

COLORADO RIVER INDIAN TRIBAL COURT
LOCAL RULES OF CIVIL PROCEDURE "LRCP"

I. SCOPE, DEFINITIONS AND CONSTRUCTION.

LRCP 1

Scope. These Rules apply to every proceeding in every action and case in Courts of the Tribes filed after June 1, 1995, except as superseded by specific provisions of the Local Rules of Child Support and Paternity Procedure ("LRCSP"), Local Rules of Procedure for Section 632 Actions, ("LRP632"), Local Rules of Criminal Procedure ("LRCRP"), Local Rules of Juvenile Court Procedure for Child in Need of Care (including Child Protective Service) and Child Offender Actions ("LRJP"), Local Rules of Subpoena Procedure ("LRSP"), Local Rules of Procedure for Contempt of Court and Related Proceedings ("LRPOSC"), and amendments to any of these Rules on Insert C, and the Local Rules of Appellate Procedure ("LRAP").

ANNOTATIONS

LRCSP 1 (a); LRP632 1; LRCRP 1; LRJP 1; LRSP 1; LRPOSC 1; LRAP 14

LRCP 2

Definitions and Construction. The definitions in these Rules and in all other Tribal law including, but not limited to, L&O 104 and DRC 102 are construed in pari materia.

(1) "Attorney" means anyone licensed or otherwise authorized under Tribal law to practice in the Courts of the Tribes per LRCP 20 and L&O 106.

(2) "Attorney General" means the Attorney General of the Colorado River Indian Tribes, the Tribal Attorney, or other attorney appointed by the Tribal Council and acting in such capacity, and includes, unless the context requires otherwise, any assistant attorney thereof.

(3) "Bail Bondsman" means anyone authorized by the Clerk to post a bond in lieu of cash to secure the appearance of a person, party or property.

(4) "Business Day" means all days excluding legal holidays. *Sat & Sunday incl*

(5) "But See" means the cited rule or other authority that follows directly contradicts, or is superseded by, the rule stated, or previously set forth.

(6) "Calendar Day" means all days identified on any accurate current calendar, including both business days and legal holidays.

(7) "Cf." means the cited rule or other authority that follows supports a rule or proposition different from the rule stated, or previously set forth, but sufficiently analogous to lend support. Literally, "cf." means compare.

(8) "Citation" means a single summons and complaint form, including, but not limited to, the Tribal citation and traffic ticket and complaint forms, designed for completion and service by an officer, deputy, agent or employee charged with enforcement of the Tribal law set forth therein.

(9) "Civil" refers to all non-criminal issues, matters, subjects, cases and controversies between or among persons, including, but not limited to, all regulatory, child support, subpoena, civil contempts of Court as defined in LRCP 2 (14)(i), and to Juvenile Court actions and cases, and to the procedure for trial or other disposition of them, regardless of how the law or possible penalty therefor is denominated therein or denominated in any other of law, order, notice, or warning.

(10) "Clerk" means the Judicial Clerk of the Tribal, Juvenile or Appeals Courts, as the context requires, and includes, unless the context requires otherwise, any deputy thereof.

(11) "CNC Action" means an action under the DRC alleging a Child In Need of Care, as defined therein.

(12) "CO Action" means an action under the DRC alleging a Child Offender, as defined therein.

(13) "Complaint, Application or Petition" means a written instrument, including a citation, that commences an action or case, is signed by the person making or completing it under oath or certificate that the statements and allegations therein are true to the best of his or her knowledge and belief, and states a claim against one or more respondent/defendants and seeks relief from those respondent/defendants(s), by providing reasonable notice of the claim and relief. It is reasonable notice of a claim and relief arising from laws or regulations to cite them and identify the approximate time, date and location of the allegations. A sufficient certificate includes a simple declaration by the signer such as found on Tribal citation forms.

(14) "Contempt" refers to either (i) a civil contempt of Court action per L&O 107, or per the inherent powers of the Courts of the Tribes, for which any individual may be subject to the maximum of up to 30 days incarceration, and/or a penalty of up to \$150, regardless of how such incarceration or penalty is denominated in any law, order, notice, or warning, and to the rules and procedure for trial or other disposition of them per the LRPOSC, or (ii) a criminal contempt of Court per L&O 341, and to the rules and procedure for trial or other disposition of them per the LRCP, as the context so implies.

(15) "Criminal" refers to punishment for an offense and specifically to all offenses See LRCP 2 (47), under the L&O, or other Tribal ordinance or code, for which upon conviction a person may be subject to a fine per LRCP 2 (22)(ii) or imprisonment per LRCP 2 (25)(ii), or both, and to the cases involving such offenses or alleged offenses, and to the procedures for trial or other disposition of them, including criminal contempts of Court per LRCP 2 (14)(ii).

(16) "Customs of the Tribes" or "Traditional Customs and Usages of the Tribes", "Lawful Tradition and Policies of the Tribes and the Courts of the Tribes" means the common law of the Colorado River Indian Tribes and the Indians of the Colorado River and its tributaries, and the interpretation and determination thereunder of Tribal law and the language thereof, by the Courts of the Tribes. It does not include the common law of England, the United States, or any State, nor any interpretation thereunder of Tribal law or the language thereof, by any courts other than Courts of the Tribes. The Courts of the Tribes have the right and responsibility to interpret and determine Tribal law and the language thereof prior and paramount to any other courts.

(17) "Deliver a Copy" or "Deliver an Original" means handing it to the person, party, or attorney to be served; or leaving it at her office with a secretary or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person, party, or attorney to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or if an attorney in her box at Court, or the person or party has no accurate and specific mailing or home address of record, by leaving it in the file or appropriate Court box, or as otherwise specifically required in the applicable Rule or order of the Courts of the Tribes under which that delivery is made.

(18) "Disclose" means to serve or deliver a copy, or, if required by law, an original.

(19) "Domestic Restraining Order" means a preliminary injunction or temporary restraining order per LRCP 12, and does not include any provisional remedy per LRCP 15.

(20) "Domicile" means the place where the person is residing, located or present.

(21) "DRC" means the Domestic Relations Code of the Colorado River Indian Tribes and any amendment thereto.

(22) "Fine" means either (i) a forfeiture, penalty, damage, restitution, sanction, fees, or costs, or (ii) a fine for purposes of punishing persons for engaging in activities prohibited by laws, as the context so implies.

(23) "Forfeiture", "Penalty", "Damage", "Restitution", "Sanction", "Fees", "Costs" means a lawfully imposed debt or loss of property for purposes of compensation or coercing compliance with any Tribal law, other than for purposes of punishing activities prohibited by laws.

(24) "Government" means both Colorado River Indian Tribal and non-tribal governments, including any department, board, enterprise, corporation or other subordinate entity thereof, unless the context requires otherwise.

(25) "Imprisonment" means either (i) incarceration or (ii) imprisonment for purposes of punishing persons for engaging in activity prohibited by laws, as the context so implies.

(26) "Incarceration" means commitment to the custody of the Tribal Police or Court Bailiff for purposes of securing the attendance of that witness or party and/or of the lawfully compelled testimony or production of evidence therefrom, of coercing compliance with any lawful order of the Courts of the Tribes, of maintaining the integrity of the administration of justice by the Courts of the Tribes, of ensuring due respect and decorum in the Courthouse and providing for the safety and security of Court personnel and property at the Courthouse or elsewhere engaged in the administration of justice.

