

WINNEBAGO TRIBAL CODE  
TITLE 1

TITLE 1  
COURT RULES  
(As redesignated July 1, 1989.)

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PREAMBLE

This Code of laws for the Winnebago Tribe of Nebraska of the Winnebago Indian Reservation is established for the purpose of strengthening Tribal self-government and providing for the protection of people and property on the reservation. Adoption of this Code is an exercise of inherent sovereignty of the Winnebago Tribe of Nebraska, and is undertaken by the Winnebago Tribal Council pursuant to its constitutional authority so to do. [TCR 86-79]

**1-100 Authorization.** There is hereby established, ordained and activated, pursuant to the Constitution of the Tribe, the judicial branch of the government of the Tribe, the Tribal Court and an appeals Court known as the Winnebago Supreme Court. [TCR 96-22]

**1-101 Definitions.** The following words have the meanings given below when used in this Act, unless a different meaning is obvious from the context:

1. “Appeals Court” shall mean the Court of last resort to which appeals may be taken from the Tribal Court. The judicial decisions of the Court of Appeals are final and not subject to further appeal. The Court of Appeals shall be the Winnebago Supreme Court.
2. “Clerk” shall mean the clerk of the Court.
3. “Code” shall mean the statutory laws of the Tribe.
4. “Constitution” shall mean the Constitution of the Tribe.
5. “He,” “him,” and “his” shall mean the masculine, feminine or neuter form as necessary for the phrase to have meaning.
6. “Tribal Court” shall mean the general Tribal Court operating within the jurisdiction of the Tribe.
7. “Jurisdiction” shall mean the Indian Country within the territorial jurisdiction of the Tribe.
8. “Tribe” shall mean the Winnebago Tribe of Nebraska unless the context clearly indicates otherwise.
9. “Reservation” shall mean all the territory within the exterior boundaries of the Winnebago Indian Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title

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of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.

10. “Winnebago Tribal Court” shall mean the Tribal Court and the Winnebago Supreme Court and such other inferior courts as the Tribal Council may from time to time establish. [TCR 86-79, 87-102, 91-63, 93-62, 96-22]

**1-102 Territorial jurisdiction.**

1. The jurisdiction of the Courts of the Winnebago Tribe of Nebraska shall extend to the territory within the exterior boundaries of the Winnebago Indian Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of territorial jurisdiction includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.
2. The Winnebago Tribal Courts shall have jurisdiction over any Indian Child Welfare Act proceeding or other juvenile matter falling within the jurisdiction conferred on the Tribal Courts by Article IV, Section 1(R) of the Winnebago Constitution and Bylaws (amended May 28, 1981) and /or contemplated by the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1901, et. seq., as may be amended from time to time, or by successor statute, whether arising on or off the Winnebago Indian Reservation. [TCR 96-22]

**1-103 Criminal jurisdiction.** The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any statute adopted by the Tribe insofar as not prohibited by federal law. The Court of Appeals in all criminal cases shall be the Winnebago Supreme Court. [TCR 96-22]

**1-104 Personal jurisdiction.**

1. As used in these jurisdictional provisions, the word “person” shall include any individual, firm, company association, corporation or other entity.
2. Subject to any limitations expressly stated elsewhere in this Code, the Courts of the Tribe shall have jurisdiction over the following persons:
  - a. Any person who transacts, conducts, or performs any business or activity within the reservation, either in person or by an agent or representative, for any civil cause of action or contract or in quasi contract or by promissory estoppel or alleging fraud.
  - b. Any person who owns, uses, or possesses any property within the reservation, for any civil cause of action prohibited by this Code or other statute of the Tribe arising from such ownership use or protection.
  - c. Any person who commits a tortious act on or off the reservation or engages in tortious conduct within the reservation, either in person or by agent or representative, causing harm within the reservation for any civil cause of action arising from such act or conduct.
  - d. Any Indian who commits a criminal offense prohibited by this Code or other statute of the Tribe, by his/her own conduct or the conduct of another for which he/she is legally accountable, if:
    - i. The conduct occurs either wholly or partly within the reservation; or
    - ii. The conduct which occurs outside the reservation constitutes an attempt or conspiracy to commit an offense within the reservation; or

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- iii. The conduct which occurs within the reservation constitutes an attempt or conspiracy to commit in another jurisdiction an offense prohibited by this Code or other statute of the Tribe and such other jurisdiction.
3. Any person for whom the Tribal Courts may constitutionally exercise jurisdiction.
4. None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable. [TCR 96-22]

**1-105 Jurisdiction over property.** Subject to any contrary provisions, exceptions or limitations contained in either federal laws and regulations, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Winnebago Tribal Court System shall have jurisdiction over any real or personal property located on the reservation to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property must be liable. [TCR 96-22]

**1-106 General subject matter jurisdiction—limitations.**

1. The Winnebago Tribal Court System shall have such subject matter jurisdiction as is expressly conferred by Article IV 1(i) and 1(q), Winnebago Constitution and By-laws (amended May 28, 1981) to wit:
  - a. Any and all Indian Child Welfare Act proceedings defined at 25 U.S.C. Section 1901, et. seq., or successor statute, without regard to the child's residence or domicile or the location of any incidents giving rise to the proceedings.
  - b. Civil disputes and civil causes of action of any kind whatsoever with the following exceptions and limitations:
    - i. The Winnebago Tribal Court shall have jurisdiction over probate proceedings to the extent permitted by federal law over all of the real and personal property located within the boundaries of the jurisdiction of the Court at the time of death. [TCR 86-79, 96-22]

**1-107 Civil jurisdiction.** The Winnebago Tribal Courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Tribe, including the Tribal common law, over all general civil claims which arise within the Tribal jurisdiction, and over all transitory claims in which the defendant may be served within the Tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within territorial jurisdiction of the Courts, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Courts shall be considered consent to the jurisdiction of the Courts with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant or their agent(s) to the jurisdiction of the Courts for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place. The Court of Appeals in all civil cases shall be the Winnebago Supreme Court. [TCR 96-22]

**1-108 Juvenile jurisdiction.** The juvenile division of the Tribal Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of care, children in need of supervision, or children under eighteen years of age, or any juvenile offenders when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court pursuant to law. The Court of Appeals in all juvenile matters shall be the Winnebago Supreme Court. [TCR 96-22]

**1-109 Law to be applied.** The Courts shall apply the Tribal Constitution, and the provisions of all statutory law hereto or hereafter adopted by the Tribe. In matters not covered by Tribal statute, the Court

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shall apply traditional Tribal customs and usages, which shall be called the common law. When in doubt as to the Tribal common law, the Court may request the advice of counselors and Tribal elders familiar with it. In any dispute not covered by the Tribal Constitution, Tribal statute, or Tribal common law, the Court may apply any laws of the United States or any states therein, and any regulation of the Department of Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part II of Title 25 of the Code of Federal Regulations, except those sections thereof which are effective when the Tribe receives certain funding from the Bureau of Indian Affairs, nor state law shall be binding upon the Court unless specifically incorporated into Tribal law by Tribal statute or by decision of the Tribal Courts adopting some federal or state law as Tribal common law. [TCR 96-22]

**1-110 Exclusive jurisdiction.**

1. The Courts of the Winnebago Tribe of Nebraska shall have exclusive original jurisdiction in all matters in which the Tribe or its officers or employees are parties in their official capacities, except as otherwise limited by federal law.
2. Nothing contained in the preceding paragraph or elsewhere in this Code shall be constructed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises. [TCR 96-22]

**1-111 Constitutional authority.** This Code is adopted pursuant to the authority vested in the Tribal Council under Article IV, Section 1(i) and 1(q) of the Constitution of the Winnebago Tribe of Nebraska (amended May 28, 1981). [TCR 86-79]

**1-112 Name of Code.** This Code shall be known as the Code of the Winnebago Tribe of Nebraska and may be referred to as “the Code.” [TCR 86-79, 93-62]

**1-113 Prior inconsistent ordinances repealed.** Any and all ordinances and resolutions of the Tribal Council which conflict in any way with the provisions of this Code are hereby repealed to the extent of their inconsistency herewith. [TCR 86-79]

**1-114 Amendment of Code.** Code parts shall be adopted, amended or repealed by resolution of the Tribal Council. Each resolution shall be numbered chronologically, the first number to be the final two numbers of the fiscal year in which the resolution was adopted, and the last numbers to reflect the resolution’s place in the sequence of numbering of all resolutions adopted in that fiscal year. The number of the resolution adopting, amending or repealing each Code section shall appear in brackets following each section. All changes to the Code which are technical and intended to have no substantive effect, including changes in numbers or names of Code titles, article, sections or subparts thereof shall become effective when said Code parts are issued to the Tribal Court or to the Tribal commission, committee, department or program having oversight in the matters treated in such parts of the body of Tribal law. [TCR 86-79, 93-85]

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ESTABLISHMENT OF COURTS  
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1-202	Court of appeals. Appeal of right.	1-227	Books and records kept by the clerk and entries therein.
1-203	Tribal Court judges.	1-228	Stenographic report or transcript as evidence.
1-204	Minimum qualifications of Judge of the Tribal Court.	1-229	Judgment docket.
1-204.1	Change in qualifications.	1-230	Execution docket.
1-205	Manner of selection of Tribal Judges.	1-231	Clerk may collect judgment and costs.
1-206	Term of office.	1-232	Clerk to issue writs and orders.
1-207	Compensation of judges.	1-233	Clerk to file and preserve papers.
1-208	Oath of office.	1-234	Each case to be kept separate.
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1-222	Clerk to serve Tribal and all other Courts.		
1-223	Courts always open.		
1-224	Trials and hearing—orders in chambers.		
1-225	Clerk's office and orders of the clerk.		

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**1-201 Trial Court established.**

1. Pursuant to Article X, Winnebago Constitution and Bylaws (amended May 28, 1981), there is hereby established the Winnebago Tribal Court, the trial level court for the Winnebago Tribe of Nebraska.
2. There is hereby established as part of the Tribal Court, a Juvenile Court division, which may be referred to as the Tribal Juvenile Court. The Juvenile Court division shall handle all matters as set forth in the Juvenile Code. [TCR 96-22]

**1-202 Court of appeals. Appeal of Right.**

1. Pursuant to Article X, Winnebago Constitution and Bylaws (amended May 28, 1981), there is hereby established the Winnebago Supreme Court, the appellate court for the Winnebago Tribe of Nebraska. Appeal to the Winnebago Supreme Court shall be of right.
2. The Winnebago Supreme Court of Appeals shall be the appellate court for the Winnebago Tribe of Nebraska, and shall have appellate jurisdiction over all proceedings before the Winnebago Tribal Court. The Winnebago Supreme Court shall be the highest and final forum for the

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adjudication or resolution of all matters within the jurisdiction of the Winnebago Tribe of Nebraska.

3. Writs and orders. The Winnebago Supreme Court shall have the power to issue any writs or orders necessary and proper to the complete exercise of its jurisdiction, or to cause a court to act where such court unlawfully fails to act within its jurisdiction.
4. The Winnebago Supreme Court shall consist of a Chief Judge, who shall hold the title of Chief Justice of the Winnebago Supreme Court, and two associate judges, who shall hold the title of Associate Justice of the Winnebago Supreme Court. Any two justices shall constitute a quorum. Winnebago Supreme Court Justices shall meet the minimum qualifications established for Tribal Court judges under Section 1-204 of this Code. Additionally, Justices of the Winnebago Supreme Court shall be governed by the following rules:
  - a. The trial judge hearing the case at bar shall not sit on the Winnebago Supreme Court.
  - b. No person shall be qualified to sit on the Winnebago Supreme Court in any case wherein he/she has direct interest or wherein any relative by marriage or blood, within the first three degrees, is a party or has direct pecuniary interest.
  - c. In any case wherein a judge of the Winnebago Supreme Court is unable to hear a case, due to conflict of interest, illness or other reason, the Tribal Council shall appoint a Judge Pro-Tempore who meets the minimum qualifications established for Tribal Court judges under Section 1.204 of this Code. [TCR 96-22]

**1-203 Tribal Court judges.** The Tribal Court shall consist of the Chief Judge, and such Tribal associate judges, special judges and magistrates as may be appointed according to Tribal law. [TCR 93-85, 96-22]

**1-204 Minimum qualifications of Judge of the Tribal Court.** A judge shall be either:

1. An attorney, or
2. An Indian graduate of an American Bar Association approved law school, and
  - a. Have demonstrated moral integrity and fairness in his/her business, public and private life.
  - b. Have never been convicted of a felony, whether or not actually imprisoned, and have not been convicted of any offense, except traffic offenses, for a period of two years preceding his/her appointment. The two-year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
  - c. Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
  - d. Be not less than 25 years of age.
  - e. Not be a member of the Tribal Council, or the holder of any other elected Tribal office of this Tribe, provided that a candidate who is a member of the Tribal Council, or the holder of some other elective Tribal office, may be confirmed as a judge subject to his/her resignation. Upon resignation from his/her office, he/she may be sworn in as and assume the duties of judicial office.
- C. Repealed. [TCR 96-22]

**1-204.1 Change in qualifications.** A change in qualifications for any particular judge position shall be applied to any Tribal Judge in office at the time the change in qualifications becomes effective, but shall not apply to that judge as to any other person after the expiration of such judge's term. [TCR 86-79, 93-85]

**1-205 Manner of selection of Tribal Judges.** Judges shall be appointed by the Tribal Council in the following manner:

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1. Within ten days after a vacancy occurs, the Tribal personnel department shall cause a notice of the vacancy stating minimum qualifications, salary, and any other pertinent information to be published once in the Tribal newspaper and once each week for two consecutive weeks in a newspaper of general circulation in the Tribal jurisdiction. Copies shall be posted at the Tribal office, the nearest agency of the Bureau of Indian Affairs, the Winnebago Housing Authority office, and such other places as the Tribal Council shall direct. The notice shall direct that inquiries, nominations and applications be directed to the Winnebago Tribal personnel department who shall keep a permanent record of responses to such notices. The personnel department shall then interview and nominate the individuals who they feel are best qualified.
2. The Tribal Council shall then review the qualifications of the nominees and any other person meeting qualifications it wishes to consider. The Tribal Council shall then appoint the individual deemed best qualified.
3. If the nominee for judicial office is confirmed by the Tribal Council, the nominee shall be sworn into office by the Chief Justice, or the next ranking available justice of the Winnebago Supreme Court. The Chief Justice of the Winnebago Supreme Court shall be sworn in by the Chairman of the Winnebago Tribal Council.
4. If no person is confirmed, the Tribal Human Resources Department shall either republish the notice and establish a new list of eligible candidates, or will forward for reconsideration to the Tribal Council the candidates on the list gathered from the previous notice. The process shall then be repeated.
5. Upon the expiration of a judicial term of office, the judicial officer is entitled, upon request filed with the secretary of the Tribal Council not less than sixty days prior to the expiration of his/her term, to be considered for confirmation to a new term at the next meeting of the Tribal Council at which a quorum is present. If the Tribal Council, a quorum being present, does not confirm the outgoing officer, they shall so declare and direct the Tribal personnel office to begin the selection process. The outgoing judicial officer's term shall expire upon the date the Tribal Council deems the position vacant. [TCR 96-22]

**1-206 Term of office.**

1. The Chief Judge of the Winnebago Supreme Court shall serve a six year term of office beginning from the date of his/her confirmation and until his/her successor takes office, unless removed for a cause, or by death or resignation.
2. The associate judge of the Winnebago Tribal Court System shall serve a two year term of office beginning from the date of his/her confirmation and until his/her successor takes office, unless removed for cause or by death or resignation. [TCR 96-22]

**1-207 Compensation of judges.** The compensation of Tribal judges, including the Chief Judge and associate judges, shall be set by the Tribal Council at the time of their appointment. No judge's salary shall be reduced by the Tribal Council during his/her term in office except as provided in Article X, Section 1, Winnebago Constitution and Bylaws (amended May 28, 1981). [TCR 86-79, 96-22]

**1-208 Oath of Office.** Before assuming office, each judge, associate judge, special judge and magistrate shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him/her with integrity and fairness, without regard to the persons before him/her, to be administered by the Chief Justice or the next ranking available justice of the Winnebago Supreme Court as soon after confirmation as may be practical, or by the Chairman of the Tribal Council. [TCR 96-22]

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**1-209 Duties and powers of judges.** All judges of the Tribal Court, and special judges in cases within their authority, shall have the duty and power to conduct all Court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so the Court shall:

1. Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or rules of the Tribal Court regulating conduct in the Tribal Court, for the orderly and efficient administration of justice. Such rules must be filed in the office of the Tribal secretary and the Tribal Court clerk before becoming effective.
2. Hold Court regularly at a designated time and place.
3. Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
4. Hear and decide all cases properly brought before the Court.
5. Enter all appropriate orders and judgments.
6. Issue all appropriate warrants and subpoenas.
7. Keep all Court and other records as may be required.
8. Perform the duties of the clerk in his/her absence.
9. Subject to the confirmation of the Tribal Council, appoint such magistrates as may be necessary for the convenient functioning of the Court. These magistrates shall have the authority to issue arrest and search warrants for the protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary or other matters as may be determined by rule of the Tribal Court. Magistrates shall meet the minimum qualifications for the judges of the Tribal Court.
10. Unless a coroner is appointed in accordance with the provisions of the Tribal Code, any judge designated by the Chief Judge shall have the authority to perform duties of the coroner. [TCR 96-22]

**1-210 Disqualifications of judges.**

1. No judge shall hear any cases when he/she has a direct financial, personal, or other interest in the outcome of such cases or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; mother; father; brother; sister; grandmother; grandfather; or any other legal dependent. A judge should attempt to prevent even the appearance of partiality or impropriety.
2. Either party of interest in such case or the judge may raise the question of conflict of interest. Upon decision by the judge concerned, or the Chief Judge or highest ranking judge, that disqualification is appropriate, another judge shall be assigned to hear that matter before the Court.
3. Any judge otherwise disqualified because he/she is related to one or more of the parties in one of the relationships enumerated in subsection (1) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different judge hear the case, and consent to further action by that judge in the case in open Court upon the record, or in writing filed in the record, in spite of the conflict in interest. [TCR 96-22]

**1-211 Removal of judges.** Pursuant to Article X of the Constitution and Bylaws of the Winnebago Tribe of Nebraska as amended May 28, 1981, a judge may be removed for just cause by a petition of forty (40) percent of the voters, voting in the last Tribal election, filed with the Bureau of Indian Affairs superintendent, who shall call an election for removal. The removal vote must be by a majority of those voting. Before the removal election is called, the judge will be provided a hearing to answer any charges.

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The term “cause” shall include any reason sufficient for disbarment of an attorney from the bar of the Tribal Court or state Court or a violation of the Canons of Judicial Ethic promulgated by the American Bar Association. [TCR 96-22]

**1-212 Decisions.**

1. Each decision of a Court within the Winnebago Tribal Court System at a trial shall be recorded on a form approved by the Tribal Court for such purpose, or embody in writing, findings of fact or conclusions of law containing all the information required by the approved form. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court’s decision, and the conclusion of law supporting the Court’s decision.
2. The decision form or the written findings of fact and conclusions of law shall be placed in the case file as an official document of the case. [TCR 96-22]

**1-213 Records.** The Courts of the Winnebago Tribal Court System shall be Courts of record. To preserve such records:

1. In all Court proceedings, the Court reporter, which may be the clerk in the absence of an official Court reporter, shall record proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five years for use in appeals or collateral proceedings in which events of the hearing are in issue. At the close of each hearing, or as otherwise specified, the reporter shall cause a transcript to be made of the recording upon request of any party or the Court as a permanent part of the case record. Court reporters may be licensed by the Tribal Court, and shall be allowed such fees from the parties for their services as shall be set by rule of the Tribal Court.
2. To preserve the integrity of the electronic record, the reporter shall store the recording in a safe place and release it only to the relevant Court or pursuant to an order of a Tribal judge or justice.
3. The clerk shall keep a file bearing the case name and number and every written document filed in the case.
4. All Court records shall be public records except as otherwise provided by law.
5. After five years, Court records except judgments, appearance, and other dockets may be reproduced on computer tape or disk, microfilm or microfiche or similar space saving record keeping methods, provided that at least one hard copy including microfilm or microfiche, of electronically stored data shall be kept at all times.
6. The Winnebago Tribal Court System shall provide for publication in books or similar reporters all of its decisions and opinions in cases before it, which would be useful to the bar of Court and the public. [TCR 96-22]

**1-214 Files.**

1. Except as otherwise provided by law, such as in juvenile cases, Court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.
2. Any person desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the clerk, or judge, and in their presence to insure the integrity of Court records. Under no circumstances shall anyone, except a judge or a licensed advocate, attorney or the clerk taking a file to the judge in his/her chambers or a Courtroom, take a file from the clerk’s office.
3. A copy of any document contained in such a file may be obtained from the clerk by any person for a reasonable copy fee, to be set by the rule of the Tribal Court. The clerk is hereby authorized

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to certify under the seal of his/her office that such copies are accurate reproductions of those documents on file in his/her office. The Tribal Court by rule may provide for such certification. [TCR 96-22]

**1-215 Motion day.** Unless conditions make it impractical, the Winnebago Tribal Court System shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place, and on such notice, if any, as he/she considers reasonable, may make orders for the advancement, conduct, and hearing of actions, or, the Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition. [TCR 96-22]

**1-216 Court clerk establishment.** There is hereby established a Court clerk's office to be administered by one (1) Court clerk and such deputy Court clerks as may be necessary. The Court clerk shall be approved by the Chief Judge and deputy Court clerks shall be approved by the Court clerk.

**1-217 Clerk as department director.** The chief Court clerk is a supervisory administrative position of the judicial branch of the government of the Tribe with the same rank as department director. The chief Court clerk shall serve as the Court administrator and shall be charged in the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody, upkeep and maintenance of the records, papers, effects, and property of the Court and such other matters as shall be assigned to the chief Court clerk by law or Court rule. [TCR 86-79]

**1-218 Powers and duties.** The Court clerk shall have the following powers and duties:

1. To undertake all duties and functions otherwise authorized by law, or necessary and proper to exercise of a duty or function authorized by law.
2. Subject to the approval of the Winnebago Supreme Court, to supervise and direct the hiring, firing and work of all deputy Court clerks and other employees in his/her office.
3. To collect all fines, fees, and costs authorized or required by law to be paid to the Courts, to receipt therefore and to deliver them to deposit in the Court fund.
4. To accept, when ordered by the Court, monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the clerk is authorized to maintain a bank checking account subject to the oversight of the Tribal Court and to deposit and withdraw funds therefrom. This account shall be audited at least once each year by the Tribal Finance Department or an independent certified public accountant, and the clerk shall give a fidelity or performance bond to guarantee the funds deposited therein in such amount as the Tribal Court shall direct.
5. To administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Winnebago Tribal Court System.
6. To provide a record in the absence of a Court reporter to accurately and completely record all proceedings and hearings of the Courts. If a Court reporter is available, the Court reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court rule.
7. To provide stenographic and clerical services to the Court and prosecuting attorney when requested.
8. To act as a librarian, and to keep and maintain the Court's law library.
9. To undertake all duties assigned or delegated to the clerk's office by Tribal law or Court rule. [TCR 96-22]

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**1-219 Oath of clerks.**

1. Every clerk shall take the following oath upon assuming office:

I, \_\_\_\_\_ having been appointed clerk of the Winnebago Tribal Court System, do solemnly affirm that I will truly, faithfully, honestly, and impartially discharge all of the duties of my office to the best of my ability and understanding.

2. Such oaths shall be administered by a judge of the Winnebago Supreme Court. [TCR 96-22]

**1-220 Seal.** The Court clerk is authorized to have and use a seal which shall be circular in form and contain the words, "Official Seal" or the official Tribal emblem in its center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity. [TCR 86-79]

**1-221 Certification of true copies.** The Court clerk is authorized to certify that a copy of any record in his/her office is a true, accurate copy of the record on file by signed, stamp or writing placed on such copy, sealed with the seal of the Court clerk's office and in substantially the following form:

CERTIFICATE OF TRUE COPY

I hereby certify that the above and foregoing instrument is a true, accurate and exact copy of the original of same as it remains of record on file in my office.

