

# OMAHA TRIBAL CODE (2013)

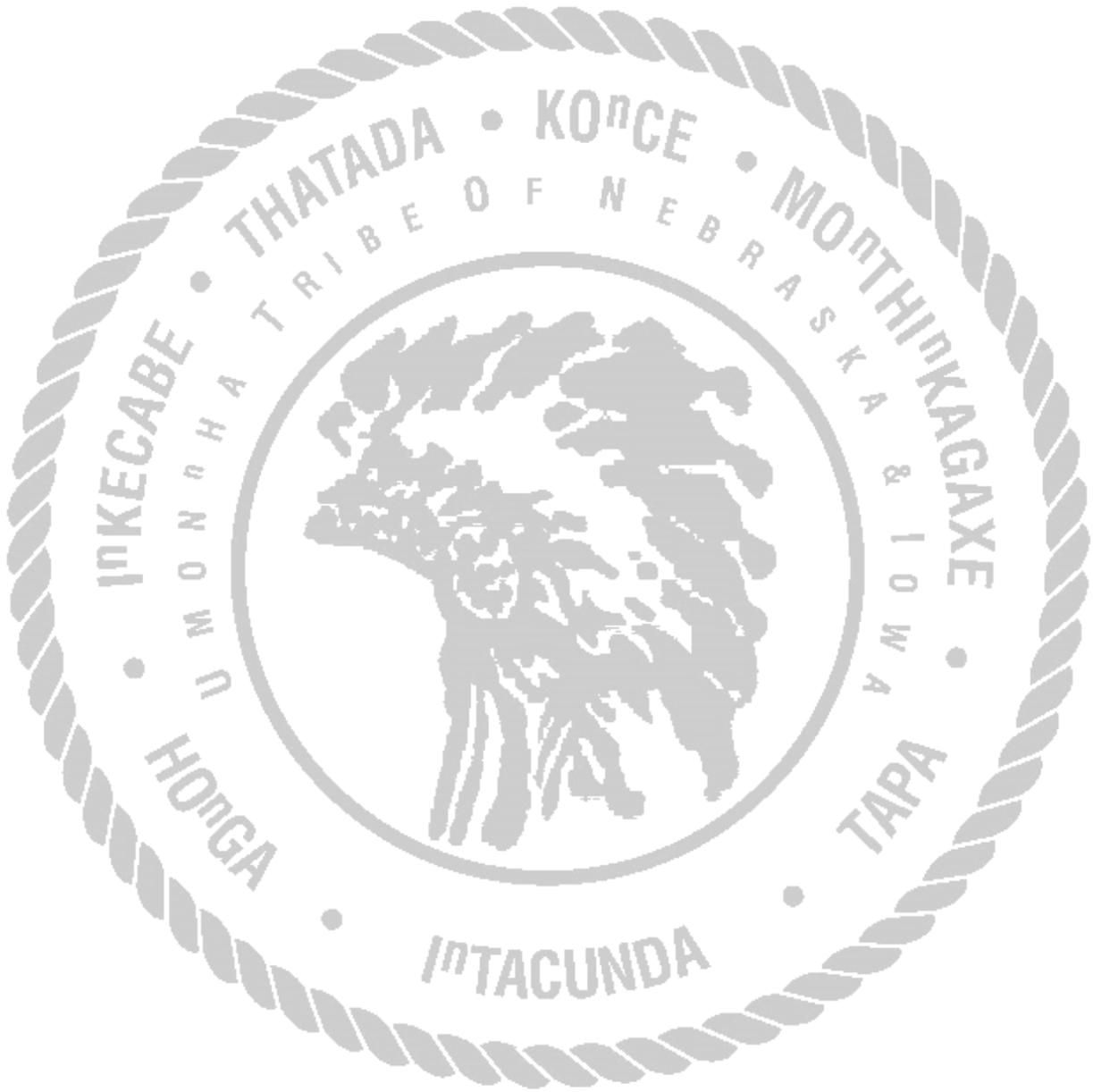
## TITLE 3. RULES OF CRIMINAL PROCEDURE

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## TITLE 3. RULES OF CRIMINAL PROCEDURE

Source: Omaha Tribal Council

### CHAPTER 1. SCOPE, PURPOSE AND CONSTRUCTION.

#### RULE 1. Scope, Purpose and Construction.

- (a) These rules govern the procedure for all criminal cases in the Omaha Tribal Courts.
- (b) Every proceeding in which an adult person is charged with a criminal offense of any degree is a criminal case.
- (c) These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

### CHAPTER 2. GENERAL PROVISIONS.

#### RULE 2. Search Warrants.

- (a) **Search Warrant Defined.** A search warrant is a written order, signed by a Tribal Judge, and directed to a Tribal law enforcement officer ordering him to conduct a search and seize items of property specified in the warrant.
- (b) **Issuance of a Search Warrant.**
  - (1) Every Tribal Judge shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the Court.
  - (2) No warrant of search and seizure shall be issued except upon probable cause that a search will discover:
    - (A) Stolen, embezzled, contraband, or otherwise criminally possessed property; or
    - (B) Property which has been or is being used to commit a criminal offense; or
    - (C) Property which constitutes evidence of the commission of a criminal offense.
  - (3) Probable cause shall be supported by a written and sworn statement based upon reliable information.
  - (4) The warrant shall be served between 7:00 a. m. and 9:00 p. m., unless the Tribal Judge, upon showing of good cause therefore, inserts a direction that it be served at some other time.
- (c) **Contents of Search Warrant.** A search warrant shall contain the following:
  - (1) The name(s) of the person(s) whose statements was/were taken in support of the issuance of the warrant.
  - (2) Name or description of the specific place or person to be searched and the specific property to be seized.
  - (3) Signature of the issuing judge.
  - (4) Direction that the warrant shall be served between 7:00 a.m. and 9:00 p. m., unless the Tribal Judge, upon a showing of good cause therefore, inserts a direction that it be served at some other time.
- (d) **Execution and Return of Search Warrant.** Warrants of search and seizure shall be served only by Tribal law enforcement officers. The serving officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant, which in no case shall be longer than seven (7) days from the date of issuance. Warrants not returned within such time limit shall be void.

