

Fort Peck Tribal Court
807 Court Avenue - P.O. Box 1027
Poplar, MT 59255



Appendix 2 – Rules of Civil Procedure Fort Peck Tribal Court

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Chapter 1.

Rule 1. Effective Date-Divisions-Admission To Bar.

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1-1. Effective Date

These Revised Rules of Civil Procedure of the Fort Peck Tribal Court, Fort Peck Indian Reservation supplement Title 8 of the Comprehensive Code of Justice (CCOJ), the Federal Rules of Civil Procedure, Title 28 USC and will be effective on October 1st 2007. Subsequent amendments to these Rules shall be effective on the date of approval by the Tribal Executive Board as per 2 CCOJ 104.

1-2. Decorum

(a) **Opening Court:** When the Court first convenes in the morning and afternoon recess, the bailiff shall, in an appropriate manner, announce the opening of Court, and all persons in attendance in the courtroom shall rise until the judge has taken the bench.

(b) The judges of the Court shall, when presiding in open court, wear judicial robes.

(c) Any attorney, lay counselor or prosecutor appearing before the Court will be appropriately attired, including neckties for males, and corresponding attire for females.

(d) Counsel for either party shall address a presiding judge in the manner prescribed in Court practice. A first name basis with the judge is prohibited at any time the Court is in session. During arraignments the defendant and counsel shall stand before the bench until dismissed.

(e) Concealed weapons are not allowed at any time in the courtroom.

1-3. Divisions of the Court.

The Court is divided into divisions as follows:

Criminal Division, located in Poplar;

Civil Division, located in Poplar;

Juvenile Division, located in Poplar.

1-4. Assignment of Cases.

(a) All of the judges designated to serve shall have presumptive jurisdiction over all criminal and civil cases filed, and may make and sign any orders, decrees or judgments.

(b) The Chief Judge shall randomly assign all cases. Application for orders shall be to the judge specifically assigned to that case.

1-5. Venue.

Venue lies with all Courts and divisions. All causes of action can be filed in any appropriate division in Poplar.

1-6. Court Calendar.

The Chief Judge shall determine the calendar of each division. Each judge shall set the calendar for each individual case assigned to them.

1-7. Admission to the Bar of this Court.

(a) **Eligibility:** Eligibility to apply for admission to practice before the Fort Peck Tribal Courts shall be determined by 2 CCOJ 501.

(b) **Procedure on Admission:** Persons applying for admission must personally appear in Court at the time the application for admission under Section 501 is made. Before any certificate of admission shall be issued, the applicant must take and subscribe to the following oath or affirmation:

"I solemnly swear or affirm that I will support the Constitution of the Sioux and Assiniboine

Tribes of the Fort Peck Indian Reservation; that I will maintain the respect due to the Courts of Justice and Judicial Officers, and that I will conduct myself properly as an attorney or lay counselor of this Court.

1-8. Practice in this Court.

(a) **Appearance:** No eligible attorney or lay counselor may participate in any proceedings in any case until his name has been entered of record by filing an attorney of record notice with the clerk. An attorney's or lay counselor's signature on pleadings filed with the Court will substitute as a notice filing.

(b) **Permission to Appear in a Particular Case:** Should a party in any cause not appear in person, and should his attorney/lay counselor not be admitted to practice in this court, he must at the time of his first appearance, or within ten (10) days thereafter and before any further proceedings are had in the matter, join with an attorney/lay counselor who is a member of the Bar of this Court. In order to help secure the just, speedy, and inexpensive determination of every action, such local counsel must be furnished with all factual, evidentiary, and legal information necessary for him to intelligently act on behalf of the party he represents in all matters connected with the cause of action. A failure of local counsel to take any action required by Title 8 CCOJ, Federal Rules of Civil Procedure or these Rules by reason of lack of authority shall, for the purpose of imposing sanctions, be treated as a refusal to act.

