

SPIRIT LAKE LAW AND ORDER CODE
Title IV (4): Civil Actions
Chapter I (1): Rules of Civil Procedure

§4-1-101 Scope of Rules

This Chapter governs the procedure in the Tribal Courts of the Spirit Lake Tribe in all actions of a civil nature, except where different rules are specifically prescribed in this Code. These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every civil action.

§4-1-102 One Form of Action

The distinctions between actions at law and suits at equity and the common law forms of all such actions and suits are hereby abolished in the Courts of the Spirit Lake Tribe. All actions to which these rules apply will be known as civil actions.

§4-1-103 Commencement of Action

1. A civil action is commenced by filing a written Complaint and Summons with the Judicial Clerk and by delivery of copies of the Summons and Complaint by the Plaintiff or his attorney to the appropriate officials for purpose of service on The Defendants.
2. The Summons shall be legibly signed by the Plaintiff or his attorney, directed to the Defendant and shall require the Defendant to Answer the Complaint and serve a copy of his Answer on the person signing the Summons at a place specified in the Summons at which there is a post office.
3. The Answer must be served within 20 days after service of the Summons and Complaint, exclusive of the day of service. The Summons shall further notify the Defendant that in case of a failure to file an Answer, judgment by default may be rendered against him for the relief requested in the Complaint.

§4-1-104 Complaints - Signature

A Complaint filed in the Tribal Court shall state the nature and facts from which the action arises, shall bear the signature of the Plaintiff and shall be witnessed by the Judicial Clerk or a licensed notary public.

§4-1-105 Filing Fees

In all civil suits the Plaintiff shall be required to pay to the Tribal Court a filing fee. The fee may be waived by the Tribal Court upon a showing of good cause. No fee shall be charged if the Tribe is the Plaintiff.

§4-1-106 Standard of Proof

The Plaintiff in a civil case shall have the burden of proving his/her case by a preponderance of the evidence.

§4-1-107 Limitation on Filing of Complaint

No Complaint shall be filed in a civil action unless the claims alleged arose within a six year period prior to the date of filing the Complaint, unless other sections in this Code set forth another specific statute of limitation for a specific action. However, this Section shall apply only to claims that are not currently pending as evidenced by the filing of a petition or affidavit for relief before the Court on the date this Code is passed by resolution of the Tribal Council regardless of the date on which the cause of action arose.

§4-1-108 Pleadings and Motions

1. The pleadings which shall be allowed shall be a Complaint and an Answer, a Counterclaim, a Cross Claim, a Reply to a Counterclaim, an Answer to a Cross Claim if the Answer contains a Cross Claim, a Third Party Complaint, and a Third Party Answer if a Third Party Complaint is served. No other pleadings shall be allowed except that the Tribal Court may order a reply to an Answer or a Third Party Answer.
2. Every application to the Tribal Court for an Order shall be made by motion, which shall be in writing and shall state with particularity the grounds therefore and the relief or Order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of a hearing on the motion. The Tribal Court may also allow oral motions during the course of a hearing or trial. The rules applicable to actions, signing, and other matters of the form of pleadings apply to all motions and other papers provided for in this Title.

§4-1-109 General Rules of Pleading

1. Any pleading which sets forth a claim for relief whether it be called a Complaint, a Cross Claim, or a Third Party Claim, shall contain a short, plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief the pleader deems himself entitled. Relief in the alternative or of several different types may be demanded.
2. In response to claims pleaded against him, a party shall state in plain, concise terms the defenses, alternatively or hypothetically and regardless of consistency, and shall

admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed a denial. A claim to which a responsive pleading is required except for the amount of damages shall be deemed admitted unless denied. If no responsive pleading is required, the claims of the adverse party shall be deemed denied.

3. All pleadings shall be construed so as to do substantial justice.

§4-1-110 Pleading Special Matters

1. In pleading an official document or official act, it is sufficient to allege that the document was issued or the act done in compliance with the law. In pleading any statute or ordinance, a party may refer to the statute by its number and the ordinance by its title or number and the date of its approval.
2. In pleading a judgment or decision of a Tribal Court, a judicial, quasi-judicial body or a board or hearing officer, a party may refer to the judgment or the decision without setting forth any matters showing the jurisdiction to render it.
3. For the purpose of testing the sufficiency of a pleading, the Tribal Court shall consider allegations of time and place as material and all other allegations as material matters.
4. When a party is ignorant of the name of an opposing party, and so alleges in his pleading, the opposing party may be designated by any name, and when his true name is discovered, the process and all pleadings in the action shall be amended by substituting the true name.

§4-1-111 Form of Pleadings

1. Every pleading shall have a caption setting forth the name of the Tribal Court, the title of the action, and an identification of the type of pleading. In the Complaint, the title of the action shall include the names of all the parties. However, in all subsequent pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication that other parties are involved.
2. All allegations shall be made in numbered paragraphs, and a paragraph may be referred to by number in all succeeding pleadings.

3. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument, which is an exhibit to a pleading, is part of the pleading for all purposes.

§4-1-112 Signing of Pleadings

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and his address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Pleadings need not be verified or accompanied by affidavits. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief, there are good grounds to support it, and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section, it may be stricken as sham and false and the action may proceed as though the pleading had not been served.

§4-1-113 Defenses and Objections

1. A Defendant shall serve his Answer within 20 days after service of the Summons and Complaint. Any party served with a pleading stating a Counterclaim or Cross Claim shall serve an Answer within 20 days after the service, The Plaintiff shall serve a reply to a Counterclaim and the Answer within 20 days after service of the Answer, or if a reply is ordered by the Tribal Court, within 20 days after service of the order unless modified by the Tribal Court. The service of any motion permitted under Subsection (2) alters these periods of time as follows unless a different time is fixed by order of the Tribal Court:
 - a. If the Tribal Court denies the motion or postpones a decision until the trial on the merits, the responsive pleadings shall be served within 10 days after notice of the Tribal Courts action.
 - b. If an appeal is taken from an order sustaining a motion to dismiss and such order is thereafter reversed, the responsive pleading shall be served within 20 days after the judgment or order of reversal is filed in the Trial Tribal Court.
2. Every defense to a claim for relief in any pleading whether a Complaint, Counterclaim, Cross Claim or Third Party Claim shall be asserted in the responsive pleading if one is required, except that the following defenses may at the

option of the pleader be made prior to the filing of a responsive pleading by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief may be granted, (6) failure to join a party under §4-1-120. If the Tribal Court is presented a motion for failure to state a claim upon which relief can be granted and matters outside the pleadings are presented to the Tribal Court and not excluded, the Tribal Court may treat the motion as one for summary judgment, if all parties are provided a reasonable opportunity to present all material pertinent to such motion.

3. Any of the defenses raised either by pleading or by motion and listed in Subsection 2 above shall heard and determined before trial upon application of one of the parties unless the Tribal Court orders such hearing to be deferred until the time of trial.

§4-1-114 Counterclaims and Cross Claims

1. A responsive or supplemental pleading may state as a Counterclaim any claim which the pleader has against the opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Tribal Court cannot acquire jurisdiction or is not a claim over which the Tribal Court would not have jurisdiction if brought as an original action.
2. A pleading may state as a Counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim if the claim is one over which the Tribal Court would have jurisdiction if brought as an original action.
3. A Counterclaim may diminish in part or defeat totally the recovery sought by the opposing party. It may claim relief exceeding an amount or different in kind from that sought in the pleading of the opposing party.
4. A pleading may state as a Cross Claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a Counterclaim or relating to any property that is the subject matter either of the original action or of a Counterclaim or relating to any property that is the subject matter of the original action. Such

Cross Claim may include a claim that the party against whom it is asserted is or may be liable to the Cross Claimant for all or part of a claim asserted in the action against the Cross Claimant.

5. Persons other than those made parties to the original action may be made parties to a Counterclaim or Cross Claim in accordance with the provisions of §4-1-120 and §4-1-121.

§4-1-115 Third Party Practice

At any time after commencement of an action and within 10 days of filing an original Answer, a defending party may without permission of the Tribal Court cause Summons and Complaint to be served upon any person not a party to the action who is or may be liable to the defending party for all or part of the Plaintiff's claim against him. After 10 days from service of the original Answer, the defending party must obtain permission of the Tribal Court to join a third party. Any person so served with Summons and Complaint shall be called a third party Defendant and shall be allowed to file responsive pleadings including Answers, Counterclaims and Cross Claims as provided in §4-1-113 and §4-1-114. A third party Defendant may also proceed under this section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third party Defendant. The Tribal Court may render such judgments, one or more in number, as may be suitable. When a Counterclaim is asserted against a Plaintiff, he may cause a third party to be brought in under such circumstances, which would entitle a Defendant to do so under this section.

§4-1-116 Amended and Supplemental Pleadings

1. Amendments to pleadings shall be allowed only upon Motion and Order of the Tribal Court or permission of the adverse party. Any party served with an amended pleading has an additional 10 days from the service date or the original expiration date for Answering, whichever is longer, within which to respond to the amended pleading.
2. All amendments of pleadings relate back to the date of the original pleading.
3. Upon Motion and Notice, the Tribal Court may permit a party to serve a supplemental pleading setting forth occurrences or events which have happened since the date of the pleading sought to be supplemented. If such permission is granted to file supplemental pleadings, the Tribal Court shall fix the responsive time for the adverse party.

§4-1-117 Pretrial Conferences

In any action, the Tribal Court may, in its discretion, direct the attorneys or the parties to appear before it in a conference to consider any matters, which may aid in the disposition of the action.