Clerk of Court \_\_\_\_\_

Date \_\_\_\_\_

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe. [TCR 86-79]

**1-222 Clerk to serve Tribal and all other Courts.** Until such time as the Winnebago Supreme Court determines that separate clerks are necessary to efficiently administer the business of the Courts and funding is available, the Court clerk shall serve as clerk of the Tribal Courts as well as clerk for all other Courts under the Winnebago Tribe's jurisdiction. [TCR 86-79, 96-22]

**1-223 Courts always open.**

**1-224 Trials and hearings—orders in chambers.** All trials upon the merits, except as specifically provided by law and in children's cases, shall be conducted in open Court insofar as convenient in a regular Courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or to his/her Court officials and in any place either within or without the Tribal jurisdiction; but no hearing, other than ex parte, shall be conducted outside the Tribal jurisdiction without consent of all parties affected thereby, except when determined by the Court to be necessary or expedient in children's cases arising under the Indian Child Welfare Act of 1978, or when the Tribe has entered into agreement with another government for the sharing of judicial officers and Courtroom space in which case the Court may sit in any place authorized by such agreement. [TCR 86-79]

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**1-225 Clerk's office and orders of the clerk.** The clerk's office with the clerk or deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays, but the Court may provide by rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Thanksgiving, and Christmas. All motions and applications in the clerk's office for issuing mesne process, for issuing final process, to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the clerk, unless the Civil Procedure Act requires previous approval by the Court, but his/her action may be suspended or altered or rescinded by the Court upon cause shown.

**1-226 Notice of orders or judgments.** Immediately upon the entry of an order or judgment, the clerk shall serve a notice of the entry by mail upon each party or their attorney who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Winnebago Rules of Civil Procedure for the service of papers. Lack of notice of the entry by the clerk does not affect the time allowed, except as permitted in the Winnebago Rules of Civil Procedure. [TCR 86-79]

**1-227 Books and records kept by the clerk and entries therein.**

1. The clerk shall keep a book known as the "Civil Docket" of such form and style as may be prescribed by the judges of the Tribal Court, and shall enter therein each civil action. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word "jury" on the folio assigned to that action.
2. In like fashion, the clerk shall keep suitable dockets, indices, calendars, and judgment records for the criminal, juvenile and small claims dockets of the Tribal Court and the appeals and original action docket of the Winnebago Supreme Court.
3. The clerk shall also keep such other books and records as may be required from time to time by the law or Tribal Court. [TCR 96-22]

**1-228 Stenographic report or transcript as evidence.**

1. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof maintained in the custody of the Court clerk with the records of the trial, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his/her direction a transcript of the recording.
2. Whenever the testimony of a witness at a trial or hearing which was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording thereof maintained in the custody of the Court clerk with the records of the trial, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his/her direction a transcript of the recording. [TCR 86-79]

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**1-229 Judgment docket.** The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, and date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order. [TCR 86-79]

**1-230 Execution docket.** In the execution docket, the clerk shall enter all executions as they are issued. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The clerk shall also record in full the return of the captain of law enforcement officers to each execution, and such record shall be evidence of such return, if the original be mislaid or lost.

**1-231 Clerk may collect judgment and costs.** Where there is no execution outstanding, the clerk of the Court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same had been paid to the captain of the law enforcement as an execution, and the clerk shall be liable to be amerced in the same manner and amount as the captain of the law enforcement officers for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his/her official bond. [TCR 86-79]

**1-232 Clerk to issue writs and orders.** All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his/her attorney who is seeking the issuance of such writ, order, or process and shall be issued by the clerk. Except for summons and subpoenas, the clerk shall not issue any such writ, order or process except upon order or allowance of the Court unless specific authorizations for his/her issuing such document is found in the Tribal Code. [TCR 86-79]

**1-233 Clerk to file and preserve papers.** It is the duty of the clerk to file together and carefully preserve in his/her office, all papers delivered to him/her for that purpose in every action or proceeding. [TCR 86-79]

**1-234 Each case to be kept separate.** The papers in each case shall be kept in a separate file marked with the title number of each case. [TCR 86-79]

**1-235 Endorsements.** The clerk shall endorse upon every paper filed with him/her, the day of filing it; upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his/her office. [TCR 86-79]

**1-236 Entry on return of summons.** The clerk shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of summons.

**1-237 Material for record.** The record shall be made up from the complaint, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the Court, but if the items of an account, or the copies of papers attached to the pleadings, are voluminous, the Court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded in the file or appearance docket, provided that the transcript of testimony may be appended to the record when paid for by a party for purpose of appeal. [TCR 86-79]

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**1-238 Memorializing record.** It is the duty of the Court to write out, sign and record its orders, judgments, and decrees within a reasonable time after their rendition. To aid in the performance of this duty, the Court may direct counsel or the Court clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or the Court may direct the clerk to prepare the written memorialization dictated by the Court and sign and file the same on the Court's behalf. [TCR 86-79]

**1-239 Clerk to keep Court records, books and papers, statistical and other information.**

1. The clerk shall keep the records, books and papers pertaining to the Court and record its proceedings, and exercise the powers and perform the duties imposed upon him/her by the Tribal statute, order of the Court, or Court rule. The clerk is directed to furnish annually, or at such times as shall be requested, without cost to the Tribal Court and to the Tribal Council, such statistical and other information as the Tribal Council may require, including, but without being limited to, the number and classification of cases:
  - a. Filed with Court.
  - b. Disposed of by Court, and the manner of such disposition.
  - c. The number of cases pending before Court. [TCR 86-79]

**1-240 Applicable to all Courts within Tribe's jurisdiction.** The provisions of this Title shall apply to the clerk of the Tribal Court and all other Courts within the Tribe's jurisdiction. [TCR 86-79]

**1-241 Bonds.** The Court clerk and each deputy clerk shall be bonded by a fidelity bond to guarantee the proper performance of his/her duties and his/her fidelity in handling of the money and other property coming into his/her hands in the performance of his/her duties. The amount of such bond shall be set by the Tribal Council and the cost thereof shall be paid from Tribal funds. [TCR 86-79]

**1-242 Probation and parole officers.**

1. The Court shall have one or more persons to be probation or parole officers. The qualifications, terms of employment and compensation of such officers shall be determined by the personnel department.
2. Probation and parole officers, subject to the supervision of the Chief Judge, shall have the responsibility of assuring the faithful performance of the probation or parole agreements by persons subject thereto, counseling such persons and their families, preparing presentence or other reports as requested by a Tribal judge, and doing such other things as may be directed by a Tribal judge or otherwise required by law.
3. A probation and parole officer shall have the authority of a police officer to make arrest for violation of probation or parole agreements. [TCR 86-79]

**1-243 Creation of prosecutor's office.** There is hereby created an office which shall be known as the prosecutor's office. The officers shall be known as prosecutors and shall be officers of the Winnebago Tribal Court System. [TCR 96-22]

**1-244 Functions of the prosecutor(s).**

1. The prosecutor(s) is charged with the responsibility of seeing that justice is administered within the Tribe's jurisdiction.
2. It is the duty of the prosecutor(s) to know and be guided by the standards of professional conduct as defined in the Codes and canons of the legal profession.

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3. It is the duty of the prosecutor to do such other duties which shall be required in this Code and which shall be required to carry out the efficient operation of the Tribal Court. [TCR 86-79]

**1-245 Creation of defender's office.** There is hereby created an office which shall be known as the defender's office. The officers shall be officers of the Winnebago Tribal Court System. [TCR 96-22]

**1-246 Functions of the defender(s).**

1. The basic duty the lawyer acting as defender owes to the administration of justice is to serve the public as counselor and advocate with courage, devotion and to the utmost of his/her learning and ability and according to law.
2. It is the duty of every defender to know the standards of professional conduct as defined in Codes and canons of the legal profession.
3. It is the duty of the defender to do such other duties which shall be required in this Code and which shall be required to carry out the efficient operation of the Winnebago Tribal Court System. [TCR 96-22]

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TITLE 1  
ARTICLE 3  
WINNEBAGO SUPREME COURT  
RULES OF APPELLATE PROCEDURE  
APPLICABILITY OF RULES

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Rule 22	Habeas corpus proceedings.		
Rule 23	Custody of prisoners in habeas corpus proceedings.		

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**Rule 1 SCOPE OF RULES.**

- a. Scope. These rules govern procedure in appeals to the Winnebago Supreme Court from the Winnebago Tribal Court or the Winnebago Juvenile Court; and in applications for writs or other relief which the Winnebago Supreme Court or a judge thereof is competent to give. When these rules provide for the making of a motion or application in the Winnebago Tribal Court or the Winnebago Juvenile Court, the procedure for making such motion or application shall be in accordance with the practice of those respective courts.
- b. “Tribal Court” defined. Unless otherwise specifically stated, the term “Tribal Court” as used in these Rules shall be deemed to refer to both the Winnebago Tribal Court and Winnebago Juvenile Court.
- c. Jurisdiction not affected. These Rules shall not be construed to extend or limit the jurisdiction of the Winnebago Supreme Court as established by the laws of the Winnebago Tribe of Nebraska; and all provisions of these Rules shall be subject to the Constitution, the Law and Order Code, and Ordinances of the Winnebago Tribe of Nebraska.

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**Rule 2 SUSPENSION OF RULES.** In the interest of expediting decision(s), the furtherance of the administration of justice, or for other good cause shown, the Winnebago Supreme Court may, except as provided in Rule 26(b), suspend the requirements or provisions of any of these Rules in a particular case on application of a party or on its own motion, and may order proceedings in accordance with its direction.

**PART II  
APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT**

**Rule 3 APPEAL AS OF RIGHT—HOW TAKEN.**

- a. Filing the notice of appeal. An appeal permitted by the laws of the Tribe as of right from the Tribal Court to the Winnebago Supreme Court shall be taken by filing a notice of appeal with the clerk of the Tribal Court within the time allowed by Rule 4, or by the statute applicable in the specific case. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Winnebago Supreme Court deems appropriate, which may include dismissal of the appeal.
- b. Joint or consolidated appeals. If two or more persons are entitled to appeal from a judgment or order of the Tribal Court, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Winnebago Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.
- c. Content of the notice of appeal. The notice of appeal shall specify the parties to the appeal, shall designate the order, commitment, or judgment appealed from, whether the appeal is from the Winnebago Tribal Court or the Winnebago Juvenile Court, and a short statement of the reasons or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.
- d. Service of the notice of appeal. The clerk of the Tribal Court shall serve notice of the filing of a notice of appeal by mailing a copy thereof (which copy shall be provided by the appealing party) to counsel of record of each party other than the appellant, and to the party at his/her last known address; and shall forthwith certify and deliver to the clerk of the Supreme Court for filing the notice of appeal, who shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon him/her, either by personal service or by mail addressed to him/her. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his/her counsel. The clerk shall note in the docket the names of the parties to whom he/she mails copies with the date of mailing.
- e. Payment of fees. Upon the filing of any separate or joint notice of appeal from the Tribal Court, the appellant shall pay to the clerk of the Tribal Court, for deposit in the Court Fund, a filing fee of twenty dollars (\$20.00), except that payment of a filing fee shall not be required for an appeal by the Winnebago Tribe of Nebraska, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Tribe, Tribal officers, or Tribal agents, the private party shall pay the required filing fee. The Supreme Court, or a judge or justice thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he/she is without sufficient funds or resources with which to pay the required fees.

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**Rule 4 APPEAL AS OF RIGHT—WHEN TAKEN.**

- a. Appeals in civil cases.
1. In a civil case in which an appeal is permitted by law as of right from the Tribal Court to the Winnebago Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the Tribal Court within the following time periods after entry of the judgment or order appealed from if a time certain is not otherwise provided by statute:
    - i. From an order or judgment in an action for forcible entry or forcible or unlawful detainer: Ten (10) days;
    - ii. From an order, decree, or judgment of the Tribal Court (except an order, decree, or judgment which terminates parental right): One (1) month;
    - iii. From an order, decree, or judgment of the Tribal Court which terminates parental rights: Three (3) months;
    - iv. From a final order, commitment, or judgment in any civil case not hereinabove provided for: Twenty (20) days.
  2. Except as provided in (a)(4) of Rule 4, a notice of appeal filed after the announcement of a decision or order, but before the entry of the judgment or order, shall be treated as filed after such entry and on the day thereof.
  3. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen (14) days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.
  4. If a timely motion under the Winnebago Rules of Civil Procedure is filed in the Tribal Court by any party, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.
  5. The Tribal Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than thirty (30) days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time for the filing of notice of appeal may be ex parte unless the Tribal Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Rules of Civil Procedure. No such extension shall exceed thirty (30) days past such prescribed time or ten (10) days from the date of entry of the order granting the motion, whichever occurs later.
  6. A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with the Winnebago Rules of Civil Procedure.
- b. Appeals in criminal cases. In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal Court within ten (10) days of the entry of the final judgment or other appealable order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order, but before entry of the judgment or order, shall be treated as filed after such entry and on the day thereof. If a timely motion for a new trial pursuant to Rule 36 of the Winnebago Rules of Criminal Procedure on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within ten (10) days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within ten (10) days after entry of the judgment. When an appeal by the Tribe is authorized by statute, the notice of appeal shall be filed by the Tribe in the Tribal Court within ten (10) days after the entry of the judgment or order appealed from unless a different time is

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specifically set by the statute authorizing the appeal. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket pursuant to the Winnebago Rules of Criminal Procedure. Upon showing of excusable neglect, the Supreme Court may, before or after the time has expired, with or without motion or notice, extend the time for filing a notice of appeal for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this subdivision of these Rules.

**Rule 5 RESERVED FOR PROVISIONS RELATING TO INTERLOCUTORY APPEALS IN CIVIL ACTIONS.**

**Rule 6 RESERVED FOR PROVISIONS RELATING TO INTERLOCUTORY APPEALS IN CRIMINAL ACTIONS.**

**Rule 7 BOND FOR COSTS ON APPEAL IN CIVIL CASES.** The Tribal Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this Rule.

**Rule 8 STAY OR INJUNCTION PENDING APPEAL.**

- a. Procedure. Application for a stay of the judgment or order of the Tribal Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the Tribal Court. A motion for such relief may be made to the Winnebago Supreme Court, or to a judge thereof, but the motion shall show that application to the Tribal Court for the relief sought is not practicable, or that the Tribal Court has denied an application or has failed to afford relief which the applicant requested, with the reasons given by the Tribal Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the motion. Reasonable notice of the motions shall be given to all parties. The motion shall be filed with the clerk of the Tribal Court, and normally will be considered by the entire Supreme Court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the Court pending review by the entire Court. In cases where relief has not been previously requested in the Tribal Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the Tribal Court for its initial determination.
- b. Bond, proceedings against sureties. Relief available in the Supreme Court under this Rule may be conditioned upon the filing of a bond or other appropriate security in the Tribal Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Tribal Court and irrevocably appoints the clerk of the Tribal Court as his/her agent upon whom any papers affecting his/her liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the clerk of the Tribal Court with his/her proper and current address, and a supply of stamped, self-addressed envelopes, if he/she wishes copies of any papers served upon the clerk as his/her agent to be mailed to him/her. His/her liability may be enforced on motion in the Tribal Court without the necessity of an independent action. The motion and such notice of the motion as the Tribal Court shall prescribe may be served on the clerk of the Tribal Court who shall forthwith mail copies to the sureties if their addresses are known.
- c. Criminal cases. Appeal in criminal cases shall be had in accordance with the provisions of Rule 40 of the Winnebago Rules of Criminal Procedure.

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**Rule 9 RELEASE IN CRIMINAL CASES.**

- a. Appeal of order denying release pending appeal. An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. Upon entry of an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence, the Tribal Court shall state in writing the reasons for the action taken. The appeal in such matters shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The Supreme Court, or a judge thereof pending action by the entire Court, may order the release of the appellant pending the appeal.
- b. Procedure. Application for release after a judgment of conviction shall be made in the first instance in the Tribal Court. If the Tribal Court refuses release pending appeals, or imposes conditions of release, the Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated judge thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court or a judge thereof, pending action by the entire Court, may order the release of the appellant pending disposition of the motion.
- c. Criteria for release. The decision as to release pending appeal shall be made as follows: The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

**Rule 10 THE RECORD ON APPEAL.**

- a. Composition of the record on appeal. The original papers and exhibits filed in the Tribal Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the Tribal Court shall constitute the record on appeal in all cases.
- b. Transcript, duty of appellant to order, notice of partial transcript.
  1. Within ten (10) days after filing the notice of appeal, the appellant shall order from the clerk or reporter a transcript of such parts of the proceedings not already on file as he/she deems necessary. The order shall be in writing, and within the same period a copy shall be filed with the clerk of the Tribal Court. If no such parts of the proceedings are to be ordered, within the same period, the appellant shall file a certificate to that effect.
  2. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he/she shall include in the record a transcript of all evidence relevant to such finding or conclusion.
  3. Unless the entire transcript is to be included, the appellant shall, within the ten (10) days time provided in (b)(1) of this Rule 10, file a statement of the issues he/she intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he/she shall, within ten (10) days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within ten (10) days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following ten (10) days order the parts or move in the Tribal Court for an order requiring the appellant to do so.
  4. At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the clerk or reporter shall charge a fee of one dollar and fifty cents (\$1.50) for each original page, and

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fifty cents (\$.50) for each copy of an original page. If a copy of a tape recording of the proceedings is ordered, the clerk or reporter shall charge fifteen dollars (\$15.00) per each sixty (60) minute tape copy ordered. All such fees paid on behalf of a clerk or reporter paid by Tribal monies shall be deposited in the Court Fund, unless specific statutory authority for other disposition of such monies is provided. All such fees paid on behalf of an independent reporter appointed or authorized by the Tribal Court to record its proceedings, but not paid from Tribal funds, shall be paid over to such reporter.

- c. Procedure when no transcript available. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his/her recollection. The statement shall be served on the appellee, who may serve objections or propose amendment thereto within ten (10) days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted to the Tribal Court for settlement and approval, and as settled and approved shall be included by the clerk of the Tribal Court in the record on appeal.
- d. Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the Tribal Court, and shall then be certified to the Supreme Court as the record on appeal and transmitted to the Supreme Court records.
- e. Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the Tribal Court, the difference shall be submitted to and settled by the judge of that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Tribal Court, either before or after the record is transmitted to the Supreme Court on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Winnebago Supreme Court.

**Rule 11 TRANSMISSION OF RECORD.**

- a. Chief clerk to serve as appellate court clerk. The chief clerk of the Tribal Court shall also serve as the clerk of the Supreme Court in all cases arising in the Winnebago Tribal Courts.
- b. Transmission and filing of record. In all cases, including juvenile, civil and criminal actions, the clerk in charge of the papers in that case shall, within five (5) working days after a notice of appeal is filed, prepare, certify, and deliver to the clerk of the Supreme Court for filing with the Supreme Court all papers comprising the record of the case appealed except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost of twenty-five cents (\$.25) per page.
- c. Completion of record. Upon receipt of an order for a transcript or additional tape recording, the clerk or reporter shall acknowledge at the foot of the order the fact that he/she has received it and the date on which he/she expects to have the transcript or copy of the tape recording completed and shall transmit the order, so endorsed, to the clerk of the Supreme Court. If the transcript cannot be completed within thirty (30) days of receipt of the order, the clerk or reporter shall request an extension of time from the clerk of the Supreme Court, and the action of the clerk of the Supreme Court shall be entered on the docket and the parties notified. In the event of the

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failure to file the transcript or complete making copies of the tapes within the time allowed, the clerk of the Supreme Court shall notify the chief judge of the Supreme Court and take such steps as may be directed by the chief judge of the Supreme Court. Upon completion of the transcript, the clerk or reporter shall file it with the clerk of the Tribal Court and shall notify the clerk of the Supreme Court that he/she has done so.

- d. Transmission of transcript. Upon receipt of the transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in Rule 10(c) or (d), the clerk of the Tribal Court shall forthwith notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Winnebago Supreme Court, shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Winnebago Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen (15) days after the mailing of the notice of completion of the transcript, tapes, or statement, the clerk of the Tribal Court shall deliver the original thereof to the clerk of the Winnebago Supreme Court for filing. Upon filing by the clerk of the Supreme Court, the record shall be deemed received and completed for the purposes of the appeal.

**Rule 12 DOCKETING THE APPEAL; FILING THE RECORD.**

- a. Docketing the appeal. Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the clerk of the Tribal Court pursuant to Rule 3(d), the clerk of the Supreme Court shall thereupon enter the appeal on the docket. An appeal shall be docketed under the title given to the action in the Tribal Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his/her name, identified as appellant, shall be added to the title. In Juvenile Court appeals, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court, which may become public information, shall contain only initials or other similar designations and not the names of the parties.
- b. Upon receipt of the completed record on appeal as provided in Rule 11(d), the clerk of the Supreme Court shall file it and shall immediately give notice to all parties of the date on which it was filed.

**PART III  
RESERVED**

**Rule 13 RESERVED.**

**Rule 14 RESERVED.**

**Rule 15 RESERVED.**

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**PART IV  
RESERVED**

**Rule 16 RESERVED.**

**Rule 17 RESERVED.**

**Rule 18 RESERVED.**

**Rule 19 RESERVED.**

**Rule 20 RESERVED.**

**PART V  
EXTRAORDINARY WRITS**

**Rule 21 WRITS.**

- a. Mandamus or prohibition directed to a judge or judges. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefore with the clerk of the Supreme Court with proof of service on the respondent judge or judges and on all parties in interest to the action in the Tribal Court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The clerk shall docket the petition and submit it to the Court upon payment of a docketing fee of twenty dollars (\$20.00).
- b. Denial or order directing answer. If the Court is of the opinion that the writ should not be granted in any case on the facts and law stated in the petition, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges, named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more may answer jointly. If the judge or judges named respondents who do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if any. The proceedings shall be given preference over ordinary civil cases. These writs may be used to compel a judge to perform a required action or to refrain from exceeding his/her jurisdiction, but may not be used to control the judge's discretionary actions.
- c. Other extraordinary writs. Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this Rule shall be made by petition filed with the clerk of the Supreme Court with proof of service on the parties named as respondents. Proceedings on such applications shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this Rule.
- d. Form of papers, number of copies. All papers may be typewritten. Three (3) copies of the original shall be filed, but the Court may direct that additional copies be furnished.

**PART VI**  
**HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS**

**Rule 22 HABEAS CORPUS PROCEEDINGS.** An application for a writ of habeas corpus shall be made to the Winnebago Tribal Court. If application is made to the Supreme Court, or a judge or justice thereof individually, the application will ordinarily be transferred to the Tribal Court for determination. The Supreme Court, or a judge or justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the Tribal Court and denied, renewal of the application before the Supreme Court, or a judge or justice thereof is not favored; the proper remedy is by appeal to the Supreme Court from the order of the Tribal Court denying the writ.

**Rule 23 CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS.**

- a. Transfer of custody pending review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of the Winnebago Tribe for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Rule. Upon application of a custodian showing a need therefor, the Court, justice or judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.
- b. Detention or release pending review of decision failing to release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon his/her recognizance, with or without surety, as may appear fitting to the Court or justice or judge rendering the decision, or to the Supreme Court en banc.
- c. Detention or release pending review of decision ordering release. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon his/her recognizance, with or without surety, unless the Court or justice or judge rendering the decision, or the Supreme Court shall otherwise order.
- d. Modification of initial order respecting custody. An initial order respecting the custody or release of the prisoner and any recognizance of surety taken shall govern review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, release or surety shall be made.

**Rule 24 PROCEEDINGS IN FORMA PAUPERIS.**

- a. Leave from Tribal Court to proceed to Supreme Court. A party to an action in the Tribal Court who desires to proceed on appeal in forma pauperis shall file in the Tribal Court a motion for leave so to proceed, together with an affidavit showing, in explicit detail, his/her inability to pay fees and costs or to give security therefor, his/her belief that he/she is entitled to redress, and a statement of the issues which he/she intends to present on appeal. If the motion is granted, the party may proceed without further application to the Supreme Court, and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the Tribal Court shall state in writing the reasons for the denial.
- b. Special rule for parties previously granted permission to proceed in forma pauperis. Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the Tribal Court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the Tribal Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not

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entitled so to proceed, in which event the Tribal Court shall state in writing the reasons for such certification or finding.

- c. Remedy for denial of motion by Tribal Court. If a motion for leave to proceed on appeal in forma pauperis is denied by the Tribal Court, or if the Tribal Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the Supreme Court within thirty (30) days after service of notice of the action of the Tribal Court. The motion shall be accompanied by a copy of the affidavit filed in the Tribal Court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the Tribal Court, and by a copy of the statement of reasons given by the Tribal Court for its action.