1-9. Standards of Professional Conduct.

Professional Conduct and Ethics: The standards of professional conduct for attorneys/lay counselors practicing in this Court shall include the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Reservation, at 30 CCOJ. An attorney /lay counselor may be subjected to appropriate disciplinary action by this Court for a violation of these Canons.

1-10. Withdrawal from Case.

(a) **Leave of Court and Notice:** No attorney/lay counselor may withdraw from any case,

civil or criminal, except by leave of Court after notice served on his client and opposing counsel.

(b) **Responsibility of Attorney/Lay Counselor on Withdrawal:** When an attorney/lay counselor of record for any reason ceases to act for a party, such party should immediately appoint another attorney/lay counselor or appear in person, and may be required to do so on motion and notice to such party.

1-11. Suspension or Disbarment.

(a) **Disbarment and Discipline:** For good cause and after an opportunity to be heard, any member of the Bar of this Court may be disbarred, suspended for a definite time, reprimanded, or disciplined as the Court may deem proper, in accordance with 2 CCOJ 504.

(b) **Reinstatement:** Any attorney/lay counselor who has been disbarred by this Court may petition for reinstatement under 2 CCOJ 504 (b)(c).

1-12. Attorney as a Witness.

If an attorney/lay counselor of any party is examined as a witness in a case, and gives testimony on the merits of the case, he shall not argue the merits of the case either to the Court or jury, except by the permission of the Court, and as limited by the Court, in that case.

1-13. Agreements of Attorneys/Lay Counselors.

No executory agreement or stipulation between parties, not made in open court, the existence of which is not conceded, will be enforced, unless the same was in writing and signed by the attorney/lay counselor of record; and no executory agreement by an attorney/lay counselor in open court, the existence of which is not conceded, will be enforced unless the same be either made as above provided, or appear from the minutes of the clerk or be within the clear recollection of the judge. Agreements during a trial or hearing in open court may be made by the counsel conducting the trial, though he is only one of the attorneys/lay counselors of record.

1-14. Attorneys/Lay Counselors under Appointment of the Court.

(a) **Compensation:** It shall be the duty of the counsel to act as such without compensation whenever he is appointed by the Court to represent an incompetent person in any proceeding except as provided in 11 CCOJ 107 (b)(c).

(b) **Gratuities:** Attorneys/lay counselors appointed by the Court to represent an incompetent person shall not, without specific approval of the Court, accept from or solicit any money from any person on account of the representation of the incompetent. Any attorney/lay counselor violating this Rule will be disciplined by the Court.

1-15. Communications to Court and Ex-Parte Applications.

Except as provided for under 8 CCOJ 401 and 10 CCOJ 308, the court will not receive letters or other communications from counsel that do not indicate on their face that copies have been sent to opposing counsel. Ex-parte applications for orders, made either by mail or by telephone, will not be granted unless it is indicated that the adverse party has been advised of the request.

1-16. Student Practice Rule.

(a) **Activities:** An eligible law or pre-law student may appear in court on behalf of any person in any civil or criminal proceedings if:

(1) The person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising attorney has also indicated in writing approval of that appearance;

(2) The supervising attorney is personally present throughout the proceedings and is fully responsible for the manner in which they are conducted.

(b) In each case, the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge.

(c) Under the general supervision of a member of the Bar of this Court, but outside the personal presence of that attorney, an eligible law or pre-law student may engage in other activities, including:

(1) Preparation of briefs, pleading, and other documents to be filed in Court, but such documents must be approved and signed by the supervising attorney;

(2) Advising, negotiating, and performing other appropriate legal services, but only after prior consultation with, and obtaining the consent of, the supervising attorney. Negotiations are subject to final approval of the supervising attorney.