(27) "Law" means all law, including, but not limited to, every statute, ordinance, regulation (including every executive order or administrative order), resolution, rule of court (including, but not limited to, TRCP 11 and any contempt of court, summons, subpoena, discovery Rule and the entire LRCP, LRCSP, LRP632, LRCRP, LRJP, LRSP and LRAP) and all applicable common law or customs of the Tribes. Whenever the context implies, however, the term refers to only Tribal law.

(28) "Laws" means statutes only. Whenever the context implies, however, the term refers to only Tribal ordinances or codes.

(29) "Law of the Government to be Served" means the particular government's own laws and rules of court to effect service thereon, which in the case of the Colorado River Indian Tribal Government is L&O 102 (D)(E) and (F), and TRCP 4 (i).

(30) "Legal Holiday" means all Saturdays, Sundays and holidays, including New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed by the President or Congress of the United States, or by the State of Arizona, and confirmed as a holiday by the Tribal Council and/or Chairman thereof, plus all additional days on which less than Four (4) hours of Tribal government business are required, as determined by the Tribal Council and/or Chairman thereof, plus any day on which the weather or other conditions, including, but not limited to, unanticipated closing of the Tribal Court, have made the office of the Clerk inaccessible.

(31) "Local Rules of Appellate Procedure" or "LRAP" means the Rules set forth in that document.

(32) "Local Rules of Juvenile Court Procedure for Child in Need of Care (including Child Protective Service) and Child Offender Actions" or "LRJP" means the Rules set forth in that document.

(33) "Local Rules of Child Support and Paternity Procedure" or "LRCSP" means the Rules set forth in that document.

(34) "Local Rules of Civil Procedure" or "LRCP" mean the Rules set forth in this document.

(35) "Local Rules of Criminal Procedure" or "LRCRP" means the Rules set forth in that document.

(36) "Local Rules of Procedure for Contempt of Court and Related Proceedings" or "LRPOSC" mean the Rules set forth in that document.

(37) "Local Rules of Procedure for Section 632 Actions" or "LRP632" means the Rules set forth in that document.

(38) "Local Rules of Subpoena Procedure" or "LRSP" means the Rules set forth in that document.

(39) "Make Available" means to have present in the office of the person, party or attorney on whom this duty falls, or in her constructive presence at the appropriate police department or other evidence depository, and to provide the person, or attorney whom this duty is intended to benefit, a reasonable opportunity to inspect, hear, view and copy such, which may be done thereat to the extent its evidentiary value is not unreasonably diminished, or else sent for copying or independent testing, or otherwise inspected, per Court order.

(40) "Manager" means, for purposes of service only, a supervisor in charge, and includes any manager of process, such as a statutory agent or other person in the office of such agent authorized or designated to receive service of process for a person, party, attorney corporation, association or government to be served.

(41) "Member of His Family" means, for purposes of service only, a person of suitable age and discretion then residing therein.

(42) "Natural Person" or "To a Natural Person" means, for purposes of service only, an adult individual.

(43) "Not a Party" means, for purposes of service only, any individual, person or entity neither named in, nor a real party in interest to, the action or case in which the process arises. The attorney of a party, and the employee or staff of such attorney, are not parties.

(44) "Notice" means a communication as may fairly and properly be expected and required in the particular circumstances.

(45) "Written Notice" or "Written" or "In Writing" means a notice, warning or order given either in writing, or by recorded, oral communication to any person or party, or to the attorney or agent therefore, to whom the notice, warning or order is to be given, who is present, either in person or through the presence of his or her attorney or agent, in Court at the time given.

(46) "Notice of Trial or Hearing" means a notice reasonably identifying the time, date, location, and issue or issues to be heard or tried, which may be done by reasonable identification of the pleading or motion to be heard or tried incorporating or attaching the pleading or motion to the notice.

(47) "Offense" means any violation of laws that is either (1) specifically declared by Tribal laws to be an "offense", such as charges per L&O Art. 3, "Criminal Offenses", Driving Under the Influence per L&O 633 ("It is an offense . . ."), and Failure to Give Information and Render Aid per L&O 621-630 (" . . . shall be guilty of an offense") per L&O, Art. 6, "Traffic Control and Operation of Vehicles", or (2) involves moral turpitude as would prompt the right to a jury trial under 25 USC § 1302 (10) were it also punishable by imprisonment, or (3) is punishable by more than six (6) months imprisonment and a \$500 fine.

(48) "Order to Show Cause" or "OSC" means a single notice of hearing and order to appear thereon and defend. An OSC is an order to appear, a summons, and a notice of trial or hearing.

(49) "Per" means the rule or other provision previously set forth is pursuant to, subject to, or under the provisions of, the cited rule or other authority that follows.

(50) "Petition" see "Complaint, Application or Petition."

(51) "Principal Employee, Agent or Representative" means, for purposes of service only, a supervisor in charge at the time of service, and includes any manager.

(52) "Provisional Remedy" means an interlocutory order of the Court in an action or case, plead and filed per LRCP 15, and heard on an expedited basis, and remaining subject to the opportunity for review, modification, or reversal at final trial or hearing, or sooner as the adverse party may appear and move, or the Court may order, per LRCP 26, LRCP 27, or LRCP 28 (j), and for any relief authorized per LRCP 31 (b). A "provisional remedy" does not include any of the following: a domestic restraining order per LRCP 12, an arrest on a civil arrest warrant per LRCP 35, an arrest on a bench warrant per the LRPOSC, an arrest per the LRCP, a preliminary custody or detention per the LRJP, or a regulatory seizure per LRCP 34, despite that such are for similar purposes.

(53) "Punishable" means actually subject to imposition under the laws and Court orders, including, applicable standing orders, in effect in the case or at the time of sentencing or liability determination.

(54) "Record" or "Recorded" means any written, taped, transcribed, or stenographically reported transcript, or copy thereof, made by the Clerk of the Tribal Court or any officer designated with the power to administer oaths or take testimony per LRCP 42.

(55) "Regulatory" refers to all civil actions or cases arising under Tribal law governing conduct that threatens or has some effect on the political integrity, the economic security, or the health or welfare of the Tribes, including, but not limited to, those arising under the Tribal Agriculture, Business and Professions, Domestic Relations, Government, Health and Safety, Labor, Land, Natural Resources, Welfare and Institutions, Gaming Code, and L&O, Article 6 "Traffic Control and Operation of Vehicles, except for criminal offenses thereunder, such as Driving under the Influence per L&O 633, and Failure to Give Information and Render Aid per L&O 621-630.

(56) "Residence" or "Usual Place of Residence" means the home, dwelling, abode or particular locality, where a natural person lives, stays, frequently returns and inhabits, or is or was offered to the Court by the person or her attorney as her most recent address of record.

(57) "Section 632 Action" or "632 Action" means the procedure for trial or other disposition of any action, cite, affidavit, notice or other filing relating to actions to suspend driving privileges under L&O 632 and the LRP632.

(58) "See" or "See Also" means the cited rule or other authority that follows directly supports, follows from, or is consistent with, the rule stated or previously set forth.

(59) "**Summons**" means a written notice, including a citation, order to show cause, or notice of hearing, that informs the party named therein that an action or case has been commenced against him and he is required to answer, in the time and manner stated therein, or appear at the time and location specified therein.

