegan Tribal Court or who files a Complaint in the Court may request peacemaking.

b. **Recommendation of the Chief Judge**. The Chief Judge or other judges of the Mohegan Tribal Court may recommend the Peacemaker Forum to the parties in cases within the jurisdiction of the Peacemaker

Forum as set forth in MTC § 1-104. The use of the Peacemaker Forum is not mandatory. A transfer made by the Chief Judge to the Peacemaker Forum may be either a complete transfer or a conditional transfer of the case, either for a fixed time or for specific issue(s) as may be in dispute.

c. **Entering Peacemaking Agreements as Tribal Court Judgments**. The Chief Judge may enter agreements or decisions reached in the Peacemaking Forum as final judgments of the Mohegan Tribal Court, provided that all parties to the peacemaking agree to the entry of such judgment. The Chief Judge, after making in open court the inquiries set forth in MTC § 1-114(d) and upon being satisfied that all requirements set forth therein have been met, may direct that written judgment be prepared by the Clerk or other person and shall ensure that the same complies with the provisions of MTC § 1-114(f), shall make the following findings on the record:

1. The parties are Mohegan tribal members, Indians, or non-Indians consenting to Mohegan Tribal Court jurisdiction;
2. The judgment entered is within the jurisdiction of the Tribal Court to enforce and;
3. Each party understands the proposed final judgment and the nature of any rights being relinquished in agreeing to the judgment and agrees to the terms of the judgment; and
4. The agreement contains sufficient information for its future enforcement once entered as a court judgment.

d. **Judgments after Peacemaking**. Any judgment entered in the Mohegan Tribal Court after peacemaking shall have the full force and effect of any other Tribal Court judgment.

§ 38B. Referrals to Council of Elders on Matters Related To Custom and Tradition

Upon Motion of a party in any case pending in the Tribal Court, or upon the Court's own Motion, the Court may refer any matter or question related to the custom and tradition of the Mohegan Tribe to the Council of Elders. The Council of Elders may respond to any such referral in writing, or in the alternative may request that the Court accept oral testimony from a designated member of the Council of Elders, on the matter or question referred. The Court shall be guided by any opinion rendered by the Council of Elders on matters related to the custom and tradition of the Mohegan Tribe.

§ 38C. Transfer of action between branches of the Mohegan Court System

Whenever it appears to the Court, after suggestion of the parties or otherwise, that any cause, or the trial of any issue therein, filed in the Gaming Disputes Court ought to be heard in the Mohegan Tribal Court, or any cause filed in the Mohegan Tribal Court ought to be heard in the Gaming Disputes Court, the Court, upon its own motion, upon the granting of a motion by any of the parties, or upon written agreement of the parties filed with the Court, may order the transfer of said cause to the appropriate branch of the Mohegan Court System. Upon such order, the Clerk of the Court in which said cause was originally filed shall transmit to the Clerk of appropriate Mohegan Court the original files and papers in such cause with a certificate of such transfer, and the cause shall thereafter proceed in the same manner as if it were originally brought in the Court to which it was transferred.

In the event that it subsequently appears to the satisfaction of the receiving Court that the transfer of said cause was not appropriate, the Court, upon its own motion, the granting of a motion of any of the parties, or upon written agreement of the parties, may order said cause returned to the Court where originally filed, and the Clerk of the Court in which said cause was originally filed shall receive back the original files and papers, together with the decisions and orders of the Court rendered therein, and shall proceed to final judgment in accordance with these Rules.

§ 39. Assignment of Court Trials

a. **Certification that Pleadings are Closed. Assignment for Trial**. A case may not be scheduled for trial until a party accurately certifies on a form provided by the Clerk that the pleadings have been closed,

unless the judicial authority orders otherwise. The Judges of the Court may by order provide for the setting of the cases for trial upon such notice as they deem reasonable.

b. **Trial Management Conference**. Attorneys, spokespersons, and p*ro se* parties shall abide by and comply with all orders of the Court with respect to Trial Management Conferences, and shall submit such joint statements, witness lists, lists of exhibits, with notation of any objections thereto, as may be ordered by the Court. Failure to comply with any Trial Management Orders shall subject the offending party to sanctions in discretion of the Court.

c. **Disposition of Cases Reached for Trial**. When a case has been reached for trial it shall be tried, defaulted, dismissed pursuant to § 52 of these Rules or nonsuited, unless for good cause shown a Judge of the Court assigns it for trial on a future date. Parties and counsel shall be present and ready to proceed to trial on the day and time specified by the Court.

d. **Motion for Continuance; Affidavit**. A motion for continuance of a case assigned for trial shall be made not less than 4 days before the date set for commencement of the trial and shall state the grounds or cause for the motion; but if the grounds of the motion arise thereafter, the motion shall be made as soon as the grounds therefor are known. Prompt telephonic or oral notice shall be given to all other parties. The motion shall state whether parties to the action agree to the continuance.

Any motion for continuance based on the absence of a material witness shall be supported by an affidavit containing the name of the absent witness, a statement of the witness's expected testimony and the basis for expecting such testimony. The Court may refuse to continue such case if the adverse party will admit that the absent witness would, if present, testify to the facts stated in the affidavit and will agree that the same shall be received as evidence at trial, in like manner as if the witness were present and testified thereto. Such agreement shall be made in writing at the foot of the affidavit and signed by the party or his attorney. The same rule shall apply where the motion is grounded on the want of any material or other evidence. In all cases, the Court has discretion to grant or deny any motion for continuance.

e. **Cases Marked Settled**. Any case that does not proceed to pretrial or trial because it has been reported to the Court as having been settled shall be withdrawn within 30 days or shall be dismissed thereafter unless the Court for good cause shown extends the time for withdrawal.