**PART VII  
GENERAL PROVISIONS**

**Rule 25 FILING AND SERVICE.**

- a. Filing. Papers required or permitted to be filed in the Supreme Court shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if the most expeditious form of delivery is by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him/her, in which event he/she shall note thereon the date of filing and shall thereafter transmit it to the clerk.
- b. Service of all papers required. Copies of all papers filed by any party and not required by these Rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him/her on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.
- c. Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.
- d. Proof of service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service, but shall require such to be filed promptly thereafter.

**Rule 26 COMPUTATION AND EXTENSION OF TIME.**

- a. Computation of time. In computing any period of time prescribed by these Rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this Rule, "legal holiday" includes New Year's Day, Tribal Constitution Day, Memorial Day, Independence Day, Friday of Pow-Wow, Labor Day, Tribal Election Day, Native American Day, Veterans Day, Thanksgiving Day and Day After (Friday), Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States or the Tribal Council of the Winnebago Tribe.

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- b. Enlargement of time. The Court, for good cause shown, may upon motion enlarge the time prescribed by these Rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing a notice of appeal.
- c. Additional time after service by mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him/her and the paper is served by mail, three (3) days shall be added to the prescribed period.

**Rule 27 MOTION**

- a. Content, response, reply. Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven (7) days after service of the motion, but motions authorized by Rules 8, 9, and 41 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.
- b. Determination of motions for procedural orders. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may, by application to the Court, request consideration, vacation or modification of such action.
- c. Power of a single judge to entertain motions. In addition to the authority expressly conferred by these Rules or by law, a single judge of an appellate court may entertain and may grant or deny any request for relief which under these Rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other proceeding, and except that an appellate court may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.
- d. Form of papers; number of copies. All papers relating to motions may be typewritten. Three (3) copies shall be filed with the original, but the court may require that additional copies be furnished.

**Rule 28 BRIEFS.**

- a. Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:
  - 1. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
  - 2. A statement of the issues presented for review.
  - 3. A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).
  - 4. An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the

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reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

5. A short conclusion stating the precise relief sought.
- b. The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(4), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of appellant.
- c. Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court.
- d. References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as “appellant” and “appellee.” It promotes clarity to use the designations used in the lower court or the actual name of the parties, or descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” “the car,” etc.
- e. References in briefs to the record. References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant (see Rule 30) shall be to the pages of the appendix at which those parts appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made to the original record. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript at which the evidence was identified, offered, and received or rejected.
- f. Reproduction of statutes, rules, regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the Court in pamphlet form.
- g. Length of briefs. Except by permission of the Court, principal briefs shall not exceed fifty (50) pages, and reply briefs shall not exceed twenty-five (25) pages, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc.
- h. Briefs in cases involving cross appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this Rule and Rule 31, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his/her appeal as well as the answer to the brief of the appellant.
- i. Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.
- j. Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after his/her brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

**Rule 29 BRIEF OF AN AMICUS CURIAE.** A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent to leave shall not be required when the brief is presented by the Winnebago Tribe, the United States or an officer or agency thereof, or by a state, territory, commonwealth or Indian tribe. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of amicus curiae is desirable. Save us all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may

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answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion.

**Rule 30 APPENDIX TO THE BRIEFS.** Whenever the record on appeal, or the transcripts are particularly voluminous, the Court may order the appellant to prepare, with notice and consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. A party may append pertinent parts of the record to his/her brief when such is necessary for a clear presentation of the issues raised on appeal.

**Rule 31 FILING AND SERVICE OF BRIEFS.**

- a. Time for serving and filing briefs. The appellant shall serve and file his/her brief within twenty (20) days after the date on which the completed record is received and filed in the Supreme Court, and this motion constitutes leave therefor. The appellee shall serve and file his/her brief within twenty (20) days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen (14) days after service of the brief of the appellee, but except for good cause shown, a reply brief must be filed at least three (3) days before argument.
- b. Number of copies to be filed and served. Three (3) copies of each brief shall be filed with the clerk in addition to the original, unless the Court by order in a particular case shall direct a lesser or greater number, and two (2) copies shall be served on counsel for each party separately represented.
- c. Consequence of failure to file briefs. If an appellant fails to file his/her brief within the time provided by this Rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his/her brief, he/she will not be heard at oral argument except by permission of the Court.

**Rule 32 FORM OF BRIEFS, THE APPENDIX, AND OTHER PAPERS.**

- a. Form of briefs and appendices. Briefs and appendices may be produced in standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. Carbon copies of briefs and appendices may not be submitted without permission of the Court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Rule may be inserted in the appendix; such pages may be informally renumbered if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices shall contain:

1. The name of the court and the number of the case;
2. The title of the case (see Rule 12(a));
3. The nature of the proceedings in the court (e.g., Appeal; Petition for Review) and the name of the court below;

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4. The title of the document (e.g. Brief of Appellant, Appendix); and
  5. The names and addresses of counsel representing the party on whose behalf the document is filed.
- b. Form of other papers. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.
- A motion or other paper addressed to the Court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

**Rule 33 PREHEARING CONFERENCE.** The Court may direct the attorneys for the parties to appear before the Court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Court. The Court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

**Rule 34 ORAL ARGUMENT.**

- a. In general; local rule. Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases, the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his/her opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines:
  1. The appeal is frivolous; or
  2. The dispositive issue or set of issues has been recently authoritatively decided; or
  3. The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.
- b. Notice of argument; postponement. The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.
- c. Order and content of argument. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.
- d. Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this Rule unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care should be taken to avoid duplication of argument.
- e. Non-appearance of parties. If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his/her counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.
- f. Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

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- g. Use of physical exhibits at argument; removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

**Rule 35 DETERMINATION OF CAUSES BY THE COURT EN BANC.**

- a. When a hearing or rehearing en banc will be ordered. A majority of the judges of the Court who are in regular active service may order that any motion or other proceeding be heard or reheard by the Supreme Court en banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of its decision, or (2) when the proceedings involve a question of exceptional importance.
- b. Suggestion of a party for hearing or rehearing en banc. A party may suggest the appropriateness of a hearing or rehearing en banc. No response shall be filed unless the Court shall so order. The clerk shall transmit any such suggestion to the judges of the Court who are in regular active service, but a vote need not be taken to determine whether the cause shall be heard or reheard en banc unless a judge in regular active service or the judge who rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.
- c. Time for suggestion of a party for hearing or rehearing en banc; suggestion does not stay mandate. If a party desires to suggest that a motion or proceeding be heard initially en banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for rehearing a motion en banc must be made within ten (10) days after notice of the decision of the judge initially hearing the motion. The pendency of such a suggestion, whether or not included in a petition for rehearing, shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

**Rule 36 ENTRY OF JUDGMENT.** The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign, and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

**Rule 37 INTEREST ON JUDGMENTS.** Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Tribal Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Tribal Court, the mandate shall contain instruction with respect to allowance of interest.

**Rule 38 DAMAGES FOR DELAY.** If the Supreme Court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

**Rule 39 COSTS.**

- a. To whom allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a

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- judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court.
- b. Costs for or against the Winnebago Tribe. In cases involving the Winnebago Tribe or an agency or officer thereof, if an award of costs against or for the Winnebago Tribe is authorized by Tribal statute, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the Winnebago Tribe of Nebraska or its agencies or officers in their official capacity.
  - c. Costs of briefs, appendices, and copies of records. Unless otherwise provided by Tribal statute or Court rule, the cost of printing, or otherwise producing necessary copies of briefs, appendices, and copies of records authorized by Rule 30 shall be taxable in the Supreme Court at rates not higher than those generally charged for such work within the reservation.
  - d. Bill of costs; objection; costs inserted in mandate or added later. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he/she shall file with the clerk, with proof of service, within fourteen (14) days after the entry of judgment. Objections to the bill of costs must be filed within ten (10) days of service on the party against whom costs are to be taxed unless the time is extended by the Court. The clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs, and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the Supreme Court to the clerk of the Tribal Court.
  - e. Costs on appeal taxable in the Tribal Court. Costs incurred in preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the Tribal Court as costs of the appeal in favor of the party entitled to costs under this Rule.

**Rule 40 PETITION FOR REHEARING.**

- a. Time for filing, content, answer, action by court. A petition for rehearing may be filed within fourteen (14) days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which, in the opinion of the petitioner, the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the case without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

**Rule 41 ISSUANCE OF MANDATE.** The mandate of the Court shall issue twenty-one (21) days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue seven (7) days after entry of the order denying the petition unless the time is shortened or enlarged by order.

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**Rule 42 VOLUNTARY DISMISSAL.**

- a. Dismissal in the Tribal Court. If an appeal has not been docketed, the appeal may be dismissed by the Tribal Court upon the filing in that court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.
- b. Dismissal in the Supreme Court. If the parties to an appeal or other proceeding shall sign and file with the clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

**Rule 43 SUBSTITUTION OF PARTIES.**

- a. Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the Court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal Court but before the notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his/her attorney of record within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this subdivision.
- b. Substitution for other causes. If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).
- c. Public officer; death or separation from office.
  1. When a public officer is a party to an appeal or other proceeding in the Supreme Court in his/her official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his/her successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.
  2. When a public officer is a party to an appeal or other proceeding in his/her official capacity, he/she may be described as a party by his/her official title rather than by name; but the Court may require that his/her name be added.

**Rule 44 CASES INVOLVING CONSTITUTIONAL OR INDIAN CIVIL RIGHTS ACT QUESTION WHERE THE WINNEBAGO TRIBE IS NOT A PARTY.** It shall be the duty of a party who draws a question of the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statute, ordinance, or other action of the Tribal Council in any proceeding in the Supreme Court to which the Tribe, or any agency, officer, or employee thereof in their official capacity is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of said question. The clerk shall thereupon certify such fact to the Tribal attorney and/or Tribal prosecutor who may intervene upon such question upon motion.

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ARTICLE 4  
COUNSELORS AND PROFESSIONAL ATTORNEYS

1-400	Lay counsel.	1-404	Disbarment and discipline.
1-401	Right to be represented by an attorney.	1-405	Standards of conduct and obligations for attorneys and lay counsel.
1-402	Eligibility for admission.	1-406	Oath of attorneys and lay counselors.
1-403	Procedure for admission.		

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**1-400 Lay counsel.**

1. Any person appearing as a party in any judicial proceeding before a Court of the Winnebago Tribe of Nebraska shall have the right to be represented by a lay counsel (not a professional attorney) and to have such person assist in the preparation and presentation of his/her case.
2. The Tribe shall have no obligation to provide or pay for such lay counselors, and such obligation shall rest entirely with the person desiring such a counselor.
3. Any person appearing as lay counselor shall be subject to the same ethical obligations of honesty and confidentiality towards his/her client and the Court as would a professional attorney, and the attorney-client testimonial privilege shall apply in appropriate circumstances.
4. Lay counselors shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters relating to their representative capacity.
5. Lay counselors must meet the minimum requirements of the Bar of the Winnebago Tribal Court as set forth in Section 1-402(2). [TCR 86-79]

**1-401 Right to be represented by an attorney.** Any person appearing as a party in any civil or criminal action shall have the right to be represented by a professional attorney or lay counsel of his/her own choice and at his/her own expense; provided, however that the Tribe has no obligation to provide or pay for such an attorney; provided further, that any such attorney or counsel appearing before Courts of the Tribe shall have first obtained admission to practice before such Court in accordance with the procedures set forth herein. [TCR 86-79]

**1-402 Eligibility for admission.**

1. Any attorney who is an active member in good standing of any State bar or Bar of the District of Columbia is eligible for admission to practice before the Courts of the Winnebago Tribe of Nebraska, if he/she follows the procedures for admission as set out in Section 1-403.
2. Any person who has successfully completed a certified paralegal training program is also eligible for admission to practice before the Courts of the Winnebago Tribe of Nebraska, if they follow the procedure for admission as set out in Section 1-403 and meet minimum requirements of this Section. [TCR 86-79]

**1-403 Procedure for admission.**

1. The clerk shall prepare and maintain on file blank copies of application for admission to practice before the Winnebago Tribal Court System. The application shall provide simple written instructions and shall set out in full an oath which must be signed by the attorney or lay counsel in the presence of a notary public.

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2. Any professional attorney or lay counsel desiring to be admitted to the practice before the Winnebago Tribal Court System shall complete and submit an application for admission certifying under oath:
  - a. That he/she meets the requirements of Section 1-402 of this Code, and appending thereto a current bar admission card or letter from a State bar association or District of Columbia Association evidencing his/her admission to a good standing therein, or evidence of graduation from a certified paralegal training program.
  - b. That he/she has taken the required oath as set out in the application.
3. An admission fee of fifty dollars (\$50.00) shall be tendered with the application subject to return if the application is denied. This is an annual fee to be paid each year by the attorney or lay counsel. The admission fee shall be waived for the General Counsel and/or Attorney General of the Winnebago Tribe of Nebraska.
4. Upon receipt of an application for admission to practice before the Courts of the Winnebago Tribe of Nebraska, the chief judge shall review the application and may, but need not, investigate the truth of the matters contained therein. If the applicant meets the qualifications set forth herein, the chief judge shall cause a certificate to be issued evidencing the admission of the applicant to practice before the Courts of the Winnebago Tribe of Nebraska.
5. Any person denied admission shall have a right to appeal in writing directly to the Tribal Council which may conduct such inquiry or proceedings on the matter as it deems appropriate. [TCR 96-22]

**1-404 Disbarment and discipline.**

1. Whenever any professional attorney admitted to practice before the Winnebago Tribal Court has been disbarred or suspended from the practice of law in any state to which reference for admission to practice was made as a condition to obtaining admission to practice before the Tribal Courts, the chief judge shall immediately send notice to his/her last known address that he/she shall be suspended from practice before the Courts of the Tribe for an indefinite period unless he/she shall appear or otherwise answer within thirty days showing good cause why such order should not be entered. The attorney may also be suspended from further appearances for misconduct or improper behavior by any judge of the Tribal Court upon conditions of notice and hearing.
2. Any person appearing as lay counsel for another may be suspended from further appearances as such for misconduct or improper behavior by any judge of the Tribal Court upon conditions of notice and hearing. [TCR 86-79]

**1-405 Standards of conduct and obligations for attorneys and lay counsel.**

1. Every attorney admitted to practice before the Courts of the Tribe, and every lay counsel employed or appointed to represent another before such Courts when acting in such capacity or in matters in any relation thereto, shall conform his/her conduct in every respect to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association.
2. Both professional attorneys and lay counselors who hold themselves out as being available to act as such have a responsibility to accept as client and represent without compensation or without full compensation such persons as a judge of a Tribal Court feels have particular urgent needs for such representation but are personally unable to afford such legal help. Professional attorneys and lay counselors will be appointed if needed to represent individual clients on a free basis or on a reduced fee basis as part of the admission requirements. Provided that no person shall be obliged by this provision or otherwise to provide more than fifteen hours of free legal services during any twelve month period. [TCR 86-79]

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**1-406 Oath of attorneys and lay counselors.** Upon applying for admission to practice as provided herein, an attorney shall take the following oath by subscribing his/her signature to such oath on the application:

I do solemnly swear (affirm):

That I will support the Constitution of the United States and support and defend the Constitution and By-laws, and laws of the Winnebago Tribe of Nebraska; that I will maintain the respect due the Courts and judicial officers of the Winnebago Tribe of Nebraska;

That I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor maintain any defense except such as I believe to be honestly debatable under the law of the land;

That I will employ for such purposes of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice, or false statement of fact or law. [TCR 86-79]

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TITLE 1  
ARTICLE 5  
CONTEMPTS

- |       |  |       |                     |
|-------|--|-------|---------------------|
| 1-500 | Acts or failures to act which contribute<br>contempt of Court. | 1-502 | Criminal contempt.  |
| 1-501 | Civil contempt.  | 1-503 | Contempt procedure. |
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**1-500 Acts or failures to act which constitute contempt of Court.** The following acts or failures to act may serve as the basis for finding an individual or other entity in contempt of Court:

1. Disorderly, contemptuous, or insulting behavior toward a judge while holding Court, which tends to interrupt the course of the proceedings or undermines the dignity of the Court.
2. A breach of the peace, or loud boisterous conduct which tends to interrupt the course of a judicial proceeding.
3. Deceit, or abuse of process or proceedings of the Court by a party or counselor to a judicial proceeding.
4. Disobedience to a lawful judgment, order or process of the Court.
5. Assuming to be an officer, spokesman or other official of the Court and acting as such without authority.
6. Rescuing or taking any person or property from the Court or an officer acting under Court order, contrary to the order of the Court.
7. Unlawfully detaining or other interfering with a witness or party to an action while such person is going to or from a Court proceeding or attending Court.
8. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
9. Any other interference with the process, proceeding, or dignity of the Court or of a judge of the Court while in the performance of his/her official duties occurring while any Court hearing is in actual session. [TCR 86-79]

**1-501 Civil contempt.**

1. A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.
2. Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the Court or to the complaining party or imprisonment of the party in contempt to secure compliance, or both. [TCR 86-79]

**1-502 Criminal contempt.**

1. Conduct which is directed at, or is detrimental to, the dignity and authority of the Court is a criminal contempt.
2. Criminal contempt is an offense which may be punishable, at the discretion of the Court based on the nature of the conduct in question, with a fine of up to five hundred dollars (\$500.00) and/or up to six months in jail. [TCR 86-79]

**1-503 Contempt procedure.**

1. A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.

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2. All other contempts shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard. [TCR 86-79]

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TITLE 1 ARTICLE 6

TITLE 1  
ARTICLE 6  
SELECTION OF JURORS

- |       |                                  |       |                         |
|-------|----------------------------------|-------|-------------------------|
| 1-600 | Eligibility for jury selection.  | 1-603 | Power to excuse jurors. |
| 1-601 | Jury lists.                      | 1-604 | Compensation to jurors. |
| 1-602 | Jury panel selection procedures. |       |                         |
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**1-600 Eligibility for jury duty.**

1. Any enrolled member of the Winnebago Tribe of Nebraska eighteen years or older, who has not been convicted of a felony or a Class I offense under this Code, and who resides on the Winnebago Indian reservation, shall be eligible to be a juror. Judges, other officers or employees of the Court, attorneys, lay counselors, and current Tribal Council members shall not be eligible to be jurors.
2. The chief judge may adopt procedures whereby non-enrolled Indians and non-Indians may be summoned for jury duty in cases in which one or more non-Indian participants are involved. [TCR 86-79, 05-111]

**1-601 Jury lists.** Each year, the clerk of Courts, at the direction of the Tribal Court, shall prepare a list of eligible jurors, which list shall contain not less than fifty names and which shall contain the names of persons appearing on the Tribal enrollment lists as well as other lists which would fairly represent those individuals living upon the reservation who are eligible to serve as jurors. [TCR 86-79]

**1-602 Jury panel selection procedures.**

1. The clerk shall subpoena not less than twenty persons from the list of eligible jurors to appear and be available to serve as jurors whenever a jury trial is scheduled in a civil or criminal matter.
2. The selection from the list of eligible jurors shall be by lot or some other means of random, impartial selection.
3. Selection of jurors to hear the case shall be accomplished as provided in the Rules of Civil and Criminal Procedures elsewhere in this Code. [TCR 86-79]

**1-603 Power to excuse jurors.** Only the judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror and may do so on account of sickness, disability, extreme hardship, or other good cause shown upon the request for such excusal by the person subpoenaed. [TCR 86-79]

**1-604 Compensation to jurors.** Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily service and/or mileage, if any, as the Tribal Court shall establish by Rule of the Court, consistent with available funds. [TCR 86-79]

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TITLE I  
ARTICLE 7  
JUDICIAL CONDUCT

1-700	Adoption of Code of Judicial Conduct.	1-705	Canon 5.
1-701	Canon 1.	1-706	Canon 6.
1-702	Canon 2.	1-707	Canon 7.
1-703	Canon 3.	1-708	Compliance with Code of Judicial Conduct.
1-704	Canon 4.		

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**1-700 Adoption of Code of Judicial Conduct.** The Winnebago Tribe of Nebraska hereby adopts the Code found in Sections 1-701, et seq., of this Article to be adhered to by all judicial officers of the Court. Judicial officer is defined as all judges, magistrates, referees, and includes anyone who is engaged in the duties of a judge. [TCR 86-79]

**1-701 Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.** An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should him/herself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. [TCR 86-79]

**1-702 Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All his/her Activities.**

- A. A judge should respect and comply with the law and should conduct him/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow his/her family, social, or other relationships to influence his/her judicial conduct or judgment. He/she should not lend the prestige of his/her office to advance the private interest of others; nor should he/she convey or permit others to convey the impression that they are in a special position to influence him/her. He/she should not testify voluntarily as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He/she must expect to be the subject of constant public scrutiny. He/she must therefore accept restrictions on his/her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. The testimony of a judge as a character witness injects the prestige of his/her office into the proceeding in which he/she testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him/her a privilege against testifying in response to an official summons. [TCR 86-79]

**1-703 Canon 3. A Judge Should Perform the Duties of his/her Office Impartially and Diligently.** The judicial duties of a judge take precedence over all his/her other activities. His/her judicial duties include all duties of his/her office prescribed by law. In the performance of these duties, the following standards apply:

- A. Adjudicative Responsibilities
  - 1. A judge should be faithful to the law and maintain professional competence in it. He/she should be unswayed by partisan interests, public clamor, or fear of criticism.
  - 2. A judge should maintain order and decorum in proceedings before him/her.

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3. A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he/she deals in his/her official capacity, and staff, Court officials, and others subject to his/her direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the Court. Courts can be efficient and businesslike while being patient and deliberate.

4. A judge should accord to every person who is legally interested in a proceeding, or his/her lawyer, the full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him/her if he/she gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Commentary

The prescription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with Court personnel whose function is to aid the judge in carrying out his/her adjudicative responsibilities. An appropriate and often desirable procedure for a Court to obtain the advice of a disinterested expert on legal issues is to invite him/her to file a brief Amicus Curiae.

5. A judge should dispose promptly of the business of the Court.

Commentary

Prompt disposition of the Court's business requires a judge to devote adequate time to his/her duties, to be punctual in attending Court and expeditious in determining matters under submission, and to insist that Court officials, litigants and their lawyers cooperate with him/her to that end.

6. A judge should abstain from public comment about a pending or impending proceeding in any Court, and should require similar abstention on the part of Court personnel subject to his/her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the Court.

Commentary

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR7-107 of the Code of Professional Responsibility.

7. A judge should prohibit broadcasting, televising, recording or photographing in Courtrooms and areas immediately adjacent thereto during sessions of Court, or recesses between sessions, except that under rules prescribed by a supervising appellate Court or other appropriate authority, a judge may authorize broadcasting televising, recording and photographing of judicial proceedings in Courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

B. Administrative Responsibilities.

1. A judge should diligently discharge his/her administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative response abilities of other judges and Court officials.
2. A judge should require his/her staff and Court officials subject to his/her direction and control to observe the standards of fidelity and diligence that apply to him/her.

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3. A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Commentary

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

4. A judge should not make unnecessary appointments. He/she should exercise his/her power of appointments only on the basis of merit, avoiding nepotism and favoritism. He/she should not approve compensation of appointees beyond the fair value of services rendered.

Commentary

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

1. A judge should disqualify him/herself in a proceeding in which his/her impartiality might reasonably be questioned, including but not limited to instances where:

- a. He/she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.
- b. He/she served as lawyer in the matter in controversy, or a lawyer with whom he/she previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it.

Commentary

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify him/herself in a proceeding if his/her impartiality might reasonably be questioned because of such association.

- c. He/she knows that he/she, individually or as a fiduciary, or his/her spouse or minor child residing in his/her household, has a financial interest in the subject matter controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding.
- d. He/she or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
- i. is a party to the proceeding, or an officer, director, or trustee of a party;
- ii. is acting as a lawyer in the proceeding;

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that his/her impartiality might reasonably be questioned under Canon 3C(1) or that the lawyer-relative is known by the judge to have an interest in the law firm that could be substantially affected by the outcome of the proceeding. under Canon 3C(1)(d)(iii) may require his/her disqualification.

- iii. is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
- iv. is to the judge's knowledge likely to be a material witness in the proceeding.