(60) "**Tribal Probation Officer**" means any employee of the Tribes Probation or Tribes Department of Health and Social Services, including Child Protective Services, having, in addition to the duties and powers found elsewhere in Tribal law, the duties and powers set forth in DRC 1-103 (E) and DRC Chapter 4.

(61) "**Tribal Prosecutor**" or "**Prosecutor**" means the person appointed by the Tribal Council to conduct the prosecution of any criminal offense per L&O 106 (E)(2), L&O 106 (F) or regulatory action, or driving privilege suspension or other action, and the Attorney General, as defined per LRCP 2 (2), or any other attorney appointed or designated by Tribal Council to prosecute any Child Offender or Child in Need of Care action, and includes, unless the context requires otherwise, any deputy thereof.

(62) "**Tribal Public Defender**" or "**Public Defender**" means the person appointed by Tribal Council to defend persons charged with any criminal offense or Child Offender or Child in Need of Care action, and includes, unless the context requires otherwise, any deputy thereof.

(63) "**Trials of... Matters**" means, for purposes of L&O 203 (h), the final adjudication of all disputed matters of material fact in a civil or criminal case triable before a jury, whether the right to such jury has been invoked or not.

(64) "**Trial or Hearing**" means, for purposes of L&O 108 (e), the final adjudication of all disputed matters of material fact in any action or case.

(65) "**Tribal Rules of Appellate Procedure**" or "**TRAP**" means the Federal Rules of Appellate Procedure as set forth in LRAP.

(66) "**Tribal Rules of Civil Procedure**" or "**TRCP**" per L&O 202 (f), means, the Federal Rules of Civil Procedure, as amended through 1993, and as thereafter amended, that are not inconsistent with another provision of L&O, nor otherwise locally inapplicable because they refer to any special federal procedure or laws having no counterpart in the Courts of the Tribes. If a conflict exists between the TRCP and the LRCP or other local rule, the local rule shall control. Unless either the context requires otherwise, or because a party in a particular case is actually the United States, the words "**Attorney General**", "**United States**", "**State**", "**Court**", "**Judicial District**", and any similar designation, in the applicable TRCP or the federal statutes to which they refer, are deemed hereby to refer to their counterparts under Tribal law, for example, to the "**Tribal Attorney General**", the "**Colorado River Indian Tribes**", "**Tribal Court**", and "**Colorado River Indian Reservation**", and any similar corresponding designation, and likewise, when the applicable TRCP refers to other federal Rules of Civil Procedure that are not applicable, that is, not set forth herein, they refer to the applicable counterpart set forth the local rule.

The following are the applicable federal rules:

TRCP 4 (i) Service on the United States

TRCP 8 General Rules of Pleading

- (a) Claims for Relief
- (b) Defenses; Form of Denial
- (c) Affirmative Defense
- (d) Effect of Failure to Deny
- (e) Pleading to Be Concise and Direct;
Consistency
- (f) Construction of Pleading

TRCP 9 Pleading Special Matters

- (a) Capacity
- (b) Fraud, Mistake, Condition of the Mind
- (c) Conditions Precedent
- (d) Official Document or Act
- (e) Judgment
- (f) Time and Place
- (g) Special Damage

TRCP 10 Form of Pleading

- (b) Paragraphs; Separate Statements
- (c) Adoption by Reference; Exhibits

TRCP 11 Signing of Pleading, Motion, and Other Papers; Representation to Court; Sanction

- (a) Signature, TRCP 11
- (b) Representation to Court, TRCP 11
- (c) Sanction, TRCP 11
 - (1) How Initiated
 - (A) By Motion
 - (B) On Court's Initiative
 - (2) Nature of Sanction; Limitation
 - (3) Order
- (d) Inapplicability to Discovery, TRCP 11

TRCP 12 Defense and Objection--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleading

- (a) When Presented
- (b) How Presented
- (c) Motion for Judgment on the Pleading
- (d) Preliminary Hearing, TRCP 12
- (e) Motion for More Definite Statement
- (f) Motion to Strike
- (g) Consolidation of Defenses in Motion
- (h) Waiver or Preservation of Certain Defense

- TRCP 13 Counterclaim and Cross-Claim**
- (a) Compulsory Counterclaim
 - (b) Permissive Counterclaim
 - (c) Counterclaim Exceeding Opposing Claim
 - (d) Counterclaim Against the United States
 - (e) Counterclaim Maturing or Acquired After Pleading
 - (f) Omitted Counterclaim
 - (g) Cross-Claim Against Co-party
 - (h) Joinder of Additional Parties
 - (i) Separate Trial; Separate Judgment
- TRCP 14 Third-Party Practice**
- (a) When Defendant May Bring in Third Party
 - (b) When Defendant May bring in Third Party
- TRCP 15 Amended and Supplemental Pleading**
- (a) Amendment
 - (b) Amendment to Conform to the Evidence
 - (c) Relation Back of Amendment
 - (d) Supplemental Pleading
- TRCP 16 Pretrial Conference; Scheduling; Management**
- (a) Pretrial Conferences: Objective
 - (b) Scheduling and Planning
 - (c) Subjects for Consideration at Pretrial Conference
 - (d) Final Pretrial Conference
 - (e) Pretrial Order
 - (f) Sanction, TRCP 16
- TRCP 17 Parties Plaintiff and Defendant; Capacity**
- (a) Real Party in Interest
 - (b) Capacity to Sue or Be Sued
 - (c) Infants or Incompetent Person
- TRCP 18 Joinder of Claim and Remedy**
- (a) Joinder of Claim
 - (b) Joinder of Remedy; Fraudulent Conveyances
- TRCP 19 Joinder of Person Needed for Just Adjudication**
- (a) Persons to Be Joined if Feasible
 - (b) Determination by Court Whenever Joinder Not Feasible
 - (c) Pleading Reason for Nonjoinder
 - (d) Exception of Class Actions
- TRCP 20 Permissive Joinder of Parties**
- (a) Permissive Joinder
 - (b) Separate Trial
- TRCP 21 Misjoinder and Non-Joinder of Parties**
- TRCP 22 Interpleader**

TRCP 23 Class Actions

- (a) Prerequisite to Class Actions
- (b) Class Actions Maintainable
- (c) Determination by Order Whether Class Actions to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions
- (d) Order (s) in Conduct of Actions
- (e) Dismissal or Compromise

TRCP 23.1 Derivative Actions by Shareholder

TRCP 23.2 Action Relating to Unincorporated Association

TRCP 24 Intervention

- (a) Intervention of Right
- (b) Permissive Intervention
- (c) Procedure

TRCP 25 Substitution of Parties

- (a) Death
- (b) Incompetency
- (c) Transfer of Interest
- (d) Public Officer; Death or Separation from Office

TRCP 26 Civil Case, General Provision Governing Discovery; Civil Case, Duty of Disclosure; Civil Case, Disclosure