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(e) **Search Without a Warrant.** A Tribal Police Officer may conduct a search and seize property without a valid warrant when:

(1) Incident to making a lawful arrest, the search is limited to search of the person himself and the immediate surrounding area within which a weapon might be found and used against the officer before he could protect himself, or within which evidence might be destroyed before the officer could prevent such destruction.

(2) The search is with the consent of the person to be searched or a person with authority over the place to be searched, after that person has been informed of his right to require the officer to obtain a search warrant.

(3) The officer has probable cause to believe that the person searched may be armed and dangerous, but any such search shall be limited to a pat down or frisk of, the subject solely to determine the existence of weapons.

(4) The search is of a movable vehicle and the officer has probable cause to believe that it contains contraband, stolen, or embezzled.

(f) **Disposition of Seized Property.**

(1) The police shall make an inventory of all property seized by warrant or otherwise, and a copy of such inventory shall be left with the person from whom the property was taken.

(2) A hearing shall be held by the Tribal Court to determine the disposition of all property seized by the police. Upon satisfactory proof as to ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property taken as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed, sold at public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the Court.

(3) The term "property" is used in this rule to include documents, books, papers and any other tangible object.

### **RULE 3. Arrest and Arrest Warrants.**

(a) An arrest is the taking of a person into custody in a manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

(b) A tribal police officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

(1) For an offense committed in his presence;

(2) When he has reasonable cause to believe the person has committed an offense, although not in his presence, and there is reasonable cause for believing that such person, before a warrant can be obtained, may,

(A) Flee the jurisdiction or conceal himself to avoid arrest, or

(B) Destroy or conceal evidence of the commission of an offense, or

(C) Injure or annoy another person or damage property belonging to another person.

(3) When the person arrested has committed a Class A or B offense although not in his presence;

(4) When a Class A or B offense has, in fact, been committed and he has reasonable cause to believe the person committed such offense;

(c) A private person may arrest another for an offense committed or attempted in his presence.

(d) Any person making an arrest may request or summon as many police officers as he deems necessary to help him.

(e) If the offense charged is a Class B or C offense, the arrest pursuant to a warrant cannot be made at

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night unless such is specifically authorized by the issuing judge.

(f) Any arresting officer:

(1) Must inform the person to be arrested of his intentions to arrest him, of the cause or reason for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;

(2) Must show the warrant of arrest as soon as practicable if such exists and is demanded;

(3) May use only that force which is reasonably necessary to effect an arrest;

(4) May break open a door or window of a building in which the person to be arrested is, or is reasonably believed to be, after demanding admittance and explaining the purpose for which admittance is desired;

(5) May search the person arrested and take from him and put into evidence all weapons he may have about his person;

(6) Shall, as soon as reasonably possible, do as commanded by the arrest warrant or deliver the person arrested to the jail and obtain a complaint;

(7) May, if in fresh pursuit, continue such pursuit and arrest upon capture of the person pursued even if arrest would occur outside the exterior boundaries of the reservation. All persons so arrested may be returned to the reservation by the arresting officer if the arrest occurs in the State of Nebraska. Otherwise, the arrested person will be turned over to local police officials pending extradition proceedings.

(8) Notification of Rights at Time of Arrest. Upon arrest the suspect shall be advised of the following rights:

(A) That he has the right to remain silent.

(B) That any statements made by him may be used against him in a court of law.

(C) That he has the right to obtain counsel at his own expense.

(9) Cease questioning if he requests legal counsel until counsel is present.

(10) Cease questioning if defendant or his legal counsel state that the questioning should cease or that defendant doesn't wish to answer any questions.

(g) Arrest Warrants.

(1) Every Judge of the Tribal court shall have authority to issue warrants to arrest and such warrants shall be only upon a showing as probable cause that an offense has been committed and that there is reasonable grounds that the person named in the warrant committed it.

(2) In determining whether probable cause (reasonable grounds) exists to justify issuance of the warrant, the Tribal Judge shall examine and consider the allegations of any criminal complaint which has been filed and any sworn statements of police officers or others in support of the warrant. Unsworn statements shall not be considered unless incorporated by reference into the sworn statement of another presented to the Judge. Sworn statements offered in support of a warrant shall be evaluated by the Judge in terms of the (a) source of the information related, (b) the content of the information, (c) the recency or remoteness of the information in time, (d) the reliability and internal consistency of the information, (e) the degree to which the information rationally relates to the allegation or crime or the identity or location of a suspect of a criminal investigation.

(3) The Tribal Judge shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the accused.

(h) Any arrest warrant issued shall contain the following information:

(1) The name or description and address, if known, of the person to be arrested.

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- (2) Date of issuance of the warrant.
- (3) Description of the offense charged and the time and place the offense is alleged to have occurred.
- (4) Signature of the issuing judge.

(A) An arrest warrant may be executed only between the hours of 7:00 a.m. and 9:00 p.m. unless the accused is to be apprehended in a public place, or unless the Tribal Judge specified other hours during which the warrant may be executed.