(d) **Requirements and Limitations:** In order to make an appearance pursuant to this Rule, the law or pre-law student must:

(1) Be duly enrolled in a law school approved by the American Bar Association, or enrolled at Fort Peck Community College or other equivalent college and attending legal courses;

(2) Have completed at least six (6) credits of legal studies including Fort Peck Tribal Codes and Federal Indian Law;

(3) Be certified by the Dean of his school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern;

(4) Be introduced to the Court by a member of the Bar of this Court;

(5) Neither ask for nor receive any compensation or remuneration of any kind for his services from clients; but this shall not prevent an attorney, legal aid bureau, law school or public defender agency from paying compensation to the eligible law or pre-law student, nor shall it prevent any agency from making charges for its services as it may otherwise properly require;

(6) Certify in writing that he has read and is familiar with and will abide by the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Reservation. Title 30 CCOJ

(e) **Supervision:** The attorney under whose supervision an eligible law student participates in any of the activities permitted by this rule shall:

(1) Be a member in good standing of the Bar of this Court;

(2) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work;

(3) Assist and counsel the law or pre-law student in the activities mentioned in these Rules and review such activities with such student, all to the extent required for the proper practical training of the student and the protection of the client;

(f) **Pro Se Representation:** Nothing in this Rule shall affect the right of any person who is not admitted to practice law to do anything he might lawfully do prior to the adoption of this Rule.

Rule 2. File and Filings.

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2-1. Form of Papers.

(a) All papers shall be filed flat and firmly bound together and be pre-punched to accommodate a 2 3/4 inch two-prong fastener centered at the top of the page.

(b) All papers shall be typewritten, printed or reproduced, without erasures or interlineations materially defacing them, on white opaque paper of good quality. Use of line numbered paper is optional.

(c) Writing shall appear on one side of the page only, and shall be double spaced, except quoted material. Names shall be typed or printed under all signatures. Pages shall be numbered at the bottom.

(d) The use of legal size paper is eliminated and the 8 1/2 by 11 inch size paper will be the only size accepted in this Court.

2-2. Counsel, Identification, Caption and Title.

The first page of all documents presented for filing shall be in the following form:

(a) In the space commencing with line 1, to the left of the center of the page, single spaced, the name, the office address, or if none, the residence address, and telephone number of the attorney/lay counsel for the party in whose behalf the

paper is presented, or of the party if he is appearing pro se. Should a party be without an address or telephone, the document shall set forth an address or telephone where the party may be contacted.

(b) The space between lines 1 and 7 on the right of the center page shall be left blank for the use of the clerk.

(c) On or below line 8, place the title of the Court.

(d) To the right of, and opposite the title, place the number of the case. Counsel shall, upon the initial filing of any pleading, request and receive a case number which must appear on all subsequent filings in the appropriate location.

2-3. Time.

Unless otherwise stated with the Comprehensive Code of Justice or these rules, the time within which an act is required to be done by these rules shall be computed as provided in Rule 6 of the Federal Rules of Civil Procedure. Where service is by mail, the time shall be extended as provided in Rule 6(e) of the Federal Rules. Except as otherwise provided by the Comprehensive Code of Justice, including but not limited to 8 CCOJ 401(c), days shall mean business days. Business days shall not include Saturdays, Sundays or holidays as determined by the Tribal Executive Board.

2-4. Copies to be furnished to Clerk.

Parties shall promptly furnish to the clerk upon demand all necessary copies of any pleading, judgment or order, or other matter filed of record in a cause so as to permit the clerk to comply with the notice and service provisions of any applicable statute or rule. All copies so furnished shall be legible copies.

2-5. Official Tribal Court Citation.

The official citation to be used with regard to Tribal Court matters and documents shall be ____ CCOJ _____. ie. 1 CCOJ 109.

Rule 3. The Clerk.

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3-1. Location and Hours.

Offices of the clerk shall be maintained in Poplar, Montana. The court complex shall be open to the public between the hours of 8:00 a.m. and 4:30 p.m. The public may transact court business between the hours of 9:00 a.m. and 3:30 p.m., Monday through Thursday.