- (a) Civil Case, Required Disclosure; Civil Case, Method to Discover
 - Additional Matter
 - (1) Civil Case, Initial Disclosure
 - (2) Civil Case, Disclosure of Expert Testimony
 - (3) Civil Case, Pretrial Disclosure
 - (4) Civil Case, Form of Disclosure; Filing
 - (5) Civil Case, Method to Discover Additional Matter
- (b) Civil Case, Discovery Scope and Limit
 - (1) In General
 - (2) Civil Case, Limitation on Disclosure
 - (3) Civil Case, Trial Preparation: Material
 - (4) Civil Case, Trial Preparation: Expert
 - (5) Claims of Privilege or Protection of Trial Preparation Material
- (c) Civil Case, Protective Order
- (d) Civil Case, Timing and Sequence of Discovery
- (e) Civil Case, Supplementation of Disclosure and Response
- (f) Civil Case, Meeting of Parties; Planning for Discovery
- (g) Civil Case, Signature of Disclosure, Discovery Request, Response, and Objection

TRCP 27 Deposition Before Actions or Pending Appeal

- (a) Before Actions
 - (1) Petition
 - (2) Notice and Service
 - (3) Order and Examination
 - (4) Use of Deposition
- (b) Pending Appeal
- (c) Perpetuation by Actions

TRCP 28 Person Before Whom Deposition May Be Taken

- (a) Within the United States
- (b) In Foreign County
- (c) Disqualification for Interest

TRCP 29 Stipulation Regarding Discovery Procedure

TRCP 30 Deposition upon Oral Examination

- (a) When Deposition May Be Taken; When Leave Required
- (b) Notice of Examination: General Requirement; Method of Recording; Production of Document and Thing; Deposition of Organization; Deposition by Telephone
- (c) Examination and Cross-Examination; Record of Examination; Oath; Objection
- (d) Schedule and Duration; Motion to Terminate or Limit Examination
- (e) Review by Witness; Changes; Signing
- (f) Certification and Filing by Officer; Exhibit; Copy; Notice of Filing
- (g) Deposition Upon Oral Examination, Failure to Attend or to Serve Subpoena; Expense

TRCP 31 Deposition upon Written Question

- (a) Serving Question; Notice
- (b) Officer to Take Response and Prepare Record
- (c) Notice of Filing

TRCP 32 Use of Deposition in Court Proceeding

- (a) Use of Deposition
- (b) Objection to Admissibility
- (c) Form of Presentation
- (d) Effect of Error and Irregularity in Deposition
 - (1) As to Notice
 - (2) As to Disqualification of Officer
 - (3) As to Taking of Deposition
 - (4) As to completion and Return of Deposition

TRCP 33 Interrogatory to Parties

- (a) Availability
- (b) Answers and Objection
- (c) Scope; Use at Trial
- (d) Option to Produce Business Record

TRCP 34 Production of Document and Thing and Entry upon Land for Inspection and Other Purpose

- (a) Scope
- (b) Procedure
- (c) Person Not Parties

TRCP 35 Physical and Mental Examination of Person

- (a) Order for Examination
- (b) Report of Examiner

TRCP 36 Request for Admission

- (a) Request for Admission
- (b) Effect of Admission

TRCP 37 Civil Case, Failure to Make Disclosure or Cooperate in Discovery: Sanction, TRCP 37

- (a) Civil Case, Motion for Order Compelling Disclosure or Discovery
 - (1) Appropriate Court
 - (2) Motion
 - (3) Evasive or Incomplete Disclosure, Answer or Response
 - (4) Expense and Sanction
- (b) Civil Case, Failure to Comply with Order
 - (1) Sanction by Court in District Where Deposition Is Taken
 - (2) Sanction by Court in Which Action Is Pending
- (c) Civil Case, Failure to Disclose; False or Misleading Disclosure; Refusal to Admit
- (d) Civil Case, Failure of Party to Attend at Own Deposition or Serve Answer to Interrogatory or Respond to Request for Inspection
- (g) Civil Case, Failure to Participate in the Framing of a Discovery Plan

TRCP 41 Dismissal of Actions

- (a) Voluntary Dismissal: Effect Thereof
 - (1) By Plaintiff; by Stipulation
 - (2) By Order of Court
- (b) Involuntary Dismissal: Effect Thereof
- (c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim
- (d) Costs of Previously Dismissed Actions

TRCP 42 Consolidation; Separate Trial

- (a) Consolidation
- (b) Separate Trial

TRCP 43 Taking of Testimony

- (a) Form
- (d) Affirmation in Lieu of Oath
- (e) Evidence on Motions
- (f) Interpreter

TRCP 44 Proof of Official Record

- (a) Authentication
 - (1) Domestic
 - (2) Foreign
- (b) Lack of Record
- (c) Other Proof

TRCP 44.1 Determination of Foreign Law

TRCP 46 Exception Unnecessary

TRCP 49 Special Verdicts and Interrogatories

- (a) Special Verdict
- (b) General Verdict Accompanied by Answer to Interrogatory

**TRCP 50 Judgment as a Matter of Law in Actions Tried by Jury;
Alternative Motion for New Trial; Conditional Ruling**

- (a) Judgment as a Matter of Law
- (b) Renewal of Motion for Judgment After Trial;
Alternative Motion for New Trial
- (c) Same: Conditional Ruling on Grant of Motion for Judgment as a
Matter of Law
- (d) Same: Denial of Motion for Judgment as a Matter of Law

TRCP 51 Instruction to Jury: Objection

TRCP 52 Findings by the Court; Judgment on Partial Findings

- (a) Effect
- (b) Amendment
- (c) Judgment on Partial Findings

TRCP 54 Judgment; Costs

- (a) TRCP 54, Definitions and Construction, TRCP 54; Form
- (b) Judgment upon Multiple Claim or Involving Multiple Parties
- (c) Demand for Judgment
- (d) Costs; Attorney Fees
 - (1) Costs Other than Attorney Fees
 - (2) Attorney Fees

TRCP 55 Default

- (a) Entry
- (b) Judgment
 - (2) By the Court
- (c) Setting Aside Default
- (d) Plaintiff, Counterclaimant, Cross-Claimant
- (e) Judgment Against the United States

TRCP 56 Summary Judgment

- (a) For Claimant
- (b) For Defending Party
- (c) Motion and Proceeding Thereon
- (d) Case Not Fully Adjudicated on Motion
- (e) Form of Affidavit; Further Testimony; Defense Required
- (f) When Affidavit is Unavailable
- (g) Summary Judgment, Affidavit Made in Bad Faith

TRCP 58 Entry of Judgment

TRCP 59 New Trial; Amendment of Judgment

- (a) Grounds
- (b) Time for Motion
- (c) Time for Serving Affidavit
- (d) On Initiative of Court
- (e) Motion to Alter or Amend a Judgment

TRCP 60 Relief from Judgment or Order

- (a) Clerical Mistake
- (b) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

TRCP 61 Harmless Error

TRCP 62 Stay of Proceeding to Enforce a Judgment

- (a) Automatic Stay; Exception--Injunction, Receivership (Patent Accountings Omitted)
- (b) Stay on Motion for New Trial or for Judgment
- (c) Injunction Pending Appeal
- (d) Stay upon Appeal
- (e) Stay in Favor of the United States or Agency Thereof
- (f) Stay According to State Law
- (g) Power of Appellate Court Not Limited
- (h) Stay of Judgment as to Multiple Claims or Multiple Parties

TRCP 63 Inability of a Judge to Proceed

TRCP 65 Injunction (Not applicable to a Domestic Restraining Order)