### RULE 4. Extradition.

(a) **Compact Required for Extradition.** No extradition shall be available under the provisions of this Code, unless both the Omaha Tribe of Nebraska and the state, county, municipal, tribal government or other entity involved have mutually and formally entered into an extradition agreement whereby either party may exercise the power of extradition.

(b) **Requirement of Tribal Arrest Warrant.** Except as otherwise provided by Federal law or this Code, no person shall be arrested within the jurisdiction of the Tribe for an offense committed outside that jurisdiction unless a Tribal arrest warrant has been obtained. Law enforcement officers of another jurisdiction who seek to arrest any person within the jurisdiction of the Tribe shall apply for a Tribal arrest warrant in accordance with Rule 4(c).

(c) Application for Tribal Arrest Warrant.

(1) An application by law enforcement officers of another jurisdiction for a warrant to arrest a person within a Tribal jurisdiction shall be made in a form substantially complying with Rule 3(g).

(2) The application shall be made to the Tribal Chairman who shall, after investigation, either deny the application or order that the application be approved pending a finding of probable cause by the Judge of the Tribal Court.

(3) If the application and accompanying documents give the Tribal Judge probable cause to believe a crime has been committed, that the person charged has committed it, and that the Court seeking arrest of the person has jurisdiction over the crime, then the Judge shall issue a Tribal arrest warrant to be executed and returned as are other Tribal arrest warrants.

(d) **Rights of Extradition Defendant.** Except as herein provided, a person arrested under this extradition procedure shall have all the rights of a defendant otherwise appearing before the Tribal Court.

(e) **Arraignment and Bail of Extradition Defendant.**

(1) A person arrested on the basis of an application for extradition shall be known as an extradition defendant.

(2) An extradition defendant shall be arraigned as provided in Rule 23 and asked if he wishes to waive or oppose extradition.

(3) An extradition defendant may be admitted to bail under standards appropriate to the offense with which he is charged in the other jurisdiction.

(f) **Waiver of Extradition.** If a defendant waives extradition he shall be transferred to the custody of the law enforcement officers of the other jurisdiction, upon their request.

(g) **Opposition to Extradition.** If a defendant wishes to oppose extradition, the Tribal Judge shall hold an extradition hearing as soon as possible, but not more than twenty-eight (28) days after arraignment.

(h) **Extradition Hearings.** At the extradition hearing, if representatives of the other jurisdiction prove that there is probable cause to believe that the defendant committed a crime and that the other jurisdiction has jurisdiction over the crime, then the Judge shall order extradition.

(i) **Extradition Appeal.** If extradition is ordered, the defendant shall be informed of his right to orally request ten (10) days to file an appeal. If the defendant does not then immediately request this time to

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appeal, he shall be considered to have waived his right to appeal, and he shall be transferred to the custody of law enforcement officers of the other jurisdiction, upon their request.

(j) **Bail on Extradition Appeal.** A defendant who has been ordered to be extradited shall be held in custody until an appeal is filed, but may be readmitted to bail after an appeal is filed.

### **RULE 5. Bail; Release from Custody.**

(Amended by Omaha Tribal Council Resolution No. 89-29 (1/26/89))

(a) Except as herein provided, all persons arrested for offenses under this Code and incarcerated shall be given the opportunity to make bail and be released pending their trial or appeal.

(b) **Bail - Release Prior to Trial - Personal Recognizance.** Every person charged with a criminal offense before the Tribal Court shall be released from custody on his personal recognizance, upon a written promise to appear at trial, unless the Judge should determine that such a release will not reasonably assure the appearance of such person lawfully required by law on that release as such person will pose a significant danger to the community, the accused or any other person.

(c) **Bail - Release Prior to Trial - Alternatives.** Where the Judge determines that a person charged with a criminal offense should not be released on his personal recognizance, the Judge may choose from among the following alternatives to assure the appearance of the person at any time lawfully required.

(1) Release after deposit by the accused or a bondsman of bond either in cash or other sufficient collateral in an amount specified by the Judge or a bail schedule. The Judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.

(2) Release after execution of a bail agreement by one or more responsible members of the community.

(3) Release to custody of a designated person or organization agreeing to assure the accused's appearance.

(4) Release with reasonable restrictions on the travel, association or place of residence of the accused during the period of release.

(5) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(6) No release where the Judge finds, from the arguments presented or the past record of the defendant, that no conditions will reasonably assure the appearance of the defendant or that release of the defendant will pose a significant danger to the community, the accused or to any other person.

(d) **Bail - Release Pending Appeal.** Every person who has been convicted of a Tribal offense and who has filed an appeal or a petition for a writ of habeas corpus shall be treated in accordance with the provisions for bail here provided.

(e) A bail schedule for Class C offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided, however, that if the arresting officer or complaining witness shall certify to the jailer, or if the jailer shall certify based on his own observation, that the defendant is at the time he is brought to the jail unconscious or in an intoxicated or apparently intoxicated, condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for 8 hours. The defendant shall be informed by the jailer of his right to make bail at the appropriate time. Bail for Class A offenses may be set only by a judge upon consideration of the relevant factors and shall be set or denied within 72 hours following arrest.

(f) At the arraignment or other appropriate time, the judge shall set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial and at such other times as his appearance is necessary. A defendant may at arraignment

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request that any bail posted under the bail schedule be reduced or that he be released under terms other than bail as authorized elsewhere in this Title.

(g) The required bail may be tendered in the form of cash, or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the court in the form that the court shall by rule direct.