§4-1-118 Parties

1. Every action shall be prosecuted by the real party in interest except that a personal representative or other person in a fiduciary capacity may sue in his own name without joining the party for whose benefit the action is being maintained.
2. A judgment in an action against two or more persons associated in business together and transacting such business under a common name, when brought in that name, shall bind the joint property of all the associates and the individual property of the party or parties actually served a Summons and Complaint in the same manner as if all had been named the Defendants and had been sued upon their joint liability.
3. When an infant or other incompetent person without general guardian is made a party to a lawsuit, the Tribal Court shall appoint a guardian ad litem to represent such person in the proceeding. Such guardian ad litem may settle or compromise the litigation only with the approval of the Tribal Court and shall make application to the Tribal Court for payment of any fees or expenses incurred by him, which fees and expenses shall be the responsibility of the ward, unless the Tribal Court determines that the fees and expenses would work an undue hardship on the ward.

§4-1-119 Joinder of Claims and Remedies

1. Any party asserting a claim to relief as an original claim, Counterclaim, Cross Claim, or Third Party Claim may join either as independent or as alternate claims as many claims either legal or equitable as he has against an opposing party.
2. Whenever a claim is one which can be decided by the Tribal Court only after another claim has been prosecuted to a successful conclusion, the two claims may be joined in a single action. However, the Tribal Court shall grant relief in the action only after determining that the right to relief has been established in the proper manner and in the proper order.

§4-1-120 Joinder of Persons Needed for a Just Adjudication

1. Certain persons shall be made parties to pending litigation if possible. Those persons are as follows: persons in whose absence complete relief cannot be accorded among those persons already parties; or persons who claim an interest in the subject of the action and are situated so that the disposition of the action in their absence may impair their ability to protect their interest or leave one of the parties subject to a substantial risk of incurring multiple or inconsistent obligations. If such person exists, the Tribal Court shall order that person be made a party.
2. If any person described in Subsection 1 above cannot be made a party because he is beyond the jurisdiction of the Tribal Court or otherwise, the Tribal Court shall determine whether the absent person is indispensable. If the Tribal Court determines that the person is indispensable, the Tribal Court shall dismiss the action. If not, the Tribal Court shall allow the action to proceed and take such protective measures by the shaping of relief or appropriate provisions of the judgment as will protect the rights of the person not joined and those persons who are parties to the lawsuit.

§4-1-121 Permissive Joinder of Parties

1. All persons may join in one action as Plaintiffs if they assert any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions, and if any question of law or fact is common to all those persons and will arise in the proceeding. All persons may be joined in the action as Defendants if the common elements exist as to all Defendants as stated in the previous sentence. Judgment may be given for one or more of the Plaintiffs according to their respective rights to relief and against one or more of the Defendants according to their respective liabilities.
2. The Tribal Court may make such orders as will prevent a party from being embarrassed, delayed, or put to additional expense by the inclusion of a party against whom he asserts no claim or who asserts no claim against him. The Tribal Court may order separate trials or make other orders to prevent delay or prejudice.

§4-1-122 Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not grounds for dismissal of an action.

Parties may be dropped or added by order of the Tribal Court on motion of any party or on its own initiative at any stage of the proceeding and on such terms as are just. Any claim against any party may be severed and proceeded with separately by court order.

§4-1-123 Interpleader

Any party to a lawsuit who believes that he is or may be exposed to double or multiple liability may make application to the Tribal Court for permission to join as parties those persons whom he believes expose him to inconsistent or multiple liability by way of interpleader. Interpleader will be liberally granted by the Tribal Court to the extent that it does not deprive the Tribal Court of jurisdiction over the proceeding.

§4-1-124 Class Actions and Stockholder Actions

No class action or stockholder derivative action shall be allowed in the Tribal Court without prior permission of the Tribal Council.

§4-1-125 Intervention

Upon timely application, any person shall be permitted to intervene in an action if the Tribal Court determines that justice cannot otherwise be granted or that without such intervention the rights of the person cannot be properly protected. Any person desiring to intervene shall serve a Motion to Intervene upon the parties, which motion shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Upon hearing or stipulation of the parties, the Tribal Court shall determine whether or not intervention will be allowed.

§4-1-126 Substitution of Parties

If a party dies and the claim is not thereby extinguished or if a party becomes incompetent or transfers his interest or separates from some official capacity, the Tribal Court may allow substitute parties to be joined in the proceeding as justice requires.

§4-1-127 What Constitutes Service

Any notice or process to any person or Party which is required under the provisions of this Code shall be served in accordance with one of the following provisions:

§ 4-1-128 Service of Process

1. **Summons and Complaint; Who May Serve.** Summons and Complaint may be served within the exterior boundaries of the Reservation by any Law Enforcement Officer or tribal member who is a resident of the Reservation, 18 years or older and who is not a party to the litigation. Service of Summons and Complaint upon any party outside the boundaries of the Reservation may be made in the manner prescribed for service of process in that jurisdiction.
2. **Delivery of Summons and Complaint.** The Summons and Complaint shall be served by delivering copies thereof. Service in the following manner shall constitute personal service:
 - a. If the action is against two or more persons associated in business together and transacting such business under a common name, service need be made on only one of the associates but need not be made upon all.
 - b. If the action is against a corporation, service shall be made on any officer, person in charge of any office, or registered agent thereof and such service may be made within or outside this jurisdiction.
 - c. If the action be against a minor, service shall be made on a parent, person having custody of such minor or the legally appointed general guardian of such minor. If a guardian ad litem has been appointed, service shall also be made on the guardian ad litem.
 - d. If the action is against a person judicially declared to be of unsound mind or who is an inmate of any institution or mentally incompetent or for whom a general guardian has been legally appointed, service shall be on the superintendent of such institution or on such guardian.
 - e. In all other cases on the Defendant personally.
3. **Alternate Personal Service Methods.** Service in the following manner shall also constitute personal service:
 - a. If the Defendant cannot be conveniently found, service may be made by leaving a copy of the Summons and Complaint at the Defendant's dwelling house and delivered to a member of the Defendant's family or household over the age of 14 years.
 - b. Service may be made if the person to be served is informed of the purpose of the service and provided copies of the papers being served and said copies are either received by the person to be served or left within

his reach. Whether the person accepts or refuses to accept said copies is immaterial.

4. **Proof of Personal Service.** Proof of personal service of a Summons and Complaint or any other legal document must state the time, place and manner of such service and must be made as follows:
 - a. If served by a Law Enforcement Officer or other Process Server, his certificate thereof.
 - b. If served by any other person, his affidavit thereof.
 - c. If admitted by the party upon whom service may have been made, then by the written admission of such party or his attorney.
 - d. If served by publication, by the affidavit of the publisher of the newspaper or other employee showing such regular publication and an affidavit of the party or his attorney showing regular mailing of copies to the party to be served at his last known post office address.
5. **Registered Mail.** Service may be obtained by depositing a copy of the notice or process in the U.S. Mail, addressed to the person or party to be served, by registered or certified mail, restricted delivery with request for a return receipt signed by the addressee only. Upon return through the U.S. Mail of the receipt, signed by the addressee, the person so serving the notice or process shall file the return receipt with the Tribal Court
6. **Service by Publication.** If the Plaintiff can establish to the satisfaction of the Tribal Court by affidavit that he has made a diligent effort to obtain personal service as provided by these rules upon a Defendant both within and without this jurisdiction, and that despite such diligent effort, personal service cannot be obtained on a Defendant, the Tribal Court may authorize service by publication of the Summons. Service by publication shall constitute publishing the contents of the Summons in a local newspaper of general circulation at least once a week for four consecutive weeks and by mailing by first class mail, postage prepaid, a copy of the Summons and Complaint to the Defendant at his last known post office address.
7. **Amendment of Summons or Proof of Service.** The Tribal Court may in its discretion on such terms as it deems proper at any time allow any Summons or other process or proof of service to be amended unless it clearly appears that the substantial rights of the person against whom the process was issued would be prejudiced thereby.

§4-1-129 Service and Filing of Pleadings and Other Papers

1. Except as Otherwise provided by these rules all pleadings, notices, appearances, demands, offers of judgment or similar papers shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against the Defendants in default shall be served upon them in the same manner as provided for service of Summons and Complaint.
2. **Service on Parties Represented by Attorneys.** Whenever service of a legal document other than the Summons and Complaint is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the Tribal Court. Service upon the attorney or upon a party shall be made either by service in the manner provided for Summons and Complaint or by mailing a copy of the legal document to the party or his attorney at the last known post office address. Service by mail shall be by first class mail and is complete upon mailing. An attorney's certificate of service, the written admission of service by the party or his attorney, or an affidavit of mailing shall be sufficient proof of service. The provisions of this Subsection are not intended to change the rules for service of Summons and Complaint. Further, any process or other legal paper designed or with the purpose to bring a party into contempt shall be served by personal service only. Except that the Tribe may serve any process or other legal papers designed or with the purpose to bring a party into contempt according to §4-1-128(5).
3. **Service on Multiple Defendants.** In any action in which there are unusually large numbers of Defendants, as determined by the Tribal Court in its sole discretion, the Tribal Court may order that service of documents between the Defendants upon each other and replies thereto may be made in some summary fashion other than by service by each Defendant on each Defendant. A copy of any such order of the Tribal Court shall be served upon all parties in such manner and form as the Tribal Court directs.
4. **Filing of Originals.** The originals of all papers served upon a party or presented to any Tribal Court or to any Judge shall either be filed with the Tribal Court prior to service or filed with the Tribal Court together with the proof of service immediately upon service. If such papers are not to be served, they must be filed with the Tribal

Court at the time of their presentation to the Tribal Court for action or consideration. In the event of failure to file any paper required to be filed under this rule, the adverse party shall be entitled, without notice, to an Order requiring such paper to be filed within a reasonable time as specified by the Tribal Court. The Tribal Court may likewise order that, upon failure to file such paper, the action or proceeding shall be dismissed without prejudice and no new action or proceeding may be commenced without payment of reasonable terms to be fixed by the Tribal Court. If any such process or other paper has been lost or withheld by any person, the Tribal Court may authorize a copy thereof to be filed and substituted for the original. A legal document is deemed filed with the Tribal Court as required by this Code if the same has been presented to the Clerk of the Tribal Court or to the presiding Judge during a trial. The Clerk or the Judge will note thereon the filing date and assure that the document is placed in the original Tribal Court file.

