

Rules of Court

For the Round Valley Indian Tribes Tribal Court

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CHAPTER 1. INTRODUCTION TO THE RULES

RULE 1.01. Establishment

These rules shall be known and cited as the **Round Valley Indian Tribes Tribal Court Rules of Civil Procedure**.

RULE 1.02. Authority and Purpose

(A) The Round Valley Indian Tribes ("RVIT") Tribal Court Code, section 1.06(A)(4), authorizes the Judiciary to establish court procedures for the tribal judiciary.

(B) This Act governs the procedures in Tribal Court for the Round Valley Indian Tribes ("Tribal Court" or "Court") in all suits of a civil nature whether cognizable as cases at law or in equity except where a law or ordinance of the RVIT specifies a different procedure. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

RULE 1.03. Definitions

Unless a different meaning is clearly apparent from the context, the term:

(A) "Clerk" and "Clerk of the Court" means the clerk of the RVIT Tribal Court, and the Court of Appeals, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this Title.

(B) "Court of Appeals" means the RVIT Court of Appeals duly authorized to hear all appeals from the Trial Court.

(C) "Dismissal With Prejudice" means that the Complaint will be dismissed and cannot be filed again. "Dismissal Without Prejudice" means that the Complaint may be filed again.

(D) "Judge" means the presiding judge of the Round Valley Tribal Court.

(E) "Plaintiff" means the party who initiates a lawsuit by filing a Complaint in a civil case, seeking some remedy. The "Defendant" is the one who is being sued in a civil case.

(F) "Real property" or shall mean any interest in real property within the RVIT's jurisdiction other than the Indian trust title held by the United States for the use of any Indian or Indian Tribe, or the fee title to any land held by any Indian or Indian Tribe which is subject to a restriction upon alienation imposed by the United States. Nothing in this Act shall be construed as affecting or attempting to affect the trust or restricted title to trust or restricted Indian land.

(G) "Service" or "Service of Process" means the manner in which parties are informed of the documents filed with the Tribal Court by others in their case and of the opportunity to answer.

(H) “Summons” means the official notice to the other parties informing him/her that he/she is identified as a party to an action or is being sued, that an Answer is must be filed, and that a Default Judgment may be entered against them if they do not file an Answer in the prescribed time.

(I) “Trial” means a hearing of the case on its merits, after the parties have had a reasonable time to prepare their cases for submission to the Court. Generally, trials will be set on a written request from one or more parties, or at a conference hearing.

(J) “Undue burden” as a basis for excuse from requirements under these Rules, means either great distance, in miles or travel time, from the place of holding court; grave illness in the family; or any other emergency, which the Court determines outweighs in immediacy and urgency the obligation to appear before the Court when summoned.

RULE 1.04. Forms

Sample forms are available through the Clerk of Court and are intended to indicate the simplicity and brevity of statements contemplated by these rules. In the interests of furthering justice, the Tribal Court may create mandatory forms to expedite the court process.

RULE 1.05. No Effect Upon Tribal Sovereign Immunity

Nothing in these Rules shall be construed to be a waiver of the sovereign immunity of the RVIT, its officers, employees, agents, or political subdivisions or to provide consent to any suit beyond the limits now or hereafter specifically stated by Tribal law.

CHAPTER 2. GENERAL PROVISIONS

RULE 2.01. Procedure to be Applied

(A) Compliance with the Federal Rules of Civil Procedure, or the California Code of Civil Procedure is NOT required in Tribal Court proceedings.

(B) The Tribal Court shall be guided but not bound by the Federal Rules of Evidence.

(C) Federal or State rules and Federal or State case law may be cited to as persuasive argument for purposes of analysis in areas where Federal or State rules are analogous to Tribal Rules and Tribal case law, but will not be relied upon as precedent requiring that the Tribal Court adopt additional rules that are not a part of this Code.

RULE 2.02. Standard of Proof

The complainant in a civil case shall have the burden of proving its case by the preponderance of the evidence, i.e., the greater weight of evidence, except in such cases where it is established by ordinance that the claimant has a different burden of proving his/her case.

RULE 2.03. Course of Proceedings

(A) Court of Tribal Custom. The Tribal Court shall follow these Rules of Civil Procedure unless the parties stipulate to resolving the complaint by the Court of under traditional customs and practices of the RVIT. The Tribal Court Judge may act as a mediator in such a proceeding if all the parties request the Judge do so. The parties may also stipulate to a mediator of their choosing. However, the parties must first stipulate:

- (1) To what they believe to be the traditional custom and practice of settling disputes is;
- (2) What the traditional law governing the dispute is; and
- (3) Must agree to abide by the decision rendered by the person or persons that they determine to be the traditional finder or finders of law and fact.

(B) Tribal Court Procedure. If the parties do not stipulate to a traditional custom and practice for settling disputes, but still agree the dispute is governed by traditional and customary law, the Court will follow the procedures as set forth in these Rules.

(C) Development of Tribal Common Law. As to matters beyond the scope of applicable Tribal, federal and state law, the Tribal Court is hereby authorized to develop a body of Tribal common law, consistent with established principles of judicial restraint and the purposes of this Code.