(h) In the event the defendant fails to appear as required, the Court will forfeit any cash deposited or order the sureties of the bail bond to pay the designated amount to the court. The liability of the sureties may be enforced by order of the Court without the necessity of an independent action or judgment.

(i) The Court may order the forfeiture of bail for non-appearance set aside if it appears that justice does not require the enforcement of the forfeiture.

(j) The right to be released on bail as provided herein shall not accrue until charges under this Code shall have been filed. Persons incarcerated in the Tribal jail for violation of Federal and State laws shall be subject to be released on bail by the jurisdiction under which authority and laws the arrest was made.

Upon arrest of an individual solely for violation of Federal law, custody of the arrested party shall immediately be given to the appropriate Federal authority. If federal authorities fail to accept custody of the arrested party and make arrangements with the Chief of Police to physically remove the arrested party from the Tribal jail, or to pay the Tribal jail to hold said party as a Federal prisoner, the Chief of Police shall release said party from custody upon 24 hours notice to the appropriate U.S. Attorney and to the Tribal prosecutor if no tribal charges have been filed as of that time.

Upon the Tribal Prosecutor's receipt of a written declaration of the State or U.S. Attorney, a Tribal judge, upon consideration of the criminal complaint and relevant factors, must set or deny bail within 72 hours of such declination.

### **RULE 6. Time Computations.**

In computing any period of time in these Rules, the day of the act or event from which the designated period begins to run shall not be included, and the last day of the period will be included unless it is a Saturday or Sunday or a legal holiday. If a time period prescribed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall not be counted, provided that weekend arrestees shall be arraigned no later than Monday of the following week.

### **RULE 7. Motions.**

An application to the Court for an order shall be by motion. A motion other than one made at trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit and/or a memorandum of points and authorities. A copy of all motions shall be served upon all parties or their counsel, and they shall be allowed to appear at a hearing before any order is issued in response to such motion, unless the Court is asked to enter an order agreed by all parties.

### **RULE 8. Dismissal.**

(a) The prosecutor may move that a complaint be dismissed and upon the court's granting such motion the prosecution of that complaint shall cease, the defendant shall be released and any bail or bail bond released. Such a dismissal shall not be made during trial without the consent of the defendant.

(b) If there is an unreasonable and unnecessary delay in bringing a defendant to trial, the court may, on motion of the defendant or its own motion, dismiss the complaint. No delay of less than six (6) months shall be considered unreasonable under this section, provided that where the defendant is incarcerated for more than 1/2 of the maximum possible sentence for the offense(s) charged without being brought to trial, the Court may cause the charge to be dismissed under this section.

### **RULE 9. Service and Filing of Papers.**

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- (a) Written motions other than those which are heard ex parte, written notices and similar papers shall be served on each party in the manner provided for in civil actions.
- (b) All papers required to be served shall also be filed with the, Court Clerk.

### **RULE 10. Calendars.**

- (a) The Tribal court shall provide for the placing of criminal proceedings on the court calendar with as little delay as is reasonably possible.
- (b) The Tribal Court shall schedule criminal trials no less frequently than one day per month.
- (c) The Court may for good cause shown by either party direct that a trial be postponed to the next or some succeeding month. However, if the prosecution for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant shall be released on his own recognizance pending the rescheduled trial, if the offense charged is Class B or C.
- (d) No criminal trial shall be set for sooner than two (2) weeks after arraignment unless this requirement is waived by Defendant.

### **RULE 11. Telephone Calls.**

- (a) Upon request, any person arrested has the right to make at least one (1) completed telephone call to a friend or bail bondsman and at least one (1) completed telephone call to a lay counselor or attorney.
- (b) The accused shall be allowed to make telephone calls immediately after being registered and identified at the jail, if there is an unreasonable delay in taking the accused to jail or in processing.
- (c) A denial of the right to call a friend, bondsman, lay counselor, or attorney, under subsection (a) shall be grounds for dismissal of the case, unless the judge finds that there was a good reason for the denial.

### **RULE 12. Other Pre-Trial Procedures**

- (a) Confessions.
  - (1) It shall be a violation of the law to obtain a confession from an accused by means of fraud, force, threat, or a denial of the rights listed in Rule 3(f).
  - (2) Any confession obtained in a manner violating the law shall be excluded from use as evidence by procedure substantially the same as Rule 32(c)(2).

### **RULE 13. Definitions and General Provisions**

- (a) **Definitions of Terms.** In this Code, unless the context otherwise requires:
  - (1) "Bribe" signifies any money, goods, right in action, property, thing of value, or advantage, present or prospective, asked, promised, given or accepted, with a corrupt intent to influence unlawfully the recipient or prospective recipient, in his action, vote, or opinion in any public or official capacity.
  - (2) "Writing" includes printing and typewriting.
  - (3) "Signature" includes any name, mark, or sign written with intent to authenticate any instrument or writing.
  - (4) "Person" includes a corporation as well as a natural person. When used to designate the party whose property may be the subject of any offense, it includes this State, any other State, government, or country which lawfully may own any property and all public and private corporations or joint associations, as well as individuals.
  - (5) "Real Property" includes every estate, interest, and right in lands, tenements, and hereditaments.
  - (6) "Personal Property" includes every description of money, goods, chattel, effects, evidences

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of rights in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created or acknowledged, transreal or personal, is created or acknowledged, transferred, increased, defeated, discharged or diminished.

(7) "Defendant" is a person charged with the commission of an offense, at any stage of the proceedings after a judge has issued a summons or warrant upon a sworn complaint..

(8) "Criminal Action" is one prosecuted by the Tribe, or a private party against a person charged with a Tribal offense, for the punishment thereof.