§ 39A. Disqualification or Recusal of Judicial Authority; Review by Chief Judge

a. Any motion seeking the disqualification or recusal of a judicial authority shall be in writing, shall set forth the facts relied upon to show grounds for disqualification or recusal, and shall contain a certificate of the counsel of record filing the same that the motion is made in good faith. The judicial authority may require the filing of an affidavit or other proof of the facts relied upon to show grounds for disqualification or recusal prior to any hearing on such motion.

b. The decision of a judicial authority on a motion seeking the disqualification or recusal of such judicial authority shall be subject to review by the Chief Judge upon the filing by any party of a motion for review.

§ 40. Dismissal for Lack of Diligence

If a party fails to prosecute an action with reasonable diligence, the Court, on its own motion, after notice to the parties and unless good cause for exemption is shown, may dismiss an action for want of prosecution at any time. At least 2 weeks notice shall be required. If a case is printed on the dormancy calendar and a motion for default for failure to plead is filed, only those papers which close the pleadings by joining issues, or raise a special defense, may be filed by any party, unless the Court otherwise orders.

§ 41. Motions Regarding Evidence: Motions in Limine; Application for Leave to Present Additional Evidence in Appeals from Final Agency Decisions

a. The Judge to whom a case has been assigned may in his or her discretion entertain a motion in limine made by any party regarding the admission or exclusion of anticipated evidence. Such motion shall be in writing and shall describe the anticipated evidence and the grounds on which the same is claimed to be admissible or inadmissible, including any prejudice which it is claimed may result therefrom. At the discretion of the Judge to whom the case has been assigned, a hearing may be held regarding any such motion and the requested relief, at which all interested parties shall be heard. The Judge may grant the relief sought in the motion or such other relief as the Judge may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding.

b. In an appeal from a final agency decision pursuant to MTC § 3-221 *et seq.*, either party may file an application to the Court for leave to present additional evidence before the Agency rendering the final decision. The Court, upon a finding that the evidence is material and that there were good reasons for the failure to present it in the course of the proceedings before the Agency, may order that such additional evidence or any part thereof be taken before the Agency upon such conditions as the Court may determine. During any such additional proceedings before the Agency, the appeal shall remain pending in the Court, and the record on appeal shall be supplemented by reason of such additional evidence and any modifications, new findings, or decisions which shall be filed by the Agency with the Court. The foregoing notwithstanding, the parties may stipulate that additional evidence be taken before the Agency upon such conditions as the Court may determine, and the appeal shall proceed as above.

§ 42. Trials – Order of Trial; Testimony; Evidence; Exceptions; Argument

a. **Order of Trial**. In all cases the judicial authority may order that one or more of the issues joined be tried before the others.

b. **Form**. In all trials the testimony of witnesses shall be taken orally under oath and in open Court, unless otherwise provided by these Rules or by Tribal Law.

c. **Administering Oath**. The oath or affirmation shall be administered by the Clerk or a Judge, as the witness takes the stand.

d. **Examination of Witnesses**. The counsel on each side who commences examination or cross-examination of a witness must alone conduct it, except as the Court otherwise permits.

e. **Objections to Evidence**. Whenever any objection to the admission of evidence is made, counsel shall state the grounds for such objection, before any discussion or argument. No argument shall be made on such objection unless requested by the Court.

f. **Exceptions**. Formal exceptions to rulings or orders of the Court are unnecessary.

g. **Argument**. Counsel for each party shall be allowed such time for argument as the Court shall order.

§ 43. Dismissal for Failure to Make Out a Prima Facie Case

If, on the trial of any case, the plaintiff has produced his or her evidence and rested, the defendant may move for a judgment of dismissal and the Court may grant such motion, if in its opinion, the plaintiff has failed to make out a prima facie case. If the motion is denied, the defendant may offer evidence to the same extent as if the motion had not been made. Exhibits premarked as defense exhibits will not be considered by the Court in ruling on such motion unless specifically introduced as evidence during plaintiff's case in chief.

§ 44. Subpoenas

a. **Form and Issuance.**

1. Every subpoena shall contain the following:

(A) The name of the Court, the title of the action, the docket number, and the applicant's name, address and telephone number; and

(B) A Command for each person to whom it is directed to appear and give testimony or to produce and permit the inspection and copying of designated documents or objects, at a time or place specified therein.

2. A subpoena may issue from the Clerk, a Judge of the Court or from an attorney admitted to practice in the Mohegan Court System.

b. **Service.**

1. Within Mohegan Tribal Lands a subpoena may be served by tribal police or other officer authorized by tribal law. Outside tribal lands, subpoenas may be served by any person authorized to serve process within the jurisdiction of the person subpoenaed. Service of subpoenas shall be made by personal delivery thereof to the person to be subpoenaed.

2. Subpoenas shall be served not less than 18 hours prior to the time designated for the person summoned to appear, unless the Court orders otherwise.

3. Proof of service shall be made, if necessary, by filing a true and attested copy of the subpoena with the Court, endorsed with the date and time of service and the name of the person served, by the officer making service.

CHAPTER 9
JUDGMENTS AND COSTS

§ 45. Stipulated Declaratory Judgments

A question, which might be the subject of a civil action seeking declaratory relief, may be submitted by parties having an interest therein to the Court upon stipulation.

If it appears that the proceeding is submitted in good faith, the Court may hear and determine the case or may approve a stipulation and render judgment accordingly.