- (a) Preliminary Injunction
 - (1) Notice
 - (2) Consolidation of Hearing with Trial on Merit
- (b) Temporary Restraining Order; Notice; Hearing; Duration
- (c) Security
- (d) Form and Scope of Injunction or Restraining Order
- (e) Employer and Employee; Interpleader; Constitutional Cases

TRCP 65.1 Security: Proceedings Against Sureties

TRCP 66 Receiver appointed by Federal Courts

TRCP 67 Deposit in Court

TRCP 68 Offer of Judgment

TRCP 71.A Condemnation of Property

- (a) Applicability of Other Rules
- (b) Joinder of Property
- (c) Complaint
 - (1) Caption
 - (2) Content
 - (3) Filing
- (d) Process
 - (1) Notice; Delivery
 - (2) Same; Form
 - (3) Service of Notice
 - (A) Personal Service
 - (B) Service by Publication
 - (4) Return; Amendment
- (e) Appearance or Answer
- (f) Amendment of Pleading
- (g) Substitution of Parties
- (h) Trial
- (i) Dismissal of Actions
 - (1) As of Right
 - (2) By Stipulation
 - (3) By Order of the Court
 - (4) Effect
- (j) Deposit and Its Distribution
- (k) Condemnation Under a State's Power of Eminent Domain
- (l) Costs

TRCP 80 Stenographer; Stenographic Report or Transcript as Evidence

ANNOTATIONS

L&O 104 (Definitions), DRC 102 (Definitions)

II. GENERAL RULES OF PLEADING AND FILING

LRCP 3

Pleading and Caption. All filings in any action or case shall contain a heading stating the name of the Tribal Court of the Colorado River Indian Tribes, the name of the first party on each side with an appropriate indication of other parties and the status of each party, the case or file number, and a title that readily identifies to the Clerk the substance and type of relief sought or process to be issued.

ANNOTATIONS

See Also TRCP 10 and TRCP 11; L&O 102 (D) and (f)(Actions Against the Tribes); Cf. LRCP 2

LRCP 4

Filing, When Required. The initial complaint, application or petition and all papers intended to be seen by a Judge or used in a proceeding, or otherwise required by Tribal law to be filed, shall be filed with the Clerk as required by law and within a reasonable time of service, except that requests for documents or discovery, depositions upon oral examination per TRCP 30, interrogatories per TRCP 33, request for admission per TRCP 36, and answers or responses thereto, shall not be filed with the Court, unless on order of the Court or for use in the proceeding.

ANNOTATIONS

Cf. LRCP 3 (b) (Search and Arrest Warrants After Business Hours)

LRCP 5

(a)(1)(i) Complaint, Application or Petition, Pleading. An initial pleading may be denominated either a complaint,

LRCP 5 (a)(1)(i)(Cont.) application or petition, and shall include the names of all parties.³ A complaint, application or petition shall be signed by the person making it per LRCP 2 (13), and per TRCP 11, but need not be verified, except a Petition for Dissolution of Marriage or Legal Separation, which shall be verified. Any substantially completed or amended complaint, application or petition is deemed to satisfy the requirements of Tribal law, including, but not limited to, L&O 202 (d) and DRC 1-313 (c) and 1-412 (c).

(ii) **Complaint, Application or Petition, Amendment.** A complaint, application or petition may be amended per TRCP 15; or other process in any case or action.

(2) (i) **Citation, Pleading.** A citation shall, at a minimum, state the name of the respondent/defendant, each alleged claim or charge, which may include or be solely by reference to the Section and Subsection of the applicable Code therefor, if any, the approximate location where the alleged claim or charge arose or occurred, the approximate date and time of the alleged claim or charge, and its summons information per LRCP 2 (8). Any substantially completed or amended citation is a complaint deemed to satisfy the requirements of Tribal law, including, but not limited to, L&O 202 (d).

(ii) **Citation, Amendment.** A citation may be amended per LRCP 5 (a)(1)(ii) or by the Court at initial appearance or arraignment to correct misspellings, reflect the correct address of persons, or upon motion of the Tribal Prosecutor or Attorney General, to specify a Section or Subsection of the applicable Tribal Ordinance or Code for the alleged charge or offense and per LRCP 38 (c).

(3) **Dissolution of Marriage, Legal Separation, Child Custody or Support, Pleading.** A proceeding for dissolution of marriage ("divorce"), legal separation, or annulment shall be commenced in, and state the heading of the Tribal Court of the Colorado River Indian Tribes, but shall be denominated a "Petition" instead of a complaint and shall identify the parties as "In Re the Marriage of ___ and ___". Actions for child support, or child custody arising out of a dissolution or legal separation cf. LRCP 5 (a)(4), shall identify the parties as "In Re the (Custody) (Support) of ___, by ___, Petitioner v. ___, Respondent".

³ Some examples of sufficient titles for complaints and petitions so denominated are "Complaint for Damages in Contract", "Petition for Forcible Detainer and Eviction", "Complaint for Damages in Tort (motor vehicle)", "Complaint for Domestication of Foreign Judgment", "Petition for Establishment of Child Support Order", "Petition for Assignment of Child Support", "Petition for Domestication of Foreign Child Support Judgment".

(4) Juvenile Court, Pleading. A proceeding alleging a CO Action or CNC Action or "Termination of Parental Rights", "Adoption" or for the "Establishment of Paternity" or determination of "Custody of a Child" not arising in a dissolution or legal separation proceeding cf. LRCP 5 (a)(3), or for the "Appointment of a Custodian or Guardian of a Child", or the "Commitment of Mentally Retarded or Mentally Ill Child", or for "Emancipation" or arising under the Indian Child Welfare Act, shall be commenced in, and state the heading of the Juvenile Court of the Colorado River Indian Tribes; and shall be denominated a "Petition" therefor.

(5) Small Claims Division, Pleading. A proceeding for contract, tort or equitable relief under \$1,000.00 may, but need not, be commenced in, and shall be denominated a complaint and shall contain the heading of the Small Claims Division of the Tribal Court of the Colorado River Indian Tribes.

(b) Complaint, Application or Petition, Citation, Filing, When Required, Limitation of Action. All actions or cases shall be commenced by filing an original complaint, application or petition or citation with the Clerk. A citation shall be filed not later than the time and date of initial appearance or arraignment, or be subject to dismissal, usually without prejudice. A complaint, application or petition or citation shall be filed prior to the time barred under the doctrine of laches, which applies in the Courts of the Tribes.

ANNOTATIONS

LRCP 2 (8) ("Citation"); LRCP 2 (13) ("Complaint"); LRCP 2 (50) ("Petition"); LRP632 4 (532 Citation); LRCP 2, LRCP 3 and LRCP 4 (Criminal Complaint); LRJP 3 (Juvenile Petition); Brochure on Domestic Relations Cases, p. 57; L&O 2-201 (Domestic Relations and Custody and Support Petitions); Brochure on Small Claims, p. 56; Small Claims Division, Section 4-102, p. 160; LRCP 22 (Domestication of Foreign Process) and LRSP 3 (b)(Foreign Subpoenas); LRCP 38 (c) and Annotations (Amendments at Arraignments and Initial Appearances); But See LRCPSP (Laches in Child Support and Paternity); LRP632 4 (Reasonably Short Filing Time); LRCP 26 (Speedy Trial); LRJP 2 (c) and LRJP 23 (Speedy Filing and Adjudication); LRAF 7 (Petition for Appeal).