(9) "Felony" is any crime punishable by a fine of more than five hundred' dollars (\$500.00), or imprisonment for more than six (6) months, or both, established by some jurisdiction other than the Tribe.

(10) "Motion" is an oral or written request of the Court for an order stating the grounds upon which it is made, setting forth the relief or order sought, and if necessary, supported by sworn oral or written statements.

(11) "Offense" is any act, or failure to act which is prohibited by this Code, and which is made punishable by fine, imprisonment, or both.

(12) "Probable Cause" is reasonably reliable prior knowledge of facts and circumstances which would justify a careful and cautious person in his beliefs or acts, e.g., reasonable cause.

(13) "Prosecutor" is any person designated by the Tribal council or the Chief Tribal Judge who presents the case against the defendant. No Tribal judge shall act as prosecutor.

(14) "Judicial Notice" is specific facts and propositions which are common everyday knowledge, such as customs and usages which are generally known and accepted as to be in effect, a part of the law of the particular jurisdiction; laws, statutes, constitutional guarantees, duly enacted ordinances, and governmental regulations of other jurisdictions.

### **RULE 14. Records.**

The Clerk of the court shall keep such records in criminal proceedings as the Chief Judge shall by rule direct. Among the records required to be kept by the Clerk shall be a book known as the "Criminal Docket" in which, among other things, shall be entered each order or judgment of the Court and the date thereof.

### **RULE 15. Rules of Court.**

The Chief Judge may, in conjunction with the other Tribal judges, promulgate rules governing criminal procedure subject to approval of the Tribal Council not inconsistent with these rules and in supplement thereto, and copies of such rules shall be made available for public inspection and copying, and shall be conspicuously posted in the Clerk's office. Copies of any Rules of Court adopted under this provision shall be mailed to all attorney and lay counsel admitted to practice before the Omaha Courts.

### **RULE 16. Forms.**

Any forms adopted for use in the courts are illustrative and not mandatory.

### **RULE 17. Citation.**

These rules may be known and cited as the "Rules of Criminal Procedure" or "R.Cr.P."

## **CHAPTER 3. PROVISIONS GOVERNING CRIMINAL PROCEEDING.**

### **RULE 18. Prosecution of Offenses.**

(a) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court, by a court of competent jurisdiction, provided, however, that no incarceration, or other esposition of one accused of an offense before trial in accordance with these rules

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shall be deemed a punishment.

(b) All criminal proceedings shall be prosecuted in the name of the Omaha Tribe of Nebraska against the person charged with an offense, referred to as the defendant.

### **RULE 19. Rights of Defendant.**

In all criminal proceedings, the defendant shall have the following rights:

- (a) To appear and defend in person and by counsel, except:
  - (1) No defendant shall have the right to have appointed professional counsel provided at the Tribe's expense.
- (b) To be informed of the nature of the charges against him and to have a copy thereof;
- (c) To testify in his own behalf, or to refuse to testify regarding the charge against him, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that criminal proceeding;
- (d) To confront and cross examine all witnesses against him, subject to the Rules of Evidence;
- (e) To compel by subpoena the attendance of witnesses in his own behalf;
- (f) To have a speedy public trial by an impartial judge or jury as provided in these rules;
- (g) To appeal in all cases;
- (h) To prevent his present spouse from testifying against him, except:
  - (1) in any case in which the offense charged is alleged to have been committed against the spouse or the children of either the spouse or the defendant, or against the marital relationship;
  - (2) any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.
- (i) Not to be twice put in jeopardy by the Omaha Tribe of Nebraska for the same offense.

### **RULE 20. Statute of Limitations.**

(a) To give rise to a prosecution in the Omaha Tribal Court, a criminal complaint shall be filed following the commission of an offense within the periods specified in Section 1-8-6(f) of this Code.

### **RULE 21. The Criminal Complaint.**

- (a) The criminal complaint is a written statement of the essential facts constituting the offense charged.
- (b) All criminal complaints shall be made upon oath before a clerk of the Tribal Court.
- (c) The criminal complaint must state:
  - (1) The name of the person accused, if known, of some other name if not known plus whatever description of the person accused is known;
  - (2) The general location where the offense was committed;
  - (3) The general name and code designation of the offense (if known);
  - (4) A short, concise statement of the specific acts or omissions to act complained of;
  - (5) The person against whom or against whose property the offense was committed, if known, otherwise no statement need be made;
  - (6) The date and approximate time of the commission of the offense, if known;

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(7) The name of the person filing the complaint.

(d) No minor omission from or error in the form of criminal complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(e) The Clerk(s) of the court shall assist private parties in writing up and filing criminal complaints as appropriate and depending upon the literacy of the complainant and his familiarity with the Tribal Criminal Code.

(f) It shall not be necessary to charge a specific class (Class A, B, or C) of an offense which depends for the degree of punishment upon a factual finding (e.g. the value of the property taken in a theft offense). If a factual allegation is made which will supply the information needed to determine the degree of the offense, such allegation shall be considered as true for all preliminary matters (e.g. setting bail). If no such factual allegation is made, the offense shall be considered, for all preliminary matters, to be of the least degree possible under the facts alleged.

### **RULE 22. Arrest - Warrant or Summons.**

(a) Upon the filing of a criminal complaint, a warrant of arrest or a summons shall issue to bring the defendant in the complaint before a judge of the Court.

(b) Whenever it is provided that a warrant may issue for the arrest of a person charged with a commission of a Class B or C offense, the judge shall issue, or cause to be issued, a summons instead of a warrant, unless he has reasonable ground to believe that the person will not appear upon a summons, in which case he shall issue a warrant of arrest. A warrant of arrest shall issue in all cases in which a Class A offense is charged.