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2. A judge should inform him/herself about his/her personal and fiduciary financial interests, and make a reasonable effort to inform him/herself about the personal financial interests of his/her spouse and minor children residing in his/her household.
3. For the purposes of this Section;
  - a. the degree of relationship is calculated according to the civil law system;  
Commentary  
According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his/her or his/her spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding but would not disqualify him/her if a cousin were a party or lawyer in the proceeding.
  - b. "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
  - c. "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
    - i. ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge participates in the management of the fund;
    - ii. an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;
    - iii. the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
    - iv. ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
  - d. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(C) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his/her qualifications. If, based on such disclosure, the parties and lawyer, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his/her financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.  
Commentary  
This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this Section may proceed on the written assurance of the lawyer that his/her party's consent will subsequently be filed. [TCR 86-79]

**1-704 Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, and Administration of Justice.** A judge, subject to the proper performance of his/her judicial duties, may engage in the following quasi-judicial activities, if in doing so he/she does not cast doubt on his/her capacity to decide impartially any issue that may come before him/her:

- A. He/she may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

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- B. He/she may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he/she may otherwise consult with an executive or legislative body or officials, but only on matters concerning the administration of justice.
- C. He/she may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He/she may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He/she may make recommendations to public and private fund granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his/her time permits, he/she is encouraged to do so, either independently or through a bar association, judicial conference, or organization dedicated to the improvement of the law. [TCR 86-79]

**1-705 Canon 5. A Judge Should Regulate his/her Extra-Judicial Activities To Minimize the Risk of Conflict with his/her Judicial Duties.**

- A. Vocational Activities. A judge may write lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocation activities do not detract from the dignity of his/her office or interfere with the performance of his/her judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; he/she should not become isolated from the society in which he/she lives.

- B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his/her impartiality or interfere with the performance of his/her judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- 1. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him/her or will be regularly engaged in adversary proceedings in any Court.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to re-examine the activities of each organization with which he/she is affiliated to determine if it is proper for him/her to continue his/her relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in Court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the Courts for adjudication.

- 2. A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his/her office for the purpose, but he/she may be listed as an officer, director, or trustee of such an organization. He/she should not be a speaker or the guest of honor at an organization's fund-raising events, but he/she may attend such events.

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3. A judge should not give investment advice to such an organization, but he/she may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. Financial Activities.

1. A judge should refrain from financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the proper performance of his/her judicial duties, exploit his/her judicial position, or involve him/her in frequent transactions with lawyers or persons likely to come before the Court on which he/she serves.

Commentary

The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

2. Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
3. A judge should manage his/her investments and other financial interest to minimize the number of cases in which he/she is disqualified. As soon as he/she can do so without serious financial detriment, he/she should divest him/herself of investments and other financial interests that might require frequent disqualification.
4. Neither a judge nor a member of his/her family residing in his/her household should accept a gift, bequest, favor, or loan from anyone except as follows:
  - a. a judge may accept a gift incident to public testimonial to him/her; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his/her spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;
  - b. a judge or a member of his/her family residing in his/her household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same term applied to other applicants;
  - c. a judge or a member of his/her family residing in his/her household may accept any other gift, bequest, favor, or loan *only* if the donor is not a party or other person whose interests have come or are likely to come before him/her, and, if its value exceeds one hundred dollars (\$100.00), the judge reports it in the same manner as he/she reports compensation in Canon 6C.

Commentary

This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

5. For the purposes of this Section, member of his/her family residing in his/her household means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his/her family, who resides in his/her household.
6. A judge is not required by this Code to disclose his/her income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary

Canon 3 requires a judge to disqualify him/herself in any proceeding in which he/she has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with impartial performance of his/her judicial duties; Canon 6 requires him/her to report all compensation he/she receives for activities outside his/her judicial office. A judge has the rights of an ordinary

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citizen, including the right to privacy of his/her financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his/her duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

D. **Fiduciary Activities.** A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his/her family, and then only if such service will not interfere with the proper performance of his/her judicial duties. [Member of his/her family includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close family relationship.] As a family fiduciary, a judge is subject to the following restrictions:

1. He/she should not serve if it is likely that as a fiduciary he/she will be engaged in proceedings that would ordinarily come before him/her, or if the estate, trust, or ward becomes involved in adversary proceedings in the Court on which he/she serves or one under its appellate jurisdiction.

Commentary

The Effective Date of Compliance with these provisions of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

2. While acting as a fiduciary, a judge is subject to the same restriction on financial activities that apply to him/her in his/her personal capacity.

Commentary

A judge's obligation under this Canon and his/her obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holding whose retention would place the judge in violation of Canon 5C(3).

E. **Arbitration.** A Judge Should Not Act as an Arbitrator or Mediator.

F. **Extra-judicial Appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his/her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the Courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary. [TCR 86-79]

**1-706 Canon 6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.** A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his/her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his/her spouse. Any payment in excess of such an amount is compensation.

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- C. Public Reports. A judge should report the date, place, and nature of any activity for which he/she received compensation, and the name of the payer and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His/her report should be made at least annually and should be filed as a public document in the office of the clerk of the Court on which he/she serves or other office designated by rule of Court. [TCR 86-79]

**1-707 Canon 7. A Judge Should Refrain from Political Activity inappropriate to his/her Judicial Office.**

A. Political Conduct in General.

1. A judge or a candidate for election to judicial office should not:
  - a. act as a leader or hold any office in a political organization;
  - b. make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary  
A candidate does not publicly endorse another candidate for public office by having his/her name on the same ticket.

  - c. solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).
2. A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his/her own behalf when he/she is a candidate for election or re-election, identify him/herself as a member of a political party, and contribute to a political party or organization.
3. A judge should resign his/her office when he/she becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he/she may continue to hold his/her judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he/she is otherwise permitted by law to do so.
4. A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct.

1. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:
  - a. should maintain the dignity appropriate to judicial office, and should encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her;
  - b. should prohibit public officials or employees subject to his/her direction or control from doing for him/her what he/she is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he/she should not allow any other person to do for him/her what he/she is prohibited from doing under this Canon;
  - c. should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his/her views on disputed legal or political issues; or misrepresent his/her identity, qualifications, present position, or other fact.
2. A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign

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funds, or solicit publicly stated support, but he/she may establish committees of responsible persons to secure and manage the expenditure for his/her campaign and to obtain public statements of support from lawyers. A candidates committee may solicit funds for his/her campaign no earlier than ninety days before a primary election and no later than ninety days after the last election in which he/she participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of him/herself or members of his/her family.

Commentary

Unless the candidate is required by law to file a list of his/her campaign contributors, their names should not be revealed to the candidate.

3. An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2). [TCR 86-79]

**1-708 Compliance with the Code of Judicial Conduct.** Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, Court commissioner, or magistrate, is a judge for the purpose of this Article except as provided below.

- A. Part-time Judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:
  1. Is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;
  2. Should not practice law in the Court on which he/she serves or in any Court subject to the appellate jurisdiction of the Court on which he/she serves, or act as a lawyer in a proceeding in which he/she has served as a judge or in any other proceeding related thereto.
- B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.
  1. While acting as such, a judge pro tempore is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.
  2. A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he/she has served as a judge or in any other proceeding related thereto.
- C. Retired Judge. A retired judge who receives the same compensation as a full-time judge on the Court from which he/she retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he/she should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his/her affairs as soon as reasonably possible to comply with it. If, however, the demands on his/her time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

- a. continue to act as an officer, director, or non-legal advisor of a family business;
- b. continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his/her family. [TCR 86-79]

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TITLE 1 ARTICLE 8

TITLE 1  
ARTICLE 8  
BONDS AND SURETIES

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|-------|-------------------------------|-------|--|
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| 1-801 | Qualifications of surety.     | 1-805 | Action by Tribe or Tribal department—no bond required. |
| 1-802 | Real estate mortgage as bond. | 1-806 | Appearance bond—enforcement.                           |
| 1-803 | Valuation of real estate.     |       |  |

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**1-800 Justification of surety.** A ministerial officer whose duty it is to take security in any undertaking provided for by the Tribal Code shall require the person offered as surety, if not a qualified surety or bonding company, to make an affidavit of his/her qualifications, which affidavit may be made before such officer, and shall be endorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the persons making the undertaking shall be shown and attached thereto. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Article. [TCR 86-79]

**1-801 Qualifications of surety.** The surety in every undertaking provided for by the Tribal Code, unless a surety or bonding company authorized to give their bond or undertaking by Tribal law, irrevocably submits him/herself to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured over and above all exceptions, debts and liabilities. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this Section. [TCR 86-79]

**1-802 Real estate mortgage as bond.** In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a state in which any portion of the Tribal jurisdiction shall be accepted, provided, that the amount of such bond, guaranty, or indemnity shall not exceed fifty (50) percent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty (50) percent of the reasonable valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty (50) percent valuation. [TCR 86-79]

**1-803 Valuation of real estate.** The officer, whose duty it is to accept and approve such bond, guaranty or indemnity, shall require the affidavits of two landowners or licensed real estate appraisers or brokers versed in land values in the community where such real estate is located to the value of such real estate. Said officer shall have the authority to administer the oaths and take said affidavits. [TCR 86-79]

**1-804 False valuation—penalty.** Any person willfully making a false affidavit as to the value of any such real estate shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured by such false affidavit to the extent of the injury proximately caused thereby. [TCR 86-79]

**1-805 Action by Tribe or Tribal department—no bond required.** Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, commissions, or political branches, no bond, including cost, replevin, attachment, garnishment, re-delivery, “injunction bonds, appeal bonds, or other obligations of security shall be required from such party either to prosecute said suit, answer, or appeal the same.” In case of an adverse decision, such costs as are taxable against such

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party shall be paid out of the miscellaneous fund or other available fund of the party under whose direction the proceedings were instituted. [TCR 86-79]

**1-806 Appearance bond—enforcement.**

1. If a bench warrant or command to enforce a Court order by body attachment is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his/her appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the Court clerk upon order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Tribe may enforce the penalty on a forfeited bail bond.
2. Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the Court fund. The Court may, for good cause shown, vacate order of bond forfeiture. [TCR 86-79]

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TITLE 1  
ARTICLE 9  
MISCELLANEOUS

1-900 Deputy may perform official duties.	1-912 Repealed by TCR 93-85.
1-901 Affirmation.	1-913 Copies of laws.
1-902 Publication in “patent insides.”	1-914 Cooperation by federal employees.
1-903 Action on official bond.	1-915 Effect of prior decisions of the Court.
1-904 May be several actions on same security.	1-916 Judicial review of legislative and executive actions.
1-905 Immaterial errors to be disregarded.	1-917 Action when no procedure provided.
1-906 Payments into Court for minors and incompetents.	1-918 Adoption by reference not a waiver of sovereign power of the Tribe.
1-907 Conserving moneys obtained for minors or incompetent persons.	1-919 Actions by or against Tribe or its officers.
1-908 Sharing of judicial officers.	1-920 Actions by or against Tribe or its officers or employees.
1-909 Sharing of other judicial personnel.	1-921 Principles of construction.
1-910 Sharing of material resources.	
1-911 Sharing of financial resources.	

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**1-900 Deputy may perform official duties.** Any duty enjoined by the Tribal Code upon a ministerial office, and any act permitted to be done by him/her, may be performed by his/her lawful deputy unless otherwise specifically stated. [TCR 86-79]

**1-901 Affirmation.** Whenever an oath is required by the Tribal Code, the affirmation of a person conscientiously scrupulous of taking oath shall have the same effect. [TCR 86-79]

**1-902 Publications in “patent insides.”**

1. Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the Tribal jurisdiction has, or within or adjacent to the Tribal jurisdiction, and the Tribal newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.
2. All publications and notices required by law to be published in a newspaper, if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published as required by subsection (1) of this Section if at least one side of such paper is printed within the legal area. [TCR 86-79]

**1-903 Action on official bond.** When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits his/her bond or renders his/her sureties liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon in his/her own name, against the officer, executor, or administrator and his/her sureties, or may proceed in a proper case as provided in the Winnebago Rules of Civil Procedure, to recover the amount to which he/she may be entitled by reason of the delinquency. [TCR 86-79]

**1-904 May be several actions on same security.** A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency. [TCR 86-79]

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**1-905 Immaterial errors to be disregarded.** The Court, in every stage of action, must disregard any error or defect in the pleading or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect. [TCR 86-79]

**1-906 Payments into Court for minors and incompetents.** Where any amount of money not exceeding five hundred dollars (\$500.00) shall be deposited and paid into Court by virtue of any judgment, order, settlement, distribution, or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate appointed by the Court, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person if it appears to the Court that such money is needed for the support of such minor or incompetent person the Court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trustee for such minor or incompetent person. Such order may be made by the Court in the original cause in which the funds are credited upon the application of any interested person and the Court may direct the clerk of the Court to make payment of the sum to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the Court with bond, the Court shall order the money paid to the guardian for the use of the minor or incompetent person subject to such restrictions and accountings as the Court may direct. [TCR 86-79]

**1-907 Conserving moneys obtained for minors or incompetents.** Moneys recovered in any Court proceeding by next of kin or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age or incompetent in excess of five hundred dollars (\$500.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall by order of the Court, be deposited in a banking or savings and loan institution, approved by the Court. Until the person becomes eighteen years of age or competent to again handle his/her affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the Court made in the case in which recovery was had. When an application for the order is made by a person who is not represented by an attorney, the judge of the Court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the Court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the Court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person subject to such restrictions and accounting as the Court shall direct. [TCR 86-79]

**1-908 Sharing of judicial officers.** This Section is hereby repealed. [TCR 96-22]

**1-909 Sharing of other judicial personnel.** Notwithstanding any other provision of Tribal law, the Tribal Council is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs or other Indian tribes for the shared use of Court clerks, prosecutors, bailiff, Court reporters, and other judicially-related or support personnel. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared personnel, their compensation, and required duties. When acting on behalf of the Tribal Courts, such personnel shall have all the powers and authority of the equivalent position as prescribed in the Tribal Code. Such personnel may be the same as, in addition to, or in lieu of, Tribal personnel in this position. [TCR 86-79]

**1-910 Sharing of material resources.** Notwithstanding any other provision of Tribal law, the Tribal Council is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs, other Indian tribes, or any other unit of government for the shared use of facilities, including Courtroom, offices, jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe. [TCR 86-79]

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**1-911 Sharing of financial resources.** Provision may be made in the above-mentioned agreements for the allocation of fines, fees and Court costs to support the functions of the judicial system, provided, that the salaries of the magistrates, judges, justices and prosecutors shall not be subject to, or contingent upon the assessment or collection of any such fines, fees, Court costs, or penalties. Such agreements may also provide for certain monetary contributions by the participating Tribes or agencies to the funding of the Court and provide a formula therefor, and may designate the Court as a prime contractor, grantee, or similar designation to authorize the Court to apply directly to any funding source for the operation of the Court. [TCR 86-79]

**1-912 Indians employed in Indian Service.** Repealed. [TCR 86-79, 93-85]

**1-913 Copies of Laws.**

1. The Tribal Court law library shall be provided with copies of all federal, Tribal, and state laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the Tribal jurisdiction.
2. Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Attorney General to furnish an opinion on the point in question. [TCR 86-79]

**1-914 Cooperation by federal employees.**

1. No field employee of the Indian Service shall obstruct, interfere with, or control the functions of the Courts of the Tribe, or influence, or attempt to influence, interfere with, obstruct, or control such functions in any manner except in response to a request for advice or information from the Court.
2. Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the Court upon its request in the preparation and presentation of the facts in the case, and in proper treatment of offenders and juveniles. [TCR 86-79]

**1-915 Effect of prior decisions of the Court.** Prior decisions of the Court's action for the Tribe shall be binding upon the parties thereto. The rules of law stated in such decisions not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Court, subject to modification or being overruled by subsequent opinion of the Court as in other cases. [TCR 86-79]

**1-916 Judicial review of legislative and executive actions.** The Tribal Courts shall have the authority to review any act by the Tribal Council, or any Tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is constitutional under the Tribal Constitution, authorized by Tribal law, and not prohibited by the Indian Civil Rights Act. If the Court finds such action, or the manner of its exercise, to be unlawful, it may enjoin the action, refuse to recognize an unlawful action or refuse to apply the law or statute in question. If the Court finds that the contemplated action is authorized by the Constitution and Tribal statutes enacted thereto, or the common law, and that the manner in which the authorized action is to be exercised is not prohibited by the Tribal Constitution, Tribal statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority committed to the discretion of a Tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes judicial review of the merits of the discretionary decision or action. [TCR 86-79]

**1-917 Action when no procedure provided.** Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion. [TCR 86-79]

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**1-918 Adoption by reference not a waiver of sovereign power of the Tribe.** The adoption of any law, Code or other document by reference into this Code shall not constitute a waiver or cession of any sovereign power of the Tribe to the jurisdiction whose law or Code is adopted, nor in any way diminish such sovereign power, but shall result in the law or Code thus adopted becoming the law of the Tribe. [TCR 86-79]

**1-919 Actions by or against Tribe or its officers.** Unless specifically waived by a resolution adopted by the Winnebago Tribe of Nebraska specifically referring to such, the Tribe shall be immune from suit in any civil actions, and its officers and employees shall be immune from suit for any liability arising from the performance of their official duties. [TCR 86-79, 93-85]

**1-920 Actions by or against Tribe or its officers or employees.** In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules and procedures set forth in this Code shall apply:

1. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.
2. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose. [TCR 86-79]

**1-921 Principles of construction.** The following principles of construction will apply to this Code unless a different construction is obviously intended:

1. Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.
2. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
3. Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of the Code unless a contrary meaning is clearly intended.
4. This Code shall be construed as a whole to give effect to all its parts in a logical and consistent manner.
5. If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of the Code are declared to be severable.
6. Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.
7. Any other issues of construction shall be handled in accordance with generally accepted principles of construction giving due regard for the underlying principles and purposes of this Code.

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TITLE 1 ARTICLE 10

TITLE 1  
ARTICLE 10  
OFFICE OF THE GENERAL COUNSEL

- |        |                       |        |                                      |
|--------|-----------------------|--------|--------------------------------------|
| 1-1000 | Office established.   | 1-1003 | Engagement of outside legal counsel. |
| 1-1001 | Duties.               | 1-1004 | Title of Attorney General.           |
| 1-1002 | Delegation of duties. |        |                                      |
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**1-1000 Office established.** There is hereby established, ordained and activated an office which shall be known as the Office of the General Counsel. The primary officer of said Office shall be known as the General Counsel for the Winnebago Tribe of Nebraska.

**1-1001 Duties.** The General Counsel shall manage all legal functions of the Tribe, except functions of the judicial branch of government. The General Counsel shall provide legal advice to the Tribal Council and all Tribal government entities, including all Tribal agencies and departments. The General Counsel shall draft necessary legislation to carry out the policies of the Tribal Council. The General Counsel shall represent the Tribal Council in negotiations with members of the judicial branch. The General Counsel shall represent the Tribe in all civil, criminal and juvenile proceedings in which the Tribe is named a party. The General Counsel shall manage the Tribe's relations with outside counsel.

**1-1002 Delegation of duties.** The General Counsel may in his or her discretion delegate any of his or her duties to internal or outside counsel or staff.

**1-1003 Engagement of outside legal counsel.** No agency or department of the Tribe may engage legal counsel without first receiving prior written permission from the General Counsel.

**1-1004 Title of Attorney General.** The General Counsel shall also possess the title "Attorney General" and shall be entitled to use either title interchangeably.

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TITLE 1  
ARTICLE 11  
TRADITIONAL WELLNESS COURT  
(Amended August 29, 2011)

1-1101	Construction.	1-1109	Powers and duties of Traditional Wellness Court Panel Members.
1-1102	Purpose.	1-1110	Powers and duties of the Traditional Wellness Court Coordinator.
1-1103	Traditional Wellness Court established.	1-1111	Intake process.
1-1104	Personal and subject matter jurisdiction.	1-1112	Procedures.
1-1105	Appointment of Wellness Court Panel Members.	1-1113	Records and confidentiality.
1-1106	Referral process.	1-1114	Completion of Proceedings.
1-1107	Reports to Tribal Court.	1-1115	Destruction of Records.
1-1108	Nature of cases to be decided by the Traditional Wellness Court.	1-1116	Appeals.

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**1-1101 Construction.** These provisions shall be interpreted liberally with the goal of providing a fair and traditional alternative to the standard juvenile justice proceedings. To the extent possible, the provisions herein shall be used and applied in accordance with Winnebago tradition and custom. [TCR 11-68, 11-155, 11-164]

**1-1102 Purpose.** The purpose of the Traditional Wellness Court is to:

1. Provide formal support, structure and enforcement to traditional Winnebago methods of fostering juvenile growth and resolving delinquency.
2. Reduce the number of offenses committed by juveniles, minimize recidivism among juvenile offenders, and prevent escalation of criminal behavior.
3. Inform and teach young tribal members about tribal traditions, culture and history, family, and the individual's role in the Tribe.
4. Include grandparents, aunts, uncles and extended family members in the process of disciplining juvenile offenders.
5. Coordinate with Tribal resources and programs in an effort to influence and make positive corrections to the attitude and conduct of young Tribal members. [TCR 11-68, 11-155, 11-164]

**1-1103 Traditional Wellness Court established.**

1. The Traditional Wellness Court of the Winnebago Tribe is hereby established as part of the Winnebago Tribal Court. The Wellness Court may use the Tribal Court as a resource and infrastructure for purposes of supporting and maintaining the Winnebago Tribal Court system. The powers and duties of the Traditional Wellness Court are set forth in this Article.
2. The Traditional Wellness Court proceedings shall be conducted by a panel of Tribal members who will use knowledge of family and traditional practices to address the behavior of individuals appearing before the Wellness Court.
3. The Traditional Wellness Court panel shall be comprised of not less than six (6) Tribal members who are respected members of the community, and who possess knowledge of family structure, extended family relationships, and Winnebago culture. Alternates may be appointed as needed by the Appointing Committee.
4. Individuals appearing before the Traditional Wellness Court shall not be represented by an attorney in such proceedings unless he/she:
  - a. Is permitted to so by all three presiding panel members;

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- b. Has been called as witnesses; or
- c. Is a party. [TCR 11-68, 11-155, 11-164]

**1-1104 Personal and subject matter jurisdiction.** Upon receiving a Petition for Referral by the Tribal Prosecutor and upon the consent and agreement of the juvenile and the Traditional Wellness Court, a case shall be referred to the Traditional Wellness Court. Members of the Wellness Court shall not have authority to hear a case unless the juvenile and the Traditional Wellness Court consent to such authority in writing and the Wellness Court has accepted the case. [TCR 11-68, 11-155, 11-164]

**1-1105 Appointment of Wellness Court Panel Members.** The Chief Judge of the Winnebago Tribal Court, the Tribal Court Administrator, and a designated member of the Tribal Council shall comprise the Appointing Committee of the Traditional Wellness Court. The Appointing Committee shall have the authority to appoint panel members comprising the Traditional Wellness Court and alternate panel members as needed. Appointment shall be made upon evaluation of the qualifications of applicants for the Wellness Court. The Appointing Committee, in its discretion, may appoint Wellness Court Panel Members on an interim or continuing basis. The Appointing Committee may also appoint alternate panel members as needed on a temporary basis. [TCR 11-68, 11-155, 11-164]

**1-1106 Referral process.**

1. Following receipt of a law enforcement report and citation and prior to filing a criminal complaint, the Tribal Prosecutor shall consult with the Traditional Wellness Coordinator to determine if the juvenile is eligible for referral to the Traditional Wellness Court.
2. If the Tribal Prosecutor and Traditional Wellness Coordinator determine eligibility, then the Traditional Wellness Coordinator shall notify the juvenile of the preliminary eligibility determination and schedule an intake appointment.
3. The Tribal Prosecutor shall submit a "Petition for Referral" to the Traditional Wellness Court along with a copy of the law enforcement report and citation.
4. Following the intake appointment, the Traditional Wellness Court Panel shall decide whether to accept the case.
5. If the case is accepted, the juvenile shall have the option to:
  - a. Proceed with Tribal Court proceedings; or
  - b. Be referred to the Traditional Wellness Court.A juvenile may decline participation in the Traditional Wellness Court at any time and have their case sent back to the Tribal Prosecutor who shall continue initiating juvenile court proceedings.
6. If the juvenile agrees to referral to the Traditional Wellness Court, the juvenile, his/her parent(s) or legal guardian(s), and the Traditional Wellness Court shall enter into an agreement setting forth the condition for the juvenile's participation in the Wellness Court.
  - a. If the juvenile completes the Traditional Wellness Court proceedings to the satisfaction of the Wellness Court Panel, the case shall be closed.
  - b. If, for any reason, the juvenile is discharged unsuccessfully by the presiding panel of the Traditional Wellness Court or voluntarily withdraws, the case shall be sent back to the Tribal Prosecutor, and the Tribal Prosecutor shall continue initiating juvenile court proceedings against the juvenile. However, nothing contained in the final written report shall be used by the Tribal Court to affect the disposition or sentencing. [TCR 11-68, 11-155, 11-164]

**1-1107 Reports to Tribal Prosecutor.**

1. The Wellness Court shall submit a monthly progress report to the Tribal Prosecutor stating:
  - a. The status of all proceedings presently before the Wellness Court, if any;

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- b. The final result of any proceedings that were concluded after the previous monthly report; and
- c. If there are no proceedings presently before the Wellness Court, stating as such.
2. Either at the conclusion of the Traditional Wellness Court proceedings or at such time as the Wellness Court finds there can be no resolution of the matter, the Wellness Court shall submit a final written report of the results of the juvenile's efforts to the Tribal Prosecutor and the Clerk of Court. This final written record shall be maintained in the Court file.
3. The final written report shall include:
  - a. A statement as to whether the juvenile had successfully completed the Wellness Court proceedings; and
  - b. Any other information the Wellness Court deems necessary.
4. If the juvenile does not successfully complete the requirements set forth by the Wellness Court, nothing contained in the progress reports or final written report shall be used by the Tribal Court in the juvenile court proceedings. [TCR 11-68, 11-155, 11-164]

**1-1108 Eligibility of Juveniles to Participate in the Traditional Wellness Court.** Except as otherwise provided herein, only cases involving juveniles who are first-time offenders shall be eligible for resolution by the Traditional Wellness Court.