§4-1-130 Minimum Notice Requirement

1. Subject to the exceptions expressly set forth in Subsection (2) below and elsewhere in this Code, no trial or hearing in any matter, case or proceeding shall be conducted by any of the Courts of the Tribe unless all parties to it have been given at least five days advance notice, which notice shall include identification of the subject of the trial or hearing, and the time and place at which it will be conducted. Exceptions to that requirement are as follows:
2. Unless otherwise stated in the Code, no trial or hearing shall be conducted in any matter, case or proceeding less than 20 days after both filing of the original Complaint, application or petition by which it was commenced and service of a copy of it upon all other parties, unless the other parties consent to an earlier trial or hearing; provided, however, that if original service in a trial, case or proceeding upon a person or party is obtained pursuant to the provisions of §4-1-128(5) or (6), the time specified shall be 30 days.

§4-1-131 Time

1. In computing any period of time set forth in these rules, the day the time period is to commence shall not be counted and the last day of the period shall be counted, provided however, that any period which would otherwise end on a Saturday, Sunday, or a legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or a legal

holiday.

2. Whenever under these rules or by an order of the Tribal Court an act is required to be done or a notice given within a specified time, the Tribal Court may for good cause shown, in its discretion at any time, with or without motion or notice, enlarge the time period if a request is made for enlargement before the expiration of the period originally prescribed or as extended by a previous order. If the time as originally prescribed or as previously enlarged has expired, the Tribal Court shall require written motion for enlargement of the time and appropriate notice be given to the adverse party. If the time period has expired prior to the application being made, the Tribal Court should not enlarge the time if such action will do substantial prejudice to the adverse party. Nothing in this rule shall be deemed to authorize the Tribal Court to enlarge the time for making motions for judgment notwithstanding the verdict, motions for new trial, or motions for relief from final judgment or order except under such circumstances as are set forth in those specific rules.
3. Any written motion, other than one which may be heard *ex parte*, and notice of hearing or an order to show cause shall be served not less than five days before the time specified for the hearing unless a different time period is fixed by these rules or by an order of the Tribal Court. Application for an order to fix a hearing date may be made *ex parte*. Whenever any motion is supported by an affidavit, the affidavit shall be served with the motion except as otherwise provided in these rules. Responding or opposing affidavits may be served not later than one day before the hearing unless the Tribal Court permits by order affidavits to be served at some other time.
4. Whenever a party has the right or is required to do some act within a specified period after the service of a notice of other paper upon him, or whenever such service is required to be made in a specified period before a specific event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

§4-1-132 General Provisions Governing Discovery

1. **Discovery Methods.** Parties may obtain discovery by one or more of the following methods:
 - a. Depositions upon oral examination.
 - b. Written interrogatories.

- c. Production of documents or things or permission to enter upon land or other property for inspection and other purposes.
 - d. Requests for admission.
2. **Discovery Scope and Limits.** Unless otherwise limited by order of the Tribal Court in accordance with these rules, the scope of discovery is as follows:
 3. In general, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether the information sought will be inadmissible at the trial, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
 4. **Frequency and extent of use.** The frequency and extent of use of these discovery methods may be limited by the Tribal Court upon application of the party against whom discovery is sought pursuant to a motion under Subsection (3) The Tribal Court may act upon its own initiative after reasonable notice.
 5. **Trial Preparation: Materials.** A party may obtain discovery of documents and tangible-things prepared in anticipation of trial, but not the work product of the attorney or other legal advocate permitted to represent in Tribal Court as set forth in this Code.
 6. **Trial Preparations: Experts.** Discovery of facts known and opinions held by experts may be obtained only upon application to the Tribal Court. The Tribal Court shall require that the party seeking such discovery pay the expert a reasonable fee for time spent in responding to discovery and may require the party to pay a fair portion of the fees and expenses reasonably incurred by the other party in obtaining facts and opinions from the expert in responding to the discovery request.
 7. **Protective Orders.** Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Tribal Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. If the motion for a protective order is denied in whole or in part, the Tribal Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of §4-1-140(2) apply to the award of expenses incurred in relation to the motion.

8. **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired at any time prior to trial.
9. **Discovery Conference.** At any time after commencement of an action, the Tribal Court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery, and may enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations for discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice requires.
10. **Signing of Discovery Requests, Responses and Objections.** Every request for discovery or response or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response or objection and that, to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, the response is made in good faith, not for any improper purpose, not to harass or cause unnecessary delay or needless increase in the cost of litigation, and is not unreasonable or unduly burdensome or expensive. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.
11. **Certification Violation.** If a certification is made in violation of this rule, the Tribal Court shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

§4-1-133 Depositions Before Action or Pending Appeal

1. **Perpetuation of Testimony.** A person who desires to perpetuate testimony regarding any matter within the jurisdiction of the Tribal Court may move the Tribal Court for an order authorizing the petitioner to take depositions for the purpose of perpetuating testimony.
2. **Notice and Service.** The motion and order shall be served as Summons and Complaint are served pursuant to the provisions of this Code.
3. **Order and Examination.** The depositions may then be taken in accordance with these rules and the order of the Tribal Court.
4. **Use of Deposition.** A deposition to-perpetuate testimony may be used in any action involving the same subject matter subsequently brought in Tribal Court in accordance with the provisions of §4-1-137.

§4-1-134 Persons Before Whom Depositions May Be Taken

1. **Inside the Reservation.** Depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or by the Spirit Lake Tribe, or before a person appointed by the Tribal Court. A person so appointed has power to administer oaths and take testimony. The term "Officer" as used in §4-1-136 and 137 includes a person appointed by the Tribal Court or designated by the parties under 4-1- 135.
2. **Outside the Reservation.** Outside the Reservation, depositions may be taken upon notice before an officer authorized to administer oaths by the laws of the United States or of the state where the examination is held, or before a person commissioned by the Tribal Court. The person so commissioned by the Tribal Court shall have the power by virtue of the commission or a letter rogatory to administer any necessary oath and take testimony. Both a commission and a letter rogatory may be issued in proper cases. A letter rogatory may be addressed to the appropriate authority in that appropriate jurisdiction.

§4-1-135 Stipulations Regarding Discovery Procedure

The parties may stipulate that depositions maybe taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by these rules for other methods of discovery.

§4-1-136 Depositions Upon Oral Examination

1. **When Depositions May be Taken.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in this Code.
2. **Notice of Examination: General Requirements; Non-Stenographic Recording; Production of Documents and Things.**
 - a. **Notice of Examination.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action, stating the time and place for taking the deposition and the name and address of each person to be examined. If a subpoena *duces tecum* is served on the person to be examined, the subpoena including the designation of the materials to be produced shall be attached to the notice.
 - b. **Objections to Use of Depositions.** Except as provided in Subsection (c) below, objection may be made at the trial or hearing regarding the receiving of any deposition in whole or in part for any reason, including but not limited to inadmissibility of evidence, competency of a witness, competency, relevancy, or materiality of testimony, errors and irregularities occurring at the oral examination, in the oath or affirmation, in the conduct of parties, in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, or filed, and errors of any other kind.
 - c. **Effect of Errors and Irregularities in Depositions.**
 - 1) **As to Notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.
 - 2) **As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
 - 3) **As to Taking of Deposition.**
 - a) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony

are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one, which might have been obviated or removed if presented at that time.

- b) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be removed or cured if promptly presented, are waived unless objection thereto is made at the taking of the deposition.

d. **Corporations, Partnerships and Associations.** A party may in a notice of deposition or in a subpoena, name as the deponent, a public or private corporation, or a partnership, or association or governmental agency, and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

e. **Time Change.** The Tribal Court may for cause shown enlarge or shorten the time for taking the deposition.

f. **Non-stenographic Recording.** The parties may stipulate in writing or the Tribal Court may upon Motion order that the testimony at a deposition be recorded by other than stenographic means. A party may arrange to have a stenographic transcription made at the party's own expense.

3. **Examination and Cross-Examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of this Title. The officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Subsection (f) above. If requested by one

of the parties, the testimony shall be transcribed at his expense. All objections made at the time of the examination shall be noted by the officer, and evidence objected to shall be taken subject to the objections.

4. **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance, which the witness desires to make, shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any; and the deposition may then be used as fully as though signed unless the Tribal Court orders otherwise.

5. **Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.**

a. **Certification And Filing.** The officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the Tribal Court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Tribal Court in which the action is pending or send it by registered or certified mail to the clerk for filing.

b. **Exhibits.** Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, the person may offer copies to be attached to the deposition to be served as originals, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or offer the originals to be, after giving to each party an opportunity to inspect and copy them, in

which event the materials may then be used in the same manner as if attached to the deposition.

c. **Copies.** Upon payment of reasonable charges, the officer shall furnish a copy of the deposition to any party or to the deponent.

d. **Notice of Filing.** The party taking the deposition shall give prompt notice of its filing to all other parties.

6. Failure to Attend or to Serve Subpoena; Expenses.

a. If the party giving the notice of the taking of a deposition fails to attend and proceed and another party attends in person or by attorney pursuant to the notice, the Tribal Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

b. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Tribal Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

§4-1-137 Use of Depositions in Tribal Court Proceedings

At the trial or upon the hearing of a motion, part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice for the purpose of contradicting or impeaching the testimony of deponent as a witness, and in a proper case may be used to establish an admission by a party. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Tribal Court finds that the witness is dead, is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition, that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment, or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. The deposition may also be used in any manner the Tribal Court deems as furthering substantial justice and is more probative than prejudicial.