3-2. Filing by the Clerk.

The clerk shall file all papers presented for filing upon payment of proper fees. It shall be the duty of the clerk to forward all papers to the clerk's office of the assignable division. All original papers shall be filed with the clerk and not the judge.

3-3. Custody of Records and Release.

No record or paper belonging to the files of the Court shall be taken from the custody of the clerk. Copies of records or papers may be obtained by a person who has legal standing (i.e. any party or counsel of record to an action) at a rate specified by the Court. Copies are to be made only by a Court clerk upon request of parties or counsel of record

3-4. Custody of Exhibits and Release.

(a) **Custody:** Every exhibit placed on file shall be held in the custody of the clerk. If there is good reason why the original should be retained, upon application, the Court may order a copy filed in its place.

(b) **Disposal:** Upon filing of a stipulation waiving the right to an appeal, and to a rehearing or a new trial, or after judgment has become final, any party may withdraw any exhibit which he has filed, unless some other party or witness files notice with the clerk that he is entitled to the exhibit, in which case the clerk shall not deliver the exhibit, except with the consent of both the party who filed it and the claimant, until the court has determined the person entitled to it. If exhibits are not withdrawn within thirty (30) days after the

judgment has become final, the clerk may dispose of them within a reasonable time after notice to the party offering the exhibit of the clerk's intention to do so.

Rule 4. Photographing, Television, Broadcasting.

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4-1.

The taking of photographs in the courtroom or its environs in connection with any judicial proceeding, including any person participating in a judicial proceeding, or the broadcasting of judicial proceedings by radio, television or other means is prohibited.

As used herein, "Judicial Proceeding" means: any trial, hearing, or ceremonial occasion in any Court; "courtroom" of a Tribal Court means the foyer, witness room, and all spaces behind the double doors containing the courtroom.

4-2. Release of Information.

It is the duty of the attorney or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be private, if there is a reasonable likelihood that dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

4-3. Special Order.

In a case that evidently will be greatly publicized, the Court, on motion of either party, or at its own discretion, may issue a special order governing any activities or conduct the trial judge believes appropriate for regulation, to insure a fair and impartial jury.

Chapter 2. Civil Rules

Rule 5. Civil Proceedings.

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5-1. Electronic Filing Not Allowed.

Documents may not be transmitted by use of telefacsimile (fax) equipment or any other electronic means for filing with the Court.

5-2. Filing of Pleadings Requiring Leave of Court.

Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of court to file, the movant shall file with the motion a copy of the proposed pleading or amendments and lodge the original with the clerk of court. If leave to file is granted, the clerk shall promptly file the original.

5-3. Documents of Discovery.

(a) Depositions upon oral examinations and interrogatories, requests for admissions, and answers and responses shall not be routinely filed (See F.R.Civ.P. 5(d)). However, when any motion is filed relating to discovery, the parties filing the motion shall at the same time attach to the motion all of the documents relevant to the motion if the documents have not been previously filed.

(b) Proof of service of a notice to take a deposition shall continue to be filed in conformance with F.R. Civ.P. 45(d)(1).

5-4. Filing of Briefs.

All briefs shall be filed with the clerk of court who shall deliver them to the judge. Copies shall be made of all cases cited in briefs and shall be filed as an attachment to the brief.

5-5. Answers and Objections to Interrogatories and Request for Admissions.

Answers and objections to interrogatories pursuant to Rule 33 of the F.R.Civ.P. and responses

and objections to requests for admissions pursuant to Rule 36 of the F.R.Civ.P. shall identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.

5-6. Demand for Jury Trial.

When a demand for a jury trial is incorporated in a pleading, counsel are requested to so indicate in the title of the pleading.

5-7. Disqualification of Judges.