RULE 2.04. Statute of Limitations

The Court shall have no jurisdiction and no complaint shall be filed in a civil action over any action brought more than three (3) years after the cause of action arose, except that no statute of limitation shall bar an action commenced by the Tribe.

RULE 2.05. Liberal Construction.

These Rules shall be liberally construed to secure a just and speedy determination of every action.

CHAPTER 3. CUSTOMS AND TRADITIONS

RULE 3.01. Traditional Tribal Law

(A) The traditional law of the RVIT shall be considered the common law of the RVIT and will be applied in all situations where it is relevant to the issues raised in an action before the Court. The Court will first look to the laws, rules, regulations, and ordinances adopted by the RVIT. If no written Tribal law applies to a cause of action or the issues involved in an action, the Court will look to the RVIT's traditional law and if it finds the traditional law to be applicable in settling the dispute, will base its decision on traditional Tribal law.

(B) These Rules shall be interpreted pursuant to the traditions and customs of the RVIT. Where any doubt arises as to these traditions and customs, the Court may request the advice of elders as counselors whom are familiar with these traditions and customs in the manner set forth in these Rules. If no such tradition or custom exists, then the Court may use applicable tribal, federal, and

state case law and statutory law, adopting those principles and procedures not in conflict with these Rules, other Tribal law, or customs and traditions of the RVIT.

RULE 3.02. Requests to Transfer a Case to Tribal Court

The Tribal Court, at its discretion, can agree to adjudicate a dispute that has not been filed with the Court, provided that the parties to the dispute jointly make such request, and voluntarily consent to appear before the Tribal Court and to be bound by its decision. In such a case, the Tribal Court shall resolve the dispute according to the customs and traditions of the RVIT, or employ any other alternative dispute resolution procedures the Court determines with result in a fair and prompt resolution of the dispute.

CHAPTER 4. COMMENCEMENT OF ACTION AND SERVICE OF PROCESS

RULE 4.01. Complaints; Form and Content

(A) General. A civil action begins by filing a written Complaint with the Clerk of Court and paying the appropriate filing fees.

(B) The Complaint shall contain a concise written statement of the essential elements constituting the claim, which shall include:

- (1) The full names and addresses of all parties and any counsel, as well as a telephone number at which the Complainant may be contacted. The Complaint shall be signed by the filing party or his/her counsel, if any.
- (2) A short, plain statement of the grounds upon which the Tribal Court's jurisdiction depends;
- (3) The facts and circumstances giving rise to the action;
- (4) Reasons why the filing party believes he/she is entitled to relief from the Tribal Court, including a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and other authorities cited in support of the position advanced; and
- (5) A demand for any and all relief that the party is seeking. Relief should include, but is not limited to the dollar amount that the party is requesting. When the demand for relief by the Plaintiff is the recovery of property, such property shall be fully described and, if money is demanded, the amount asked for shall be stated.

RULE 4.02. Filing the Complaint

(A) All civil proceedings shall be commenced by filing a Complaint with the Clerk, accompanied by a filing fee of fifty dollars (\$50.00). Tribal Civil Form No. 1, or its equivalent may be used. The Complaint shall be verified before a judge, clerk or assistant clerk, or any notary public.

(B) General. No document will be considered filed until the filing fee is paid or a Motion to Waive Filing Fees is filed. If the Motion to Waive Filing Fees is denied, and the filing fees are paid within ten (10) calendar days of the denial, the Complaint will be considered filed on the date the Motion to Waive Filing Fees was filed.

(C) Motion to Waive Filing Fees. The filing fee of fifty dollars (\$50.00 U.S.) may be waived at the Court's discretion for good cause. A person asking to file their Complaint without paying the fee shall file a Motion stating that they are the complaining party and that they are requesting an order to proceed without paying the filing fee. The Motion shall be accompanied by a Statement of the amount of income earned by their household, household expenses, whether they are represented by a civil legal services program, and any other supporting information which will help the Court understand their situation. The Court may adopt a mandatory form for use. A copy of the Motion and Statement shall be attached to the Complaint.

(1) Denial of the Waiver. In the event that the Court denies the Motion to Waive Filing Fees, the moving party shall have ten (10) calendar days from the date of denial, oral or written, in which to pay the filing fees. Should the party pay the fees within the ten-day deadline, the Complaint will be considered filed when the Motion to Waive Filing Fees was filed. Should the ten-day deadline elapse, the Court will consider the Complaint as filed on the date the filing fee is received.

(F) Summons Issued: At the time of the filing of the Complaint, the Summons shall be issued by the Clerk of Court. The Summons shall inform all parties that he/she is identified as a party to an action or is being sued, that an Answer is must be filed, and that a Default Judgment may be entered against them if they do not file an Answer in the prescribed time. The Summons shall also include the name and location of the Court, the case number, and the names of the parties. The filing party is responsible for serving the Summons with a copy of the filed Complaint attached.