LRCP 6

(a) (1) Summons, Pleading. A summons shall contain the form or space for signature by the Clerk and the seal of the Court, and shall identify the Court and the parties, be directed to the respondent/defendant, state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff, and state the time and manner in which the respondent/defendant must appear and defend, and notify her, that failure to do so will result in a judgment by default against her for the relief demanded in the complaint, application or petition. The party on whose behalf a summons is issued remains responsible for its content, even if prepared by the Clerk. Any substantially completed or amended summons is deemed to satisfy the requirements of Tribal law, including but not limited to, a citation per LRCP 2 (8), L&O 202 (d), and DRC 1-314 (D), DRC 1-407 (D), and DRC 1-505 (D).

(2) **Summons by Citation, Pleading.** A citation shall summons the respondent/defendant to whom it is directed to appear at the location and on the time and date set by the officer signing the citation on the regular initial appearance or arraignment set per LRCF 38 (c).

(i) on the next business day after arrest for any adult, and on the same or next business day after commencement of detention, whichever is sooner, for any juvenile, or

(ii) on any business day set by the officer not less than Six (6), nor more than Twenty-One (21), business days later, when the respondent/defendant or juvenile is not in custody.

In addition, the citation shall be signed by the officer and the respondent/defendant or juvenile and/or parent of the juvenile to whom it is directed, which constitutes her promise to appear as directed therein. Any substantially completed or amended summons by citation is deemed to satisfy the requirements of Tribal law, including but not limited to, L&O 202 (d).

(3) **Summons, Citation, Amendment.** A summons, including by citation, may be amended or supplemented by the Court per LRCF 38 (c) or thereafter per LRCF 5 (a)(1) or otherwise at any time per LRCF 28 (j).

(b) **Summons, Summons by Citation, Filing, When Required.** Upon or after filing an initial complaint, application or petition commencing an action or case, the plaintiff shall present a summons to the Clerk for signature and seal, cf. summons by citation per LRCF 6 (a)(2). If a summons is in proper form, the Clerk shall sign, seal, and issue it to the plaintiff for service on the respondent/defendant. A summons, or a copy thereof, shall be issued for each respondent/defendant to be served.

ANNOTATIONS

LRCF 24 (a)(120 Days to Serve Summons), LRCF 28 (j) and L&O 108 (D)(Court Amendment of Summons)

LRCF 7

(a) **Answer or Response to Summons and Complaint, Application or Petition, Pleading.** An Answer is filed to a Complaint. A Response is filed to a Petition. An answer or response to a summons and complaint, application or petition, shall be in writing and signed per TRCP 11, but need not be verified, except that a Response to a Petition for Dissolution of Marriage or Legal Separation shall be verified.

(b) Answer or Response to Summons and Complaint, Application or Petition, Filing, When Required. Whenever a summons and complaint application or Petition has been issued, filed and served on a defendant/respondent, that defendant/respondent is required to file with the Court, a written answer, or response, thereto within Twenty calendar (20) days of delivery on, or receipt by, him of that process, prior to the entry of a default or final trial or hearing in such action or case. Service of a summons and complaint, application or petition initiating an action or case off the Colorado River Indian Reservation by personal service per LRCF 28 (a)(3), or by registered mail off the Reservation per LRCF 28 (a)(4), or by publication per LRCF 28 (a)(5), or in Small Claims Division cases served by registered mail whether on or off the Reservation per Small Claims Division, Section 202 (A), requires the addition of Ten (10) calendar days to the time period prescribed or allowed, for a total of Thirty (30) calendar days, required to file an answer or response thereto prior to entry of default or final trial or hearing in the case, except by consent per LRCF 27. Service by waiver per LRCF 28 (h) shall require the addition of thirty (30) to sixty (60) calendar days prior to entry of a default or final trial or hearing in the case. Fully stipulated cases per LRCF 13 (a)(1) may be delivered to the judge for review and/or judgment at any time per Insert B.

(c) Answer to Summons and Complaint in Small Claims Division Case, Pleading and Filing, When Required. Whenever a summons and complaint in a small claims division case have been issued, filed and served on a defendant, that defendant is required to file with the Court and serve an answer in the same time and manner as any other answer or response per LRCF 24 (b), except a defendant also has Thirty (30) total calendar days to respond to service by registered mail on the Reservation, notwithstanding Small Claims Division, Section 4-203, except by consent per LRCF 28.

ANNOTATIONS

LRCF 5 (a) (1)(ii) (Amendment); LRCF 24 (b) and (c)(Service of Answer/Response Required), L&O 202 (d), L&O 108 (D) (Amendment of Summons and Notice)

LRCF 8

Answer or Response to Complaint, Application or Petition or Citation, Criminal, Juvenile CO or CNC Action or Regulatory Action, Pleading and Filing. Except to enter a plea of admission or denial and to appear therefore and at trial or hearing as required, no answer or response from any respondent/defendant in any criminal, juvenile CNC or Co or regulatory action or case shall be required, except to go forward with an affirmative defense per L&O 307, or as otherwise required by law, including discovery rules, nor shall any failure to answer or respond be used against such a respondent/defendant; provided, however, such respondent/defendant shall not be prohibited from filing or otherwise answering or responding, which motion or other answer/response or shall be per applicable law.

ANNOTATIONS

LRCF 5 (a) (1)(ii)(Amendment); Cf. LRJP 14, DRC 1-315 and DRC 1-414

LRCF 9

Order to Show Cause, Pleading, Filing and Amendment. Any order to show cause shall be plead, filed and proceed per the LRPOSC and may be amended per LRCF 38 (c) a thereafter per LRCF (a) (1) (ii) or LRCF 6 (a) (3) or otherwise, at any time per LRCF 28 (j). No order to show cause shall be requested as a provisional remedy. In general civil actions per LRCF 32 (a) Process to enforce a judgment for the payment of money directly to a party shall not be by OSC, unless the Court orders otherwise.

ANNOTATIONS

LRCF 2 (48)(OSC is also Summons); LRCF 25 (Service of OSC); L&O 107; L&O 108 (D) (Amendment); See LRCF 12 (Domestic Restraining Order OSC). But See LRPOSC 2 (Exceptions Where OSC for Payment of Money Allowed)

LRCP 10

(a)(1) **Notice of Trial or Hearing, Pleading.** Any notice of a trial or hearing shall be per LRCP 2 (46). Any substantially completed or amended notice of trial or hearing is deemed to satisfy the requirements of Tribal law, including but not limited to L&O 108 (e).

(2) **Notice of Trial or Hearing, Amendment.** Any notice of trial or hearing may be amended or supplemented by the parties or by the Court, LRCP 5 (a) (1) (ii) or LRCP 6 (a) (3) or otherwise at any time per LRCP 28 (j).

(b) **Notice of Trial or Hearing, Filing, When Required.** A written notice of trial or hearing may be completed and filed by a party per LRCP 10 (a)(1) except it shall contain a blank time and date to be completed by the Clerk. The completed notice shall be served by the party seeking the trial or hearing date, except the Court, upon its own motion or motion of a party made at a trial or hearing in that action or case, may set and serve by notice given in Court or other service, a trial or hearing date, or as the Court may order otherwise.