(c) The warrant of arrest shall be signed by the judge issuing such and shall contain the name of the defendant, or, if such is not known, some other name plus a reasonable description of the defendant, if known. It shall describe the offense charged and it shall command that the defendant be arrested and brought before the judge to enter a plea.

(d) When a summons shall issue, it shall name the defendant and, the offense charged and order the defendant to appear before a Tribal Judge to enter a plea to the charge at the date and time specified in the summons, which shall be set at not less than ten (10) days from the time of service of the summons upon defendant. If a defendant fails to appear in response to a summons, a warrant of arrest shall issue.

(e) Any defendant may request a continuance of his trial date and for good cause shown the continuance shall be granted subject to the discretion of the Court.

(f) Warrants and summons shall be served by a Tribal police officer or any other adult person designated to perform such function by a judge of the Court or the Chief of Police.

(1) Such service may be accomplished any place within the exterior boundaries of the Omaha Indian Reservation.

(2) The date, time, and place of service or arrest shall be endorsed on the warrant or summons along with the name of the person serving such which shall be returned to the Court, and a copy of which, so endorsed, shall be left with the person served. If possible, a written acknowledgement of service from the person served shall also be obtained and a place for such acknowledgement shall be put on the summons form.

(3) An officer need not have the warrant in his possession at the time of arrest; but, if he does not, he shall inform the defendant that a warrant has been issued, the nature of the charge, and shall provide the defendant with a copy of the arrest warrant and complaint not later than at the time of arraignment.

(4) If reasonably possible, a properly endorsed copy of the summons or warrant plus a copy of the complaint shall be given to the defendant at the time of service or arrest.

(g) Should a defendant refuse service of a summons or should a defendant's whereabouts be unknown after a reasonable search, an arrest warrant shall issue.

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### **RULE 23. Arraignment.**

(Amended by Omaha Tribal Council Resolution No. 89-29 (1/26/89))

(a) As soon as reasonably possible after arrest but not more than 72 hours thereafter, the defendant shall be brought before a Tribal judge to be informed of his right before the Tribal Court, to hear the charges against him, and to enter a plea to those charges.

Upon the date and time indicated upon the summons, the defendant shall appear before a Tribal judge to be informed of his rights before the Tribal Court, to hear the charges against him, and to enter a plea to those charges.

If defendant desires, but does not presently have counsel, he will be given a reasonable time to secure such before entering his plea.

(b) The defendant shall be provided with a copy of the criminal complaint if he has not before received one.

(c) At the time of the arraignment, the criminal complaint will be read to the defendant, and the defendant will be asked to enter a plea.

(d) The defendant will enter his plea or the Court will enter a not guilty plea for him, and he will then be advised regarding sentencing or bail as is appropriate.

### **RULE 24. Commitments.**

(a) No person may be detained or jailed under this Code for a longer period than 36 hours unless there has been issued a commitment order bearing the signature of a judge of the Tribal Court.

(b) Pending investigation of charges or pending trial, a temporary commitment order shall be issued.

(c) A final commitment order shall be issued for persons jailed as a result of a sentence of the Tribal Court.

### **RULE 25. Joinder of Offenses and of Defendants.**

(a) Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

### **RULE 26. Pleas.**

(a) A defendant may plead guilty or not guilty. The Court shall not accept a plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to accept a plea of not guilty, the Court shall not enter a judgment upon a plea of guilty unless it satisfied that there is a factual basis for the plea.

(b) The defendant, with the consent of the court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offenses charged in the complaint or to any lesser degree of the offense charged.

(c) Withdrawal of Guilty Plea. The Court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interests of justice and fairness would be served by doing so.

### **RULE 27. Pleadings and Motions before Trial; Defenses and Objections.**

(a) Pleadings in criminal proceedings shall consist of the complaint and the plea of either guilty or not guilty. All other pleas and motions shall be made in accordance with these rules.

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(b) Motions raising the defenses and objections shall be made as follows:

(1) Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense must be raised on motion before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of subject matter jurisdiction or failure to charge an offense may be raised as defenses or noticed by the court on its own motion at any stage of the proceeding.

(2) If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceedings or enter judgment as is appropriate in light of the decision.

### **RULE 28. Trial Together of Charges.**

(a) Two or more defendants may be tried together if they could have been joined in a single complaint and a single defendant may be tried on more than one complaint at a single trial.

(b) If it appears that a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers, any statements made by a defendant which the Tribe intends to introduce in evidence at the trial.

### **RULE 29. Discovery and Inspection.**

(a) The police, or prosecutor, shall, upon request permit the defendant or his attorney to inspect and copy any statements or confessions, police reports, or copies thereof, made by the defendant if such are within the possession or control or reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.

(b) The defendant or his attorney shall reveal by written notice to the Court clerk at least five (5) working days before the trial the names of any witnesses upon whom the defense intends to rely to provide an alibi defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

(c) The Court shall, upon motion of either party, hold a pretrial conference before trial. The court shall compel the attendance of the defendant and his counsel at the conference. The prosecution may be at the conference. The prosecution may be required by the court to exchange discoverable information at the conference. Neither the defendant nor his attorney, in recognition of his constitutional right against self-incrimination, shall be compelled to disclose anything about his case at any time before the trial, except the names of known alibi witnesses. The court shall at that time consider all pretrial motions and the court may issue such orders as deemed proper to regulate the conduct of trial.