1. "First-time offender" shall mean a person who has not:
  - a. Been convicted of any offense under Title 3 of the Winnebago Tribal Code or any civil or criminal traffic offense under Title 6 of the Winnebago Tribal Code that is punishable by imprisonment; or
  - b. Had a prior criminal or delinquency petition dismissed due to participation in the Traditional Wellness Court.
2. Juveniles with a prior offense may participate in the Traditional Wellness Court subject to review and acceptance by the Traditional Wellness Court on a case-by-case basis. The Traditional Wellness Court may establish additional rules to assist in determining whether a juvenile with a prior offense will be accepted for participation in the Traditional Wellness Court.
3. Juveniles who would otherwise be charged with the following offenses shall be ineligible for participation in the Traditional Wellness Court:
  - a. Offenses under Title 3, Article 4 of the Winnebago Tribal Code involving Crimes Against the Person; and
  - b. Offenses constituting domestic violence under the Winnebago Tribal Code. [TCR 11-68, 11-155, 11-164]

**1-1109 Powers and duties of Traditional Wellness Court Panel Members.**

1. The Wellness Court Panel conducting proceedings shall consist of three (3) Wellness Court Panel Members. The Wellness Court Panel shall select among themselves which three Wellness Court Panel Members shall conduct the proceedings on a case-by-case basis. If three (3) Panel Members cannot be selected for a case, alternate Panel Members may be selected to fill in vacancies for that case.
2. Wellness Court Panel Members shall have the authority to conduct proceedings in any manner that facilitates the administration of justice, and to include or exclude individual family members, or any other persons that the panel deems necessary, from any proceedings.
3. If the juvenile is a ward of the Court pursuant to Title 4 of the Tribal Code, any services as may be deemed necessary shall be coordinated with the juvenile's case worker.
4. Wellness Court Panel Members shall exercise discretion to determine and impose the appropriate requirements for successful completion of the wellness proceedings in each case. Whenever

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possible, the Wellness Court should seek to involve a juvenile's family members and teach juveniles about Winnebago tribal custom and the juvenile's role in the Tribe.

5. Wellness Court Panel Members shall have the discretion to recuse themselves as deemed proper.
6. Wellness Court Panel Members shall establish a reasonable time frame for completion of all Wellness Court proceedings. [TCR 11-68, 11-155, 11-164]

**1-1110 Powers and duties of the Traditional Wellness Court Coordinator.**

1. The Coordinator shall facilitate the activities of the Traditional Wellness Court and act as directed by the Wellness Court and shall create and maintain all Traditional Wellness Court files.
2. The Coordinator shall assist the Tribal Prosecutor in making preliminary determinations of the eligibility of a juvenile to participate in the Wellness Court.
3. The Coordinator shall receive referrals from the Tribal Prosecutor on behalf of the Traditional Wellness Court, schedule proceedings, contact Wellness Court Panel Members and distribute all documents as necessary.
4. The Coordinator shall monitor the progress of all cases before the Wellness Court and submit required reports to the Tribal Prosecutor and Clerk of Court.
5. The Coordinator shall serve as a liaison for the Traditional Wellness Court, coordinating the efforts of the Wellness Court, probation officers, school counselors, family members and other community resources as necessary to assist in the success of the case before the Wellness Court.
6. The Coordinator shall assist the Wellness Court with drafting all reports, disposition recommendations and proposed orders. [TCR 11-68, 11-164]

**1-1111 Intake process.**

1. Upon the initial determination of eligibility of a juvenile, the Coordinator shall create a file containing a copy of law enforcement report and citation.
2. At or immediately following the initial meeting with the juvenile, the Coordinator shall schedule an intake appointment with the juvenile and his/her parent(s) or legal guardian(s). The intake documents and Petition for Referral shall be placed in the file.
3. Following the intake appointment, the Coordinator shall distribute copies of the file to all Wellness Court Panel Members.
4. The Wellness Court Panel Members shall review the file documents and determine whether to accept the referral. If the referral is accepted, the Coordinator shall draft an agreement setting forth the conditions for the juvenile's participation in the Traditional Wellness Court proceedings and notify the juvenile and his/her parent(s) or legal guardian(s).
5. After the agreement is signed by the juvenile, his/her parent(s) or legal guardian(s), and the Coordinator, the Wellness Court Panel shall determine which three Wellness Court Panel Members shall conduct the proceeding and notify the Coordinator. The Coordinator shall schedule the initial proceeding no later than twenty-one (21) days after the agreement is signed.
6. The Wellness Court shall provide notification to the juvenile and any other persons or entities as the Wellness Court may deem appropriate.
7. The Wellness Court shall certify to the Tribal Prosecutor that the intake process has been completed. [TCR 11-68, 11-155, 11-164]

**1-1112 Procedures.** The Traditional Wellness Court shall adopt such procedures as necessary to administer justice and carry out the intent of this Article. [TCR 11-68, 11-164]

**1-1113 Records and confidentiality.** The records of the Traditional Wellness Court shall be privileged. Traditional Wellness Court records shall be confidential and shall not be shared outside the Wellness Court. [TCR 11-68, 11-155, 11-164]

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**1-1114 Completion of Proceedings.**

1. When a juvenile has satisfactorily completed requirements set forth by the Traditional Wellness Court, the Traditional Wellness Court shall submit notice and a final report to the Tribal Prosecutor and Clerk of Court. The Tribal Prosecutor shall close the case or the equivalent.
2. Where a juvenile has not satisfactorily completed the requirements set forth by the Traditional Wellness Court, the case shall be referred back to the Tribal Prosecutor. The Tribal Prosecutor shall proceed with the process of filing a criminal complaint in the juvenile court. [TCR 11-68, 11-155, 11-164]

**1-1115 Destruction of Records.**

1. Following the completion of a proceeding, whether successful or unsuccessful, the Traditional Wellness Court shall destroy all contents of the Traditional Wellness Court case file except for the final written report.
2. All copies of the file provided to the Traditional Wellness Court Panel and any documents provided to any other participants shall be returned to the Traditional Wellness Court Coordinator following disposition. Such documents shall be destroyed regardless of the outcome of the Traditional Wellness Court proceedings. [TCR 11-68, 11-155, 11-164]

**1-1116 Appeals.** Decisions of the Traditional Wellness Court are not subject to appeal. [TCR 11-68, 11-155, 11-164]



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TITLE 1A

TITLE 1A  
WINNEBAGO RULES OF EVIDENCE  
As amended March 1, 1993.  
(Redesignated February 24, 1994)

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TITLE 1A  
WINNEBAGO RULES OF EVIDENCE  
(As amended to March 1, 1993)  
(Redesignated February 24, 1994)

ARTICLE 1  
GENERAL PROVISIONS

Rule 1A-101	Scope.	Rule 1A-105	Limited admissibility.
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Rule 1A-103	Rulings on evidence.		writings or recorded statements.
Rule 1A-104	Preliminary questions.		

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**Rule 1A-101 Scope.** These rules govern, evidentiary questions in all proceedings in the Courts of the Winnebago Tribe of Nebraska, whether civil, criminal, juvenile, or otherwise except as may be otherwise specifically provided by this Tribal Code. [TCR 86-79]

**Rule 1A-102 Purpose and construction.** These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. [TCR 86-79]

**Rule 1A-103 Rulings on evidence.**

1. Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected:
  - a. Objection. In case the ruling is one admitting evidence, a timely objection or motion, to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
  - b. Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the Court by offer or was apparent from the context within which questions were asked.
2. Record of offer and ruling. The Court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.
3. Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.
4. Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the Court. [TCR 86-79, 93-85]

**Rule 1A-104 Preliminary questions.**

1. Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of subdivision (b), in making its determination it is not bound by the rules of evidence except those with respect to privileges.
2. Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the Court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

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3. Hearing of jury. Hearings on the admissibility of confession shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness, if he/she so requests.
4. Testimony by accused. The accused in a criminal case does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.
5. Weight and credibility. This Rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility. [TCR 86-79, 93-85]

**Rule 1A-105 Limited admissibility.** When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the Court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly. [TCR 86-79]

**Rule 1A-106 Remainder of or related writings or recorded statements.** When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. [TCR 86-79, 93-85]

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TITLE 1A  
ARTICLE 2  
JUDICIAL NOTICE

Rule 1A-201 Judicial notice of adjudicative facts.

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**Rule 1A-201 Judicial notice of adjudicative facts.**

1. Scope of rule. This rule governs only judicial -notice of adjudicative facts.
2. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the Tribal Court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. When discretionary. A Court may take judicial notice, whether requested or not.
4. When mandatory. A Court shall take judicial notice if requested by a party and supplied with the necessary information.
5. Opportunity to be heard. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
6. Time of taking notice. Judicial -notice may be taken at any stage of the proceeding.
7. Instructing jury. In a civil action or proceeding, the Court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the Court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed. [TCR 86-79]

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TITLE 1A  
ARTICLE 3  
PRESUMPTIONS

Rule 1A-301 Presumptions in general in civil actions and proceedings.

Rule 1A-302 Applicability of state law in civil actions and proceedings.

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**Rule 1A-301 Presumptions in general in civil actions and proceedings.** In all civil actions and proceedings not otherwise provided for by these Rules, a presumption imposes upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast. [TCR 86-79, 93-85]

**Rule 1A-302 Applicability of state law in civil actions and proceedings.** In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which state law supplies the rule of decision is determined in accordance with state law. [TCR 93-85]

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TITLE 1A  
ARTICLE 4  
RELEVANCY AND ITS LIMITS

Rule 1A-401	Definition of relevant evidence.	Rule 1A-406	Habit; routine practice.
Rule 1A-402	Relevant evidence generally admissible; irrelevant evidence inadmissible.	Rule 1A-407	Subsequent remedial measures.
		Rule 1A-408	Compromise and offers to compromise.
Rule 1A-403	Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.	Rule 1A-409	Payment of medical and similar expenses.
Rule 1A-404	Character evidence: not admissible to prove conduct; exceptions; other crimes.	Rule 1A-410	Inadmissibility of pleas, offers of pleas, and related statements.
		Rule 1A-411	Liability Insurance.
Rule 1A-405	Methods of proving character.	Rule 1A-412	Sex offenses cases: relevance of victim's past behavior.

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**Rule 1A-401 Definition of relevant evidence.** Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence the determination of the action more probable or less probable than it would be without the evidence. [TCR 86-79]

**Rule 1A-402 Relevant evidence generally admissible; irrelevant evidence inadmissible.** All relevant evidence is admissible, except as otherwise provided by the Constitution of the Winnebago Tribe of Nebraska, adopted by resolution of the Winnebago Tribe of Nebraska, by these Rules, or by other rules prescribed by the Court of Appeals pursuant to statutory authority. Evidence which is not relevant is not admissible. [TCR 86-79, 93-85]

**Rule 1A-403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.** Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. [TCR 86-79]

**Rule 1A-404 Character evidence: not admissible to prove conduct, exceptions; other crimes.**

1. Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving that action in conformity therewith on a particular occasion, except:
  - a. Character of accused. Evidence of a pertinent trait of his/her character offered by an accused, or by the prosecution to rebut the same;
  - b. Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
  - c. Character of witness. Evidence of the character of a witness, as provided in Rules 1A-607, 1A-608, and 1A-609.
  - d. Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial or during trial if the Court excuses pretrial notice on

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good cause shown, of the general nature of any such evidence it intends to introduce at trial. [TCR 86-79, 93-85]

**Rule 1A-405 Methods of proving character.**

1. Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
2. Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his/her conduct. [TCR 86-79]

**Rule 1A-406 Habit; routine practice.** Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. [TCR 86-79]

**Rule 1A-407 Subsequent remedial measures.** When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment. [TCR 86-79]

**Rule 1A-408 Compromise and offers to compromise.** Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This Rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This Rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negotiating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. [TCR 86-79]

**Rule 1A-409 Payment of medical and similar expenses.** Evidence of finishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. [TCR 86-79]

**Rule 1A-410 Inadmissibility of pleas, offers of pleas, and related statements.** Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussion:

1. A plea of guilty which was later withdrawn;
2. A plea of nolo contendere;
3. Any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
4. Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (a) in any proceeding wherein another statement made in the course of the same plea or plea discussions have been introduced and the statement ought in

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fairness be considered contemporaneously with it, or (b) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel. [TCR 86-79, 93-85]

**Rule 1A-411 Liability insurance.**

1. Evidence that a person was or was not insured against liability is not admissible upon the issue whether he/she acted negligently or otherwise wrongfully. This Rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.
2. Evidence that a person was or was not insured against liability and the limits of coverage and other relevant factors is admissible in a bifurcated jury trial sounding in tort in the second phase of the UW upon the issue of the amount of actual and consequential damages to be awarded. [TCR 86-79]

**Rule 1A-412 Sex offense cases: relevance of victim's past behavior.**

1. Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code, reputation or opinion evidence of the past sexual behavior of an alleged victim of such offense is not admissible.
2. Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is:
  - a. Admitted in accordance with subdivisions (cX1) and (cX2) and is constitutionally required to be admitted; or
  - b. Admitted in accordance with subdivision (C) and is evidence of:
    - i. Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or
    - ii. Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which such offense is alleged.
3.
  - a. If the person accused of committing an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the Court may allow the motion to be made at a later date, including during trial if the Court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.
  - b. The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the Court determines that the offer of proof contains evidence described in subdivision (b), the Court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule A1-104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the Court, at the hearing in chambers or a subsequent

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- hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.
- c. If the Court determines on the basis of the hearing described in paragraph (C) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the Court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.
  4. For purposes of this Rule, the term past sexual behavior means sexual behavior other than the sexual behavior with respect to which an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code is alleged. [TCR 93-85]

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ARTICLE 6  
WITNESSES  
(Revised March 9, 2011)

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Rule 1A-602	Lack of personal knowledge.	Rule 1A-611	Mode and order of interrogation and presentation.
Rule 1A-603	Oath or affirmation.	Rule 1A-612	Writing used to refresh memory.
Rule 1A-604	Interpreters.	Rule 1A-613	Prior statements of witnesses.
Rule 1A-605	Competency of judge as witness.	Rule 1A-614	Calling and interrogation of witnesses by Court.
Rule 1A-606	Competency of juror as witness.	Rule 1A-615	Exclusion of witnesses.
Rule 1A-607	Who may impeach.	Rule 1A 616	Patient/Client – Physician/Counselor Privilege.
Rule 1A-608	Evidence of character and conduct of witness.		
Rule 1A-609	Impeachment by evidence of conviction of crime.		

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**Rule 1A-601 General rule of competency.** Every person is competent to be a witness except as otherwise provided in these Rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which state law supplies the rule of decision, the competency of a witness shall be determined in accordance with the state law. [TCR 93-85]

**Rule 1A-602 Lack of personal knowledge.** A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This Rule is subject to the provisions of Rule 1A-703, relating to opinion testimony by expert witnesses. [TCR 86-79, 93-85]

**Rule 1A-603 Oath or affirmation.** Before testifying every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so. [TCR 86-79, 93-85]

**Rule 1A-604 Interpreters.** An interpreter is subject to the provisions of these Rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation. [TCR 86-79, 93-85]

**Rule 1A-605 Competency of judge as witness.** The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point. [TCR 86-79]

**Rule 1A-606 Competency of juror as witness.**

1. At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting as a juror. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.
2. Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's

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attention, or whether any outside influence was improperly brought to bear upon any juror. Nor may the juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded testifying be received for these purposes. [TCR 86-79; 93-85]

**Rule 1A-607 Who may impeach.** The credibility of a witness may be attacked by any party, including the party calling him/her. [TCR 86-79]

**Rule 1A-608 Evidence of character and conduct of witness.**

1. Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truth character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
2. Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his/her credibility, other than conviction of crime as provided in Rule 1A-609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of privilege against self-incrimination when examined with respect to matters which relate only to credibility. [TCR 86-79]

**Rule 1A-609 Impeachment by evidence of conviction of crime.**

1. General rule. For the purpose of attacking the credibility of a witness:
  - a. Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 1A-403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
  - b. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty of false statement, regardless of the punishment.
    - i. Time limit. Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
    - ii. Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this Rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable

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- by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- iii. Juvenile adjudication. Evidence of juvenile adjudication is generally not admissible under this Rule. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.
  - iv. Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible. [TCR 86-79, 93-85]

**Rule 1A-610 Religious beliefs or opinions.** Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his/her credibility is impaired or enhanced. [TCR 86-79]

**Rule 1A-611 Mode and order of interrogation and presentation.**

1. Control by Court. The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
2. Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.
3. Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. [TCR 86-79, 93-85]

**Rule 1A-612 Writing used to refresh memory.** If a witness uses a writing to refresh memory for the purpose of testifying either:

1. While testifying; or
2. Before testifying if the Court in its discretion determines it is necessary in the interest of justice, an adverse party is entitled to have the writing produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the Court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate Court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this Rule, the Court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one showing the testimony or, if the Court in its discretion determines that the interests of justice so require, declaring a mistrial. [TCR 86-79, 93-85]

**Rule 1A-613 Prior statements of witnesses.**

1. Examining witness concerning prior statements. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.
2. Extrinsic evidence of prior inconsistent statements of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 1A-801(d)(2). [TCR 86-79, 93-85]

**Rule 1A-614 Calling and interrogation of witnesses by Court.**

1. Calling by Court. The Court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.
2. Interrogation by Court. The Court may interrogate witnesses, whether called by itself or by a party.
3. Objections. Objections to the calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present. [TCR 86-79]

**Rule 1A-615 Exclusion of witnesses.** At the request of a party, the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This Rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his/her cause. [TCR 86-79]

**Rule 1A-616 Patient/Client – Physician/Counselor Privilege.**

1. Definitions.
  - a. A “patient” is a person who consults or is examined or interviewed by a physician for purposes of diagnosis or treatment of his/her physical, mental or emotional condition.
  - b. A “physician” is (i) a person who is licensed to practice medicine pursuant to the laws of any state or nation or who is reasonably believed by the patient so to be or (ii) a person licensed as a psychologist pursuant to the laws of the state or nation who devotes all or a part of his/her time to the practice of psychology.
  - c. A “client” is a person who consults or is interviewed by a professional counselor for professional counseling.
  - d. “Professional counseling” means the assessment and treatment of mental and emotional disorders within the context of professional counseling theory and practice of individuals, couples, families or groups.
  - e. A “professional counselor” is a person certified as a professional counselor pursuant to the laws of any state or nation.
  - f. A communication is “confidential” if not intended to be disclosed to third persons other than those present to further the interest of (i) the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient’s family, or (ii) the client participating in professional counseling by a professional counselor.

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2. Scope of Privilege.
  - a. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of his/her physical, mental, or emotional condition among himself or herself, his/her physician or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.
  - b. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made during counseling between himself or herself, his/her professional counselor or persons who are participating in the counseling under the direction of the professional counselor, including members of the client's family.
3. Who may claim the privilege. The privilege may be claimed by the patient or client, by his/or guardian or conservator, or by the personal representative of a deceased patient or client. The person who was the physician or professional counselor may claim the privilege but only on behalf of the patient or client. His/her authority so to do is presumed in the absence of evidence to the contrary.
4. Limits on application of privilege.
  - a. There is no privilege under this Rule for communications relevant to an issue in proceedings to hospitalize the patient for mental or emotional illness if the physician, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization or if a professional counselor deems it necessary to refer a client to determine if there is need for hospitalization.
  - b. If the judge orders an examination of the physical, mental or emotional condition of the patient, communications made in the course thereof are not privileged under this Rule with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.
  - c. There is no privilege under this Rule as to communications relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he/she relies upon the condition as an element of his/her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his/her claim or defense.
  - d. There is no privilege under this Rule in any judicial proceedings regarding injuries to children, incompetents, or disabled persons allegedly caused by parents, guardians or caregivers or in any criminal prosecution involving injury to any child, incompetent or disabled person or the willful failure to report any such injuries. For the purposes of this subsection, the term "injury(ies)" includes a sexual assault as that term is used in the Winnebago Tribe of Nebraska Tribal Code Sections 3-416 through 422.
  - e. There is no privilege under this Rule in any judicial proceeding regarding unlawfully obtaining or attempting to obtain (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance from a practitioner. For purposes of this subdivision, the definitions found in the Winnebago Tribe of Nebraska Tribal Code Section 3-801 shall apply. [TCR 11-71]

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TITLE 1A  
ARTICLE 7  
OPINION AND EXPERT TESTIMONY

Rule 1A-701	Opinion testimony by lay witnesses.	Rule 1A-704	Opinion on ultimate issue.
Rule 1A-702	Testimony by experts.	Rule 1A-705	Disclosure of facts or data underlying expert opinion.
Rule 1A-703	Bases of opinion testimony by experts.	Rule 1A-706	Court appointed experts.

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**Rule 1A-701 Opinion testimony by lay witnesses.** If the witness is not testifying as an expert, the witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. [TCR 86-79, 93-85]

**Rule 1A-702 Testimony by experts.** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise. [TCR 86-79]

**Rule 1A-703 Bases of opinion testimony by experts.** The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. [TCR 86-79, 93-85]

**Rule 1A-704 Opinion on ultimate issue.**

1. Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.
2. No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone. [TCR 86-79, 93-85]

**Rule 1A-705 Disclosure of facts or data underlying expert opinion.** The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination. [TCR 86-79, 93-85]

**Rule 1A-706 Court appointed experts.**

1. Appointment. The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the Court in writing, a copy of which shall be filed with the clerk or at a conference in which the parties shall have opportunity to participate. A witness so appointed

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shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the Court or any party. The witness shall be subject to cross-examination by each party, including a party calling him/her a witness.

2. Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the Court may allow. The compensation thus fixed is payable from the Court fund, said fund to be reimbursed by the parties in such proportion and at such time as the Court directs, and thereafter charged in like manner as other costs.
3. Disclosure of appointment. In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the Court appointed the expert witness.
4. Parties' experts of own selection. Nothing in this Rule limits the parties in calling expert witnesses of their own selection. [TCR 86-79, 93-85]

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TITLE 1A  
ARTICLE 8  
HEARSAY

Rule 1A-801	Definitions.	Rule 1A-805	Hearsay within hearsay.
Rule 1A-802	Hearsay rule.	Rule 1A-806	Attacking and supporting credibility of declarant.
Rule 1A-803	Hearsay exceptions; availability of declarant immaterial.		
Rule 1A-804	Hearsay exceptions; declarant unavailable.		