Title 2 CCOJ 307, sets forth the grounds for disqualification of judges. As a matter of procedure, a party taking action to disqualify a judge shall submit a motion for disqualification stating applicable reasons in an attached affidavit, to the judge who is the subject of the motion. The moving party shall submit a copy of the pleadings pursuant to these Rules to the opposing party and a hearing shall be held not less than ten (10) days from the date of filing. The subject judge shall, upon good cause showing, disqualify himself from the case. If good cause is not shown, the motion shall be denied. The denial of the motion for disqualification shall be appealable to the Chief Judge by indicating at the time of denial the intent to appeal. The appeal shall be filed and served on the adverse party within five (5) working days of the denial. All proceedings shall be stayed pending a disposition of a properly filed appeal. If the Chief Judge is a subject of the motion to disqualify, upon denial of the motion, an appeal may be taken to an associate judge of the Tribal Court, in compliance with any procedures set forth above.

Rule 6. Service of Process and Papers.

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6-1. Issuance and Service of Process.

The issuance and service of process shall be in conformity with the Tribal Rules of Civil Procedure, 8 CCOJ. The issuance of process, the clerk shall deliver it to counsel for the party securing the process. It is the duty of counsel to cause the

process to be served in the manner required by law without unreasonable delay.

6-2. Service of Papers.

All papers required to be served shall be served in conformity with Title 8 CCOJ and the Tribal Rules of Civil Procedure. Where service is permitted to be made upon counsel, such service shall be on all counsel of record and the parties, unless otherwise ordered by the Court. (Atchico v. Deherrera, FPCA #429)

6-3. Proof of Service.

Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in the Tribal Rules of Civil Procedure, shall be filed in the clerk's office promptly and in any event before action is to be taken by the Court or the parties. The proof shall show the day, place and manner of service and may be by written acknowledgment of service, by certificate of a member of the Bar of this Court, by affidavit of the person who served the papers, or by any other proof satisfactory to the Court. If an affidavit of mailing or of service is attached to the original pleading, it shall be attached underneath the pleading so the character of the pleading is easily discernible. Failure to make the proof of service required by this subdivision does not affect the validity of service. The Court may at any time allow proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

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7-1. Motions.

Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. The adverse party shall have ten (10) days after receipt of the motion and brief

within which to serve and file an answer brief. Upon the filing of briefs, the motion shall be deemed made and submitted and taken under advisement by the Court, unless the Court orders oral arguments on the motion. The Court may, in its own discretion, order oral arguments on its own motion, or upon an application contained in the brief of either party. Failure to file briefs within the prescribed time may subject any motion to summary ruling. Failure to file a brief by the moving party shall be deemed an admission that, in the opinion of the counsel, the motion is without merit, and, failure to file a brief by the adverse party shall be deemed an admission that, in the opinion of counsel, the motion is well taken.

7-2. Extension of Time.

Extensions of time to further plead, file briefs or continue a hearing on a motion may be granted by order of the Court upon written application which shall note that opposing counsel has been contacted concerning the extension or continuance, and whether opposing counsel objects to the motion. All requests for extension of time or continuance shall be accompanied by an appropriate form of order with sufficient copies for the clerk to mail to adverse parties.

7-3. Hearing on Motions.

(a) Within the respective divisions, hearings on motions shall be set at such time and place as has been approved by the Court. The Court may order or conduct a hearing on a motion if the Court believes a hearing would be beneficial, or upon a timely written request of either party.

(b) It is incumbent upon the moving party to assure that a filed motion is set on the law and motion calendar as established by Rule 1-6. If the Court does not rule on a properly filed motion within thirty (30) days, the motion shall be deemed denied, unless this time limit is waived by the Court.

7-4. Informal Matters.

All informal matters not appearing on the Court's calendar, except matters requiring immediate attention of the Court, must be presented when the Court convenes in the morning, or after the noon recess. All informal matters shall be accompanied by a proposed order if the action requested requires an order of the Court.

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8-1. Procedure for the Appointment of Guardian Ad Litem.