§ 46. Statement of Decision

The judicial authority shall set forth its decision in writing on the issues in the matter and shall include in its decision its conclusions as to each claim of law raised by the parties and the factual basis therefor.

§ 47. Setting Aside or Opening Judgments; Clerical Mistakes; Motions for Collateral Source Reduction; Motions for Reduction of Awards in Excess of Tribal Liability Insurance

a. **Setting Aside or Opening Judgments.** Unless otherwise provided by law, any civil judgment or decision rendered in the Trial Court may not be opened or set aside unless a motion to open or set aside is filed within 4 months succeeding the date on which notice was sent. The parties may waive the provisions of this paragraph or otherwise submit to the jurisdiction of the Court. Upon filing a motion to open or set aside a civil judgment, the moving party shall pay to the Clerk the required filing fee.

b. **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and other errors and omissions therein may be corrected by the Court on its own initiative at any time, or on motion of any party, after such notice, if any, as the Court may order. After an appeal is filed, such mistakes may be corrected with leave of the Court of Appeals.

c. **Motions for Collateral Source Reduction.** Motions pursuant to MTC § 3-251(c) for reduction of any award by reason of collateral source payments shall be filed with the Clerk within 10 days after the date

the Clerk issues notice of the decision of the judicial authority; provided that, for good cause shown or by stipulation of the parties, the judicial authority may extend this time. At the discretion of the judicial authority, the Clerk shall schedule a hearing on such motion. The foregoing notwithstanding, the parties may file a Stipulation of Collateral Source Deduction at any time, which the Clerk shall file with the decision of the judicial authority and which shall become a part of the judgment of the Court.

d. **Motions for Reduction of Awards in Excess of Tribal Liability Insurance.** Motions pursuant to MTC § 3-251 (b)(4) for reduction of any award on grounds that damages awarded exceed the limits of the applicable insurance policies of The Mohegan Tribe, The Mohegan Tribal Gaming Authority, or any Mohegan Tribal Entity shall be filed with the Clerk within 10 days after the date the Clerk issues notice of the decision of the judicial authority; provided that, for good cause shown or by stipulation of the parties, the judicial authority may extend this time. The Clerk shall schedule a hearing on such motion at which all interested parties shall have the opportunity to be heard.

§ 48. Judgment Files: Satisfaction of Judgment

a. Judgment files shall be prepared when ordered by the judicial authority.

b. Upon the full satisfaction of any judgment, notice shall be filed with the Clerk by any party in whose favor judgment was rendered that any such judgment has been fully paid and satisfied.

§ 49. Summary Judgment

a. **Summary Judgments – Trial Issue as to Damages Only**. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to damages.

b. **Filing Motion**. Any party may, at any time prior to the assignment of a case for trial, move for summary judgment, and with the permission of the Court may file such motion after the case has been assigned for trial. These Rules shall be applicable to counterclaims and cross-complaints. The pendency of a motion for summary judgment shall delay trial only at the discretion of the trial Judge.

c. **Proceedings on Motion**. A motion for summary judgment shall be supported by such documents as may be appropriate including affidavits, depositions, disclosures, written admissions and like documents which show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The adverse party shall file opposing affidavits or other documentary evidence as provided in this rule within the time set forth in § 15d of these Rules, setting forth specific facts showing that there is a material issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

d. **Form of Affidavits**. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto.

e. **When Appropriate Documents Unavailable**. Should it appear from affidavits of a party opposing a motion for summary judgment, that he cannot, for reasons stated in an affidavit filed with the Court, present facts essential to justify his opposition, the Court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

f. **Affidavits Made in Bad Faith**. Should it appear to the satisfaction of the Court at any time that any affidavit is made or presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the offending party to pay to the other party the reasonable expenses which the filing of the affidavit caused him to incur, including attorneys fees, and any attending party or attorney may be adjudged guilty of contempt.

g. **Judgment**. Judgment shall be rendered forthwith if the pleadings and any other proof show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

§ 50. Offer of Compromise

a. **Offer of Compromise by Defendant; How Made**. In any action on contract, or seeking the recovery of money damages, whether or not other relief is sought, the defendant may not later than 30 days before the commencement of evidence, file with the Clerk of the Court a written offer of compromise signed by the defendant or the defendant's attorney, directed to settle the claim underlying the action for a sum certain.

b. **Acceptance of Defendant's Offer**. The plaintiff may, within 60 days after being notified by the defendant of the filing of an offer of compromise, file with the Clerk a written acceptance of the offer signed by the plaintiff or the plaintiff's attorney agreeing to settle the underlying action for the sum certain specified in the defendant's offer of compromise. Upon the filing of the written acceptance and receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the Clerk and the Clerk shall record the withdrawal of the action against the defendant accordingly. No trial shall be postponed because the period within which the plaintiff may accept such offer has not expired, except at the discretion of the judicial authority.

c. **Defendant's Offer Not Accepted**. If the plaintiff does not, within the time allowed for acceptance of the offer of compromise and before any evidence is offered at the trial, file the plaintiff's notice of acceptance, the offer shall be deemed to be withdrawn and shall not be given in evidence; and the plaintiff, unless recovering more than the sum specified in the offer, with interest from its date, shall recover no costs accruing after the plaintiff received notice of the filing of such offer, but shall pay the defendant's costs accruing after said time. Such costs may include reasonable attorney's fees in an amount not to exceed $350. Nothing in this section shall be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action. The provisions of this section shall not apply to cases in which nominal damages have been assessed upon a hearing after a default or a motion to strike has been denied.