RULE 4.03. Notice of Service of Process

Any time a party files a document with the Court in relation to a case, the filing party must serve copies on the other parties to the action and provide a Certificate of Service to the Court. Any time the Court issues an Order or Judgment in the context of an active case, the Court must serve copies on all parties. Service of process can be accomplished as outlined in Rule 4.04 and 4.05.

RULE 4.04. Methods of Service of Process

(A) The first Service of Process may be made on a party by any means permitted in sections (1) through (5) below. After the first successful service of process, the Court and the parties will then perform all written communications through regular mail. See Rule 4.05 below.

(1) Personal Service. The required papers are delivered to the party in person by either a law enforcement officer from any jurisdiction, or any other person not a party to the action who is eighteen (18) years of age or older and of suitable discretion.

(a) Personal Service is required for the initiation of actions in the following:

(i) Relief requested is over \$5,000.00, excluding the enforcement of foreign child support orders; or

(ii) Children's custody and/or placement are the subject matter of the proceedings.

(b) Where personal service is required, and despite due diligence, the filing party may move for permission from the Court to pursue service of process by any means provided for in subsections (3) through (7) of this Rule. The Court shall grant the motion where good cause is shown. The Court may also enter such an order sua sponte for good cause shown.

(2) Service Upon A Business, Corporation, or Entity. Service may be made upon an agent of a business, corporation, or governmental agency.

(3) Service At Individual's Home or Place of Business. The required papers are delivered in person to the party's home or usual and current place of business or employment to someone of suitable age and discretion over fourteen (14) years of age.

(4) Service by Mail. Service of process by mail may be accomplished by sending the required papers to a party by registered mail with return receipt requested.

(5) Service by Publication. Upon order of the Court for good cause shown, service of process may be accomplished by publishing the contents of the summons. The filing party must show by a preponderance of the evidence that the party to be served lives in the area where the summons is to be published. Where service by publication is being made on a member or members of the RVIT, the contents of the summons may be published in the Tribal newsletter, Tribal newspaper or a newspaper of general circulation in an area where the party is most likely to be made aware of the summons. In the case of non-members of the RVIT, the contents of the summons may not be published in the Tribal newsletter or Tribal newspaper, but may be published in a newspaper of general circulation in an area where the party is most likely to be made aware of the summons. If publication is sought in the Tribal newsletter or Tribal newspaper, publication must be in two consecutive issues. If publication is sought in a paper of general circulation, publication must be at least, once per week for four consecutive weeks. Proof of publication must be provided to the Clerk of Court.

B) Long Arm Service. Any person subject to the jurisdiction of the RVIT Tribal Court may be served outside the territorial jurisdiction of the Court in the manner provided with the same force and effect as if the service had been made within the territorial jurisdiction thereof, if such person:

(1) Transacts business with the RVIT, or does an act leading to a civil action over which the Tribal Court has jurisdiction;

(2) Owns, uses, or possesses any property or interest therein within the boundary of the RVIT;

(3) Contracts for services to be rendered or goods to be furnished to, or within the boundary of the RVIT.

RULE 4.05. Service Using Regular Mail

After the first successful service of process, the Court and the parties will then perform all written communications through regular mail at that address, however, subject to the approval of the Court, the parties to any action may stipulate to service by facsimile or electronic mail. Each party to an action has an affirmative duty to notify the Court, and all other parties, of a change of address, facsimile number or email address within ten (10) calendar days of such change. Nothing in this Rule prevents the Court from ordering that any or all service be completed by facsimile or electronic mail.

RULE 4.06. Using a Process Server or Bailiff

The Court's bailiff shall be authorized to serve process in any action filed with the Court. In addition, the Court may authorize other persons to serve process when there is an assurance the other person knows how to effect proper service and will make adequate factual inquiries to assure that service is proper. Any party requesting the Court bailiff to serve process shall pay the reasonable costs for the services of the bailiff.

RULE 4.07. Return of Service

A return of service shall be endorsed with the name of the person serving and the date, time, and place of service. It shall state the manner in which service was made and shall be filed with the Clerk of Court.

RULE 4.08. Effect of Incomplete or Improper Service

Incomplete or improper service results in a lack of jurisdiction over the person incompletely or improperly served. If a person refuses to accept service of process, service shall be deemed properly performed if the person is informed of the purpose of the service and offered copies of the papers served. If a person intentionally avoids service, the Court may also consider service as properly performed.

RULE 4.09. Time Limit for Service of Process

A Complaint must be served, and proof of service filed with the Court within one hundred and twenty (120) calendar days of filing, or it will be considered dismissed without prejudice by the Court with notice provided to the filing party. Upon order of the Court for good cause shown, a sixty (60) calendar day extension may be ordered in the event that the Court or the filing party exercises due diligence in unsuccessfully providing service of process.

RULE 4.10. Emergency Notice

In cases of emergency, upon motion of a party or sua sponte, the Court may provide notice of a hearing less than forty-eight (48) hours prior to the hearing. In such cases, the Court may provide

notice by telephone with written confirmation or by telephone and fax at least forty-eight (48) hours in advance. Documentation of the call or fax shall be included in the record.