§4-1-138 Interrogatories

1. Any party may serve upon any other party written interrogatories to be answered by the party served. Each interrogatory shall be answered separately and fully in writing under oath. The party upon whom the interrogatories have been served shall sign and serve a copy of the answers within 30 days after the service of the interrogatories.
2. Interrogatories may relate to any matters, which can be inquired into under §4-1-137.

§4-1-139 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

1. Any party may serve on any other party a request to produce and permit the inspection and copying of any designated documents, or to inspect and copy, test, or sample any tangible things which constitute or contain matters relevant to the subject matter in the pending action and which are in the possession, custody or control of the party upon whom the request is served, or to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation relevant to the subject matter in the pending action.
2. The party upon whom the request is served shall serve a written response within 30 days after the service of the request stating whether the requested acts will be done or permitted. The party submitting the request may move for an order requiring the acts to be done or permitted.

§4-1-140 Requests for Admission

1. **Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters relevant to the subject matter involved in the impending action that relate to statements or opinions of fact or of the application of law to fact including the genuineness of any documents described in the request.

Each matter of which an admission is requested is admitted unless, within 30 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer signed by the party or by the party's attorney specifically denying the matter, or admitting a part thereof and denying the rest

thereof, or setting forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. The party who has requested the admissions may move for an order determining the sufficiency of the answers.

2. **Effect or Admission.** Any matter admitted under this rule is conclusively established unless the Tribal Court on motion permits withdrawal or amendment of the admission. The Tribal Court may permit withdrawal or amendment when the presentation of the merits of the action will be served, and the party who obtained the admission fails to satisfy the Tribal Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits.

§4-1-141 Failure to Make or Cooperate in Discovery; Sanctions

1. **Motion for Order Compelling Discovery.** A party, upon reasonable notice to other parties and all persons affected, may apply to the Tribal Court for an order compelling discovery.
2. **Award of Expenses of the Motion.**
 - a. If the motion is granted, the Tribal Court may, after opportunity for hearing, require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees.
 - b. If the motion is denied, the Tribal Court may, after opportunity for hearing, require the moving party to pay to the party who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees.
 - c. If the motion is granted in part and denied in part the Tribal Court may, after opportunity for hearing, apportion the reasonable expenses incurred in relation to the motion among the parties in a just manner.
3. **Failure to Comply with Order.** If a party fails to obey an order to provide or permit discovery, the Tribal Court may make such orders in regard to the failure as are just, including, but not limited to an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of

the action in accordance with the claim of the party obtaining the order, an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence, an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party, an order treating as a contempt of Tribal Court the failure to obey any orders, and may require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure.

§4-1-142 Trials

1. Trials of all civil actions shall be to the Tribal Court without a jury unless a party to the action files a request for a jury trial and pays a fee of \$100.00 at the time of filing the initial pleadings. The Tribal Court will then fix the time and place for hearing the request for a jury trial, which the Tribal Court may postpone until the pleadings have been completed and the issues formulated. The Tribal Court shall determine whether significant issues of fact are presented which will be determinative of the legal issues. If so, a jury trial shall be granted; otherwise, no jury trial will be allowed.
2. Unless the requesting party or the Tribal Court specifies otherwise, all factual issues shall be decided by the jury at trial.
3. A Judge may, upon his own motion, order a trial by jury of any or all of the factual issues of a case regardless of whether the parties have requested a jury. A Judge may hear and decide all of the issues at trial without a jury if either party fails to appear for trial regardless of was requested or ordered.

§4-1-143 Right to Trial by Jury

No absolute right of jury trial exists in a civil case in the Tribal Court. Whether a request for jury trial is granted is within the sound discretion of the Judge assigned to hear the case.

§4-1-144 Assignment of Cases for Trial

1. **Trial Calendar.** The Chief Judge shall be responsible for assigning civil cases to the various Judges and shall be responsible for maintaining a separate Tribal Court calendar for civil jury cases and civil court cases. The

Chief Judge shall review both calendars on a regular basis, but at least every six months to assure the Tribal Judiciary Committee that all actions are being disposed of expeditiously as possible.

2. **Dismissal For Failure to Proceed.** If the Chief Judge determines that no activity has occurred in a pending civil case beyond one year, the Tribal Court may fix a hearing time pursuant to an Order to Show Cause why the action should not be dismissed without prejudice for failure to prosecute the claim. If the Tribal Court finds that no good cause exists the Tribal Court may in its discretion, giving due regard for the interests of justice, dismiss the case without prejudice for failure to proceed.

§4-1-145 Dismissal of Action

1. **Voluntary Dismissal by The Plaintiff.** Any civil action may be dismissed by the Plaintiff without order of the Tribal Court by filing a notice of dismissal at any time before service by the adverse party of a responsive pleading or of a motion for judgment or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice. Costs and attorney fees may be assessed against the Plaintiff.
2. **Dismissal by Court Order.** Except as provided above, no action shall be dismissed at the Plaintiff's request except on order of the Tribal Court and upon such terms and conditions as the Tribal Court deems proper. If a Counterclaim, Cross Claim, or Third Party Claim has been pleaded prior to the service upon such person of the Plaintiff's motion to dismiss, the action shall not be dismissed over the Defendant's objection or the third party's objection unless the Counterclaim or Third Party Claim can remain pending for independent adjudication by the Tribal Court. Unless otherwise specified in the order, a dismissal under this subsection is without prejudice.
3. **Dismissal for Failure to Proceed and Motion for Dismissal for Failure to Prove a Right to Relief.** If the Plaintiff fails to prosecute or substantially comply with this Chapter or any order of the Tribal Court, a Defendant may move for dismissal of an action or any claim against him. After the Plaintiff in an action tried to the Tribal Court has completed presentation of his case, the Defendant may move for dismissal on the ground that upon the facts presented or the law, the Plaintiff has shown no right to relief. The Tribal Court may rule on the motion at that

time or may decline to rule on the motion until the close of all the evidence. If the Tribal Court renders judgment on the motion against the Plaintiff, the Tribal Court shall enter findings of fact and conclusions of law establishing the reasons for his ruling. A dismissal under this subsection, other than a dismissal for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits.

4. **Dismissal for Inactivity.** On its own motion, the Tribal Court may dismiss any action where the records of the Judicial Clerk indicate that the case has been inactive for a period of two (2) years.

§4-1-146 Consolidation or Severance of Trials

1. The Tribal Court may, upon motion of any party or upon its own initiative, order any or all of the issues of separate actions tried together when there is a common issue of fact or law relating to the actions or if the consolidation will tend to avoid unnecessary cost or delay.
2. The Tribal Court may, to avoid prejudice or in furtherance of convenience, order severance or separate trials of any claims or issues which are pled in one action.

§4-1-147 Evidence

At all hearings and trials, the testimony of witnesses shall be taken orally under oath unless otherwise provided in this Chapter. All evidence admissible under the Federal Rules Evidence or as specified as admissible under Tribal Law shall be admissible. The competency of witnesses to testify shall be similarly determined.

§4-1-148 Proof of Official Records

1. **By Attested or Certified Copy or Testimony.** An official record kept within the United States or any territory, state, or tribe, or any entry therein, when admissible for any purpose, may be evidenced by an official publication or by a copy attested or certified by the officer having the legal custody of the record or his deputy together with a certificate that such officer has custody of the original record. The certificate may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office. It may also be proven by the testimony of the official having custody of the record.

2. **Proof of lack of Entry or Record.** A written statement that asserts that, after diligent search no record or entry of a specific tenor is found to exist in the records designated by the statement and authenticated is admissible as evidence that the records contain no such record or entry.

§4-1-149 Excluded Evidence Preserved for Appeal

In any action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made outside the hearing of the jury. In actions tried to the Tribal Court, the Judge may receive such excluded evidence and testimony into the record for appeal purposes.

§4-1-150 Exceptions

Subject to the provisions of §4-1-165, formal exceptions to rulings or orders of the Tribal Court are unnecessary for the purposes of appeal, but for all purposes where an objection is proper and the party has an opportunity to object to a ruling or order at the time it is made, such party should do so in order to assure that such objection or ruling is preserved for appeal purposes.

§4-1-151 Jury Verdicts

When the jury has agreed on a verdict, the jury foreman shall so inform the Bailiff who shall notify the Tribal Court. The jury shall return to the Courtroom and the Judicial Clerk shall call the jury roll. The verdict shall then be given in writing to the Judicial Clerk who shall read the same to the Tribal Court. The Judge shall then inquire of the jury foreman as to whether the verdict just read is the true verdict of the jury. Either party may request that the jury be polled individually to determine if such, in fact, is the jury verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider. Otherwise, the verdict is complete and the jury shall be dismissed.

§4-1-152 Special Verdicts

The Tribal Court may, in its discretion, require the jury to return a verdict or verdicts in the form of specific findings on specified issues. The Tribal Court may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

§4-1-153 Motion for Directed Verdict

1. **Grounds Stated.** A motion for directed verdict shall state the grounds and may be granted by the Tribal Court without

the consent of the jury.

2. **Evidence Offered if Motion Denied.** A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied.

§4-1-154 Motion for Judgment Notwithstanding the Verdict

A party who has moved for a directed verdict at the close of all the evidence, which motion has been denied or not ruled upon, may within 10 days after entry of judgment move to have the verdict and any judgment set aside and entered according to his motion for directed verdict or if there has been a verdict, the party may so move within 10 days after the jury has been discharged. A motion for a new trial may be made in the alternative under the same restrictions. The Tribal Court shall enter judgment or make any orders consistent with the decision on the motion.