d. **Offer of Compromise by Plaintiff; How Made**. After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than 180 days after service of process is made upon the defendant is such action but not later than 30 days before the commencement of evidence, file with the Clerk a written offer of compromise signed by the plaintiff of the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain. The plaintiff shall give notice of such offer of compromise to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant.

e. **Acceptance of Plaintiff's Offer**. Within 60 days after being notified of the filing of such offer of compromise and prior to an award by the judicial authority, the defendant or the defendant's attorney may file with the Clerk a written acceptance of the offer of compromise agreeing to settle the claim underlying the action for the sum certain specified in the plaintiff's offer. Upon such filing, and the receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the Clerk and the Clerk shall record the withdrawal of the action against the defendant accordingly.

f. **Plaintiff's Offer Not Accepted**. If such offer of compromise is not accepted within 30 days and prior to the rendering of a verdict by the jury or an award by the judicial authority, such offer of compromise shall be considered rejected and not subject to acceptance unless refiled.

g. **Offer of Compromise and Acceptance Included in Record.** Any such offer of compromise and any acceptance of the offer of compromise shall be included by the Clerk in the record of the case.

h. **Judgments where Plaintiff Recovers an Amount Equal to or Greater than Offer**. After trial the judicial authority shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the judicial authority ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in that plaintiff's offer of compromise, the judicial authority shall add to the amount so recovered 8% annual interest on said amount,

computed as provided in General Statutes § 52-192a, may award reasonable attorney's fees in an amount not to exceed $350, and shall render judgment accordingly. Nothing in this section shall be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action.

§ 51. Enforcement of Judgments

a. Any procedure set forth in the Connecticut Practice Book for the enforcement of civil judgments may be utilized in the Mohegan Court System for the enforcement of any judgment rendered therein. Recognition and enforcement of foreign judgments shall be governed by the provisions of MTC § 1-5(b).

b. Process to enforce a judgment for the payment of money shall be a writ of execution unless the Court otherwise directs.

§ 52. Procedure Where Party Fails to Comply With Order of Court or to Appear for Trial

If a party fails to comply with an order of Court or a citation to appear or fails without proper excuse to appear for trial, the party may be nonsuited or defaulted by the Court.

§ 53. Costs

a. **Allowance**. Costs shall be allowed to the prevailing party as provided by these Rules, unless the Court otherwise directs, subject to such limitations as provided by The Mohegan Tribe Code.

b. **Taxation**. Costs shall be taxed by the Clerk upon the filing of a bill of costs by the prevailing party. If the adverse party objects to any bill of costs within 10 days of the filing thereof, the Clerk shall not tax costs without notice to the adverse party.

c. **Schedule of Fees**. The following schedule of fees shall be taxable as costs:

Entry of any action in the Gaming Disputes Court except as provided by Tribal Law, $300.00

Entry of any action in the Mohegan Tribal Court except as provided by Tribal law or by these Rules, $40.00

Appeal to the Gaming Disputes Court of Appeals, $300.00

Appeal to the Mohegan Tribal Court of Appeals, $40.00

Service of any document within the Mohegan Reservation, the actual cost not to exceed $35.00

Service of any document without the Mohegan Reservation, the actual cost not to exceed $35.00

For each deposition taken, $75.00

Maps, plans, drawings and photographs necessary or convenient in the trial of any action, a reasonable sum

Copies of records used in evidence, the Court's and Clerk's fees

For any interpreter necessary in the trial of a civil action, a reasonable sum.

§ 54. Defaults

a. **Entry by Clerk**.

1. Where a defendant is in default for failure to plead pursuant to § 16(a) hereof, the plaintiff may file a written motion for default, which shall be acted on by the Clerk upon filing. The Clerk shall set aside the default if a party defaulted under this section files an answer or reply before a judgment after default has been rendered by the Court. The procedures set forth herein shall not apply to actions brought under The Debt Collection Ordinance.

2. Where either party is in default for failure to comply with § 16(a), § 21, or with any discovery request filed under these Rules, the adverse party may file a written motion for a nonsuit or default with the Clerk. Except as provided in subparagraph (a)(1) hereof, any such motion shall be filed with the Clerk and unless the pleading in default or disclosure be made within 10 days thereafter, the judicial authority shall rule on such motion.

3. If no appearance has been entered for any party within the time required by these Rules, any party may make a motion that a nonsuit or default be entered for failure to appear. It shall be the responsibility of counsel filing a motion for default for failure to appear to serve upon the defaulting party a copy of the motion, by mailing a copy of the motion and all related papers to the defendant. Except for proceedings under the Debt Collection Ordinance, motions for default for failure to appear shall be acted on by the Clerk upon filing. Such motion shall be granted if the party who is the subject of the motion has not appeared. If the defaulted party files an appearance in the action prior to the entry of a judgment after default, the default shall be automatically set aside by the Clerk. Motions for nonsuit for failure to appear shall be acted upon by the judicial authority.

b. **Judgments After Default**.

1. Prior to entry of any judgment after default where the defendant has failed to appear, an affidavit must be filed pursuant to the Servicemember's Civil Relief Act,, and unless it appears to the Court that the defendant is not in the military service, the defendant shall be accorded the civil protections provided therein.

2. In all cases, any party claiming a judgment by default shall apply to the Court therefor. If in order to enable the Court to enter judgment or carry it into effect, it is necessary to take evidence to establish the amount of damages or to establish the truth of any allegations, the Court may conduct such hearings, as it deems proper.

3. If there is a default in appearance, and the action is based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, reasonable attorneys fees and other lawful charges, the plaintiff may file a motion for default for failure to appear and motion for judgment. Such motion shall have annexed thereto an affidavit of debt, a military affidavit and if costs are claimed, a bill of costs.