Guardians ad litem may be appointed ex parte, at any time upon the presentation to the Court of a sworn petition showing a proper case for the appointment pursuant to 9 CCOJ 303A and 29 CCOJ 505.

8-2. Who May Be Guardian Ad Litem.

No person shall be appointed guardian ad litem who has an interest adverse to that of the child or incompetent, or who is connected in business with the adverse party or with the attorney or counsel of the adverse party, or who has not sufficient pecuniary ability to answer to the child or incompetent for any damage or injury which may be sustained by the child or incompetent for his negligence or misconduct in the case.

8-3. Bond of Guardian Ad Litem.

No bond shall ordinarily be necessary from a guardian ad litem, provided, that no such guardian shall receive any money until he has filed with the clerk a bond in an amount to be fixed by the judge, with at least two sureties, to be approved by the judge, conditioned for the faithful performance of his duties as guardian ad litem. If he shall not desire to receive any such money or property, it shall be paid or delivered to the clerk of court, or to such person as may be directed by the Court or judge, with like effect as if paid or delivered to the guardian ad litem.

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9-1. Pretrial Calendar.

Following the 8 CCOJ 103 hearing, the matter may be placed on a pretrial calendar

9-2. Notice of Preliminary Pretrial Conference.

Immediately upon placing the case upon the pretrial calendar, the clerk will mail to each attorney of record a notice in substantially the following form:

Pursuant to 8 CCOJ 103 and Rule 9 of this Court, the attorneys for all parties are directed to attend a Preliminary Pretrial Conference at ___o'clock, __.M. on the __ day of _____,20__, at the Tribal courtroom in the city of Poplar, Montana, for the purpose of setting dates for the completion of discovery, submission of motions, and a trial date. At the request of the presiding judge, the parties may be required to ascertain the issues, stipulate facts not in dispute and otherwise simplify the issues.

9-3. Conduct of the Preliminary Pretrial Conference.

The parties shall be prepared orally, or in writing on request of the presiding judge, to :

- (a) Discuss any problems of Tribal jurisdiction. This discussion should be complete enough to permit a ruling by the Court on any jurisdictional question;
- (b) Discuss the contentions of the parties and outline the legal theories upon which the action or defense is based;

(c) Discuss the law problems which are believed to be of importance, and suggest any problems which should be decided by the Court in advance of trial;

(d) Suggest any contemplated amendments to the pleadings;

(e) Discuss any problems of discovery. The parties should be prepared at the time of the Preliminary Pretrial Conference to:

(1) Indicate in a general way the course of the discovery. The parties should be ready to advise the Court and opposing counsel of the general nature of any requests for admission or answers to interrogatories they intend to file, the documents they wish to inspect and the names of the witnesses they intend to depose and the method and place of taking depositions. The parties shall be ready to indicate what documents will be produced without the requirements of a motion to produce. (It is thought that by a free and frank disclosure of all intended discovery on the necessary motions, requests and objections may be avoided.)

(2) Suggest a timetable for the accomplishment of the various steps on the discovery process for each discovery matter;

(3) Suggest a date when discovery will be completed.

9-4. Use of Deposition Testimony.

(a) A party shall underline the parts of every deposition that he proposes to offer or read at trial. Depositions must be purged of all repetitious and irrelevant questions and answers, all objections that have been abandoned, and all irrelevant colloquy between the attorneys. A copy of the deposition so purged should be served on the opposing party later than five (5) days before the Final Pretrial Conference. At or before the Final Pretrial Conference, the opposing party shall set forth his objections to those parts of the depositions sought to be read or deleted, and he shall underline additional parts of the deposition that he proposes to read or offer; objections and additions shall be served on opposing counsel before the Final Pretrial Conference. All objections not waived and all problems that are unresolved shall

be presented to the Court for decision no later than the Final Pretrial Conference. Any objections and argument made during a deposition and, if sustained, the question, answer and ruling, will not be read or referred to during the reading of the deposition or at any time during the trial in the presence of the jury.