§4-1-155 Instructions and Arguments to the Jury

1. **Settlement of Instructions.** At the close of the evidence or at such earlier time as the Tribal Court may direct, any party may file proposed written instructions for the Tribal Court to give to the jury. Copies shall be served on the other parties. At the close of the evidence, the Tribal Court and the parties or their counsel shall settle instructions out of the hearing of the jury, the Tribal court shall hear arguments on the instructions which the Tribal Court proposes to make and offer the parties the opportunity to object to the instructions of the Tribal Court. No ground of objection to the giving or the refusing of an instruction shall be considered on motion for new trial or appeal unless the proposed instruction is specifically presented to the Tribal Court.
2. **Argument to the Jury.** Final arguments shall be made by the parties or their counsel, but not both. The party having the burden of proof will open and close the argument. Each side shall be allotted the same amount of time for opening and closing. The Tribal Court shall not comment to the jury on the evidence of the case. At the conclusion of the closing arguments, the Judge shall read the instructions to the jury. The jury shall retire to deliberate and shall be furnished a copy of the instructions and all evidence admitted into the record.

§4-1-156 Findings by the Tribal Court

1. **Necessity For Findings and Conclusions.** In all actions tried upon the facts without a jury, the Tribal Court

shall, unless otherwise provided in these rules, find the facts specially and state separately its conclusions of law, and judgment shall thereafter be entered pursuant to §4-1-157. In granting or refusing temporary restraining orders or preliminary injunctions, the Tribal Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. If an opinion or memorandum of decision is filed, the facts and legal conclusions stated therein need not be restated but may be included in the findings of fact and conclusions of law by reference, or the Tribal Court may adopt its written decision as findings of fact and conclusions of law.

2. **Waiver of Findings and Conclusions.** Findings of fact and conclusions of law are waived by failing to appear for trial, by consent in writing filed with the Clerk, by oral consent in open Tribal Court, or by entering into a stipulation of facts for consideration by the Tribal Court. Findings of fact and conclusions of law are not necessary and need not be entered when granting or denying a temporary restraining order or preliminary injunction in a divorce proceeding or other domestic relations type dispute or on decisions on motions under §4-1-113 or §4-1-161 or any other motion except under §4-1-145(3) for involuntary dismissal of a lawsuit.

§4-1-157 Judgments

1. **Nature of Judgments.** A judgment is an order, which finally and conclusively determines the rights of the parties. A judgment shall fairly compensate the injured person for the loss he has suffered or shall follow any rules of compensation set out in any Section of this Code pursuant to which the action is brought.
2. **Partial Judgments.** When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on fewer than all of such claims. If the Tribal Court enters an order severing any decided claim from the remaining claims, then the appeal time will commence to run as to the claim decided in the same manner in which the appeal time would begin to run if the claim had been sued upon separately. Otherwise, the appeal time will not commence to run until all of the claims in the litigation are decided.
3. **Nature of Judgment Award.** A judgment by default shall not award relief different in kind from or exceed the Complaint. Otherwise, every final judgment shall grant the relief to which the party in whose favor the same was

rendered even if such relief was not demanded in the pleadings. It may be given for or against one or more or several persons, and it may, if justice requires, determine the ultimate rights of the parties on either side as between themselves.

4. **Assessment of Costs.** The Tribal Court may assess reasonable court costs of civil litigation against any one or more of the parties to a case as appropriate in the discretion of the Tribal Court. Such assessment shall be limited to those costs representing the actual expenses incurred by the Tribal Court, Judicial Clerk, or other Tribal agency directly attributable to that case, and the direct, reasonable expenses of the parties incurred for the litigation, including the expenses of voluntary witnesses for which either party may be responsible under this Code and the fees of juries in civil jury trials.
5. **Costs of Prevailing Party.** The Tribal Court may award costs and disbursements to the prevailing party or order that each party shall bear its own costs. The prevailing party shall file with the Tribal Court an affidavit of his costs and necessary disbursements within five days of the entry of the judgment and serve a copy on the opposing party. If such are not objected to within five (5) days after receipt of the affidavit of costs, they shall be deemed to be part of and included in the judgment rendered. The costs which are allowable are filing fees, fees for service of process, publication fees, fees for subpoena and attendance of witnesses, costs of transcribing court proceedings and costs of depositions. No other costs or fees shall be allowed unless specifically so Provided in this Code.
6. **Attorney's Fees.** Except as otherwise provided in this Code, the Tribal Court should not award attorney's fees in any case, except divorce or other domestic relations cases. However, if justice so requires, the Tribal Court may in its discretion award reasonable attorney's fees.

§4-1-158 Punitive Damages

If an injury is adjudged deliberately inflicted, the judgment may award punitive damages to the prevailing party.

§4-1-159 Judgments - Duration

A judgment of the Tribal Court shall be valid until satisfied in full, including interest upon the judgment at the rate of 10% per annum from the date of entry of the judgment.

§4-1-160 Default Judgments

1. **When Granted.** When a party against whom a judgment for affirmative relief is sought has failed to make an appearance or plead or otherwise defend as provided by these rules, his default shall be proved by affidavit and judgment by default may be granted to the opposing party.
2. **How Obtained After Appearance.** If the party against whom judgment by default is sought has appeared in the action, he or his counsel shall be served with written notice of the application for default judgment at least three (3) days prior to the hearing on such application. The same notice shall be given if the person against whom default judgment is sought is an infant or incompetent, regardless of whether he has appeared or not.
3. **Nature Of Default Judgment.** The Tribal Court may enter a judgment by default if a party's claim against the opposition is for a sum of money, which is or can by computation be made certain. A judgment by default for a money judgment may be entered without evidence. Judgment by default for any other type of relief shall be entered only upon receipt of such evidence, as the Tribal Court may deem necessary to establish the validity and amount of the claim. Notice of an entry of a default judgment shall be served upon the party against whom it is taken and such default judgment shall not be effective until such service has been accomplished and proof has been filed with the Tribal Court.
4. **Setting Aside Default Judgment.** The Tribal Court may, for good cause shown, set aside either an entry of default or a default judgment under §4-1-166.

§4-1-161 Summary Judgment

At any time 30 days after commencement of an action any party may move the Tribal Court for summary judgment as to any or all issues presented in the case, and such shall be granted by the Tribal Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motion shall be served not less than ten (10) days prior to the hearing on said motion and may be supported by affidavits, discovery material, or memorandum, all of which must be made available to the opposing parties at least 10 days prior to the hearing. The opposition shall have full opportunity to respond to such motion at the time fixed for hearing.

§4-1-162 Declaratory Judgments

In the case of an actual controversy, the Tribal Court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree.

§4-1-163 Entry of Judgment

A money judgment upon a verdict of a jury shall be signed by the Judicial Clerk and filed. All other judgments shall be signed by the Judge and filed with the Judicial Clerk. A judgment is complete and shall be deemed entered and effective for all purposes when it is signed and filed as provided herein and when proof of service of notice of entry judgment on the opposing party has been filed with the Clerk.

§4-1-164 Judgments and Decedents' Estates

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal Court to distribute decedents' estates.

§4-1-165 New Trials

1. **Petition by Party.** Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than 10 days after entry of judgment for any of the following reasons:
 - a. Error or irregularity in the Tribal Court proceedings or misconduct by one of the adverse parties which prevented one of the parties from receiving a fair trial.
 - b. Misconduct of the jury or jury members or a finding that any question submitted to them was determined by a resort to chance.
 - c. Accident or surprise or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial.
 - d. Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice.
 - e. Insufficiency of the evidence to justify the verdict or other decision or that the decision is contrary to law.
 - f. Error of law occurring at the trial, provided however, that the claimed error was accompanied by an objection, an offer of proof, or a motion to strike at the time the

alleged error was made.

2. **Affidavits Required.** All requests for new trial shall be summarily dismissed unless they are accompanied by affidavits establishing the particular facts in detail upon which the motion is based. Arguments of law may also be included.
3. **Ordered By Tribal Court.** The Tribal Court may, on its own initiative within 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action and shall specify the reasons for doing so.
4. **Motion to Amend or Alter Judgment.** A motion to alter or amend a judgment shall be served within 10 days after the entry of judgment.

§4-1-166 Relief from Judgments or Orders

1. **Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the Tribal Court at any time on its own initiative or on motion of any party and after such notice as the Tribal Court may direct. Mistakes may be corrected before an appeal is docketed in the Appellate Court and thereafter while the appeal is pending, but only with the permission of the Appellate Court.
2. **Grounds for Relief.** On motion and upon such terms as are just, the Tribal Court may, in the furtherance of justice, relieve a party or his counsel from a final judgment, order or proceeding for any of the following grounds:
 - a. Mistake, inadvertence, surprise, or excusable neglect.
 - b. Newly discovered evidence which, by the exercise of due diligence, could not have been discovered in time to move for a new trial.
 - c. Fraud.
 - d. The judgment is void.
 - e. That the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment should have prospective application.
 - f. Any other reason justifying relief from the operation of the Judgment.
3. The motion should be made within a reasonable time and for

reasons, if under Subsections 2a, 2b, or 2c above, not more than 90 days after the Judgment order or proceeding was entered upon or taken. This rule does not limit the power of a Tribal Court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a the Defendant not actually personally notified as provided by statute or to set aside a judgment for fraud upon the Tribal Court.

§4-1-167 Harmless Error

No error in either the admission or exclusion of evidence or in any ruling or order or in anything done or omitted by the Tribal Court or by any of the parties is grounds for granting a new trial or otherwise disturbing a judgment or order unless refusal to grant relief appears to the Tribal Court inconsistent with substantial justice. The Tribal Court at every stage of the proceeding shall disregard any error or defect, which does not adversely affect the substantial rights of the parties.