RULE 4.11. Service of Process Upon the Tribe

Service of process upon the Tribe, or an officer of the Tribe named as a party Defendant, shall be made by delivering a copy of the complaint to the Tribal Council, the tribal attorney, and the officer named in the manner prescribed in Rule 4.04 above, except that service by publication is not permitted.

RULE 4.12. Proof of Service

(A) The affidavit or declaration of service by the person making service, filed in the case record, shall constitute proof of service. In the case of service by mail, the affidavit or declaration shall be accompanied by the return postal receipt, filed in the Court record.

CHAPTER 5. GENERAL RULES FOR PLEADING

RULE 5.01. Pleadings Allowed

- (A) There shall be a Complaint and an Answer;
- (B) If there is a Counterclaim, there shall be a Reply to the Counterclaim;
- (C) If a Cross-claim, there shall be an Answer to the Cross-claim;
- (D) If a third party who is not an original party is summoned, then there shall be a Third Party Complaint; and
- (E) If the third party is served, then there shall be a Third Party Answer.
- (F) No other pleading shall be allowed, except that the court may order a Reply to an Answer or a Third Party Answer.

RULE 5.02. Form

- (A) All papers presented for filing shall be on white, 8 ½ x 11" paper (letter, not legal size) with at least a one (1) inch margins on all four sides. Typewriting is preferred, but handwritten filings will be accepted provided they are clear and legible and of such quality that legible photocopies can be made. The Clerk shall accept all papers presented for filing, but the Judge of the Court may reject papers not in substantial compliance with these rules.
- (B) Every pleading will have a caption stating the name of the court, the title of the action, the file number and a designation (i.e., Complaint, Answer, Motion, Counterclaim, Cross-claim, Third Party Complaint, etc.). The original Complaint should name all the parties. Subsequent pleadings need only name the first party on each side with the appropriate indication of other parties.

(C) Each averment made in a pleading shall be simple, concise, and direct. However, no technical forms of pleading or motions are required.

(D) Each claim founded upon a separate transaction or occurrence, and each defense, shall be stated by the pleader in a separate numbered paragraph whenever a separation facilitates the clear presentation of the matters set forth. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of any written instrument which is an exhibit to a pleading is a part of the pleading for all purposes.

RULE 5.03. Signatures of Parties and Counsel

(A) The Complaint and Answer shall be signed by the party or his/her counsel. The signature means the statements in the pleading are made in good faith, are believed to be true and accurate, and are based upon adequate research or investigation. The Court may impose sanctions if it finds statements in a pleading are not made in good faith, contain intentional misstatements, or are not based upon adequate research or investigation. This includes omitting material facts or law that the person knew, or should have reasonably known, was relevant to the action. Sanctions may include removing issues from consideration in the action, imposing costs and counsel fees, and any other relief that may be appropriate under the circumstances.

(B) Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by these Rules pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(C) By presenting to the Court a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief:

- (1) The filing is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted either by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

RULE 5.06. Court's Discretion to Strike Information

The Court may, upon motion, or at any time in its discretion, and upon terms it deems proper:

(A) Strike out any irrelevant, false, or improper matter inserted in any pleading;

(B) Strike out all or any part of any pleading not drawn or filed in conformity with these rules.

CHAPTER 6. SUBSTANTIVE CONTENTS OF PLEADINGS

RULE 6.02. Answering a Complaint

(A) An Answer to a complaint shall be filed within thirty (30) days after service of the Summons and Complaint.

(B) The Answer shall contain:

- (1) A short and plain statement to admit, admit in part, or deny each statement in the Complaint;
- (2) A general or specific denial of each material allegation of the Complaint or Petition denied by the Defendant;
- (3) A statement of any new matter constituting a defense, counterclaim, or set-off, in ordinary and concise language and without repetition; and
- (4) Assertions of any and all claims against other parties arising from the same facts or circumstances as the Complaint and state any defenses to the Complaint.

(C) An Answer may also contain a statement that:

- (1) The facts stated do not constitute a cause of action;
- (2) There is another action pending between the same parties for the same cause;
- (3) That the Plaintiff has no legal right to sue; or
- (4) The action was not started within the period of three (3) years following the acts complained of and for which relief is sought.

RULE 6.03. Counterclaim and Cross-Claim

(A) A party may counterclaim any claim arising out of the same transaction or occurrence that is the subject of the opposing party's claim and that does not require the presence of third parties of whom the Court cannot acquire jurisdiction. A party may cross-claim any claim arising out of the transaction or occurrence that is the subject matter of the original claim against a co-party.

(B) The Defendant may make a counterclaim in his/her Answer to the Complaint. In that event the Plaintiff shall have ten (10) days in which to answer and file a copy of his/her reply with the Clerk of the Court.

(C) If the Defendant files a cross-claim against a third party Defendant, the third party Defendant shall be served in the same manner as set forth in this Rule for service of process and shall have ten (10) days to answer the cross-claim.