If the instrument on which the contract is based is a negotiable instrument, the affidavit shall state that the instrument is now owned by the plaintiff, and a copy of the executed instrument shall be attached to the affidavit. If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which interest is computed which shall not be later than the date of the entry of judgment.

If the moving party claims any lawful charges other than interest, including a reasonable attorney's fee, he or she shall in the affidavit of debt set forth the terms of the contract providing for such charge and the amount claimed. If a claim for a reasonable attorney's fee is made, the moving party shall include in his affidavit of debt the reasons for the specific amount requested in order that the Court may determine the relationship between the fee requested and the actual and reasonable costs incurred by counsel.

4. Promise to Pay Liquidated Sum. In actions based on an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorney's fee and other lawful charges, the moving party may file with his motion for default for failure to appear and judgment and affidavit of debt and affidavit pursuant to the Servicemember's Civil Relief Act and may proceed in accordance with the provisions of §§ 17-24 *et seq.* of the Connecticut Rules of Procedure in Civil Cases.

5. Upon receipt of the motion and affidavits under subparagraph (b)(4) hereof, the Clerk shall bring the motion and affidavits to the attention of the Court and if the Court orders judgment entered, the Clerk shall mail the proposed judgment and notice to all parties.

c. **Setting Aside Defaults**. For good cause shown the Court may set aside the entry of judgment on default within 4 months from the date of entry of the judgment.

d. **Judgment Against the Mohegan Tribe or Tribal Entity**. No judgment by default shall be entered against the Mohegan Tribe or an officer or agency thereof or any Tribal Entity unless the claimant establishes a right to relief by evidence satisfactory to the Court.

CHAPTER 10
CLERKS FILES AND RECORDS; FEES; AMENDMENTS

§ 55. Clerk and Clerk's Office

a. **Clerk's Office**. The Clerk's office shall be open each weekday from Monday to Friday, inclusive, at such hours as may be established by the Chief Judge, except that it shall not be open on tribal holidays. If the last day for filing any matter in the Clerk's office falls on a day when such office is not open, as thus provided, or is closed pursuant to authorization of the Chief Judge due to the existence of special circumstances, then the last day for filing shall be the next business day when such office is open.

b. **Electronic Signature of Clerk**. An electronic signature of the Clerk, on any writ, summons, subpoena, judgment, order or notice, except executions, shall have the same validity as the Clerk's signature.

c. **Notice of Orders and Judgments**. The Clerk shall give notice to attorneys of record, spokespersons, and *pro se* parties unless otherwise provided by these Rules, of all judgments, nonsuits, defaults, decisions, orders and rulings unless made in their presence. The Clerk shall record in the Court file the date of issuance of the notice.

d. **Issuance of Subpoenas**. As provided herein, at the request of a *pro se* litigant the Clerk of the Court may sign a subpoena for the appearance and testimony of any witness who is subject to the jurisdiction of the Court pursuant to MTC § 1-15, § 3-71 or Article XIII, Section 2 of the Constitution of The Mohegan Tribe of Indians of Connecticut, and/or the production of documents or other items, at any deposition, hearing, trial or other judicial proceeding in the Court. A *pro se* litigant seeking to compel the attendance of one or more necessary witnesses in connection with such judicial proceedings shall file an application seeking the issuance of a subpoena for that purpose by the Clerk of the Court. After verifying the scheduling of the proceeding, the Clerk shall present the application to the Judge to whom the matter has been assigned or, in his or her absence, to the Chief Judge, who shall conduct an ex parte review of the application and may direct or deny the issuance of subpoenas as such Judge deems warranted under the circumstances, keeping in mind the nature of the proceeding and the necessity, relevancy and materiality of the testimony or production sought.

§ 56. Clerk to Maintain Books and Records

a. **Civil Docket**. The Clerk shall keep a daybook in which to enter the date upon which each case is filed on the docket; each entry shall include the names of the parties, the date of filing and the docket number assigned to each case.

The Clerk shall keep the civil docket; shall enter on the docket all civil actions filed under these Rules; and shall assign docket numbers to each action. Upon the filing of a complaint, the Clerk shall enter on the docket the name of each party and the name and address of the plaintiff's attorney, spokesperson, or *pro se* party; thereafter, the Clerk shall enter on the docket the name and address of any attorney or spokesperson appearing for the defendant. All papers filed with the Clerk, all appearances, orders, and judgments shall be noted chronologically on the docket; each docket entry shall briefly show the nature of the papers filed, the substance of each order or judgment of the Court and the returns showing service of process. In the alternative, the docket entry of an order or judgment of the Court may incorporate by reference the designated order, judgment or opinion or other document filed with the Clerk by the Court.

b. **Custody of Files**. The Clerk shall not permit files, records, transcripts or exhibits to be taken from the Clerk's office, except for use in the Courtroom or upon order of a judicial authority.

§ 57. Jurisdiction Unaffected

These Rules shall not be construed to extend or limit the jurisdiction of the Mohegan Court System.

§ 58. Repeal of Prior Rules

The Mohegan Rules of Civil Procedure as set forth herein shall govern practice and procedure in the Mohegan Gaming Disputes Court and Mohegan Tribal Court. All prior Rules of Civil Procedure of the Gaming Disputes Court and Mohegan Tribal Court are hereby repealed.

§ 59. Title and Citation

These Rules shall be known and cited as the Mohegan Rules of Civil Procedures. The official citation form to these Rules shall be: MRCP.