ANNOTATIONS

L&O 108 (D) (Amendment); L&O 108; LRCP 2 (44) ("Notice"); LRCP 2 (46) (Written Notice) LRCP 2 (45) ("Notice of Trial or Hearing"); LRCP 25 (Service of Notice of Trial or Hearing)

LRCP 11

Answer or Response to Order to Show Cause, Notice of Trial or Hearing, Pleading, Filing, When Required. Whenever a notice of trial or hearing has been issued and served on a defendant/respondent, that defendant/respondent is not required, unless otherwise ordered by the Court, or otherwise pursuant to applicable law, to file with the Court or to serve on the party initiating the trial setting or hearing, any written answer, reply or other response thereto; however, a timely served defendant/respondent is required to appear and defend at such trial or hearing.

ANNOTATIONS

LRCP 8; L&O 202 (D); LRCP 5 (a)(1)(11)(Amendment)

(a) Domestic Restraining Order, Pleading. There are two (2) types of domestic restraining orders:

(1) Preliminary Injunctions, as set forth in this Rule, and that arise at the commencement of a proceeding for dissolution of marriage or legal separation or maintenance or support in such actions. Application therefor shall be accompanied by an affidavit per DRC 202-5, and may request any of the relief permitted therein, such as, restraining the parties from molesting or disturbing the peace of each other, or of any child, from transferring or removing property from the Reservation, from removing a child from the Reservation, or for excluding a party from the family home or the other's residence or work, or restraining other similar conduct. Upon receipt of the affidavit, the judge assigned, or if unavailable, another judge, shall review it, and if sufficient, issue a preliminary injunction, which the Tribal Police per LRCF 22 (a) shall serve personally, or by personal service on the attorney of any party, and the Preliminary Injunction shall remain in effect until a final decree or dismissal is entered, unless the party against whom it is directed moves the Court to modify or quash it per DRC 2-205 (E).

(2) Domestic Temporary Restraining Orders, as set forth in this Rule and per LRCF 31 (a) -- Which are NOT civil TROs per LRCF 15, LRCF 31 (b) and TRCP 65 -- and arise as independent actions, not out of a pending proceeding for dissolution or legal separation, and are essentially for the same purposes as preliminary injunctions, and likewise shall be accompanied by a similar affidavit. Upon receipt of the affidavit, the judge assigned, or if unavailable, any judge, shall review it, and if sufficient, issue a temporary restraining order, which the Tribal Police shall serve personally, or by personal service on the attorney of any party. The temporary restraining order shall be issued with an order to the party against whom it is directed to appear and show cause why the ordered relief should not have been granted. The temporary restraining order shall be vacated, unless the party on whose behalf it was issued shows by a preponderance of the evidence why it should be continued for up to Six (6) months duration, unless the Court orders a longer period.

(b) Domestic Restraining Order, Filing, When Required. A domestic restraining order is issued by the Court only upon the filing of a sufficient affidavit with the Court. Note in criminal cases involving victims, the Court automatically issues a standard release condition order that restrains the criminal defendant from substantially the same conduct as most temporary restraining orders, and which release order can provide cause for immediate arrest by the Tribal Police for criminal contempt per L&O 341 for any violation thereof.

(c) Service. The filing party is responsible for delivery of Domestic Restraining Order process to the Tribal Police for service. The Tribal Police serve only Domestic Restraining orders and attachments thereto and do not provide free service of other process simply because a Domestic Restraining Order has been issued.

ANNOTATIONS

The Clerk of Court has forms available to assist parties in applying for Domestic Restraining Orders. FORMS: LRCF 12 (A)(1)("Preliminary Injunction"), p. 233-235; LRCF 12 (a)(2)("Restraining Order"), p. 203-205.

LRCP 13

(a) **Fully Stipulated, Pleading.** There are two types of agreement, stipulation, or consent between parties and/or any attorney:

(1) The first is to commence and at the same time enter a final order, judgment or sentence. Only the following actions or cases may be both commenced and judgment entered at the same time by stipulation: any Order or Judgment for the Establishment of Paternity, or Establishment of Child Support, or the Assignment of Child Support, or for Emancipation,⁴ or as particularly found to be appropriate by the assigned judge. Such pleading shall express all relief to be ordered by the Court and contain the duly notarized signatures of all parties requesting same, and shall contain the title "FULLY STIPULATED" followed by the relief requested.⁵

(2) The second is for any other purpose, including but not limited to, stipulate to any particular fact or issue in any pending action or case, to modify any order, judgment or sentence, to enter any final order, judgment, or sentence in an already commenced action or case. Any agreement, stipulation or consent between parties or any attorney herein may occur, but shall not contain the word "FULLY" in the title and may be approved by the Judge, unless illegal or contrary to the interests of justice. In addition, a continuance may be moved for by one party and shall be granted by the Judge if it contains the correct statement that the opposing party or attorney has been contacted and does not oppose the continuance or other matter.⁶

(b) **Fully Stipulated, Filing, When Required.** No agreement, stipulation or consent, between parties or any attorney in any matter is binding if disputed, unless it is in writing, or made orally in open court, or recorded, or entered in a minute order.

ANNOTATIONS

Acceptance of Service and Waiver of Appearance for Default Form p. 20 (Not in Domestic Relations) and p. 232 (Domestic Relations); LRCP 28 (h) Notice of Lawsuit and Waiver of Summons and Courts Form (Save Costs of Service but Not for Default), p. 325-329.

⁴ Other actions and cases, in which Fully Stipulated pleadings and judgments per LRCP 13 (a)(1) may not be filed, may, of course, be served by waiver of process and proceed by default under TRCP 55.

⁵ Sufficient examples of titles are the following: "FULLY STIPULATED PETITION FOR ESTABLISHMENT OF PATERNITY" or "FULLY STIPULATED PETITION FOR ESTABLISHMENT OF CHILD SUPPORT" or "FULLY STIPULATED PETITION FOR ASSIGNMENT OF CHILD SUPPORT", "FULLY STIPULATED PETITION FOR EMANCIPATION".

⁶ A sufficient examples are the following: "STIPULATED MODIFICATION OF CHILD SUPPORT ORDER {or} "STIPULATED MODIFICATION OF JUDGMENT" or "STIPULATED MODIFICATION OF CIVIL JUDGMENT".

(a) Attorney General Notification, Pleading. All notifications shall be in writing, state the name of the person or party doing the notification, and shall identify the issue causing notification, the actual and proper parties to the action or case, and should briefly summarize the relevant facts and procedural posture of the case or action at the time of notification, and may have attached, or refer to, pertinent Court records. Notification shall identify one or more of the following issues: "TRCP 24 (c)", which are those in which the U.S. Attorney General would be required to be notified or intervene under TRCP 24 (c) and Title 28 U.S.C. § 2403; "Intergovernmental Agreement" or "Intergovernmental Relationship", which are those in which an agreement or relationship of the Colorado River Indian Tribes with any other government is substantially involved, including, but not limited to, Law Enforcement Agreements and Indian Child Welfare Act cases; "Constitutional Interpretation", which are those in which the Court is actually almost certain to decide the issues of separation of powers, judicial review, or fundamental rights; "Sovereignty Issue", which are those in which the sovereignty, jurisdiction, or power, of the Tribes is likely to be materially limited or affected by the possible outcome of the action or case.