(b) In a non-jury trial case, if a party proposes to read or offer more than 25 pages of the deposition testimony of any witness, he shall summarize that part. The summary shall be prepared in narrative-prose form and shall contain deposition page references. (Quotations may be used sparingly.) A copy of the summary should be served on the opposing party not later than five (5) days before the Final Pretrial Conference. Objections to the summary that the parties are unable to resolve shall be submitted to the Court at the Final Pretrial Conference.

(c) This rule shall not apply to depositions used to refresh recollection, as an admission against interest, or for impeachment.

(d) The Court may allow deposition testimony that does not conform to this rule.

9-5. Pretrial Conference.

A Pretrial Conference shall be held, at the Courts discretion, to discuss and determine the contents of the Final Pretrial Order and any issues that were not agreed to at the Preliminary Pretrial Conference. In addition, attorneys shall submit and be prepared to argue proposed jury instructions. Requests for jury instructions shall be presented to the Court and served upon each adverse party ten (10) days prior to the Pretrial Conference. Each requested instruction shall be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the instruction. Each party shall provide one original and two copies attached to each instruction. The Pretrial Conference shall be attended by the attorneys who will be trying the case.

9-6. Final Pretrial Order.

(a) It shall be the duty of the plaintiff's attorney to prepare a Final Pretrial Order in accordance

with the requirements of this rule. If the plaintiffs attorney believes that counsel for the other parties are unreasonably refusing to cooperate in the preparation of such order, the Court shall be advised and appropriate orders will be made. In those cases where the costs of preparing a Final Pretrial Order would be substantial, the parties may, if they cannot agree upon an apportionment of costs, request the Court for assistance in the solution of the problem.

(b) The Final Pretrial Order shall contain:

(1) **Statement of Jurisdiction:** Fort Peck Tribal jurisdiction is invoked on the following grounds: (include a concise statement of the facts required to confer Tribal jurisdiction.)

(2) **Agreed Facts:** The following facts are true and require no proof: (disclose all relevant facts admitted by the pleadings, by answers to requests for admission, answers to interrogatories, and any other facts on which the parties may be able to agree.)

(3) **Contentions of the Parties:** The theory of the plaintiff's case should be disclosed. For example, if the plaintiff relies on alternative theories such as negligence, strict liability and warranty, it should be clearly stated. If the defendant has alternative theories of defense, they should be stated. Plaintiff should also set out in detail the items of damages that are claimed.

(4) **Law Problems:** The parties shall specify the law problems in the case, and may request the Court to make rulings in advance of trial.

(5) **Exhibits:** At the Pretrial Conference, all exhibits that the parties intend to introduce shall be exchanged and identified by numbers for the plaintiff and letters for the defendant. An exhibit sheet furnished by the clerk of court shall be completed, with sufficient copies for the parties and two for the Court. At the time of the conference the parties shall state their objections to any exhibits in writing, particularly specifying whether authenticity of the exhibit is admitted or denied. Objections not specified on the exhibit sheet will be deemed waived. Except for good cause shown, exhibits not identified on the exhibit sheet will not be received in evidence. Exhibits to be used for impeachment purposes only may be placed in

a sealed envelope, marked and filed with the remainder of the exhibits. An exhibit admissible in a party's case-in-chief is not an exhibit for impeachment purposes only. The envelopes shall be opened only on order of the Court. The exhibits identified on the exhibit sheet shall be transmitted to the clerk with the Final Pretrial Order.

(6) **Witnesses:** Each party shall identify by name and address the witnesses it intends to call at the trial. Such identification shall not make the party identifying the witness responsible for his appearance. If an order has been made requiring the parties to exchange narratives of the testimony of expert witnesses, the narratives shall be exchanged at the time of the Pretrial Conference. The records and statistics relied on by the expert witnesses shall be identified, and a time and place agreed to by the parties for the examination of records and statistics. The Final Pretrial Order shall show the extent of compliance with this subsection.