§ 60. Schedule of Fees

(a) **Filing Fees**:

The fees of the Gaming Disputes Court shall be as follows:

Entry of any action, except as provided by tribal law:	$300.00
Motion to Open or Modify Judgment:	$ 50.00

The fees in the Mohegan Tribal Court shall be as follows:

Entry of any action, except as provided by tribal law:	$ 40.00
Motion to Open or Modify Judgment:	$ 50.00
Matters involving minor children:	No filing fee

A party may file an Application for Waiver of Filing Fee with the Clerk of the Court. Any Filing Fee may be waived or reduced by order of a Judge of the Mohegan Court System upon a finding of indigency.

(b) **Application for Admission to Bar**:

Admission to the Gaming Disputes Court Bar:	$75.00
Admission to Mohegan Tribal Court Bar:	$25.00 Non-attorney spokespersons $75.00 Attorney spokespersons

(c) **Miscellaneous Fees**:

Copies:	$ 1.00 per page
Transcript of Proceedings:	Actual cost of transcript (including Court copy)
Request for recording of Court proceedings:	$15.00 per tape
Certification of any document:	$ 5.00 plus copy costs

(d) **Mohegan Tribal Court Peacemaker Forum**:

Request for Peacemaker Forum:	No filing fee
Registration of Peacemaking Agreement:	$30.00

All fees shall be payable to "The Mohegan Court System."

§ 61. Effective date

These Rules shall apply to all trials, hearings, and depositions occurring on or after the effective date of adoption.

§ 62. Waiver of Court Filing Fee

a. **Application**. Any person who intends to bring a civil action under these Rules may, without fee, file an application in the Court asking for waiver of the Court filing fee. Such application shall be accompanied by the affidavit of the plaintiff setting forth the applicant's monthly income and expenses; and assets and liabilities.

b. **Waiver of Filing Fee**. The application for waiver of filing fee shall be filed with the complaint. The action shall then be entered on the docket. If the Court finds that the plaintiff is without sufficient funds to pay the filing fee, it shall order that the fee be waived. If the Court denies the application, the action shall be dismissed without prejudice, unless within 10 days after the denial the plaintiff pays the fee to the Clerk.

§ 63. Amendments

Amendments to the Mohegan Rules of Civil Procedure may be made as provided by Tribal Law. Amendments shall be effective upon adoption by the Chief Judge.

CHAPTER 11
ATTORNEY DISCIPLINE

§ 64. Disciplinary Procedures

a. Any person who claims that there has been a violation of the Rules of Professional Conduct for attorneys of the Mohegan Court System may report such claimed violation in writing to the Chief Judge of the Mohegan Court System.

b. The Chief Judge, within a reasonable time after receipt of such complaint, shall appoint a Special Bar Counsel to conduct an investigation of the complaint; the fees of Special Bar Counsel shall be paid as an administrative expense of the Court.

c. Written notice of the complaint shall be provided to the attorney (herein respondent) against whom it is filed and shall include a copy of the complaint. The respondent shall have 15 days from the date of the notice within which to respond to the complaint.

d. The Chief Judge and one other Judge of the Mohegan Court System , shall determine whether there is probable cause to believe that a violation of the Rules of Professional Conduct has occurred. Such determination shall be made within 60 days after respondent's response to the complaint is due. Written notice of such determination, and the reasons therefor, shall be given to the complainant and respondent. If deemed appropriate, a complaint may be dismissed at this stage, without a probable cause determination, for one or more of the following reasons:

1. The complaint alleges only a fee dispute and not a clearly excessive or improper fee;
2. The complaint does not contain a claim of misconduct;
3. The complaint does not contain sufficient specific allegations on which to conduct an investigation;
4. The complaint alleges personal behavior outside the practice of law, which does not constitute a violation of the Rules of Professional Conduct.

e. If a determination is made that there is no probable cause that a violation of the Rules of Professional Conduct has been committed, the case shall be closed and sealed until further order of the Court.

f. If a determination is made that there is probable cause that a violation of the Rules of Professional Conduct has been committed, the appropriate Mohegan Court shall conduct a hearing on the complaint. The hearing shall be conducted before not less than two Judges of the Court, with Special Bar Counsel presenting the case against the respondent. Reasonable notice of the time, date and place of hearing shall be given to all parties to the complaint.

g. The hearing shall be closed to the public and shall be governed by the following procedures:

1. All parties to the complaint may be represented by legal counsel;
2. The parties or their counsel may examine and cross-examine witnesses;
3. Any motions shall be filed not less than 10 days in advance of the date scheduled for hearing;
4. Continuances may be granted in the discretion of the Court, for good cause shown.

h. The Court shall render its decision in writing, within 45 days after completion of the hearing. Such decision shall be final and not subject to any appeal. Both the complainant and the respondent shall receive written notice of the Court's determination and the reasons therefore.

i. If the Court determines after its hearing that an attorney has violated the Rules of Professional Conduct, it may impose one or more of the following sanctions:

1. Public or private reprimand;
2. Assessment of costs or monetary fines against such attorney;
3. Suspension of the right to practice before the Mohegan Court System for a fixed period of time;
4. Disbarment of the attorney.

j. Nothing contained herein shall prevent any Judge of the Court who observes a violation of the Rules of Professional Conduct, from taking immediate action concerning such violation. Such Judge shall then refer such matter to the Chief Judge in accordance with the procedures set forth herein.

k. The Chief Judge shall transmit a certified copy of any order imposing discipline on an attorney, to any other jurisdiction in which the disciplined attorney is licensed to practice.