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**Rule 1A-801 Definitions.** The following definitions apply under this article:

1. **Statement.** A statement is (1) an oral or written assertion, or (2) nonverbal conduct of a person, if it is intended by him/her as an assertion.
2. **Declarant.** A declarant is a person who makes a statement.
3. **Hearsay** is a statement, other than one made by the declarant, while testifying at the trial or hearing offered in evidence to prove the truth of the matter asserted.
4. **Statements which are not hearsay.** A statement is not hearsay if:
  - a. **Prior statement by witness.** The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his/her testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding or in a deposition, or (B) consistent with his/her testimony and is offered to rebut an express or implied charge against him/her of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him/her; or
  - b. **Admission by party-opponent.** The statement is offered against a party and is (A) his/her own statement, in either his/her individual or a representative capacity or (B) a statement of which he/she has manifested his/her adoption or belief in its truth, or (C) a statement by a person authorized by him/her to make a statement concerning the subject, or (D) a statement by his/her agent or servant concerning a matter within the scope of his/her agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. [TCR 86-79]

**Rule 1A-802 Hearsay rule.** Hearsay is not admissible except as provided by these Rules or by other Rules adopted by resolution of the Winnebago Tribe of Nebraska. [TCR 86-79, 93-85]

**Rule 1A-803 Hearsay exceptions; availability of declarant immaterial.** The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. **Then existing mental, emotional, or physical condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

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4. Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
5. Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
6. Records of regularly conducted activity. A memorandum, reports record, or data compilation, in any form, of acts, events, or conditions, opinions or diagnoses, made at or near the time, by, or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstance of preparation indicate lack of trustworthiness. The term business, as used in this paragraph, includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
7. Absence of entry in records kept in accordance with the provision of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
8. Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Tribe in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.
9. Records of vital statistics. Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.
10. Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 1A-902, or testimony, that diligent search failed to diagnose the record, report, statement, or data compilation, or entry.
11. Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood, marriage, or other similar acts of personal or family history, contained in a regularly kept record of a religious organization.
12. Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

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13. Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engraving on urns, crypts, or tombstones, or the like.
14. Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.
15. Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purpose of the document.
16. Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.
17. Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
18. Learned treatises. To the extent called to the attention of an expert witness upon cross-examination, or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert witness or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.
19. Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.
20. Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the Tribe or community or state or nation in which located.
21. Reputation as to character. Reputation of a person's character among associates or in the community.
22. Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment but not indulging when offered by the government in a criminal prosecution for purposes other than impeachment, the judgments against persons other than the accused in a criminal case. The pendency of an appeal may be shown but does not affect admissibility.
23. Judgment as to personal family or general history, or boundaries. Judgments as proof of matters of person, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.
24. Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these Rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity

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to prepare to meet it, the proponent's intention to offer the statement and the *participation* of it, including the name and address of the declarant. [TCR 86-79, 93-85]

**Rule 1A-804 Hearsay exceptions; declarant unavailable.**

1. Definition of unavailability. Unavailability as a witness includes situations in which the declarant:
  - a. Is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
  - b. Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the Court to do so; or
  - c. Testifies to a lack of memory of the subject matter of the declarant's statement; or
  - d. Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
  - e. Is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony by process or other reasonable means. A declarant is not available as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.
2. Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
  - a. Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding or in a deposition taken in compliance with law in the course of the same or another proceeding if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
  - b. Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
  - c. Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable man in his/her position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
  - d. Statement of personal or family history. (A) statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
  - e. Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes

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of these Rules and the interest of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his/her intention to offer the statement and the particulars of it, including the name and address of the declarant. [TCR 86-79, 93-85]

**Rule 1A-805 Hearsay within hearsay.** Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these Rules. [TCR 86-79]

**Rule 1A-806 Attacking and supporting credibility of declarant.** When a hearsay statement, or a statement defined in Rule 1A-801(d)(2),(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination. [TCR 86-79, 93-85]

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ARTICLE 9  
AUTHENTICATION AND IDENTIFICATION

Rule 1A-901	Requirement of authentication or identification.	Rule 1A-903	Subscribing witness' testimony unnecessary.
Rule 1A-902	Self-authentication.		

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**Rule 1A-901 Requirement of authentication or identification.**

1. General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
2. Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:
  - a. Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.
  - b. Non-expert opinion on handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.
  - c. Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.
  - d. Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
  - e. Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
  - f. Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
  - g. Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.
  - h. Ancient documents or data compilation. Evidence that a document or data compilation, in any form (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty years or more at the time it is offered.
  - i. Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.
  - j. Methods provided by statute or rule. Any method of authentication or identification provided by resolution of the Winnebago Tribe of Nebraska or by other rules prescribed by the court of appeals pursuant to statutory authority. [TCR 86-79, 93-85]

**Rule 1A-902 Self-Authentication.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

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1. Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any Indian tribe, state, district, commonwealth territory, or his/her possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and signature purporting to be an attestation or execution.
2. Domestic public documents not under seal. A document purporting to bear the signature in an official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
3. Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the Court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.
4. Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this Rule or with any resolution of the Winnebago Tribe of Nebraska or Rule prescribed by the court of appeals pursuant to statutory authority.
5. Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.
6. Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.
7. Trade inscriptions and the like: descriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
8. Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law, by a notary public, or other officer authorized by law to take acknowledgments.
9. Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.
10. Presumptions under Acts or Ordinances. Any signature, document, or other matter declared by resolution of the Tribal Council to be presumptively or prima facie genuine or authentic. [TCR 86-79, 93-84, 93-85]

**Rule 1A-903 Subscribing witness' testimony unnecessary.** The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing. [TCR 86-79]

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CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Rule 1A-1001	Definitions.	Rule 1A-1006	Summaries.
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Rule 1A-1004	Admissibility of other evidence of contents.		
Rule 1A-1005	Public records.		

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**Rule 1A-1001 Definitions.** For the purpose of this Article the following definitions are applicable:

1. Writings and recordings. Writings and recordings consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, Photostatting, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.
2. Photographs. Photographs include still photographs, X-ray films, video tapes, and motion pictures.
3. Original. An original of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it, an original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.
4. Duplicate. A duplicate is a counterpart produced by the same impression as the original or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original. [TCR 86-79]

**Rule 1A-1002 Requirement of original.** To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these Rules or by resolution of the Tribal Council. [TCR 86-79, 93-84]

**Rule 1A-1003 Admissibility of duplicates.** A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. [TCR 86-79]

**Rule 1A-1004 Admissibility of other evidence of contents.** The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

1. Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
2. Original not obtainable. No original can be obtained by any available judicial process or procedure; or
3. Original in possession of opponent. At a time when an original was under the control of the party against whom offered, he/she was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing and he/she does not produce the original at the hearing; or
4. Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue. [TCR 86-79]

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**Rule 1A-1005 Public records.** The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 1A-902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given. [TCR 86-79]

**Rule 1A-1006 Summaries.** The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in Court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying or both, by other parties at reasonable time and place. The Court may order that they be produced in Court. [TCR 86-79]

**Rule 1A-1007 Testimony or written admission of party.** Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his/her written admission, without accounting for the non-production of the original. [TCR 86-79]

**Rule 1A-1008 Functions of Court and jury.** When the admissibility of other evidence of contents of writings, recordings, or photographs under these Rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with the provisions of Rule 1A-804. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing recording or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact. [TCR 86-79]

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TITLE 1A ARTICLE 11

TITLE 1A  
ARTICLE 11  
MISCELLANEOUS RULES

Rule 1A-1101 Applicability of rules.  
Rule 1A-1102 Amendments.

Rule 1A-1103 Title.

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**Rule 1A-1101 Applicability of rules.**

1. These Rules apply to all criminal and civil controversies arising from any transaction or occurrence occurring on land which is within the boundaries of the Winnebago reservation.
2. These Rules apply generally to civil actions and proceedings, to criminal actions and proceedings and to contempt proceedings except those in which the Court may act summarily.
3. The Rule with respect to privileges applies at all stages of all actions, cases, and proceedings.
4. The Rules (other than with respect to privileges) do not apply in the following situations:
  - a. When the Court mistake preliminary findings of fact in order to rule on the admissibility of evidence under Rule 1A-804.
  - b. Proceeds for extradition, preliminary examinations in criminal cases, sentencing granting or revoking parole or probation, issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise. [TCR 86-79]

**Rule 1A-1102 Amendments.** The court of appeals shall have the power to prescribe amendments to the Winnebago Rules of Evidence. Such amendments shall not take effect until they have been reported to the Tribal Council by the chief justice and until the expiration of ninety days after they have been so reported; but if the Tribal Council within that time shall by resolution disapprove any amendment so reported it shall not take effect. The effective date of any amendment so reported may be deferred by the Tribal Council to a later date or until approved by the Council. Any Rule, whether proposed or in force, may be amended by Act or ordinance of the Tribal Council. Any provision of law in force at the expiration of such time and in conflict with any such amendment not disapproved shall be of no further force or effect after such amendment has taken effect. Any such amendment creating, abolishing, or modifying a privilege shall have no force or effect unless it shall be approved by Act or Ordinance of the Tribal Council. [TCR 86-79]

**Rule 1A-1103 Title.** These Rules may be known and cited as the Winnebago Rules of Evidence, or the Rules of Evidence of the Winnebago Tribe of Nebraska. [TCR 86-79]



WINNEBAGO TRIBAL CODE  
TITLE 1B

TITLE 1B  
RULES OF CRIMINAL PROCEDURE  
(Redesignated February 24, 1994)

ARTICLE 1  
SCOPE, PURPOSE, AND CONSTRUCTION

Rule 1B-101 Scope, purpose and construction.

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ARTICLE 2  
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WINNEBAGO TRIBAL CODE  
TITLE 1B ARTICLE 1

TITLE 1B  
RULES OF CRIMINAL PROCEDURE  
(Redesignated February 24, 1994.)

ARTICLE 1  
SCOPE, PURPOSE, AND CONSTRUCTION

Rule 1B-101 Scope, purpose and construction.

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**Rule 1B-101 Scope, purpose and construction.**

1. These rules govern the procedure in all criminal proceedings in the Winnebago Tribal Court and all preliminary or supplementary procedures as specified herein.
2. Every proceeding in which a person is charged with a criminal offense of any degree and brought to trial and punished is a criminal proceeding.
3. 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. [TCR 86-79]

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TITLE 1B ARTICLE 2

TITLE 1B  
ARTICLE 2  
PRELIMINARY PROVISIONS

Rule 1B-201	Prosecution of offenses.	Rule 1B-203.1	Time computations.
Rule 1B-202	Rights of defendant.	Rule 1B-204	Extradition.
Rule 1B-203	Limitation of prosecution.		

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**Rule 1B-201 Prosecution of offenses.**

1. No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere in open Court, by a Court of competent jurisdiction provided, however, that no ulceration or other disposition of one accused of an offense prior to trial in accordance with these Rules shall be deemed punishment.
2. All criminal proceedings shall be prosecuted in the name of the Winnebago Tribe of Nebraska, plaintiff, against the person charged with an offense, referred to as the defendant. [TCR 86-79]

**Rule 1B-202 Rights of defendant.** In all criminal proceedings, the defendant shall have the following rights:

1. To appear and defend in person or by counsel except:
  - a. Trial of traffic or hunting offense not resulting in injury to any person, nor committed while using alcohol or nonprescription drugs may be prosecuted without the presence of the defendant upon a showing that the defendant received actual notice five days prior to the proceeding. The defendant may represent him/herself or be represented by a lay advocate who has been admitted to the Tribal Bar, or by any attorney admitted to practice before the Winnebago Tribal Court, but no defendant shall have the right to have appointed professional counsel provided at the Tribe's expense. However, the privilege to have counsel appointed may be granted by the Court as may be provided in the rules of the Court relating to attorneys and lay advocates.
2. To be informed of the nature of the charges against him/her and to have a copy thereof.
3. To testify in his/her own behalf, or to refuse to testify regarding the charge against him/her, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him/her, he/she shall be deemed to have waived all right to refuse to testify in that criminal proceeding. He/she shall not, however, be deemed to have waived his/her right to remain silent in other distinct phases of the criminal process.
4. To confront and cross-examine all witnesses against him/her subject to the Rules of Evidence.
5. To compel by subpoena the attendance of witnesses in his/her own behalf.
6. To have a speedy public trial by an impartial judge or jury as provided in these Rules.
7. To appeal in all cases as provided in Article 6 of Title 1.
8. To prevent his/her present spouse from testifying against him/her, except:
  - A. 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;
  - B. Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.
9. Not to be twice put in jeopardy by the Winnebago Tribal Court for the same offense. [TCR 86-79]

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TITLE 1B ARTICLE 2

**Rule 1B-203 Limitation of prosecution.**

1. Every criminal proceeding shall be commenced within three (3) years of the date of commission of the offense, or prosecution for that offense shall be forever barred.
2. If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.
3. Time spent outside the jurisdiction of the Winnebago Tribe of Nebraska for the purpose of avoiding prosecution shall not be counted toward the three year period to begin prosecution. [TCR 86-79]

**Rule 1B-203.1 Time computations.** In computing any period of time in the 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 seven days, intermediate Saturdays, Sundays and legal holidays shall not be counted, provided that weekend arrests shall be arraigned no later than Monday of the following week. [TCR 86-79]

**Rule 1B-204 Extradition.**

1. The Chairman of the Winnebago Tribal Council of the Winnebago Tribe of Nebraska, or any individual designated by him/her to act in his/her absence, shall have the authority to have apprehended and delivered up to the executive authority of any Indian tribe, state, or the United States, or Canada or Mexico, any person charged with or convicted of an offense, who is found within the exterior boundaries of the Winnebago Reservation.
2. A formal demand for extradition must be made in writing by the demanding sovereign alleging that the individual was present within the jurisdiction of the demanding sovereign at the time of the commission of the alleged crime and that, thereafter, he/she left the jurisdiction of that sovereign. Accompanying the formal demand shall be a copy of any warrant outstanding against the individual or a copy of any judgment of conviction or any sentence imposed in execution thereof, or a statement by an appropriate agent of the demanding sovereign that the individual has escaped from confinement or has violated the terms or conditions of his/her bail, probation, or parole. Additionally, the Tribal Council Chairman shall receive a copy of any indictment, a copy of any information or complaint supported by an affidavit, or a copy of an affidavit made before a magistrate or judge in said jurisdiction. The indictment, information, complaint, or affidavit made before a magistrate or judge must substantially charge the individual whose extradition is demanded with having committed an offense under the laws of that sovereign. The copy of the indictment, information, complaint, affidavit, judgment of conviction, or sentence shall be authenticated by an appropriate agent of the demanding sovereign.
3. If the Tribal Council Chairman determines that the demand should be complied with, he/she shall cause a judge of the Winnebago Tribal Court to sign a warrant for apprehension which shall be directed to the Winnebago law enforcement office for execution. The warrant shall authorize any Winnebago law enforcement officer to apprehend the individual at any time and any place where he/she may be found within the Winnebago Reservation, and to command the aid of all Winnebago law enforcement officers in the execution of the warrant.
4. No individual apprehended under such warrant shall be delivered directly over to an agency of the demanding sovereign. He/she shall first be taken forthwith before a Tribal judge who shall inform him/her of the demand made for his/her extradition, the offense with which he/she has been charged or of which he/she has been convicted, his/her right to demand and secure legal counsel, and his/her right to a full hearing to challenge the proposed extradition.
5. A full hearing shall be held within seventy-two hours after the individual is apprehended to test the validity of the arrest. It will be presumed that the individual arrested desires a full hearing

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TITLE 1B ARTICLE 2

- unless the individual waives such hearing by executing in the presence of a Tribal judge a writing which states that he/she consents to the return to the demanding sovereign without a full hearing on the proposed extradition.
6. If, from the examination of the evidence presented at a hearing before a Tribal judge, it appears that the individual held is, in fact, the individual whose extradition is demanded and that he/she has fled from justice, the judge shall, by an order reciting his/her determination, commit him/her to a Tribal detention facility until such time, not exceeding thirty days, as the individual is surrendered to an agent of the demanding sovereign. Reasonable costs of detention of said individuals are to be paid by the demanding sovereign.
  7. Unless the offense, with which the individual has been charged or of which he/she has been convicted, is shown to be an offense punishable by death or life imprisonment under the laws of the jurisdiction in which it was committed, the Tribal judge may, in lieu of confinement, admit the person arrested to bail by bond, with sufficient sureties in such a sum as he/she deems proper, until he/she is surrendered to an agent of the demanding sovereign.
  8. The Tribal Council Chairman shall also have the authority to demand the return of an individual charged with a crime, with escaping from confinement, or with violating the term or conditions of his/her probation, or parole within the Winnebago reservation, from the executive authority of any other sovereign authorized to receive such demand.
  9. When the return to the Winnebago reservation of an individual charged with or convicted of a crime within the reservation is required, a Tribal judge shall present to the Tribal Council Chairman a written application for the return of such individual. The application shall state the name of the individual, the crime with which he/she has been charged or of which he/she has been convicted, the approximate time, place and circumstances of its commission, and the jurisdiction in which he/she is believed to be, including location of the individual in such jurisdiction, at the time the application is made. The application shall certify that, in the opinion of the judge, the ends of justice require the arrest and return of the individual to the reservation for trial or other hearing and that the proceeding is not instituted to enforce a private claim.
  10. An individual returned to the reservation by means of extradition based on a criminal charge shall not be subject to personal service of process in any civil action arising out of the same circumstances involved in the criminal proceeding until he/she has been finally convicted or, if acquitted, until he/she has had reasonable opportunity to return to the jurisdiction from which he/she was extradited.
  11. Nothing contained in these procedures shall be deemed to constitute a waiver by the Winnebago Tribe of their right, power, or privilege to try such demanded individual for any crime committed within the reservation or of their right, power, or privilege to regain custody of such individual by extradition proceedings for the purpose of trial, sentence, or punishment for any crime committed within the reservation. [TCR 86-79]

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TITLE 1B  
ARTICLE 3  
PROCEEDINGS BEFORE TRIAL

Rule 1B-301	The complaint.	Rule 1B-308	Bail.
Rule 1B-302	Arrest warrant or summons to appear: contents; service.	Rule 1B-309	Joinder.
Rule 1B-302.1	Service of arrest warrants and summons.	Rule 1B-310	Pleas.
Rule 1B-302.2	Citation instead of arrest.	Rule 1B-310.1	Withdrawing guilty plea.
Rule 1B-303	Search and seizure.	Rule 1B-310.2	Plea Bargaining.
Rule 1B-304	Arrest.	Rule 1B-311	Pleading and motions before trial: defenses and objections.
Rule 1B-304.1	Arrest in hot pursuit.	Rule 1B-312	Joinder of offenses.
Rule 1B-304.2	Limitations on arrest in the home.	Rule 1B-313	Discovery and inspection.
Rule 1B-304.3	Notification of rights.	Rule 1B-314	Subpoena.
Rule 1B-304.4	Telephone calls.	Rule 1B-315	Dismissal.
Rule 1B-305	Arraignment.		
Rule 1B-306	Pre-trial divers.		
Rule 1B-307	Commitments.		

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**Rule 1B-301 The complaint.**

1. Complaint. Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.
2. Contents of complaints. Complaints shall contain:
  - a. The name and address of the Court;
  - b. The name of the defendant, if known, or some other name, if not known, plus whatever description of the defendant is known;
  - c. The signature of the Tribal prosecutor or his/her assistant and his/her typewritten name;
  - d. A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known;
  - e. The person against whom or against whose property the offense was committed and the names of the witness of the Tribe if known, otherwise no statement need be made;
  - f. The general name and Tribal Code title and section number of the alleged offense.
3. Error. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.
4. Time of filing complaint. A complaint may be filed at any time within the period prescribed by Article 3 of this Title, provided, that if an accused has been arrested without a warrant the complaint shall be filed immediately or in no case later than the time of arraignment.
5. The clerk or prosecutor shall assist all parties with writing and filing criminal complaints.

**Rule 1B-302 Arrest warrant or summons to appear; contents; service.**

1. If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court shall issue a summons to the defendant to bring him/her before the Court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the criminal law of the Winnebago Tribe of Nebraska supported by the testimony or affidavit of some

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- person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.
2. Issuance of arrest warrants or summons. Unless the Tribal judge has reasonable grounds to believe that the person will not appear on a summons, a summons shall be issued instead of an arrest warrant.
  3. Contents of arrest warrants. The warrant of arrest shall be signed by the judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and a description of the offense charged with a reference to the section of the Winnebago Code of Criminal offenses alleged to have been violated. It shall order and command the defendant be arrested and brought before a judge of the Tribal Court to enter a plea.
  4. Contents of summons. A criminal summons shall contain the same information as an arrest warrant except that, instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal judge within five days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court. If the defendant fails to appear in response to a summons, or refuses to accept the summons, an arrest warrant shall issue. [TCR 86-79]

**Rule 1B-302.1 Service of arrest warrants and summons.**

1. Warrants for arrest and criminal summons may be served by any Tribal or federal law enforcement officer or any adult person authorized in writing by the Tribal judge. Service may be made at any place within the jurisdiction of the Tribe.
2. Warrants of arrest and summons are to be served at a person's home between the hours of 7:00 a.m. and 9:00 p.m. unless an authorization to serve such process at night is provided by a Tribal judge. Warrants and summons may be served at any time on an individual found in a public place.
3. The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonably possible.
4. An officer need not have the warrant in his/her possession at the time of arrest, but if not, he/she shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment. [TCR 86-79]

**Rule 1B-302.2 Citation instead of arrest.**

1. Whenever a law enforcement officer would be empowered to make an arrest without a warrant but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he/she may, in his/her discretion, issue the defendant a citation instead of taking said person into custody. Such citation shall be considered a Court order. Provided that in the case of infractions, the officer may issue a citation, and may not take said person into custody.
2. Contents of citation.
  - a. The citation shall contain the name and address of the Court, the name or address and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.
  - b. The citation shall contain an agreement by the defendant to appear before a Tribal judge within five days or on a day certain to answer to the charge and the signature of the defendant.

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- c. The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court.
- d. One copy of the citation shall be given to the defendant and two copies shall be delivered to the prosecutor.