(D) When a pleader fails to make a counter-claim or cross-claim, the pleader may by leave of court set up the counterclaim, or cross-claim by amendment.

RULE 6.04. Amended and Supplemental Pleadings

(A) A party may amend his/her or her pleading at any time before a responsive pleading is served or, where no responsive pleading is permitted and the action has not been placed on the calendar the party may amend at any time within twenty (20) days after it is served.

(B) Otherwise a party may amend the party's pleading only by leave of Court or by written consent of the opposing party; and leave may be given when justice so requires.

CHAPTER 7. TIME

RULE 7.01. Computation of Time

(A) Computation of time originates with the actual Court file stamped date of the document and not the date the notice or the document is received by the party.

(B) "Days" means calendar days unless a rule specifically states otherwise.

(C) Whenever a Rule or an order of Court requires that an action be taken within a certain number of days, the computation does not include the day the order is given, but begins as of the next following day and runs until the last day specified. For example, if a Complaint is filed on the first day of a month and the Answer is due in twenty (20) days, then the date the Answer is due will be the twenty-first day of the month. If the time limit identified in these rules is less than seven (7) calendar days, then Saturdays, Sundays, and legal holidays are not counted in the time limit. Legal Holidays are defined as those recognized by the RVIT.

(D) If the last day falls on a weekend, general Holiday, Tribal Holiday, or on a day when the Court is closed due to inclement weather or other unforeseen circumstances, then the due date is the next Court work day.

(E) When a time limit is counted from the time that notice is delivered to a person by mail, it shall be presumed that delivery takes place five days after notice is mailed.

CHAPTER 8. MOTION PRACTICE

RULE 8.01. Motion Defined

(A) A motion is a request to the Court for an order, which shall be made by written motion before trial wherever possible. A motion made verbally may be allowed at trial and at the discretion of the Court if the Court finds that in the interest of justice it is proper to do so.

(B) The motion shall specifically state what order is sought, and the reasons why the Court should grant the request. A written memorandum of legal authority in support of the motion is encouraged but is not required.

(C) A request to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds for the motion, and state the relief or order sought. The requirement of writing is fulfilled if the motion is stated in the written notice of the hearing of the motion. Motions must be in the proper form as provided for by this Chapter and must be signed in accordance with Rule 505.

RULE 8.02. Motions Hearing Defined

(A) A motion hearing is a pretrial proceeding, which takes place when a party has asked the Court to order that something be done in connection with a pending case. Hearings on motion are not automatic.

(B) Unless requested by either party or ordered by the Court, a hearing on the motion will not be held. In the event a hearing is desired, a hearing date can be requested in writing or by contacting the Court prior to filing the motion. Hearings will be set as soon as practicable, but must allow sufficient time for the party to file and serve their motion.

(C) Hearings will be set when oral argument would be helpful to the Court and on request of a party or parties or the Court's own motion. Motions may be filed to add or eliminate parties, to amend pleadings, to request a jury trial, to prepare or simplify a case for trial, or to request judgment as a matter of law in the absence of material disputed issues of fact pursuant to these Rules.

(D) Motions made within fourteen (14) calendar days of trial may be dismissed and costs and fees assessed against the moving party if the Court finds no good cause exists for failing to file the Motion more than fourteen (14) calendar days in advance of the trial.

RULE 8.03. Timing of Motions

(A) Motions may be filed by a party with any pleading or at any time after their first pleading has been filed. A copy of all written Motions shall be served to other parties at least five (5) calendar days before the time specified for a hearing on the Motion. A proof of service must be filed with the notice of motion stating that copies of the same were served to the opposing party.

(B) Motions for Extension of Time and More Definite Statement may be filed before the initial pleading.

RULE 8.04. Response to a Motion

(A) Responses. A Response to a written Motion must be filed at least three (3) days before the hearing. If no hearing is scheduled, the Response must be filed with the Court and served on the other parties within fourteen (14) calendar days of the date the Motion was filed plus five additional days if service is by mail. The party filing the Motion must file any Reply within three (3) calendar days.

(B) Motions for Expedited Consideration. Any Motion that requires action within five (5) calendar days shall be accompanied by a Motion for Expedited Consideration. The Motion for Expedited Consideration shall state the reasons why the Accompanying Motion should be heard prior to the normal time period, and what efforts the party has made to resolve the issue with the opposing party prior to filing the Motion for Expedited Consideration.

RULE 8.05. Motion for Default Judgment

(A) A party may file a Motion for Default Judgment against another party who fails to file an Answer if that party was personally served in accordance with Chapter 4 (or obtained judicial authorization to pursue other means of service such as publication) or if that party fails to appear at a hearing, conference or trial for which he/she was given proper notice.

(B) A Default Judgment shall not award relief different in kind from, or exceed the amount stated in the request for relief.

(C) A Default Judgment may be set aside by the Court only upon a timely showing of good cause.

RULE 8.06. Motion for Summary Judgment

A party may file a Motion for Summary Judgment on any or all of the issues presented in the action at any time after the date an Answer is due or filed. The Court will render summary judgment in favor of the moving party if there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law.