§4-1-168 Authority over Property in Possession or Control of Another

In support of enforcement and satisfaction of its judgments, the Tribal Court shall have the authority to order any other persons within its jurisdiction to deliver or surrender to the Judicial Clerk or the Tribal Police Department any money, goods or other property in their possession or under their control owned by or subject to the claim of a defaulting party to any judgment. Provided, however, that such orders be issued only following notice to the defaulting party and an opportunity for hearing concerning the proper disposition of the property.

§4-1-169 Stay of Proceedings to Enforce a Judgment

1. Except as ordered by the Tribal Court for good cause shown, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry unless otherwise ordered by the Tribal Court. A judgment in an action for injunction shall not be stayed during the period after its appeal and until an appeal is taken or during the pendency of an appeal. §4-1-269 subsections 3 and 8 govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.
2. **Stay Pending Appeal or Motion for New Trial.** In its discretion and on such conditions for security of the adverse party as are proper, the Tribal Court may stay the execution of or any proceeding to enforce a judgment pending the disposition of motions under §4-1-165 or §4-1-

3. **Stay of Judgment Involving an Injunction.** When an appeal is taken from a judgment granting, dissolving, or denying an injunction, the Tribal Court, in its discretion, may suspend, modify, restore, or grant an injunction during an appeal upon such conditions as it deems proper for the security of the rights of the adverse party. The Tribal Court may require a cash or surety bond to be posted by the appropriate parties.
4. **Bond Required.** When an appeal is taken, the appellant, by giving a bond in an amount fixed by the Tribal Court of at least an amount sufficient to pay any Judgment which may be rendered against him on appeal, may obtain a stay unless such stay is otherwise prohibited by law or by these rules. The stay is effective when the bond is approved and received by the Tribal Court but not until such time.
5. **Appeal By Tribe or Tribal Agency.** A stay shall be granted by the Tribal Court automatically upon request and no bond or other security shall be required from the Tribe, its officers or agencies.
6. **Stay by Appellate Court not Affected.** Nothing in this rule shall be construed to limit the power of the Appellate Court to grant such stays or other proceedings or make such orders appropriate to preserve the status quo or the effectiveness of any judgment subsequently to be entered.
7. **Stay of Partial Judgment.** When a Tribal Court has ordered a final judgment on some but not all claims presented in an action, the Tribal Court may stay enforcement of that judgment until the entering of a remaining judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.
8. **Notice of Stay or Injunction Required.** No stay, injunction, or other relief from a judgment or order pursuant to this rule shall be granted by the Tribal Court without notice to the opposing party and an opportunity to be heard.

§4-1-170 Disability or Disqualification of a Judge

After Trial but Before Entry of Judgment. If by reason of death, sickness, or other disability a Judge before whom an action has been tried is unable to perform the duties under this Chapter after a verdict is returned, or Findings of Fact and Conclusions of Law are filed, then in such event, any other Judge assigned or sitting in the Tribal Court may perform those

duties. The Order shall reflect that the signing Judge was not the presiding Judge; however, the Judge has reviewed the file, testimony and evidence and certifies that the verdict or judgment is supported by the evidence. If the Judge is satisfied that he/she cannot perform those duties because he/she did not preside at the trial or for any other reason, the Judge shall have the discretion to grant a new trial.

§4-1-171 Execution of Judgments

1. **Order of Execution.** If, at any time 30 days after entry of judgment awarding money or costs against a party, it is made to appear to the Tribal Court that the judgment debtor has been served notice of entry of Judgment and has not paid the judgment in full or is not current in making installment payments in a manner agreed to by the parties in writing and filed with the Tribal Court, the Tribal Court shall, upon motion of the judgment creditor heard *ex parte*, order the Tribal Police to levy and execute upon the personal property of the judgment debtor as provided herein.
2. **Levy Upon and Sale of Judgment Debtor's Property.** The Tribal Police shall forthwith attempt to locate all personal property of the judgment debtor within the jurisdiction of the Tribal Court and seize the same and transport it to a safe, convenient place. The Tribal Police shall then, as soon as may reasonably be done, make arrangements to sell such property at a public auction conducted by the Tribal Police.
3. **Notice of Sale.** Sale of the seized property shall be conducted after the Tribal Police have given at least ten (10) days public notice posted in three (3) conspicuous public places on the Reservation together with a notice of sale published in a local newspaper of general circulation at least seven (7) days prior to the date fixed for the sale.
4. **Sale to Highest Bidder, Postponement.** The property shall be sold to the highest bidder for cash at the time of the sale. The person conducting the auction may postpone such in his discretion if there is an inadequate response to the auction or the bidding and may reschedule such upon giving the required notice.
5. **Return of Sale.** The person conducting the sale shall make a return of sale to the Tribal Court including an inventory of the items taken into his possession, the amounts received, the persons who bought the same, and shall deposit the proceeds thereof with the Tribal Court for

distribution to the judgment creditor to be credited against the judgment.

6. **Levy Upon Property that cannot be Moved.** The Tribal Police may also levy and execute upon items of personal property, which cannot be conveniently moved such as bank accounts, accounts receivable, and other such items. The levy and execution shall be made by serving upon the holder of such item of personal property a copy of the order of the Tribal Court. Upon receipt of such order of the Tribal Court, the person in whose possession the property then is shall execute whatever legal instruments are necessary to transfer the property to the Tribal Police for either public auction sale or crediting on the judgment if the property is cash or its equivalent.
7. **Examination of Judgment Debtor.** If sufficient property is not found by the Tribal Police in order to sell and satisfy the judgment, upon application of the judgment creditor, the Tribal Court shall order the judgment debtor to appear in Tribal Court and answer questions under oath regarding all of his personal property. The Tribal Court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to take appropriate measures to convert the property to cash and apply the same to the judgment. Failure of the judgment debtor to appear or fully answer questions shall be deemed a contempt of Tribal Court.
8. **Exemptions from Execution of Judgment.** The judgment debtor may claim as exempt from levy and execution any the following exemptions:
 - a. Any property, real or personal, within the Spirit Lake Indian Reservation, to which the legal title is held by the United States of America for the benefit of the Spirit Tribe or any individual Indian.
 - b. All lands, buildings, and grounds with the fixtures, equipment, furniture, books, papers, computers, and appurtenances pertaining to the public offices or for the use of the Spirit Lake Tribe or the public use of its members, and such property as may be necessary to carry out the governmental functions of any governmental entity with property located within the Reservation.
 - c. Professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor.
 - d. Personal property recognized by the Tribal Court or the Tribal Council as having significant spiritual,

- religious, or traditional value.
- e. Benefits the judgment debtor has received or is entitled to receive under any of the following:
 - i. Federal social security.
 - ii. Federal, state or Tribal public assistance.
 - iii. Veterans' disability programs.
 - iv. Unemployment compensation or workers, compensation programs.
- f. A home.
- g. Maintenance and child support.
- h. The judgment debtor's interest, not exceeding a value of \$2,000 in any item or \$5,000 in the aggregate, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments.
- i. The judgment debtor's interest, not to exceed \$2,000 in one motor vehicle.
- j. The judgment debtor's interest, not to exceed \$3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor.

The judgment debtor may only claim the exemptions by filing with the Tribal Court an affidavit and inventory listing all of the judgment debtor's property identifying in the affidavit the specific items of property claimed as exempt and the values of the property. The affidavit and inventory shall be filed at least ten (10) days prior to the date fixed for levy and execution sale and shall be deemed waived if they are not filed on time.

- 9. Satisfaction of Judgment.** A judgment may be satisfied in whole or in part by the owner or his attorney executing under oath and filing an acknowledgement of satisfaction specifying the amounts paid and whether such is in full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. A judgment satisfied in whole with such fact entered in the judgment record shall cease to operate as a lien on the judgment debtor's property. A partially satisfied judgment or an unsatisfied judgment shall continue in effect and become and remain a lien upon the judgment debtor's property until satisfied.

10. **Appointment of Judgment Enforcement Commissioners.**

Notwithstanding the availability of Tribal Police to exercise the powers of levy and execution described in this Chapter, the Tribal Court may appoint suitable tribal members as Judgment Enforcement Commissioners having all of the powers to levy and execute upon the property of the judgment debtor described in this Section.

§4-1-172 Temporary Restraining Orders and Injunctions

1. **Temporary Restraining Order and Preliminary Injunction.** No temporary restraining order or preliminary injunction shall be granted without a written or oral notice to the adverse party or his counsel unless:

- a. It clearly appears from specific facts shown by affidavit or by the verified Complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and
- b. The applicant or his attorney certifies to the Tribal Court in writing under oath the efforts, if any, which have been made to give notice or the reasons supporting his claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's Office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice, and except in actions arising in a divorce proceeding or other domestic relations type litigation, shall expire by its terms within thirty (30) days after entry unless the Tribal Court fixes a shorter time period for expiration. For good cause shown, the Tribal Court may extend the temporary restraining order for an additional thirty (30) days.

The party against whom the order is directed may consent that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character.

When the motion comes on for hearing, the party who obtained the order shall proceed with the application for preliminary injunction. If not, the Tribal Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without

notice or upon such shorter notice period as the Tribal Court may prescribe, the adverse party may appear and move for dissolution or modification. In such event, the Tribal Court shall proceed to hear and determine such motion as expeditiously as possible. Temporary restraining orders may not be appealed.