**Rule 1B-303 Search and seizure.**

- 1. Search warrants. A search warrant is an order directed to any Tribal or federal law enforcement officer directing him/her to search a particular place for described persons or property and if found to seize them.
- 2. A warrant shall issue order on an affidavit or affidavits sworn to before a Tribal judge and establishing grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he/she shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the judge may require the defendant to appear personally and be examined under oath. The warrant shall be directed to any police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed ten days, the person or place named for the property specified.
- 3. Contents of search warrant. Every search warrant shall contain the name and address of the Court and the signature of the judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The search warrant shall be directed to any Tribal or federal law enforcement officer and contain the date on which it was issued.
- 4. Service of search warrants. Search warrants shall be served by any Tribal or federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the judge who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen years of age at the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises.
- 5. Inventory. The officer serving a search warrant shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.
- 6. Return of search warrants.
  - a. The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.
  - b. The warrant shall be returned to the Court with an inventory of property seized within twenty four hours of service, Saturdays, Sundays, and legal holidays excluded.
  - c. In every case the warrant shall be returned within ten (10) days of the date of issuance.
- 7. Property subject to seizure. Property which is subject to seizure is property in which there is probable cause to believe is:
  - a. Stolen, embezzled, contraband, or otherwise criminally possessed; or
  - b. Which is or has been used to commit criminal offense; or
  - c. Property which constitutes evidence of the commission of a criminal offense.
- 8. Warrantless searches. A law enforcement officer may conduct a search without a warrant only:
  - a. Incident to a lawful arrest; or
  - b. With the consent of the person to be searched; or
  - c. When he/she has reasonable cause to believe that the person searched may be armed and dangerous; or

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- d. When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure.
  - e. In any other circumstances wherein federal law has held that warrant prior to the search in those circumstances would not be unreasonable.
9. A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of the property on the grounds that he/she is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned and shall not be admissible at any hearing or trial unless it is subsequently seized in a lawful manner.
10. A law enforcement officer may stop any person in a public place whom he/she has probable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him/her his/her name, address, an explanation of his/her actions and may, if he/she has reasonable grounds to believe his/her own safety or the safety of others nearby is endangered, conduct a frisk type search for weapons of such person.
11. The term property is used in this Rule to include documents, books, papers, and any other tangible object. The term daytime as used in this Rule shall mean the hours from 6:00 a.m. to 10:00 p.m. according to local time. [TCR 86-79]

**Rule 1B-304 Arrest.**

- 1. An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.
- 2. A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he/she may, without a warrant, arrest a person:
  - a. For an offense committed in his/her presence.
  - b. When he/she has reasonable cause for believing the person to have committed an offense, although not in his/her presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:
    - i. Flee the jurisdiction or conceal him/herself to avoid arrest, or
    - ii. Destroy or conceal evidence of the commission of an offense, or
    - iii. Injure or annoy another person or damage property belonging to another person.
  - c. When he/she has reasonable cause for believing the person arrested has committed an offense in violation of 18 U.S.C. Section 11-53 (Major Crimes Act) although not in his/her presence;
  - d. When an offense in violation of 18 U.S.C. Section 11-53 (Major Crimes Act) has, in fact, been committed and he/she has reasonable cause to believe the person arrested committed such offense;
- 3. A private person may arrest another, for prompt delivery to a law enforcement officer:
  - a. When an offense is committed or attempted in his/her presence;
  - b. When the person arrested has committed an offense in violation of the Major Crimes Act although not in his/her presence.
  - c. When an arrest for that person is in fact outstanding.
- 4. Any person making an arrest may orally summon as many persons as he/she deems necessary to help him/her.
- 5. If the offense charged is an offense in violation of the Major Crimes Act, the arrest may be made at any time of the day or night, otherwise the arrest pursuant to a warrant cannot be made at night unless such is specifically authorized by the issuing judge.
- 6. Any law enforcement officer, upon making an arrest:
  - a. Must inform the person to be arrested of his/her intention to arrest him/her, of the cause or reasons for the arrest, and his/her 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

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- is pursued immediately after its commission, or an escape, or if such is not reasonably possible under the circumstances;
- b. Must show the warrant of arrest if such exists and is demanded as soon as is practicable;
  - c. May use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest;
  - d. May search the person arrested and take from him/her and put into evidence all weapons he/she may have about his/her person;
  - e. Shall, as soon as is reasonably possible, deliver the person arrested to a police office or do as commanded by the arrest warrant or deliver the person arrested to the jail and obtain a complaint and arrest warrant. [TCR 86-79]

**Rule 1B-304.1 Arrest in hot pursuit.**

1. Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Winnebago Tribe to any point of arrest within or without the Winnebago Tribe's jurisdiction, and such arrest shall be valid, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made, if applicable.
2. Any law enforcement officer commissioned by the federal government, any Indian tribe, or the state when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may arrest such person within the jurisdiction of the Winnebago Tribe of Nebraska, provided, that any person so arrested shall be forthwith delivered to a Winnebago police officer for a show cause hearing pursuant to the extradition laws of the Winnebago Tribe of Nebraska. [TCR 86-79]

**Rule 1B-304.2 Limitations on arrests in the home.** Pursuant to this Article, any arrest made in a residential dwelling shall be:

1. By a law enforcement officer pursuant to an arrest warrant; or
2. By a law enforcement officer for an offense committed in the home either in the presence of the officer or immediately before his/her arrival; or
3. By a law enforcement officer in continuous pursuit of a person who flees to his/her home to avoid arrest. [TCR 86-79]

**Rule 1B-304.3 Notification of rights.** Upon arrest, the defendant shall be notified that he/she has the following rights:

1. The right to remain silent and that any statements made by him/her may be used against him/her in Court.
2. That he/she has the right to obtain an attorney at his/her own expense and to have an attorney present at any questioning; or that he/she may consult with the Tribe's public defender.
3. That if he/she wishes to answer the questions of the police, he/she may stop or request time to speak with his/her attorney or the public defender at any point in the questioning. [TCR 86-79]

**Rule 1B-304.4 Telephone calls.** Upon request, any person arrested has the right to make at least one completed telephone call to a friend or bail bondsman and at least one completed call to a lay counselor or attorney. Denial of the right to make a call shall be grounds for dismissal of the case, unless the judge finds there was a good reason for the denial. [TCR 86-79]

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**Rule 1B-305 Arraignment.**

1. Arraignment defined. Arraignment is the bringing of an accused person before the Court, informing him/her of the charge against him/her and of his/her rights, receiving his/her plea and setting bail. Arraignment shall be held in open Court upon the appearance of an accused in response to a criminal summons or citation or, if the accused was arrested and confined, within forty-eight hours of the arrest, Saturdays, Sundays, and legal holidays excepted.
2. Procedure at arraignment. Arraignment shall be conducted in the following order:
  - a. The judge should request the prosecutor to read the charges.
  - b. The prosecutor should read the entire complaint, deliver a copy to the defendant and state the maximum authorized penalty, and that he/she has the following rights:
    - i. The right to remain silent.
    - ii. To be tried by a jury upon request if incarceration upon conviction is a possibility.
    - iii. To consult with an attorney at his/her own expense, or with the public defender, and that if he/she desires to consult with an attorney or the public defender the arraignment will be postponed.
  - c. The judge should determine that the accused understands the charge against him/her and explain to the defendant.
  - d. The judge shall ask the defendant if he/she wishes to obtain counsel and, if the defendant so desires, he/she will be given a reasonable time to obtain counsel. If the defendant shows his/her indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he/she shall not be required to enter a plea until the date set for his/her appearance.
  - e. The judge should then ask the defendant whether he/she wishes to plead guilty, nolo contendere, or not guilty.
3. Receipt of plea at arraignment. The defendant shall plead guilty, nolo contendere, or not guilty to the offense charged.
  - a. If the defendant refuses to plead, the judge shall enter a plea of not guilty for him/her.
  - b. If the defendant pleads not guilty, the judge shall set a trial date and conditions for bail prior to trial.
  - c. If the defendant pleads nolo contendere or guilty, the judge shall question the defendant personally to determine that he/she understands the nature of his/her action, the rights that he/she is waiving and that his/her action is voluntary. The judge may refuse to accept a guilty plea. If the guilty plea is accepted, the judge may immediately sentence the defendant or order a sentencing hearing. [TCR 86-79]

**Rule 1B-306 Pre-trial diversion.** Prior to trial, at the discretion of the judge, a defendant in a Class II or III criminal action may be referred to a community agency for job training, counseling and/or education for a period not to exceed ninety days, if the defendant agrees. During this interval the criminal complaint shall be held in abeyance. At the conclusion of this period, the judge shall review the results of the diversion and, if he/she determines that the diversion was successful, the criminal charge shall be dismissed. Pre-trial diversion is a voluntary alternative, and the accused must be provided the opportunity to consult with counsel prior to a decision to participate. [TCR 86-79]

**Rule 1B-307 Commitments.** No person shall be detained or jailed under this Code for a period longer than forty-eight hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a judge of the Tribal Court has been issued.

1. A temporary commitment may be issued pending investigation of charges or trial.

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2. A final commitment may be issued for those persons incarcerated as a result of a judgment and sentence of the Winnebago Tribal Court. [TCR 86-79]

**Rule IB-308 Bail.**

1. 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.
2. Bail-release prior to trial — personal recognizance. Every person charged with a criminal offense before trial, unless the judge should determine that such a release will not reasonably assure the appearance of such person lawfully required by law, or that release of such person will pose a significant danger to the community, the accused or any other person.
3. Bail — Release Prior to Trial — Alternatives. Where the judge determines that a person charged with a criminal offense should not be released on his/her personal recognizance, the judge may choose from among the following alternatives to assure the appearance of the person at any time lawfully required:
  - a. 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/her 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.
  - b. Release after execution of a bail agreement by one or more responsible members of the community.
  - c. Release to custody of a designated person or organization agreeing to assure the accused's appearance.
  - d. Release with reasonable restrictions on the travel, association or place of residence of the accused during the period of release.
  - e. Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
  - f. 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.
4. Bail release pending appeal. Every person who has been convicted of a Tribal offense and has appealed the conviction may request bail pursuant to the provisions for bail herein provided.
5. A bail schedule for Class III 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/her own observation, that the defendant is at the time he/she 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 eight hours.
6. 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 a trial and at such other times as his/her appearance is necessary. A defendant may, at arraignment, request that any bail posted under the bail schedule be reduced or that he/she be released under terms other than bail as authorized elsewhere in this Title.
7. The required bail may be tendered in the form of cash, collateral or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the Court in the form which the Court shall direct.
8. In the event the defendant fails to appear as required, the Court will forfeit any cash or collateral deposited or order the sureties of the bail bond to pay the designated amount to the Court. The

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- liability of the sureties may be enforced by order of the Court without the necessity of an independent action or judgment.
9. 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.
  10. The right to be released on bail as provided herein shall not accrue and state laws shall be subject to be released on bail by the jurisdiction under whose authority the arrest was made according to the provisions of the laws under which their arrest was made. A person arrested for violation of federal law shall not be entitled to be released on bail until the prosecution of such charges has been declined by the United States Attorney, plus a reasonable time thereafter, not to exceed thirty-six hours after receipt of notification of such declination, in which charges for violation of this Code, if any, may be filed, provided that upon the arrest of any person solely for violation of federal law, custody of the arrested party shall immediately be given to the appropriate federal authorities. Unless such authorities accept custody of the defendant 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 federal prisoners, the chief of police shall release said party from custody upon twenty-four hours notice to the appropriate United States Attorney and to the Tribal prosecutor if no Tribal charges have been filed as of that time.
  11. Security offered as bail shall be returned immediately on an acquittal or finding of not guilty, provided, that bail may be continued until sentencing or a ruling on an appeal, at the discretion of the Court. [TCR 86-79]

**Rule 1B-309 Joinder.**

1. Joinder of offenses. Two or more offenses may be charged in one complaint so long as they are set out in separate counts and:
  - a. They are part of a common scheme or plan; or
  - b. They arose out of the same transaction or events.
2. Joinder of defendants. Two or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

**Rule 1B-310 Plea.**

1. A defendant may plead guilty, nolo contendere, or not guilty. The Court shall not accept a plea of guilty or nolo contendere 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 plead or if the Court refuses to accept a plea of guilty, or nolo contendere, the Court shall enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.
2. The defendant, with the consent of the Court and of the prosecutor, may plead guilty to any lesser offense than that logged which is included in the offenses charged in the complaint or to any lesser degree of the offense charged. [TCR 86-79]

**Rule 1B-310.1 Withdrawing guilty plea.** A motion to withdraw a plea of guilty may be made before sentence is imposed, defeated, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice. [TCR 86-79]

**Rule 1B-310.2 Plea bargaining.** Whenever the defendant pleads, guilty as a result of a plea arrangement with the prosecutor, the full terms of such agreement shall be disclosed to the judge. The judge, in his/her discretion, is not required to honor such agreement. [TCR 86-79]

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**Rule 1B-311 Pleading and motions before trial: defenses and objections.**

1. Pleading in criminal proceedings shall consist of the complaint and the plea of either guilty, nolo contendere, or not guilty. All other pleas and motions shall be made in accordance with these Rules.
2. Motions raising defenses and objections may be made as follows.
  - a. Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
  - b. 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 may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any state of the proceeding.
  - c. Such motions shall be made in writing and filed with the Court at least five business days before the day set for trial. Such motions will be argued before trial or the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the judge and not by the jury.
  - d. 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, allow an interlocutory appeal to be taken as provided in the Appellate Rules or enter judgment as is appropriate in light of the decision. [TCR 86-79]

**Rule 1B-312 Joinder of offenses.**

1. The Court may order two or more defendants tried together if they could have been joined in a single complaint or may order a single defendant tried on more than one complaint at a single trial.
2. If it appears that a defendant or the Winnebago Tribe of Nebraska 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. [TCR 86-79]

**Rule 1B-313 Discovery and inspection.**

1. The police, or prosecutor, shall, upon request, permit the defendant or his/her attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of, or reasonably obtainable by the police or prosecution. The police and prosecution shall also make available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.
2. The defendant or his/her attorney shall reveal by written notice to the Court and the prosecutor at least five working days before trial the name and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity 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. [TCR 86-79]

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**Rule 1B-314 Subpoena.**

1. The defendant and the prosecutor shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.
2. A subpoena may be served any place within the territorial jurisdiction of the Tribal Court, and as provided for service in civil cases.
3. 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 of 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. [TCR 86-79]

**Rule 1B-315 Dismissal.**

1. 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.
2. 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 months shall be considered unreasonable under this Section, provided that where the defendant is incarcerated for more than one half 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. [TCR 86-79]

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TRIAL

Rule 1B-401	Trial by jury or by the Court.	Rule 1B-408	Motion for judgment of acquittal; directed verdict.
Rule 1B-402	Trial jurors.	Rule 1B-409	Instructions.
Rule 1B-403	Order of trial.	Rule 1B-410	Verdict.
Rule 1B-404	Trial by judicial panel.	Rule 1B-411	Regulation of conduct in the Courtroom.
Rule 1B-405	Judge disability.	Rule 1B-412	Harmless error and plain error.
Rule 1B-406	Evidence.		
Rule 1B-407	Expert witnesses and interpreters.		

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**Rule 1B-401 Trial by jury or by the Court.**

1. All trials of offenses shall be by the Court without a jury unless the defendant files a request for jury trial at the arraignment or at least ten (10) days prior to the date originally set for trial. Requests for jury trials need not be granted in cases where imprisonment is not a possibility.
2. Juries shall be composed of six members with one alternate if such is deemed divisible by the Court.
3. In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall upon request of a party, make specific findings which may be embodied in a written decision. [TCR 86-79]

**Rule 1B-402 Trial jurors.**

1. Jurors shall be drawn from the list of eligible jurors, prepared as provided in the rules promulgated by the Court, by the clerk in advance of trial. Jurors to sit at trial shall be drawn by lot from the group of potential jurors by the judge or clerk at trial. All adult Tribal members who are residents of the reservation are eligible jurors unless such person is incompetent or subject to incarceration or other restraint on his/her liberty due to a judgment and sentence in a criminal case. Any person convicted of a felony within the preceding five years for which he/she did not receive a pardon is not eligible for jury duty.
2. The Court shall permit the defendant or his/her counsel and the prosecutor to examine the jurors and the Court itself may make such an examination.
3. Challenges regarding jury members may be taken as follows:
  - a. Each side shall be entitled to three (3) peremptory challenges;
  - b. Either side may challenge any juror for cause;
  - c. An alternate juror shall be treated as a regular juror for the purpose of challenges.
4. The alternate juror shall be dismissed prior to the jury's retiring to deliberate if he/she has not first been called to replace an original juror who has become for any reason unable or disqualified to serve.
5. Jurors shall otherwise be subject to all rules applicable to juries in civil cases. [TCR 86-79]

**Rule 1B-403 Order of trial.** The trial of all criminal offenses shall be conducted in the following manner:

1. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its direction.

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2. If the parties are ready to proceed, the judge should swear all prospective jurors, if the case is to be tried by jury, to decide the case in a fair and impartial manner if selected for jury duty.
3. If the case is to jury, the Court should select a panel of six potential jurors by random and question them to determine if they have any interest in the case.
4. When the Court is satisfied that no juror is directly interested in the case, the prosecution and then the defendant shall be allowed to question the prospective jurors.
5. If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss him/her for cause and select another person from the jury panel.
6. Both the prosecutor and the defendant may alternatively request the Court to dismiss any juror by peremptory challenge. Each party shall have three challenges and the Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.
7. The Court should request the prosecutor to read the criminal complaint and to make his/her opening statement. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant.
8. The prosecutor should then read the complaint and briefly present the facts which he/she intends to prove to show the offense. No argument of the facts or law shall be allowed.
9. The defense may then make an opening statement or may reserve their opening statement until beginning the presentation of the defense evidence.
10. The prosecutor shall then present his/her evidence followed by the defendant's presentation of his/her defense evidence. After the defendant has presented his/her evidence, the prosecutor may present evidence in rebuttal.
11. The prosecutor shall then present his/her closing arguments, the defendant his/her closing argument, and the prosecutor shall be allowed to present a rebuttal.
12. If trial is to a jury, the judge should give them his/her instructions and they shall retire to decide their verdict. If trial is to the judge, he/she shall then make his/her decision or announce the time at which he/she will present his/her decision.
13. If the verdict is not guilty, the defendant should be discharged and bail exonerated.
14. If the verdict is guilty, the judge may impose sentence immediately or may hold a hearing to decide on an appropriate sentence.
15. After sentencing the judge may hold a hearing to determine appeal bond if an appeal is filed.  
[TCR 86-79]

**Rule 1B-404 Trial by judicial panel.**

1. In every trial for an offense or offenses punishable by imprisonment for more than four months in which a jury trial is not requested, the judge may, in his/her discretion, upon request of the defense or prosecution, order the matter to be heard by a three judge panel.
2. The chief judge shall assign three judges to sit on the judicial panel for trial. Those judges shall be subject to disqualification only for good cause shown.
3. All orders of the judicial panel, including judgments of conviction or acquittal, shall be by majority vote. The actual vote of each judge shall be held in strict confidence and only the actual decision shall be announced. [TCR 86-79]

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**Rule 1B-405 Judge disability.**

1. 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, any other Tribal judge may, upon certifying that he/she has familiarized him/herself with the record of the trial, proceed with the trial.
2. If by reason of death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the required duties of a judge after the verdict or finding of guilt, any other Tribal judge may perform those duties unless such judge feels he/she cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

**Rule 1B-406 Evidence.** The admissibility of evidence and the competence and privileges of witnesses shall be governed by Winnebago Rules of Evidence, except as herein otherwise provided. [TCR 86-79]

**Rule 1B-407 Expert witnesses and interpreters.**

1. Either party may call expert witnesses of their own selection and each bear the cost of such.
2. 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.
3. The trial judge or clerk may act as interpreter only with the consent of all parties. [TCR 86-79]

**Rule 1B-408 Motion for judgment of acquittal; directed verdict.**

1. 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 a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his/her right to present evidence.
2. 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. [TCR 86-79]

**Rule 1B-409 Instructions.** At the close of 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 requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he/she objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he/she objects and the grounds of the objection. Opportunity shall be given out of the hearing or if necessary out of the presence of the jury. [TCR 86-79]

**Rule 1B-410 Verdict.**

1. The verdict of a trial to a judicial panel shall be by majority vote and shall be returned in open Court.
2. The verdict of a jury shall be unanimous. It shall be returned by the jury to the judge in open Court. If the jury is unable to agree, the jury may be discharged and the defendant tried again before a new jury.

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3. If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.
4. The defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or lesser included offense without having been formally charged with the lesser included offense or attempt.
5. Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged. [TCR 86-79]

**Rule 1B-411 Regulation of conduct in the Courtroom.** Each judge may regulate the conduct of persons in his/her Courtroom and may forbid the taking of photographs or other visual or audio recording of proceedings occurring therein. [TCR 86-79]

**Rule 1B-412 Harmless error and plain error.**

1. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.
2. 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. [TCR 86-79]

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JUDGMENT

(As revised February 19, 2014)

Rule 1B-501	Judgment.	Rule 1B-505	Arrest of judgment.
Rule 1B-502	Sentence.	Rule 1B-506	Correction or reduction of sentence.
Rule 1B-503	General sentencing provisions.	Rule 1B-507	Clerical mistakes.
Rule 1B-504	New trial.		

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**Rule 1B-501 Judgment.** A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk. [TCR 86-79]

**Rule 1B-502 Sentence.** Sentence shall be set forth as follows:

1. Sentence shall be imposed without unreasonable delay in accordance with the provisions of the Winnebago Code of Criminal Offenses and these Rules. Pending sentence, the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him/her if he/she wishes to make a statement on his/her own behalf and to present any information in mitigation of punishment.
2. After imposing sentence, the Court shall inform the defendant of his/her right to appeal. [TCR 86-79]

**Rule 1B-503 General sentencing provisions.** In addition to any sentence otherwise authorized by law the Court may:

1. Order the offender to pay restitution to the victim in money, property or services.
2. Order the offender to pay restitution to the Winnebago Tribe of Nebraska in money, property, or services.
3. Allow such offender to exchange actual work performed for the Tribe in lieu of a fine or imprisonment, at the rate of the prevailing federal minimum wage per hour in effect at the time of sentencing.
4. Allow such offender to maintain their existing regular employment, job training or education, provided that whenever the offender is not employed or being trained or educated and between the hours or periods of employment, training, or education, the offender shall be confined to jail or to a monitored facility.
5. Unless otherwise prohibited, place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three times the amount of the maximum sentence allowed.
6. Any person who violates the terms of his/her 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.
7. Unless otherwise prohibited, defer imposing judgment and sentencing for a period not exceeding three times the maximum sentence allowed on condition that if the defendant violates no law and

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- satisfies such other reasonable conditions, such as restitution, as may be imposed, the plea or guilty verdict will be withdrawn and said charges will be dismissed.
8. In the discretion of the Court, allow the offender to pay a fine in goods or commendations at the fair market value of the goods or commodities to be surrendered, provided, that the Winnebago Tribe shall not reimburse the offender for any excess value of the property surrendered.
  9. Order the offender to participate in a rehabilitative program, such as alcohol treatment or mental health counseling.
  10. Order the offender to pay Court costs not to exceed one hundred dollars (\$100.00).
  11. 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.
  12. For all of the alternatives to incarceration presented in this Rule, the offender shall be supervised by a person duly authorized by the Court to monitor compliance with the sentence imposed. Completion of said sentencing alternatives shall be certified by the Court upon recommendation of the authorized supervisor, which recommendation shall state that the sentence requirements have been satisfied.
  13. If an offense specifies that a mandatory minimum penalty is required, the Court may not defer imposing judgment and sentencing, suspend the mandatory minimum penalty, or impose probation in lieu of the mandatory minimum penalty for that offense. The Court may, in its discretion, impose a sentence greater than the mandatory minimum penalty. Only that portion of a sentence greater than the mandatory minimum shall not be subject to the restrictions contained in this subsection. [TCR 86-79, 14-47]

**Rule 1B-504 New trial.** The Court, on motion of a defendant, may grant a new trial to him/her if required in the interest of justice. If trial was by the 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 only within one month after final judgment, but if an appeal is pending, the Court may grant the motion only on the remand of the case. A motion for a new trial based on any other grounds shall be made within seven days after verdict or finding of guilt or within such further time as the Court may fix during the seven day period. [TCR 86-79]

**Rule 1B-505 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 over the offense charged. The motion in arrest of judgment shall be made within seven days after verdict or finding of guilt or plea of guilty, or within such further time as the Court may fix during the seven day period. [TCR 86-79]

**Rule 1B-506 Correction or reduction of sentence.** The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty days after the sentence is imposed, or within thirty days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation. [TCR 86-79]

**Rule 1B-507 Clerical mistakes.** 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. [TCR 86-79]

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APPEAL

Rule 1B-601 Right of appeal; how taken.

Rule 1B-602 Stay of judgment and relief  
pending review.

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**Rule 1B-601 Right of appeal; how taken.**

1. The defendant has the right to appeal from the following:
  - a. A final judgment of conviction;
  - b. From an order made, after judgment, affecting his/her substantial rights;
  - c. Such other matters as provided in the Appellate Rules.
2. The Tribe has the right to appeal from the following:
  - a. A judgment of dismissal or an order excluding evidence in favor of the defendant prior to trial, or a dismissal based on any procedural irregularity occurring before trial;
  - b. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
  - c. An order of the Court directing the jury to find for the defendant;
  - d. An order made after judgment affecting the substantial rights of the Tribe;
  - e. Such other matters as provided in the Appellate Rules.
3. A notice of appeal must be filed within thirty days of the entry of the final judgment or other appealable order and such must be served on all parties except the party filing the appeal.
4. Such appeals shall be had in accordance with the Winnebago Rules of Appellate Procedure. [TCR 86-79]

**Rule 1B-602 Stay of judgment and relief pending review.**

1. A sentence of imprisonment may be stayed if an appeal is taken, and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his/her sentence in the matter under appeal.
2. 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 favor the defendant and negate the requirement for paying such.
3. An order placing the defendant on probation may be stayed in motion of the defendant if an appeal is taken. [TCR 86-79]

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TITLE 1B  
ARTICLE 7  
MISCELLANEOUS PROVISIONS  
(As revised February 19, 2014)

Rule 1B-701	Continuance.	Rule 1B-707	Bail schedule for Class III offenses.
Rule 1B-702	Disbursement of money and valuables collected.	Rule 1B-708	Diversion and probation costs.
Rule 1B-703	Habeas corpus.	Rule 1B-709	Sex offenders.
Rule 1B-704	Disposition of seized property.	Rule 1B-710	Additional findings for sex offenses.
Rule 1B-705	Designation of offenses.		
Rule 1B-706	Maximum fines and sentences, payment schedules; credit.		