RULE 8.07. Motion for Judgment on the Pleadings

Any party may move for judgment on the pleadings after the pleadings are closed but within such time as not to delay the trial. The court will grant a party judgment on the pleadings where, if everything in the pleadings by both parties is considered true, the law requires a judgment for one party. Judgment on the pleadings shall not award relief different in kind from, or exceed the amount stated in the request for relief.

RULE 8.08. Motion for Reconsideration

Upon motion of the Court or by motion of a party made not later than ten (10) calendar days after entry of judgment, the Court may amend its findings or conclusions or make additional findings or conclusions, amending the judgment accordingly. The motion may include a request for a new trial. If the Court amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the Court denies a motion filed under this rule, the time for initiating an appeal from the judgment commences when the Court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within thirty (30) days after the filing of such motion, and the Court does not decide a motion under this Rule or the judge does not sign an order denying the motion, the motion is considered denied.

RULE 8.09. Prohibited Ex Parte Communications

Except as otherwise authorized by these Rules or RVIT Tribal law, a party, or their legal representative must not directly or indirectly communicate with, or argue to, a judge upon the merits of a contested matter pending before such judge or judicial officer, except:

- (A) In open court; or
- (B) With the written consent of all other parties in the matter; or
- (C) In the presence of all other parties in the matter; or
- (D) In writing with a copy furnished to the other parties in the matter.

CHAPTER 9. DISCOVERY

RULE 9.01. Discovery Defined

Discovery is the process used among parties to uncover evidence relevant to the action, including the identity of persons having knowledge of facts. Discovery may take place before an action has been filed and may be used for the purpose of preserving testimony or other evidence that might otherwise be unavailable at the time of trial. Discovery may include written interrogatories, depositions, and requests for the production of documents and things. It is the policy of the Court to favor open discovery of relevant material as a way of fostering full knowledge of the facts relevant to a case by all parties. It is the intent of these rules that reasonable open discovery will encourage settlement, promote fairness, and further justice.

RULE 9.02. Required Disclosures

(A) Except to the extent otherwise stipulated or directed by order, a party shall, without waiting for a discovery request, provide to other party or parties:

- (1) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;
- (2) A copy of, or a description by category and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;
- (3) A computation of any category of damages claimed by the disclosing party, made available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (4) For inspection and copying any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part of all of a judgment, which may be

entered in an action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) Time of Disclosure. Unless otherwise stipulated or directed by the Court, these disclosures shall be made no later than ten (10) calendar days before the initial Case Management Conference. (See Rule 11.01).

(C) A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

RULE 9.03. Judicial Notice

Judicial notice shall be taken of and required disclosures shall be made of official documents, public documents, documents subject to public inspection, document and materials of non-executive session, governmental minutes and recordings of a RVIT governmental body.

RULE 9.04. Interrogatories

A party may submit up to twenty-five (25) interrogatories (written questions) to other parties. Subparts to an interrogatory shall be counted against the total permitted of twenty-five interrogatories. The requesting party must receive the responding party's written answers, under oath, within twenty-five (25) calendar days of receiving them. The responding party must include facts he/she knows, facts available to him/her, and give opinions, if requested.

RULE 9.05. Depositions

A party may take a deposition (testimony, under oath and recorded) of a deponent (another party or a witness) after giving at least ten (10) calendar days notice of the time and place where the deposition will occur to all parties and the deponent. All parties may ask the deponent questions. Depositions may take place by telephone and be recorded stenographically, by tape recording or by other means if the parties agree or the Court so orders.

RULE 9.06. Requests for Documents and Things

A party may request another party to produce any documents or things within his/her possession or control for the purpose of inspection and/or copying. This includes permission to enter onto land for testing. The responding party must make the documents or things available to the requesting party within twenty-five (25) calendar days of the date of receiving the request.

RULE 9.07. Ongoing Obligation

There is an ongoing obligation by any party subject to a discovery request, which continues up to and through the trial, to supplement any response previously answered if new or freshly discovered material previously unavailable is discovered or revealed to them.

RULE 9.08. Protective Orders

For good cause, the Court on its own motion or by the motion of any party or witness, may enter an Order to protect a party or other person from undue annoyance, embarrassment, oppression or undue burden or expense.

RULE 9.09. Non-Compliance

If a party fails to appear or respond as requested under these rules, the Court on its own motion or by the motion of any party or witness, may enter an Order requiring a response and imposing costs, attorney's fees, and sanctions as justice requires in order to secure compliance.

RULE 9.10. Power to Compel

The Court retains the inherent authority to compel disclosure or production of discoverable documents, records and other materials it has cause to believe is relevant to the matter before it.

The Court shall have authority to compel parties to answer or respond upon the Court's own motion.

CHAPTER 10. WITNESSES AND SUBPOENAS

RULE 10.01. Presence of Parties and Witnesses

(A) Any party may request the Court to issue a subpoena to cause a witness to appear and give testimony at any hearing or trial. The request must state why the testimony of the witness is necessary, and what the party anticipates the witness will testify about.