(d) The Prosecution is at all times obligated to disclose to the defendant or his counsel any evidence or information in the possession of the police or prosecution which tends to cast doubt on the guilt of the Defendant for the particular crime charged, or which exculpates him of such crime. This duty arises from the prosecution's duty to seek justice, rather than merely convictions, in any criminal case.

### **RULE 30. Subpoena.**

(a) A subpoena is an order of court issued by a judge or the clerk of the courts. It shall command each person to whom it is directed to attend and give testimony at a place and time specified therein. The clerk may issue subpoenas, signed and otherwise complete except for the name of the person or thing subpoenaed to a defendant upon request.

(b) A subpoena may be served by any police officer or court employee or any resident tribal member over the age of 18 years who is not a party: Service shall be accomplished by handing a copy of the

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subpoena to the person named therein. No fees or mileage allowance need be tendered with service.

(c) A subpoena may be served any place within the territorial jurisdiction of the Tribal court.

(d) Failure without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court and prosecution thereof may proceed upon the order to the court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service.

### CHAPTER 4. TRIAL

#### RULE 31. Judge Disability.

(a) If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, a mistrial shall be declared and the prosecutor may at his discretion reinstitute trial before another judge.

#### RULE 32. Evidence.

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the following rules:

(a) **Form.** At all hearings and trials, the testimony of witnesses shall be taken orally upon oath or affirmation, unless otherwise provided in these rules,

(b) Examination and Cross Examination.

(1) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

(2) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(3) Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.

(c) **Testimonial Evidence.** Testimonial evidence which tends to show the existence or non-existence of any material fact at issue in a criminal trial shall be admitted, provided that:

(1) Testimony, the admission of which would deny either party any right guaranteed by Federal or Tribal law, including but not limited to the right to be confronted with the witnesses against a defendant, shall not be admitted; and

(2) Testimony which, because of its inflammatory nature or its inherent unreliability would tend to have a significant prejudicial impact on the trier of fact that would far outweigh its contribution to proof of the existence or nonexistence of a material fact shall not be admitted; and

(3) Testimony, the admission of which would violate the exclusionary rules on privileged communications under Nebraska law relating to privileges and immunities of witnesses, which law is hereby incorporated by reference, and including, but not limited to the priest/penitent privilege, shall not be admitted; and

(4) Hearsay evidence, to be admissible, must be determined in advance to be not at issue or subsequently confirmed by the, testimony of the person to whom the hearsay statements are imputed.

Except as provided in subsection (c)(2) above, determinations as to the authenticity or reliability of any item of testimony or other evidence shall be made by the trier of fact; the jury in jury trials or the Judge in trials without a jury.

(d) **Weight and Worth of Testimonial Evidence.** The Court shall evaluate, and in jury trials shall

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direct the jury to evaluate the credibility of all witnesses' testimony in terms of the witness' truthfulness, the ambiguity of the testimony and the probable accuracy of the witness' perceptions, observations and memory, and to give greater or lesser weight to said testimony in accordance with such evaluation.

(e) **Physical Evidence.** Written documents and other physical evidence shall be received upon being identified, authenticated, and upon a showing of relevance to the action.

(f) **Official Documents.** Official documents or an official law, record or copy thereof, may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof and without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

(g) **Record of Excluded Evidence.** In an action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Judge may receive such excluded testimony into the record.

### **RULE 33. Exceptions Unnecessary.**

Exceptions to rulings or order of the Court are unnecessary, and it is sufficient that a party at the time a ruling or order of the Court is sought makes known to the Court his objection or what grounds therefore; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

### **RULE 34. Harmless Error and Plain Error.**

(a) Any error, defect, irregularity or variance that does not affect substantial rights shall be disregarded.

(b) Errors or defects affecting substantial rights may be recognized and acted upon by the Court even though they were not brought to the attention of the Court by counsel.

### **RULE 35. Regulation of Conduct in the Courtroom.**

Each judge may regulate the conduct of persons in his courtroom and may forbid the taking of photographs or other visual or audio recordation of proceedings occurring therein.

### **RULE 36. Jury.**

(a) Any person accused of a crime for which imprisonment is a possible penalty shall be granted a jury trial, upon his or her request, made at the time of the arraignment or at least five (5) days before the date originally set for trial.

(b) Unless a defendant requests a jury trial, the case shall be tried by a Tribal Judge without a jury.

(c) A jury shall consist of at least six (6) members of the Tribe and one alternate selected at random from a list of eligible jurors prepared each year by the Tribal Council or other body, as the Council shall direct.

(d) An eligible juror is a tribal member who has reached the age of eighteen (18) years, has not been convicted of a felony within the last five (5) years and is not otherwise unqualified according to standards established by The Tribal Court under its general rulemaking authority.

(e) The Court shall permit the defendant or his counsel and the prosecutor to examine the jurors and the Court itself may make such an examination.

(f) Each party shall have the right to challenge an unlimited number of jurors for cause on the basis of lack of qualifications, partiality, or otherwise acceptable reasons. Whether or not cause exists shall be determined by the Judge in all instances. Preemptory challenges of jurors are not allowed by either party.

(g) After selecting the six (6) jurors, and any alternates, the judge shall have them swear to fully consider all evidence and to render an impartial verdict, and shall declare them a jury.

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(h) The Judge shall instruct the jury with regard to the applicable laws, and the jury shall decide all questions of the act on the basis of that law.

(i) The jury shall deliberate in secret and shall return a verdict of "Guilty" or "Not Guilty." All verdicts shall be by unanimous vote. The Judge shall render judgment in accordance with the jury verdict.