§ 65. Reciprocal Discipline

a. If any attorney admitted to practice in the Mohegan Court System has been subject to discipline in another jurisdiction, and the Court has received a certified copy of such disciplinary order, the Court shall appoint Special Bar Counsel to serve notice upon the respondent attorney as hereafter set forth. The Court shall enter an order of notice containing a copy of the disciplinary order from the other jurisdiction and directing that within 30 days of service, with proof of service on Special Bar Counsel, the respondent attorney inform the Court why the imposition of identical discipline by the Mohegan Court System would be unwarranted. Special Bar Counsel shall cause this order of notice to be served upon the respondent attorney by registered or certified mail with restricted delivery and return receipt requested.

b. Upon the expiration of the 30 day period, the Court shall assign the matter for a hearing. After hearing, the Court may enter such order it deems appropriate, including imposition of identical discipline.

§ 66. Conviction of Crimes

a. An attorney shall send to the Clerk of the Mohegan Court System written notice of his or her conviction of a felony in any jurisdiction, as defined in the jurisdiction in which the attorney is convicted, within 10 days of entry of the judgment of conviction. The written notice shall include the name and address of the Court in which the judgment of conviction was entered, the date of the judgment of conviction and the specific section of the applicable criminal or penal code upon which the conviction is predicated. The Clerk shall transmit a copy of any such notice to the Chief Judge of the Mohegan Court System .

b. Upon notice of an attorney's conviction of a felony by any jurisdiction, the Chief Judge shall appoint Special Bar Counsel. Special Bar Counsel shall obtain a certified copy of the attorney's judgment of conviction and file it with the Clerk of the Court. The Clerk of the Court shall provide a copy thereof to the Chief Judge within 10 days. Such certified copy of the judgment of conviction shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney on the basis of the conviction. The sole issue to be determined in a disciplinary proceeding predicated upon the conviction of a felony shall be the extent of the final discipline to be imposed.

c. Upon the filing with the Court of a certified copy of a judgment for conviction of a felony, the Court shall enter an order to show cause why the attorney should not be suspended or disbarred from the practice of law in the Mohegan Court System. The Court may, in its discretion, choose to defer the hearing on the order to show cause until all appeals from the conviction are concluded. The Court may in its discretion enter an order immediately suspending the attorney, pending final disposition of a disciplinary proceeding predicated upon the judgment of conviction. Thereafter, upon good cause shown, the Court may in the interests of justice, set aside or modify the interim suspension.

d. An attorney suspended hereunder will be reinstated upon demonstrating to the Court that the underlying judgment of conviction has been reversed or set aside. The vacating of the interim supervision shall not automatically terminate any disciplinary proceeding pending against the attorney.

e. An attorney's failure to send the written notice required by this section shall constitute misconduct.

CHAPTER 12
DISCIPLINE AND REMOVAL OF JUDGES

§ 67. Filing of Complaints

Complaints filed against a Judge shall be made in writing and signed by the complainant. Complaints shall be filed with the Clerk of the Court, who shall assign a docket number, acknowledge receipt of the complaint and immediately notify the Judicial Review Board.

§ 68. Judicial Review Board

a. **Establishment**. The Judicial Review Board is hereby established for the purpose of hearing complaints concerning the conduct of Judges of the Mohegan Court System , and to impose disciplinary actions against them, including removal from office, if warranted, after hearing.

b. **Members**. The Judicial Review Board shall consist of 3 members, as follows:

1. The Chief Judge of the Court. In any case where the Chief Judge is the subject of the Board's review, another Judge of the Mohegan Court System Court shall serve as a member of the Board; and

2. The Attorney General of The Mohegan Tribe, or his designee, who shall be an attorney on the legal staff of the Mohegan Tribe; and

3. An attorney admitted to practice in the appropriate Mohegan Court, who shall be designated by the Judge serving as a member of the Board.

The Judge who serves on the Judicial Review Board shall serve as chairperson and shall have the right to vote on all decisions of the Board.

§ 69. Proceedings of Judicial Review Board

a. **Preliminary Determination**. Within 20 days after the filing of a complaint, the Board shall meet and consider whether any complaint received is within the Board's authority to hear. The Board shall make one of the following determinations:

1. That the complaint is not a type which it has authority to hear, in which case it shall dismiss the case, and notify both the complainant and the Judge complained against of the Board's decision on the complaint; or;

2. That the complaint is within its authority to hear in which event it shall provide a copy of the complaint to the Judge complained against. Provided, that the Board may determine after conducting an investigation that a complaint within its authority to hear is unfounded, frivolous, or otherwise provides insufficient cause for proceeding, in which case it shall dismiss the complaint, and notify the complainant and the Judge complained against of its decision.

b. **Hearings**. Unless a complaint is dismissed pursuant to § 69(a)1 or § 69(a)2 hereof, the Board shall conduct a hearing on the complaint.

1. The Board hearing shall be on the record with all witnesses sworn. The Board shall have the power to subpoena witnesses.

2. The Judge complained against, may be represented by counsel at the Judge's own expense, may present evidence, examine and cross-examine witnesses and subpoena witnesses and documents.

3. The Board shall issue written notice to the Judge describing the alleged misconduct and the facts upon which they are based. Within 15 days after receipt of notice, the Judge shall file a written answer, setting forth the Judge's admission, denial and/or affirmative defenses.