(B) Any party may request the Court to issue a subpoena to cause a witness to appear and produce books, records, documents or any other physical evidence relevant to the determination of the case. The request must state why the production of the evidence is necessary, and what the party anticipates the requested items will show.

RULE 10.02. Issuance of Subpoenas

(A) If a party wishes to have a subpoena issued by the Court, the party shall furnish a properly prepared subpoena. A subpoena shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(B) Each subpoena shall also be accompanied by a certified check or money order, prepaying the witness fees and expenses, as outlined in RULE 10.05, and no subpoena shall be valid in the absence of such a check or money order.

(D) A subpoena is not considered issued by the Court unless and until it bears the signature of the Chief Judge or an Associate Judge of the Court.

RULE 10.03. Notice

(A) If a party wishes to have a subpoena issued by the Court, he/she shall furnish a properly prepared subpoena at least ten (10) calendar days before trial. Service will be completed at least three (3) calendar days prior to hearing or trial.

(B) A subpoena may be served in the manner prescribed in Rule 4.04, except that service by publication is not permitted.

(C) When service has been completed, the party shall mail proof of service to all parties. If a party does not timely request a subpoena, he/she shall not be entitled to a postponement because of the absence of the witness.

(D) At all times the parties shall use diligent efforts to notify witnesses subpoenaed to appear in sufficient time so that they might make arrangements needed to appear.

RULE 10.04. Failure to Appear

(A) In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena issued and served in accordance with the provisions of this Code may be cited and held in contempt of court.

(B) If any party fails to appear at a hearing or trial for which they received proper notice, the Court may, in its discretion, postpone the hearing, dismiss the case, enter a default judgment against the absent party, or the Court may proceed to hold the hearing or trial without the party.

RULE 10.05. Witness Fee and Expenses

(A) Each witness answering a subpoena shall be entitled to reimbursement of his/her mileage expenses at the current rate paid by General Services Administration, and to witness fees at the rate of fifty dollars (\$50.00) per day except that the custodian of any public books; records; documents or other physical evidence subpoenaed shall not be entitled to witness fees. A certified check or money order for these fees and expenses shall be attached by the party issuing the subpoena to the subpoena served on the witness.

(B) The fees and expenses provided for in this Chapter shall be taxed as court costs, and assessed against the parties as provided in the judgment in the case.

RULE 10.06. The Court's Power to Subpoena

(A) The Court's power to subpoena or otherwise to order attendance in Court or the production of evidence, shall not extend over any Tribal government official with respect to matters or actions arising in the member's official capacity, or in the exercise of the member's official duties.

(B) An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the Tribe.

CHAPTER 11. TRIALS

RULE 11.01. Scheduling Hearing

At the time the Complaint is filed, the clerk shall schedule an initial Case Management Conference on the claim not less than thirty (30) days after the complaint is filed. The clerk shall furnish the Plaintiff with a copy of the notice showing the time and place of the Case Management Conference, and shall affix such notice to the copy of the Complaint to be served on each Defendant. At the initial Case Management Conference, the Court shall ascertain whether:

- (1) Whether all parties have been served, and whether any served Defendant has any defenses to the claim, or wishes to present any counterclaim against the Plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence;
- (2) Some or all of the issues in dispute can be settled without a formal adjudication; and
- (3) The claim is ready for trial, and, if no, when.
 - (i) If the claim is ready for trial, the Court shall set a date for trial.
 - (ii) If the claim is not ready for trial, the Court shall schedule additional Case Management Conferences, and make any order not inconsistent with these Rules as necessary to promote a just and speedy resolution or trial of the case.

RULE 11.02. Scheduling Order

The Court may enter a scheduling order on the Court's own motion or on the motion of a party. The Scheduling Order may be modified by motion of a party upon a showing of good cause or by leave of the Court.

RULE 11.03. Postponement

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

RULE 11.04. Consolidation or Separation of Action

(A) Consolidation. When actions involving a common question of law or fact are pending before the Court, the Court may order a joint hearing or trial of any or all the matters in issue in the actions; the Court may order all the actions consolidated; and the Court may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(B) Severance. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to judicial economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues.

RULE 11.05. Trial Procedure

(A) Civil cases shall be tried before the Court without a jury..

(B) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.

(C) The case of the Plaintiff shall be presented first followed by the case of the Defendant. If rebuttal is required, the Plaintiff shall proceed first, followed by the Defendants.

(D) At the conclusion of the evidence, the Plaintiff and Defendant each in turn may summarize the proof and make final argument.

RULE 11.06. Intervention

A person may be permitted in the discretion of the Court to intervene as a party to an action in cases where property in which he/she claims an interest may be substantially affected by disposition of the action or where the applicant for intervention asserts a claim or defense which presents a question of law or fact common to the main action.

RULE 11.07. Substitution of Parties

If a party dies, becomes incompetent or transfers his/her interest, a substitute or successor party may be joined or substituted as justice requires.