(j) If the jury is unable to reach a unanimous verdict, the judge shall dismiss the case, and the prosecution may not be reviewed.

(k) Each juror shall be paid out of Tribal Funds the sum of fifteen dollars (\$15.00) for each day of service, plus fifteen (\$0.15) cents per mile for his transportation to and from court.

### **RULE 37. Expert Witnesses and Interpreters.**

(a) Either party may call expert witnesses of their own selection and bear the cost of such.

(b) The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

(c) The trial judge or clerk may act as interpreter with the consent of all parties.

### **RULE 38. Motion for Judgment.**

(a) The Court on motion from defendant or on its own motion shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.

(b) If a motion for judgment of acquittal is made at the close of all evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

### **RULE 39. Instructions.**

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such request shall be furnished to adverse parties. The court shall rule on proposed instructions, and shall then instruct the jury before closing arguments. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing or if necessary out of the presence of the jury. Sample uniform Jury instructions for criminal cases are available from the Clerk.

### **RULE 40. Verdict.**

(a) The verdict of the jury shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) If there are two or more defendants, the jury may at any time during its deliberations return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree as to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if such an attempt is an offense, without the necessity of the defendant having been formally charged with such lesser offenses or with attempt.

(d) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If upon the poll there is not unanimous concurrence, the jury may be

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directed to retire for further deliberations or may be discharged.

### **RULE 41. Sentencing, Judgment and Post Trial Procedures.**

(a) **Sentencing.**

(1) Before sentencing, the Judge may commit the defendant to jail or may continue or alter the bail in accordance with the procedures prescribed in this Chapter.

(2) Sentence shall be imposed within a reasonable amount of time after either the conviction by the Court or jury, or upon plea of guilty. Before imposing sentence, the Court shall allow counsel to speak on behalf of the defendant personally and ask him if he wishes to make a statement on his own behalf and to present any information in mitigation of punishment. The prosecutor shall have an equal opportunity to speak to the Court, if he so desires.

(3) Any person who been convicted in the Tribal court of a criminal offense may be sentenced to one or a combination of the following penalties:

(A) Imprisonment for a period not to exceed the maximum permitted by the Code provision defining the offense, which in no case shall be greater than six (6) months.

(B) A money fine in an amount not to exceed the maximum permitted by the Code provision defining the offense, which in no case shall be greater than five hundred dollars (\$500.00).

(C) Restitution or compensation for the injured party by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(4) A defendant held in jail pending the imposition of sentence shall earn credit toward the sentence at the rate of one (1) day for every day served

(5) If, solely because of indigency, a convicted offender is unable to pay forthwith a money fine assessed under this Section or costs assessed under other provisions of this code, the court shall allow him a reasonable time to pay the entire sum or allow him to, make reasonable installment payments to the Clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments, the Court may find him in contempt of court and imprison him accordingly.

(b) **Judgment.** A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the Judge and filed as a part of the record. The Clerk shall give a copy of the judgment to the defendant.

(c) **Notification of Right to Appeal.** Following imposition of judgment, the court shall inform the defendant that he has a right to appeal provided he was found guilty either by Court or jury. If the defendant requests, the Clerk of court s shall prepare and file a Notice of Appeal on behalf of the defendant. No appeal shall exist upon a plea of guilty unless the defendant alleges breach of a plea bargain agreement or imposition of an unlawful sentence.

(d) **Probation.**

(1) Where the sentence of imprisonment has been imposed on a convicted offender, the Tribal court may suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Court.

(2) Any person who violates the terms of his probation may be required by the Court to serve the sentence originally imposed or such part of it as the Court may determine to be suitable, giving consideration to all the circumstances, provided that such revocation of the probation shall not be ordered without a hearing before the Court at which the Tribe shall have the burden of proving the grounds alleged for revocation and the offender shall have the opportunity to rebut the grounds alleged to justify revocation or to show that if true, they do not warrant such revocation.

(e) **Parole.** Any person sentenced by the Court to detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Court.

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### **RULE 42. Motion for New Trial.**

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by Court without a jury, the court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made at any time to cure manifest injustice, but if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial based on any grounds shall be made within fifteen (15) days after verdict or finding of guilty or within such further time as the Court may fix during the fifteen (15) day period.

### **RULE 43. Arrest of Judgment.**

The court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within fifteen (15) days after verdict or finding of guilty or plea of guilty, or within such further time as the court may fix during the fifteen (15) day period.

### **RULE 44. Correction or Reduction of Sentence.**

The court may correct an unlawful sentence at any time and may correct a sentence imposed in an unlawful manner within thirty (30) days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of an appeal.

### **RULE 45. Clerical Mistake.**

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

## **CHAPTER 5. APPEAL**

### **RULE 46. Right of Appeal - How Taken.**

- (a) The Defendant has the right to appeal from the following
  - (1) A final judgment of conviction, sentence or bail.
  - (2) From an order made, after conviction, affecting his substantial rights.
- (b) The Tribe has the right to appeal from the following:
  - (1) A judgment of dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before a trial;
  - (2) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
  - (3) An order of the Court directing the jury to find for the defendant;
  - (4) An order made after judgment affecting the substantial rights of the Tribe.
- (c) The procedures governing Appeals are set out at Title 4, Rules of Appellate Procedure.

### **RULE 47. Stay of Judgment and Relief Pending Review.**

(a) A sentence of imprisonment may in the trial Court's discretion, be stayed. If an appeal is taken and the defendant may be given the opportunity to post bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.

(b) A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to return if the appeal should

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favor the defendant and negate the requirements for paying such. In the alternative, an appropriate bond may be required.

(c) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

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