4. The Board shall provide at least 15 days notice of the scheduled hearing to the Judge.

5. Prior to any hearing the Board may conduct such investigation, as it deems appropriate, provided it shall make available to the Judge who is the subject of the Board's investigation all information it has acquired concerning the charges prior to the hearing. In connection with its investigation, the Board shall have the power to subpoena witnesses and require testimony under oath.

c. **Grounds for Discipline and Removal**. In accordance with Article XIII, § 2.6 of the Mohegan Constitution, Judges of the Gaming Disputes Court shall be subject to discipline and removal, for cause, pursuant to the Rules of the Court. The term "for cause" as used in this section shall mean the following:

1. There has been a willful violation by the Judge of any provision in the Code of Judicial Conduct, and that such violation is of such a serious nature as to warrant disciplinary action; or

2. The Judge has been convicted of a felony or of a misdemeanor involving moral turpitude; or

3. The Judge has been disbarred or suspended as an attorney-at-law.

In accordance with MTC § 1-9, the Connecticut Code of Judicial Conduct as published in the Connecticut Practice Book, as may be amended from time to time, shall be the Code of Judicial Conduct for the Mohegan Court System to the extent applicable, except that Canon 5 (F) prohibiting judges from practicing law, shall not apply to judges of the Mohegan Court System. The proceedings for discipline and removal of judges of the Gaming Disputes Court shall be followed in cases involving judges of the Mohegan Tribal Court.

d. **Board Decisions and Findings.**

1. All decisions of the Board to discipline or remove a Judge shall be by unanimous vote. Decisions shall be in writing and shall contain findings of fact and conclusions of law. Decisions of the Judicial Review Board shall be final and not subject to any appeal.

2. After hearing, the Board shall decide whether there is clear and convincing evidence that:

a. There has been a willful violation by the Judge of any provision in the Code of Judicial Conduct, and that such violation is of such a serious nature as to warrant disciplinary action; or

b. The Judge has been convicted of a felony or of a misdemeanor involving moral turpitude; or

c. The Judge has been disbarred or suspended as an attorney-at-law.

3. If the Board decides that one or more of the charges in §§ 69(c)1– (c)3 has been established by clear and convincing evidence it may order such discipline as it deems appropriate, and it shall provide notice of its written decision to the complainant and to the Judge complained against. If the Board decides that one or more of the charges in §§ 69(c)1– (c)3 has not been established by clear and convincing evidence, it shall dismiss the complaint and provide notice to the complainant and the Judge complained against.

e. **Confidentiality**. All proceedings before the Board shall be confidential, and no information shall be published by the Board, except that:

1. The Mohegan Tribal Council, upon written request, shall be provided with information on any complaints made against any judicial candidate for reappointment, and the Board's disposition thereof; and

2. The Judge complained against may request that the proceedings before the Board be open to the public.

§ 70. Proceedings in the event a Judge becomes incapable of performing judicial duties

a. Pursuant to the duty to provide administrative superintendence of the Court, in the event that the Chief Judge becomes aware or has reason to believe that a Judge of the Mohegan Court System may have become incompetent or otherwise incapable of performing the duties of his or her office, the Chief Judge shall make reasonable inquiry to determine whether or not probable cause exists to question the competency or capability of such Judge.

b. In the event that the Chief Judge determines that reasonable cause exists to question the competency or capability of a Judge of the Mohegan Court System to perform the duties of his or her office, and that it is more probable than not that such lack of competency or capability will continue for a period of time likely to impair the function of the Court or the administration of justice, the Chief Judge shall promptly file such findings with the Clerk of the appropriate Mohegan Court pursuant to § 67, *et seq.,* to initiate proceedings by the Judicial Review Board.

c. Pursuant to the standards set forth in § 69(c), the Judicial Review Board, upon finding by clear and convincing evidence that a Judge of the Mohegan Court System has become incompetent or incapable of performing the duties of his or her office and that such lack of competency or capability will continue for a period of time likely to impair the functioning of the Court or the administration of justice, may take any of the following actions that it deems appropriate:

1. Suspend or place on inactive status such Judge for such period or periods of time as the Board deems appropriate, if it appears to the Board that good cause exists to believe that such Judge may be restored to competency and capability during such period or periods of time;

2. Remove the Judge on grounds of incapacity to perform the duties of his or her office; or

3. Enter such other orders regarding treatment as it deems appropriate, during which time the proceedings may, in the Board's discretion, be held in abeyance to assure compliance.

d. In the event that two or more Judges of the Mohegan Court System determine that reasonable cause exists to question the competency or capability of the Chief Judge to perform the duties of his or her office, and that it is more probable than not that such lack of competency or capability will continue for a period of time likely to impair the function of the Court or the administration of justice, said Judges may file such findings with the Clerk of the appropriate Mohegan Court, pursuant to § 67, *et seq.*, to initiate proceedings by the Judicial Review Board. In such case, the duties otherwise performed by the Chief Judge under § 68 *et seq.* shall be assigned by the Clerk to the next Judge in rotation not a party to the finding of reasonable cause, or to the next Judge in rotation if all remaining Judges have participated in such finding.

THE MOHEGAN TRIBE
MUNDO WIGO

ORDER

Pursuant to Article XIII Section 2.1 of the Constitution of the Mohegan Tribe of Indians of Connecticut, and §§ 1-51 and 3-27 of the Mohegan Tribe Code, the attached are hereby adopted as the Mohegan Rules of Civil Procedure (MRCP) for the Mohegan Court System, effective July 1, 2009, to apply as provided therein to all cases now pending in or hereafter brought to the Gaming Disputes Court and the Mohegan Tribal Court.

THE MOHEGAN COURT SYSTEM

By Paul M. Guernsey
Paul M. Guernsey, Chief Judge
June 30, 2009

THE MOHEGAN TRIBE
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