2. **Preliminary Injunction; Generally.** Before or after the commencement of the hearing for an application for a preliminary injunction, the Tribal Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even if this consolidation is not ordered any evidence received on an application for a preliminary injunction, which would be admissible in the trial on the merits, becomes part of the record in the trial and need not be repeated at the trial. This Subsection shall be construed and applied to save the parties any rights they may have to a trial by jury.
3. **Bond Required.** Except as otherwise provided by law, no temporary restraining order or preliminary injunction shall issue except by the posting of a bond by the applicant in an amount approved by the Tribal Court for the payment of such costs and damages as may be incurred by the opposing party who is found to have been wrongfully enjoined or restrained. No security shall be required of the Tribe or any officer or agency thereof. Bond may or may not be required in a divorce proceeding or other domestic relations litigation in the discretion of the Tribal Court. Any surety upon a bond under this rule submits to the jurisdiction of the Tribal Court and irrevocably appoints the Judicial Clerk as an agent upon whom any papers affecting liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and notice of motion shall be served upon the Judicial Clerk who shall forthwith mail copies to the sureties at their last known post office addresses.
4. **Content of Temporary Restraining Order or Order Granting Injunction; Persons Bound; Findings and Conclusions.** Every temporary restraining order or order granting an injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not be reference to the Complaint or other documents, the acts sought to be restrained. It is binding only upon the parties to the action, their officers, agents, servants, employees, and counsel and upon those persons in active concert or active participation with them who receive actual notice of the order by personal service or

otherwise. The Tribal Court shall set forth the findings of fact and conclusions of law, which constitute the grounds of its actions.

5. **Grounds for Temporary Restraining Order or Injunction.** No temporary restraining order or injunction shall be issued unless the Tribal Court finds from the pleadings, affidavits, or testimony presented to it as follows:

a. That the party making application has no adequate legal remedy.

b. That the party making application has exhausted all administrative remedies.

c. That irreparable harm will result, which cannot be resolved by the awarding of money damages, unless the temporary restraining order or injunction is granted.
AND

d. That greater harm will be done to the party making application by the refusal of the injunctive relief than will be occasioned to the opposing party by the granting of such relief.

Chapter II (2): Recognition of Foreign Judgments

§4-2-101 Application

Any person may apply to the Tribal Court by written application for an order recognizing and giving effect to a civil judgment from another tribal court or a state or federal court as if it were a judgment of the Tribal Court.

§4-2-102 Review by Tribal Court

The Judge shall review the application within five (5) days of its filing. The Judge shall then decide whether to enter the judgment of the other court as a Tribal Court judgment. The Judge shall have full and total discretion regarding this matter and shall be guided by the best interest of the Tribe and the parties.

§4-2-103 Payment of Judgment

Upon the entry of the order declaring the other court's judgment to be a judgment of the Tribal Court, all provisions of this Code regarding judgments and execution shall be applicable.

Chapter III (3): Civil Commitment Code

Originally enacted on July 30, 2008 via Resolution A05-08-142.

Subsequently repealed/amended on September 27, 2022 via Resolution A05-22-443.

§4-3-110 Purpose

This Chapter of the Spirit Lake Law and Order Code is intended to provide a legal means to safeguard individuals who are found, by the Tribal Court (Court), to be in need of treatment or commitment for mental health and/or substance abuse issues.

§4-3-120 Definitions

1. **Chemically Dependent Person** - means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
2. **Inpatient Services** - means placement in a mental health or substance abuse treatment facility or agency on a full or part-time residential basis.
3. **Mentally Ill Person** - means any individual who meets the criteria for a mental health diagnosis within the DSM IV or is diagnosed by a licensed mental health care professional with a mental illness or diminished capacity; or an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly below average general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior. Although, an individual who is intellectually disabled may also be a person who is mentally ill. Chemical dependency does not per se constitute mental illness. Although, a person who is chemically dependent may also be a person who is mentally ill.
4. **Mental Health Professional** - means a board certified psychiatrist or psychologist, a licensed addiction or mental health counselor, or a traditional healer.
5. **Outpatient Services** - shall include services or treatment by a mental health or substance abuse treatment facility or agency on a full or part-time non-residential basis.
6. **Reliable Electronic Means** - means any form of electronic communication deemed reliable by the Court. Reliable

electronic means shall include, but is not limited to, the following:

- a. Telephone Conferencing
- b. Interactive Video
- c. Internet Facilitated Video Conferencing

The Court must ensure that an adequate record/recording is made of any Hearing conducted and/or any testimony presented via reliable electronic means.

7. **Serious Risk of Harm** - means a substantial likelihood of any of the following:
- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential.
 - b. Killing or inflicting serious bodily harm on another individual or inflicting significant property damage, as manifested by acts or threats.
 - c. Substantial deterioration in physical health or substantial injury, disease, or death based upon recent poor self-control or Judgment in providing for one's shelter, nutrition, or personal care.
 - d. Substantial deterioration in mental health which would predictably result in dangerousness to that individual, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions or based upon acts, threats, or patterns in the individual's treatment history, current condition, and other relevant factors, including the effect of the individual's mental condition on the individual's ability to consent.

§4-3-130 Applicability

- 1. This law shall apply to any individual who is deemed by the Court to pose a serious risk of harm to themselves or others because they are chemically dependent or mentally ill.
- 2. In assessing the nature and extent of the risk of harm posed by the individual of harming either themselves or others, the Court shall consider any relevant facts or evidence including, but not limited to, recent actions, threats or attempts to inflict physical harm on oneself or others. The Court may also consider whether the individual, as a result of being chemically dependent or mentally ill, is able to provide for their own basic needs such as food, clothing, shelter, medical care or safety; and the individual's mental capacity to make an informed decision regarding treatment or other remedial measures.

§4-3-140 Liability

No Petitioner, acting in good faith and upon personal knowledge or reliable information, shall be subjected to civil or criminal penalties for filing a Petition for Involuntary Commitment under this Code.

§4-3-150 Notice

1. Upon receipt of a Petition for Involuntary Commitment (Petition) the Court shall schedule a Treatment Hearing and provide notice to the Respondent by providing a copy of the Petition and notifying the Respondent of the date, time and location of the hearing.
2. The Respondent shall be entitled to be represented by legal counsel or a lay advocate of their own choosing and at their own expense unless the Tribe has a Public Defender for these types of cases. If a Public Defender is available, the Respondent may request to be represented by a Public Defender or the Court may appoint a Public Defender on its own.

§4-3-160 Petition for Involuntary Civil Commitment - Contents

To file for civil commitment, an individual must file a Petition with the Court. The Petition must clearly identify the name, date of birth and address of the Respondent against whom commitment is sought and must clearly articulate the factual basis for the Petition. Additionally, the Petition must state clearly why the Petitioner feels that the Respondent poses a serious risk of harm to themselves or others. Whenever possible, the Petitioner shall provide statements from medical personnel, law enforcement or others who possess personal knowledge of the Respondent's chemical dependency or mental health.

§4-3-170 Immediate Apprehension and Interim Commitment - Authority

Upon receipt of a Petition, the Court may issue an Order for Immediate Apprehension and Interim Commitment if, upon initial review of the Petition and supporting evidence, the Court finds that it is necessary to apprehend and place the Respondent into a detention center, public or private hospital, public or private institution, mental health treatment facility or chemical dependency treatment facility in order to provide for the Respondent's immediate safety, to provide for the safety of others or where it is clear that the Respondent needs immediate care and treatment for the protection of themselves and/or others.

§4-3-180 Interim Commitment to a Detention Center Pending a Treatment Hearing

1. No Respondent shall be confined to a detention center

pursuant to this Code without a Court Order. Every effort shall be made by the Court to place the Respondent in an appropriate treatment facility as soon as possible. Any Respondent taken into custody and placed in a detention center pursuant to an Order of Immediate Apprehension and Interim Commitment shall be examined or evaluated by a mental health professional within twenty-four (24) hours of apprehension. A Report of Examination or Evaluation shall be submitted to the Court no later than forty eight (48) hours after the Respondent has been taken into custody.

2. In no event shall the Respondent be detained in a detention center for more than seventy two (72) hours without a review being conducted by the Court to assess the need for continued detention pending a Treatment Hearing. The review shall consider the Report of Examination or Evaluation as well as any other additional information that has been presented to the Court during the period of interim commitment/detention.

§4-3-190 Interim Commitment to a Hospital, Institution, Mental Health Treatment Facility or Chemical Dependency Treatment Facility Pending a Hearing

Any Respondent placed in a hospital, institution, mental health treatment facility or chemical dependency treatment facility pursuant to an Order for Immediate Apprehension and Interim Commitment shall be examined or evaluated by a mental health professional within seventy two (72) hours (excluding weekends and holidays) of placement. A Report of Examination or Evaluation shall be submitted to the Court no later than five (5) days after the Respondent has been placed. In no event shall the Respondent be placed in a hospital, institution, mental health treatment facility or chemical dependency treatment facility for more than five (5) days (excluding weekends and holidays) without a Treatment Hearing being held.

§4-3-200 Treatment Hearing Following Interim Commitment

1. Any Respondent committed pursuant to Section 4-3-170 under Sections 4-3-180 or 4-3-190 shall be entitled to a Treatment Hearing within five (5) days (excluding weekends and holidays) of the Interim Commitment. The Petitioner and the Respondent shall be notified of the hearing date, time and location and shall be entitled to legal representation at said hearing at their own expense unless otherwise ordered by the Court. Treatment Hearings shall be closed to everyone except parties deemed necessary to the proceeding(s) by the Court.
2. If the Court finds the Respondent is incapable of understanding the nature of the proceedings, the Court may, in its discretion, appoint an attorney or a guardian ad litem (GAL) to represent the interest(s) of the Respondent.

§4-3-210 Treatment Hearing; No Interim Commitment Order

If the Court fails to find sufficient cause to issue an Interim Commitment Order pursuant to Section 4-3-170 under Sections 4-3-180 or 4-3-190, the Court may set the matter for a Treatment Hearing to be held at any reasonable time after the filing of the Petition.