(7) **Fruits of Discovery:** There shall be attached to the Final Pretrial Order all those portions of deposition upon oral examination and interrogatories, requests for admissions and answers and responses that the parties intend to introduce into evidence. Any objections to the use of the above documents shall be stated and, if not stated, shall be deemed waived. (Because this rule relates to filing and is designed to consolidate in one place all of the fruits of discovery, and because there can be no surprise element involved, the Court shall be liberal in permitting the amendment of the Pretrial Order to include any material not originally listed.)

(8) **Length of Trial:** The Final Pretrial Order shall contain an estimate of the length of time it will take to try the action.

(c) **Submission of Final Pretrial Order:** When the Pretrial Conference has been completed, the parties shall submit to the clerk of court the proposed Final Pretrial Order or such portions of it as they have been able to agree upon. If the order is not completed, the parties shall indicate the areas of disagreement and the reasons for lack of agreement. If there is no agreement a further Pretrial Conference may be held

by order of the Court to resolve the remaining differences. Any party may request a further Pretrial Conference.

9-7. Final Pretrial Conference.

A Final Pretrial Conference may be held at a time designated by the Court. If a time is not designated, the presiding judge has determined that a Final Pretrial Conference is unnecessary. The Final Pretrial Conference shall be attended by the attorneys who will be trying the case. The Court may sign the Final Pretrial Order at the Final Pretrial Conference, or at any other time deemed appropriate by the Court.

Rule 10. Settlement of Orders-Judgements-Findings and Conclusions.

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10-2. Findings and Conclusions, Preparation after Decision. 11
10-3. Preparation of Judgement or Findings and Conclusions upon Failure of Prevailing Party to Do So. 11

10-1. Judgements entered only on Direction of Court.

Upon a general verdict, and in all cases tried by the Court without a jury, except when the Court directs that a party recover only money or costs or that all relief be denied, the Court will give direction as to the entry of judgment, and no judgment shall be entered by the clerk until such directions are given. In the case provided for by this rule, the prevailing party shall within ten (10) days, unless additional time is granted by the Court, prepare and submit to the clerk of the court a draft of the judgment and serve a copy upon each other party. Each other party shall then have ten (10) days within in which to serve and file objections to the form of the proposed judgment. When the time for objections has expired, the clerk shall deliver the proposed judgment, together with all objections to the judge.

10-2. Findings and Conclusions, Preparation after Decision.

The Court may, after decision, request the prevailing party to prepare findings of fact and conclusions of law in accordance with the decision. The findings, unless otherwise ordered, shall be submitted, served and objected to within the schedule provided for in Rule 10-1.

10-3. Preparation of Judgement or Findings and Conclusions upon Failure of Prevailing Party to Do So.

If a prevailing party fails within ten (10) days, or any additional time granted, to prepare orders of judgments required by Rule 10-1, or the findings of fact and conclusions of law required by Rule 10- 2, any other party may do so.

Rule 11. Trial.

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11-1. Setting of Cases for Trial.

At each term in the respective division of the Court, the judge to whom each division is assigned will set for trial all causes then at issue. Causes coming to issue during the term may be set in the discretion of the Court upon the application of all parties.

11-2. Notification of Parties.

Whenever any case is set for trial, the clerk of court shall promptly notify the parties and their attorneys of record, or if representation is pro se, directly to that party.

11-3. Continuances.

In granting an application for continuance, the Court may impose costs and conditions. A motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing the nature and materiality of the expected testimony or evidence, and that diligent effort was timely made to secure the witness or the evidence, and that reasonable grounds exist for the production of the witness or evidence

if postponement or continuances granted. If the testimony or the evidence would be admissible during the trial, and the adverse party stipulates that it shall be considered as actually given during the trial, there shall be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.