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**Rule 1B-701 Continuance.** The Court may grant a request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case. [TCR 86-79]

**Rule 1B-702 Disbursement of money and valuables collected.** All fines, costs, forfeited bonds, securities or other moneys or valuables collected by the Court shall, unless specifically directed otherwise in this Code, be retained by the Court and used appropriately to enhance the operation of the Court. [TCR 86-79]

**Rule 1B-703 Habeas corpus.** Any incarcerated person may file with the Court a writ of habeas corpus alleging that said person is being restrained of his/her liberty in violation of his/her rights. Said writ addresses only the issue of unlawful imprisonment. Upon the filing of said writ, a hearing shall be held within seventy-two hours before a Tribal Court judge, other than a judge responsible for the incarceration, for the sole purpose of determining whether or not the imprisonment or detention is unlawful. If the judge determines, based on evidence produced at the hearing that the incarceration is unlawful, said person shall be released from custody immediately. [TCR 86-79]

**Rule 1B-704 Disposition of seized property.**

1. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence at any trial. Property seized may not be taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the Court shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control and disposition thereof.
2. Where seized property is no longer required as evidence in the prosecution of any complaint or information, the Court which has jurisdiction of such property may transfer the same to the jurisdiction of any other Court, where it is shown to the satisfaction of the Court that such property is required as evidence in any prosecution in such other Court.
3. Unless other disposition is specifically provided by law, when property seized or held is no longer required as evidence, it shall be disposed of on order of the Court on such showing as the Court may deem adequate, as follows:
  - a. Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

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- b. Money shall be restored to the owner unless it was used in unlawful gambling activities or in the purchase or sale of contraband, in which case it shall be forfeited to the Court.
- c. Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction held by the officer having custody thereof and the net proceeds disposed of as provided in Rule 43 of this Title, as shall any money which is unclaimed or the ownership of which is unknown;
- d. Articles of contraband shall be destroyed, except that any such articles which may be capable of lawful use may in the discretion of the Court be sold and the proceeds disposed of as provided in Rule 43 of this Title;
- e. Firearms, ammunition, explosives, bombs, and like devices which have been used in the commission of crime shall be disposed of in the same manner as contraband; and
- f. Unless otherwise provided by law, all other property shall be disposed of in such manner as the Court in its sound discretion shall direct. [TCR 86-79, 93-85]

**Rule 1B-705 Designation of offenses.**

- 1. Offenses are designated as Class I offenses, Class II offenses and Class III offenses.
- 2. An offense for which no penalty or sentence is specifically designated as a certain class of offense shall be treated for purposes of bail, sentencing and punishment as a Class III offense. [TCR 86-79]

**Rule 1B-706 Maximum fines and sentences; payment schedules; credit.**

- 1. There shall be five classes of offenses in the Code:
  - a. "Class One" offense shall be the most serious of offenses for which the maximum penalty shall be one year imprisonment and a five thousand (\$5,000) fine. Unless otherwise provided, there is no minimum penalty for a Class One offense; and
  - b. "Class Two" offense shall be the second class of offenses for acts which are criminal on this reservation and of an intermediate seriousness. The maximum penalty for a Class Two offense shall be six months imprisonment and a one thousand dollar (\$1,000) fine. Unless otherwise provided, there is no minimum penalty for a Class Two offense; and
  - c. "Class Three" offense shall be the least class of offenses for acts which are criminal on this reservation. The maximum penalty for a Class Three offense shall be three months imprisonment and a five hundred dollar (\$500) fine. Unless otherwise provided, there is no minimum penalty for a Class Three offense; and
  - d. An infraction is an act which is not treated as criminal but is a violation of the law. The maximum penalty for an infraction is a two hundred dollar (\$200) fine. Unless otherwise provided, there is no minimum fine for an infraction.
  - e. All "Driving While Intoxicated (DWI)" and "Implied Consent Refusal" offenses shall be considered a "Class W" offense. The minimum and maximum penalties shall be as follows:

	<u>Minimum</u>	<u>Maximum</u>
First conviction	Seven days imprisonment and a two hundred dollar (\$200) fine	Sixty days imprisonment and a five hundred dollar (\$500) fine
Second conviction	Thirty days imprisonment and a four hundred dollar (\$400) fine	Ninety days imprisonment and a five hundred dollar (\$500) fine
Third and subsequent Convictions	Ninety days imprisonment and a six hundred dollar (\$600) fine	One year imprisonment and a six hundred dollar (\$600) fine

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2. The fines listed above may be imposed in addition to any assessment of costs or other civil penalties and in addition to any amounts ordered paid as restitution.
3. If, solely because of indigency, a convicted offender is unable to pay forthwith a money fine or costs assessed under other provisions of this Code, the Court shall allow him/her a reasonable time to pay the entire sum or allow him/her 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/her in contempt of Court and imprison him/her accordingly.
4. Credit against a term of imprisonment imposed following an adjudication of guilty shall be given to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based. Such credit shall apply to time spent in custody prior to trial, during trial, pending sentence, and pending resolution of an appeal.
5. In case of re-prosecution for any reason of the same offense or an offense based on the same conduct for which a defendant has been imprisoned, credit shall be given for all time spent in custody under prior prosecution as provided in subsection (4) above.
6. Credit as provided in this Section should be considered and computed by the Court at the time of sentencing.
7. Sentencing that includes imprisonment pursuant to a mandatory minimum penalty may include work release and/or house arrest provisions. [TCR 86-79, 89-87, 95-07, 03-194, 14-47]

**Rule 1B-707 Bail schedule for Class III offenses.** Bail for all Class III offenses shall be set by the judge, and shall be no less than twenty-five dollars (\$25.00), nor more than fifty dollars (\$50.00). [TCR 86-79]

**Rule 1B-708 Diversion and probation costs.**

1. A person placed on probation or diversion and subject to supervision by the Court shall be required to pay a \$50.00 enrollment fee to the Winnebago Tribal Court to offset the costs of supervision. This fee applies to both juvenile and adult cases.
2. The fees collected pursuant to this Section shall be used for administrative and program services.
3. The Tribal Court may adopt rules for the administration of this Section.
4. This provision shall be effective January 1, 2006. [TCR 06-27]

**Rule 1B-709 Sex offenders.** In addition to Rule 1B-706, an offense that is a “sex offense” pursuant to the Winnebago Tribe of Nebraska Sex Offender Registration Act, Title 7, Article 16, shall be punishable by the following:

1. A Court order to register as a sex offender with the Winnebago Tribe of Nebraska Chief of Police;
2. Residential restrictions against living within 1,000 feet of any school, child care facility, youth program, or playground;
3. Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders;
4. A prohibition on contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender’s therapist, and the Tribal Court; and
5. If the victim was under the age of 18, a prohibition against contact with children under the age of eighteen (18) without review and approval by the Tribal Court; provided that the sex offender has successfully completed a sex offender treatment program. [TCR 11-160]

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**Rule 1B-710 Additional findings for sex offenses.**

1. At sentencing for any offense that is sex offense pursuant to the Winnebago Sex Offender Registration Act (Title 7, Article 16), the Tribe and the defendant shall present any additional evidence necessary for the Court to make a determination as to which sex offense registry Tier the offender must register under pursuant to the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and Title 7, Article 16 of the Tribal Code.
2. Upon consideration of such evidence, the Court will determine what tier of sex offender the defendant is, pursuant to the Winnebago Sex offender Registration Act, and shall inform defendant of defendant's registration obligation pursuant to the Winnebago Sex offender Registration Act and SORNA. [TCR 11-160]



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ARTICLE 1  
TRIBAL CHILD SUPPORT GUIDELINES

Rule 1C-101	Guidelines Adopted.	Rule 1C-114	Split Custody.
Rule 1C-102	Table.	Rule 1C-115	Joint Physical Custody.
Rule 1C-103	Purpose.	Rule 1C-116	Alimony.
Rule 1C-104	Temporary and Permanent Support.	Rule 1C-117	Child-Care Expenses.
Rule 1C-105	Rebuttable Presumption.	Rule 1C-118	Child(ren)'s Health Insurance and Nonreimbursed Health Care Expenses.
Rule 1C-106	Total Monthly Income.		
Rule 1C-107	Deductions.		
Rule 1C-108	Monthly Support.	Rule 1C-119	Modification.
Rule 1C-109	Parent's Monthly Share.	Rule 1C-120	Basic Subsistence Limitation.
Rule 1C-110	More Than One Child.	Rule 1C-121	Limitation on Increase.
Rule 1C-111	Minimum Support.	Rule 1C-122	Limitation on Decrease.
Rule 1C-112	Non-Cash Support.	Rule 1C-123	Maintenance and Review of Guidelines.
Rule 1C-113	Visitation or Parenting Time Adjustments.		

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ARTICLE 1  
TRIBAL CHILD SUPPORT GUIDELINES

Rule 1C-101	Guidelines Adopted.	Rule 1C-114	Split Custody.
Rule 1C-102	Table.	Rule 1C-115	Joint Physical Custody.
Rule 1C-103	Purpose.	Rule 1C-116	Alimony.
Rule 1C-104	Temporary and Permanent Support.	Rule 1C-117	Child-Care Expenses.
Rule 1C-105	Rebuttable Presumption.	Rule 1C-118	Child(ren)'s Health Insurance and Nonreimbursed Health Care Expenses.
Rule 1C-106	Total Monthly Income.	Rule 1C-119	Modification.
Rule 1C-107	Deductions.	Rule 1C-120	Basic Subsistence Limitation.
Rule 1C-108	Monthly Support.	Rule 1C-121	Limitation on Increase.
Rule 1C-109	Parent's Monthly Share.	Rule 1C-122	Limitation on Decrease.
Rule 1C-110	More Than One Child.	Rule 1C-123	Maintenance and Review of Guidelines.
Rule 1C-111	Minimum Support.		
Rule 1C-112	Non-Cash Support.		
Rule 1C-113	Visitation or Parenting Time Adjustments.		

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**Rule 1C-101 Guidelines Adopted.** The Winnebago Tribal Court has undertaken to prescribe uniform child support guidelines and criteria pursuant to the federal Final Rule for Tribal Child Support Enforcement IV-D Programs, 45 CFR 309 (March 30, 2004) and Winnebago Tribe of Nebraska Family Relations Code, Title 12, Article 5. The child support guidelines in this Article are hereby adopted, effective thirty (30) days from the date of approval by the Winnebago Tribal Council. The guidelines shall apply to civil cases pending on or after the effective date. Proceedings to establish child support obligations are civil in nature and where not governed by the procedures set forth under this Article, shall be conducted according to the Winnebago Rules of Civil Procedure. [TCR 08-79]

**Rule 1C-102 Table.** The table contained in this chapter is established as guidelines for use by the Winnebago Tribal Court in determining the amount of child support. The table is applicable to modification of child support orders as provided in Rule 1C-119, below. [TCR 08-79]

**Rule 1C-103 Purpose.** The main principle behind these Tribal child support guidelines is to provide for the best interests of the children by recognizing the equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes. [TCR 08-79]

**Rule 1C-104 Temporary and Permanent Support.** The Tribal child support guidelines are intended to be used for both temporary and permanent support determinations. [TCR 08-79]

**Rule 1C-105 Rebuttable Presumption.** The Tribal child support guidelines shall be applied as a rebuttable presumption. All orders for child support obligations shall be established in accordance with the provisions of the Tribal guidelines unless the Tribal Court finds that one or both parties have produced sufficient evidence to rebut the presumption that the Tribal guidelines should be applied. All stipulated agreements for child support must be reviewed against the Tribal guidelines and if a deviation exists and is approved by the Tribal Court, specific written findings giving the reason for the deviation must be made. Written findings must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. Deviations must take into consideration the best interests of the child. In the event of a deviation, the reason for the deviation shall be contained in the findings portion of the decree or order, or worksheet 5 should be completed by

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the Tribal Court and filed in the Court file. Deviations from the guidelines are permissible under the following circumstances:

1. When there are extraordinary medical costs of either parent or child;
2. When special needs of a disabled child exist;
3. If total net income exceeds \$15,000 monthly, child support for amounts in excess of \$15,000 monthly may be more but shall not be less than the amount which would be computed using the \$15,000 monthly income unless other permissible deviations exist. To assist the Court and not as a rebuttable presumption, the Court may use the amount at \$15,000 plus: 10 percent of net income above \$15,000 for one, two, and three children; 12 percent of net income above \$15,000 for four children; 13 percent of net income for five children; and 14 percent of net income for six children;
4. For juveniles placed in foster care; or
5. Whenever the application of the guidelines in an individual case would be unjust or inappropriate.

All orders for child support, including modifications, must include a basic income and support calculation worksheet 1, and if used, worksheet 2 or 3. [TCR 08-79]

**Rule 1C-106 Total Monthly Income.** “Total monthly income” is income of both parties derived from *all sources*, except all means-tested public assistance benefits, including Tribal or State TANF and any earned income tax credit and payments received for children of prior marriages. This would include income that could be acquired by the parties through reasonable efforts. For instance, the Court may consider as income the retained earnings in a closely-held corporation of which a party is a shareholder if the earnings appear excessive or inappropriate. All income should be annualized and divided by 12. For example, a party who receives a salary of \$200 gross per week would have an annualized gross income of \$10,400 (\$200 times 52) and a monthly income of \$866.67 (10,400 divided by 12). If the person is paid \$200 every 2 weeks, his or her annualized gross income would be \$5,200 (\$200 times 26) and monthly income would be \$433.33 (5,200 divided by 12).

Examples of income may include any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income, workers’ compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or Veterans benefits provided for a dependent child, gaming winnings, Tribal per capita payments, and any form of federal or Tribal trust benefits derived from a person’s status as an enrolled member of any federally-recognized tribe, including but not limited to general assistance payments, oil or other mineral royalties, agricultural leases, and water leases.

It is the responsibility of the person with seasonal employment to budget income so that payments are made monthly throughout the year.

The Tribal Court may consider overtime wages in determining child support if the overtime is a regular part of the employment and the employee can actually expect to regularly earn a certain amount of income from working overtime. In determining whether working overtime is a regular part of employment, the Court may consider such factors as the work history of the employee for the employer, the degree of control the employee has over work conditions, and the nature of the employer’s business or industry.

Depreciation calculated on the cost of ordinary and necessary assets may be allowed as a deduction from income of the business or farm to arrive at an annualized total monthly income. After an asset is shown to be ordinary and necessary, depreciation, if allowed by the Tribal Court, shall be calculated by using the

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“straight-line” method, which allocates cost of an asset equally over its useful duration or life. An asset’s life should be determined with reference to the Class-lives and Recovery Periods Table created pursuant to 26 CFR § 1.167(a)-11. A party claiming depreciation shall have the burden of establishing entitlement to its allowance as a deduction.

Copies of at least two (2) years’ tax returns, financial statements, and current wage stubs should be furnished to the Tribal Court and the other party to the action at least three (3) days before any hearing requesting relief. Any party claiming an allowance of depreciation as a deduction from income shall furnish to the Court and the other party copies of a minimum of five (5) years’ tax returns at least 14 days before any hearing pertaining to the allowance of the deduction.

If applicable, earning capacity may be considered in lieu of a parent’s actual, present income and may include factors such as work history, education, occupational skills, and job opportunities. Earning capacity is not limited to wage-earning capacity, but includes moneys available from all sources. [TCR 08-79]

**Rule 1C-107 Deductions.** The following deductions should be annualized to arrive at monthly net income:

1. Taxes. Standard deductions applicable to the number of exemptions provided by law will be used to establish the amount of federal and state income taxes.
2. FICA. Social Security deductions, or any other mandatory contributions in lieu of Social Security deductions including any self-employment tax paid.
3. Retirement. Individual contributions, in a minimum amount required by a mandatory retirement plan. Where no mandatory retirement plan exists, a deduction shall be allowed for a continuation of actual voluntary retirement contributions not to exceed 4 percent of the gross income from employment or 4 percent from the net income from self-employment.
4. Child Support. Child support previously ordered for other children.
5. Other Children. Subject to Rule 1C-122, credit may be given for biological or adopted children for whom the obligor provides regular support. [TCR 08-79]

**Rule 1C-108 Monthly Support.** The combined monthly net income of both parties from line 4 of worksheet 1 is compared to table 1. For example, if the combined monthly net income was \$1,500 and there were three children, we would find \$530 as the child support from table 1 (read across the table from \$1,500 to the “Three Children” column to find \$530). [TCR 08-79]

**Rule 1C-109 Parent's Monthly Share.** This is the child support amount from line 7, worksheet 1 (or line 9 if applicable), multiplied by the percentage contribution of each parent from line 6, worksheet 1. In our example, if F had a monthly net income of \$1,000 and M had a monthly income of \$500, each parent's monthly share would be \$355.10 for F (.67 times \$530) and \$174.90 for M (.33 times \$530). F would be required to pay M \$355.10 per month in the event M was awarded custody of the children. [TCR 08-79]

**Rule 1C-110 More Than One Child.** If there is more than one child, the Court’s order should specify the amount of child support due for the children, with the amount recalculated and reduced as the obligation to support terminates for each child. The amount due for each possibility should be calculated separately from table 1. In our example, if M was awarded custody of the children, F would be required to pay \$355.10 (.67 times \$530) when there are three children, \$328.30 (.67 times \$490) when there are two children, and \$258.62 (.67 times \$386) when there is one child. See worksheet 4. The order should direct that child support continue only until each child reaches majority under Winnebago law, becomes

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emancipated, becomes self-supporting, marries, or dies, or until further order of the Tribal Court. [TCR 08-79]

**Rule 1C-111 Minimum Support.** It is recommended that even in very low income cases, a minimum support of \$50, or 10 percent of the obligor's net income, whichever is greater, per month be set. This will help to maintain information on such obligor, such as his or her address, employment, etc., and, hopefully, encourage such person to understand the necessity, duty, and importance of supporting his or her children. [TCR 08-79]

**Rule 1C-112 Non-Cash Support.** A non-cash support payment may satisfy a set child support obligation only where:

1. The obligor and obligee agree to the non-cash support as a form of payment and the Court approves of the non-cash support in the written order;
2. The Court states the specific dollar amount of the child support obligation in the written order;
3. The Court describes in the written order the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the child support order and that only 50% of the underlying child support obligation may be met by non-cash support; and
4. The Court provides in the written order that the non-cash support will not be permitted to satisfy child support obligations that have been assigned to any tribal or state public agency.

The making of direct payments to or for the benefit of the child, the giving of gifts, the purchasing of food, clothing and the like, or the payment of bills shall *not* satisfy the aforesaid child support obligation unless such payments are approved by the Court as Non-Cash Support under this Rule. [TCR 08-79]

**Rule 1C-113 Visitation or Parenting Time Adjustments.** Visitation or parenting time adjustments or direct cost sharing should be specified in the support order. If child support is not calculated under Rule 1C-115, an adjustment in child support may be made at the discretion of the Tribal Court when visitation or parenting time substantially exceeds alternating weekends and holidays and 28 days or more in any 90-day period. During visitation or parenting time periods of 28 days or more in any 90-day period, support payments may be reduced by up to 80 percent. The amount of any reduction for extended parenting time shall be specified in the Court's order and shall be presumed to apply to the months designated in the order. Any documented substantial and reasonable long-distance transportation costs directly associated with visitation or parenting time may be considered by the Court and, if appropriate, allowed as a deviation from the guidelines. [TCR 08-79]

**Rule 1C-114 Split Custody.** Split custody is defined as each parent having physical custody of one or more of the children. Worksheet 2 shows how to do this calculation. [TCR 08-79]

**Rule 1C-115 Joint Physical Custody.** When a specific provision for joint physical custody is ordered and each party's parenting time exceeds 142 days per year, it is a rebuttable presumption that support shall be calculated using worksheet 3. When a specific provision for joint physical custody is ordered and one party's parenting time is 109 to 142 days per year, the use of worksheet 3 to calculate support is at the discretion of the Court. If child support is determined under this paragraph, all reasonable and necessary direct expenditures made solely for the child(ren), such as clothing and extracurricular activities, may be allocated between the parents, as determined by the Court, but shall not exceed the proportion of the obligor's parental contributions (worksheet 1, line 6). For purposes of these guidelines, a "day" shall be generally defined as including an overnight period. [TCR 08-79]

**Rule 1C-116 Alimony.** These guidelines intend that spousal support be determined from income available to the parties after child support has been established. [TCR 08-79]

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**Rule 1C-117 Child-Care Expenses.** Child-care expenses are not specifically computed into the guidelines amount. If the Tribal Court chooses to allocate child-care expenses, the Court shall consider such expenses independently of any amount computed by use of these guidelines. Care expenses for the child for whom the support is being set, which are due to employment of either parent or to allow the parent to obtain training or education necessary to obtain a job or enhance earning potential, shall be allocated to the obligor parent as determined by the Court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6) and shall be added to the basic support obligation computed under these guidelines. The value of the federal income tax credit for child care shall be subtracted from actual costs to arrive at a figure for net child-care expenses. The Court may impute the value of the federal child-care tax credit using worksheet 6 if the parent incurring the child-care expense has monthly gross income above \$2,100 for one child; \$2,500 for two children; \$2,600 for three children; \$2,700 for four children; \$2,800 for five children; and \$2,900 for six children. The value shall be imputed at 25 percent of the child-care expense, not to exceed \$62.50 per month for one child and \$125 per month for two or more children. [TCR 08-79]

**Rule 1C-118 Child(ren)'s Health Insurance and Nonreimbursed Health Care Expenses.** The child support order shall address how or whether the parents will provide for the child(ren)'s health care needs through health insurance as well as the nonreimbursed reasonable and necessary child(ren)'s health care costs that are not included in table 1 that are provided for in subparagraph 2 of this rule.

1. Health Insurance. The increased cost to the parent for health insurance for the child(ren) of the parent shall be prorated between the parents. When worksheet 1 is used, it shall be added to the monthly support from line 7, then prorated between the parents to arrive at each party's share of monthly support on line 10 of worksheet 1. The parent requesting an adjustment for health insurance premiums must submit proof of the cost for health insurance coverage of the child(ren). The parent paying the premium receives a credit against his or her share of the monthly support.
2. Health Care. Children's health care expenses are specifically included in the guidelines amount of up to \$480 per child per year. The Tribal Court *may* order that either parent provide health insurance to meet children's health care needs where appropriate. All nonreimbursed reasonable and necessary children's health care costs in excess of \$480 per child per year shall be allocated to the obligor parent as determined by the Court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6). [TCR 08-79]

**Rule 1C-119 Modification.** Application of the child support guidelines which would result in a variation by 10 percent or more, but not less than \$25, upward or downward, of the current child support obligation, child care obligation, or health care obligation, due to financial circumstances which have lasted 3 months and can reasonably be expected to last for an additional 6 months or for a period of time determined by the Tribal Court, establishes a rebuttable presumption of a material change of circumstances. [TCR 08-79]

**Rule 1C-120 Basic Subsistence Limitation.** A parent's support, child care, and health care obligation shall not reduce his or her net income below the minimum of \$851 net monthly for one person, or the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), except minimum support may be ordered as defined in Rule 1C-111 above. [TCR 08-79]

**Rule 1C-121 Limitation on Increase.** Under no circumstances shall there be an increase in support due from the obligor solely because of an increase in the income of the obligee. [TCR 08-79]

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**Rule 1C-122 Limitation on Decrease.** An obligor shall not be allowed a reduction in an existing support order solely because of the birth, adoption, or acknowledgment of subsequent children of the obligor; however, a duty to provide regular support for subsequent children may be raised as a defense to an action for an upward modification of such existing support order. [TCR 08-79]

**Rule 1C-123 Maintenance and Review of Guidelines.** The Tribal Court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the Final Rule for Tribal Child Support Enforcement IV-D Programs, 45 CFR § 309.105 (March 30, 2004). The Winnebago Tribe of Nebraska Child Support Enforcement Program Director is responsible for notifying the Tribal Court Judges and Court Administrator when a review and potential revision of the guidelines are necessary. The Tribal Court Judges and Court Administrator shall convene a Guidelines Advisory Committee of five members, including one member appointed by the Winnebago Tribe of Nebraska Attorney General's office, two employees of the Winnebago Tribe of Nebraska Child Support Enforcement Program appointed by the Child Support Director, one Tribal Court Judge, and the Tribal Court Administrator. The Tribal Court Judge(s) will review reports submitted to the Tribal Court by the Guidelines Advisory Committee. The initial review shall be performed within three years of July 1, 2008, and subsequently within the four-year period of the most recent review. [TCR 08-79]



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[TCR 10-110; 10-112; 16-106]