§4-3-215 Appearance by Reliable Electronic Means

1. In any Hearing(s) held pursuant to Title Four (4), Chapter Three (3), the Court may conduct the Hearing(s) by reliable electronic means and/or allow the following persons to appear or present testimony by reliable electronic means:
 - a. Petitioner
 - b. Respondent
 - c. Witness(s)
 - d. Legal Counsel for any party

§4-3-220 Order for Examination or Evaluation prior to Treatment Hearing; No Interim Commitment Order

Prior to a Treatment Hearing being scheduled or held pursuant to Section 4-3-210, the Court may require that the Respondent undergo a mental health and/or chemical dependency examination or evaluation by a licensed physician or mental health professional. The person conducting the examination or evaluation shall submit a Report of Examination or Evaluation to the Court. The Report of Examination or Evaluation shall include a formal diagnosis and, if necessary, recommendations for treatment or placement from the examiner or evaluator.

§4-3-230 Examination or Evaluation

1. Prior to entering any final Order of Commitment, the Court shall require that the Respondent undergo a mental health and/or chemical dependency examination or evaluation by a licensed physician or mental health professional. The person conducting the examination or evaluation shall submit a Report of Examination or Evaluation to the Court. The Report of Examination or Evaluation shall include a formal diagnosis and, if necessary, recommendations for treatment or placement from the examiner or evaluator.
2. Should the Respondent dispute the findings of the Report of Examination or Evaluation or the recommendations made therein, the Respondent may request a second opinion at their own expense. If deemed necessary, the Respondent may be confined to an appropriate facility until final order can be entered based upon receipt of all examination or evaluation results by the Court.

§4-3-240 Standard of Proof – Clear and Convincing Evidence

At the Treatment Hearing and prior to any entry of an Order of Commitment, the Court shall require that the Petitioning party present clear and convincing evidence to the Court that the Respondent is a mentally ill and/or chemically dependent person AND that, as a result of the mental illness and/or chemical dependency, the Respondent poses a serious risk of harm to themselves and/or others as those terms are defined in Section 4-3-120.

§4-3-250 Order of Commitment

Any final Order(s) of Commitment may include a requirement that the Respondent be hospitalized in a public or private hospital or institution or that the Respondent participate in and/or complete inpatient or outpatient services as deemed necessary and appropriate by the Court based upon evidence presented to the Court at the Treatment Hearing. In no event shall the Order extend beyond ninety (90) days without a Review Hearing being conducted to establish just cause to extend the Order under this Code.

§4-3-260 Failure to Appear

1. Should the Petitioner fail to appear for a Hearing despite having been served with timely notice, the Court shall dismiss the Petition unless the Court finds good cause to postpone the hearing to another date and time.
2. Should the Respondent fail to appear for a Hearing despite having been served with timely notice, the Court shall issue an Order for Immediate Apprehension and Detention. At the discretion of the Court and/or the Spirit Lake Tribal Prosecutor, the Respondent may also be held in Contempt of Court and/or charged with Disobedience to a Lawful Order of the Court.

§4-3-270 Review – Post Adjudication

Unless the final Order of Commitment is dismissed by the Court pursuant to request of any party prior to ninety (90) days, the Court shall require a Review Hearing within a timeframe not to exceed ninety (90) days from the Treatment Hearing date. Should circumstances warrant a Review Hearing prior to ninety (90) days, the Court shall give timely notice to the parties of the date, time and location for said Review Hearing. The Review Hearing shall address whether there is any need for ongoing placement and/or supervision by the Court.

§4-3-280 Appeals

All Orders issued pursuant to the Civil Commitment Code are subject to appeal in accordance with the rules and procedures applicable to all other civil proceedings in the Spirit Lake Court.

Chapter IV (4): Disorderly Conduct Restraining Order Code

As enacted on September 27, 2022 via A05-22-442.

§4-4-110 PURPOSE

The purpose of the Disorderly Conduct Restraining Order Code is to preserve peace and good order, to protect individuals, to protect the public at large and, in certain instances, to protect the offender.

§4-4-120 AUTHORITY

This Code is adopted pursuant to the inherent sovereign powers of the Spirit Lake Tribe and the Spirit Lake Tribal Constitution. Nothing under this Code shall be construed as a waiver of sovereign immunity for the Spirit Lake Tribe, its elected officials, its departments, agencies, employees, or agents.

§4-4-130 JURISDICTION

1. The Spirit Lake Tribal Court shall have the power and duty to issue Disorderly Conduct Restraining Orders when:
 - a. An enrolled member, an individual eligible for enrollment, or the parent or guardian of a minor who is eligible for enrollment, is the victim of disorderly conduct; or
 - b. The alleged disorderly conduct took place within the exterior boundaries of the Spirit Lake Reservation; or
 - c. The individual alleged to have committed disorderly conduct is an enrolled member or eligible for enrollment in the Spirit Lake Tribe.
2. The Spirit Lake Tribal Court shall have exclusive and continuing jurisdiction over the proceeding until it is terminated by the Court or expires by its own terms.

§4-4-140 DEFINITIONS

Where a term is not defined in this Code, it shall be given its ordinary meaning, unless otherwise defined in the Spirit Lake Law and Order Code. The Definitions below apply to this Disorderly Conduct Restraining Order Code only:

1. **Disorderly Conduct** - means any intrusive or unwanted acts, words, or gestures that are:
 - a. Intended to or likely to cause public inconvenience, annoyance, or alarm; or
 - b. Intended to or likely to adversely affect the safety, security, or privacy of another person; or

c. Intended to or likely to cause another to reasonably fear for their own safety or the safety of their family members.

2. **Public** - means affecting or likely to affect persons in a place to which the public or a substantial group of the public has access and includes, but is not limited to, apartment houses, office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement.
3. **Hearing** - means a proceeding before the Court.
4. **Restraining Order** - means a Court order issued to prohibit an individual from carrying out a particular action.

§4-4-150 RECOGNITION OF FOREIGN ORDERS

The Spirit Lake Tribal Court may review documentation in relation to a foreign court's Restraining Order and determine whether the Court will recognize and enforce the Restraining Order within the Spirit Lake jurisdiction. In determining the duration of the enforcement, the Court shall follow the enforcement criteria set forth in this Code.

§4-4-160 EFFECTIVE DATE

This Code shall be effective as of the date of adoption by the Tribal Council.

§4-4-170 NAME AND CITATION

This Code shall be known and may be cited as the Disorderly Conduct Restraining Order Code and references in this part shall refer to this Code unless another is clearly indicated.

§4-4-180 INITIATION OF PROCEEDING; PETITION

1. To initiate a Disorderly Conduct Restraining Order proceeding an individual must file a "Petition for a Restraining Order" with the Court.
2. The Petition for Restraining Order must allege facts sufficient to show:
 - a. The name of the alleged victim(s); and
 - b. The name of the individual(s) engaging in the alleged disorderly conduct; and
 - c. Specific facts and circumstances supporting the relief sought.

§4-4-190 DISMISSAL

When the alleged facts within the Petition and any accompanying affidavits do not establish a prima facie case for granting the Restraining Order, the Court may dismiss a Petition for a Restraining Order prior to a Hearing.

§4-4-200 EMERGENCY RESTRAINING ORDER

Without written or oral notice to the adverse party, the Court may issue a written Emergency Restraining Order when:

1. The Petition for Restraining Order clearly alleges reasonable grounds to believe an individual has engaged in disorderly conduct; and
2. The Petition for Restraining Order clearly alleges reasonable grounds to believe that an imminent danger and/or risk of irreparable injury will result to Petitioner if the Restraining Order is not issued prior to the Hearing; and
3. A Hearing is scheduled to occur within 15 days.

§4-4-210 RESTRAINING ORDER HEARING

Notwithstanding Section 4-4-200 above, within thirty (30) days of receiving a Petition for Restraining Order, the Court must conduct a Hearing. The Court may extend this time period for any of the following:

1. Upon written consent of both parties.
2. Upon a showing that Respondent has not been served with a copy of the Summons and Complaint/Petition despite the exercise of due diligence by the Court and/or Petitioner.
3. Upon other finding of good cause by the Court.

§4-4-220 BURDEN OF PROOF

The Petitioner must provide the Court with testimony and/or evidence to establish by clear and convincing evidence that Respondent has engaged in disorderly conduct.

§4-4-230 RESTRAINING ORDER

The Court may grant a Restraining Order when:

1. A person files a Restraining Order Petition pursuant to § 4-4-180; and
2. The Court has conducted a Hearing pursuant to § 4-4-210; and
3. The Court finds Petitioner has met the Burden of Proof required by 4-4-220.

§4-4-240 RESTRAINING ORDER CONTENTS

1. A Restraining Order must contain:
 - a. The specific conduct that would constitute a violation of the Restraining Order. Including logical limits on time and distance.
 - b. Notice that a violation of the Restraining Order is grounds for Contempt of Court and/or Disobedience to an

Order of the Court and punishable by imprisonment of up to one (1) year in jail, a fine of up to five thousand dollars (\$5,000.00) or both.

- c. Notice that any Police Officer may arrest Respondent with or without a warrant and take Respondent into custody if said Officer has probable cause to believe that Respondent has violated the Restraining Order.
- 2. A Restraining Order may contain language requiring Respondent to surrender his/her firearms and/or other dangerous weapons to the Fort Totten Police Department upon a finding of the following:
 - 3. Respondent possesses firearms; and
 - 4. Respondent has used firearms in committing disorderly conduct; and/or
 - 5. There is an imminent danger and/or risk of Respondent using firearms in committing future disorderly conduct; and/or
 - 6. There is an imminent danger and/or risk of Respondent using firearms to commit a violation of the Restraining Order.

§4-4-250 PETITIONER CONSENT

Consent of Petitioner to any contact and/or conduct in violation of a Restraining Order does not invalidate the Restraining Order and any such contact and/or conduct will still be considered a violation of the Order.