RULE 11.08. Telephone Appearances

Parties may appear by telephone at a hearing or conference with the permission of the court. A Party must contact the court as soon as they are aware of the need for a telephonic appearance, and confirm with the court clerk whether a telephone appearance will be allowed in their case. A party must arrange with the clerk of the court for payment of any telephonic appearance fees. The court may require the personal appearance of all parties at any hearing or conference for which the court, in its discretion.

CHAPTER 12. DISMISSAL OF ACTIONS

RULE 12.01. Voluntary Dismissal

A Plaintiff may file a Notice of Dismissal any time prior to the filing of an Answer. The Complaint may be dismissed with or without prejudice.

RULE 12.02. Involuntary Dismissal

After an Answer has been filed, a party may file a Motion to Dismiss. A Motion to Dismiss will be granted at the discretion of the Court. A Motion to Dismiss may be granted for a lack of jurisdiction; if there has been no Order or other action in a case for six (6) months; if a party substantially fails to comply with these rules; if a party substantially fails to comply with an order of

the Court; if a party fails to establish the right to relief following presentation of all evidence up to and including trial; or if the Plaintiff so requests.

RULE 12.03. Dismissal at Discretion of the Court

The Court, on its own motion, may move to dismiss an action if there has been no filing or other activity on the record for six (6) months, if a party substantially fails to comply with these rules, or if a party substantially fails to comply with an order of the Court. The Court shall give written Notice to all parties that the action will be dismissed after thirty (30) calendar days unless good cause is shown in writing prior to the end of the thirty day period. No further Notice is necessary for the Court to enter a dismissal.

CHAPTER 13. JUDGMENTS AND ORDERS

RULE 13.01. Verdict by the Judge

The Court shall enter its verdict in open court, or at Court's discretion, by writing within twenty (20) days from the time of the end of the presentation of all testimony and evidence.

RULE 13.02. Judgments – Generally

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

RULE 13.03. Punitive Damages

Where the injury was willfully and maliciously inflicted, the judgment may award punitive damages to the prevailing party. Punitive damages shall not be excessive.

RULE 13.04. Cost of Civil Actions

The Court may assess reasonable costs of the case against the party or parties against whom judgment is entered.

RULE 13.05. Sanctions or Contempt of Court

Where any party or witness has willfully failed to follow any of these Rules, or an order of the Court, the Court may impose reasonable sanctions following a hearing on an Order to Show Cause.

CHAPTER 14. EXECUTION OF JUDGMENTS

RULE 14.01. Procedures

If, after the time for appeal has run, the judgment debtor has not paid the judgment or is not making payments in the manner agreed to by the parties or ordered by the Court, the judgment creditor may

make an application to the Court for an order requiring the judgment debtor to appear before the Court and answer under oath regarding his or her personal and real property. The Court shall then determine what property of the judgment debtor is available for seizure to pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may impose reasonable sanctions following a hearing on an Order to Show Cause.

RULE 14.02. Sale of Property

Property seized under 14.01 shall be sold at a public auction conducted by the RVIT Tribal Police after giving at least thirty (30) days public notice posted in at least three public places on the RVIT Reservation, one of which shall be the Tribal Office. Property shall be sold in a commercially reasonable manner to the highest bidder who shall make payment for the property at the time of the sale. If the sale results in a higher price than the debt, plus expenses of the sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale. After the sale, a sixty (60) day escrow period will be provided for the debtor to comply with the Court's order. Said escrow shall be administered by the Clerk of the Court. After the escrow period expires, the sale shall be final.

RULE 14.03. Record of Sale

A complete and accurate record of any sale pursuant to this Chapter shall be kept by the Clerk of the Court, including receipts and descriptions of property and any other information as deemed necessary.

RULE 14.04. Exemption From Execution

The Court shall not order seizure and sale of property of the judgment debtor, where such an order would impose an immediate and substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor may be subject to execution, and not property of his or her family.

CHAPTER 15. MISCELLANEOUS

RULE 15.01. Enforcement of Judgment or of Judicial Records of Other Jurisdictions

The Tribal Court may as a matter of comity enforce the judgment of another Tribe, the United States, a state or foreign nation, provided, that such a judgment may be enforced only after hearing or trial, on an action or special proceeding in the Tribal Court, requesting enforcement relief. An authenticated copy of the judgment of the other jurisdiction shall accompany the complaint seeking enforcement.

RULE 15.02. Effective Date

These rules will take effect on the first Court work-day after the date these Rules are adopted by the Chief Justice of the RVIT Court of Appeals. They will govern all proceedings brought on or after that date. They will govern all proceedings pending on that date unless, in the discretion of the Court, their application would not be feasible or would work injustice to the parties in the

proceeding. In that event, the Court shall devise procedures as are necessary for a full, fair and expeditious resolution of the proceeding.

RULE 15.03. Business Hours

The Round Valley Tribal Court is open from 9:00 a.m. to 4:30 p.m. Monday through Friday, with the exception of holidays, closings due to inclement weather, or other unforeseen circumstances. For a document to be timely filed, it must be received and stamped by the Clerk of Court no later than 4:30 p.m. on the date due.