(b) Attorney General Notification, Filing, When Required. Notification herein is required by any party raising the issue(s) causing notification within a short and reasonable time of so raising it.

(c) Attorney General Notification, Right to Intervene. The Attorney General has the right to intervene at any stage of any action or case, and to petition the Court to review or reconsider any order or judgment issued prior to intervention, where such notification to the Attorney General has not been promptly made by the party required to do so.

(d) Advice of Tribal Members on Traditional Customs and Usages and Lawful Tradition and Policies of the Tribes. At any time, and in any action or case, upon motion of the Attorney General, any party, or sua sponte, and upon a finding of any doubt as to any traditional customs and usages or lawful tradition and policies of the Tribes, the Court may convene a panel of Fifteen (15) to Thirty (30) Tribal-member elders, who the Court, in its sole and unfettered discretion, determines are familiar with customs and usages, to advise the Court thereon, and who shall decide by either the eldest or majority opinion, whichever is more appropriate under the particular facts of the case.

ANNOTATIONS

LRCP 2 (16); L&O 110 (a) (Advice of Tribal Members in Civil Cases); L&O 312 (Establishing Differing Standards and Lawful Tradition and Policies of the Tribes in Criminal Cases)

(a) Motion for Provisional Remedy, Pleading. As defined in LRCF 2 (52), every provisional remedy shall be plead as follows:

- (1) When ancillary to a pending action or case out of which it arises -- a provisional remedy is not available as an independent action,
- (2) By filing a notice of hearing, per LRCF 10, and motion, entitled the same as, or similar to, the examples below,
- (3) For one or more of the remedies set forth in LRCF 31 (b),
- (4) Accompanied by either one or more separate affidavit(s), or by incorporation in the motion of a verified complaint, application or petition, that sets forth specific facts from which it clearly appears that immediate and irreparable injury, loss or damage will result to the applicant if not granted, as requested, and, including such further affidavit, bonds or other supporting documents, if any, as may be warranted to the particular relief sought,⁸ and
- (5) Set for an expedited hearing per Insert B by the Clerk at the time of filing the notice of hearing, motion and accompanying affidavit(s), bonds or other supporting documents.

(b) Provisional Remedy, Filing, When Required. A motion for provisional remedy, its supporting document(s) and the notice of hearing thereon shall be filed together, and may be filed either at the time of, or at any time after, but in no event prior to, the filing of the original complaint, application or petition commencing the action or case out of which the motion for provisional remedy arises and to which it is ancillary.

(c) Provisional Remedy, No Order to Show Cause. No motion for provisional remedy shall request, or be in the form of, an order to show cause.

ANNOTATIONS

LRCF 2 (52) ("Provisional Remedy"); LRCF 25 (Time Required for Service of Notice of Hearing Prior to Hearing); LRCF 26 (Provisional Remedy Subject to Final Hearing or Judgment); L&O 108 (e)(1); L&O 108 (e); LRSP 4 (e) - (f) (Subpoenas in Expedited Hearings) DRC 2-205 (Temporary Child Support or Spousal Maintenance), DRC 3-103 (Temporary Custody Order); Federal Credit Union v. Judy Eddy, Civ. No. 90-1862 (Jan. 1991) (Stating Requirements for Ex Parte and Without Notice Replevin of Automobile) and State Bank v. Larry Eddy, Case No. 85-1498 (App. Ct.)

⁷ Examples: Every motion for provisional remedy shall set forth in its title the specific remedy and relief in the same or similar manner as the following examples: "Forcible Detainer and Eviction" or "Temporary Child Support" or "Temporary Child Custody" or "TRCP 65 Temporary Restraining Order to _____" or "Replevin of [Property, and Location if Needed to Identify] _____" or "Attachment of [Property, and Location if Needed to Identify] _____". In addition, every motion for provisional remedy shall be entitled either in form A or B as follows: Form A: "Motion for Provisional Remedy: [Specific Remedy and Relief]", or Form B: "Motion for Immediate and Ex Parte Order of Provisional Remedy: [Specific Remedy and Relief]". Sample Titles for Motions using Forms A or B are follows: "Motion for Provisional Remedy: Temporary Child Support" or "Motion for Immediate and Ex Parte Order of Provisional Remedy: Temporary Child Custody" or "Motion for Immediate and Ex Parte Provisional Remedy: Replevin of Buick Automobile, VIN 0010" or "Motion for Provisional Remedy: Attachment of Alfalfa Crop Located in NW1/4, N1/2, Sec. 12, S10, T32, R27W of the GSRBM".

⁸ Note: If the particular relief sought is an immediate and ex parte order of provisional remedy, a Tribal Court Judge will require much more support in the way of a bond, affidavits, and exhibits, to issue such order at the time of filing than would be required for the Judge to issue the provisional remedy order at or after the expedited hearing which the Clerk must set on every motion for provisional remedy anyway. See LRCF 15 (a)(5).

LRCP 16

Answer or Response to Both Summons and Complaint, Application or Petition and Notice of Trial or Hearing, Pleading, Filing, When Required. Whenever a defendant/respondent has been served with both (1) a summons & complaint, application or petition initiating an action or case and (2) a notice of trial or hearing setting an expedited hearing, the defendant/respondent is required to comply with both LRCP 7 to timely answer the summons & complaint, application or petition, as well as, to comply with LRCP 11 to timely appear and defend at the scheduled hearing or trial; provided, however, that no final trial or hearing shall be conducted in any matter, case or proceeding less than Twenty (20) or Thirty (30) days, as applicable, 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, except by consent per LRCP 27.

ANNOTATIONS

See Annotations to LRCP 15; See Also, Service Requirements per LRCP 26 incorporating both LRCP 24 (Answer or Response) and LRCP 25 (Notice of Trial or Hearing and OSC); LRCP 5 (a) (1) (Amendment).

LRCP 17

Motion for Stay of Proceeding to Enforce a Judgment, Pleading, Filing.

(a) Except motions for stay per LRCP 17 (b), all motions to stay execution or enforcement of any final order, judgment or sentence shall be plead and filed with the trial court for the trial judge per LRCP 62 and shall be treated as any other motion per LRCP 19.

(b) A motion for stay based on a final order, judgment, or sentence -- whether made in the form of a minute order or not -- and that is immediately effective and likely to result in the temporary or permanent loss of property, incarceration or imprisonment of a party may be made in open court, and if so made, and shall be deemed denied, unless granted at that hearing, unless the moving party agrees otherwise.

(c) The making of a motion for stay does not affect the finality or appealability of the order, judgment or sentence on which it is based.

(d) The denial, or deemed denial, of a motion for stay is immediately final for purposes of appeal, whether made in the form of a minute order or not, and may thereafter be the subject of a motion for reconsideration if joined with other issues, or of an immediate petition for appeal on the issue of the denial of the stay, or both.

ANNOTATIONS

LRCP 62 (Usual Judgments not Enforceable for Ten Business Days) But See Exceptions that are Immediately Effective: LRSP 7 (Subpoena Enforcement); LRPOSC 10 (Contempt); LRCP 35 (Civil Arrest Warrant); LRCP 15 (Provisional Remedy); LRP632 10 (Driving Privilege Suspension); LRCP 27 (Criminal Judgment and Sentence); LRJP 24 (Juvenile CO and CMC Actions); LRCP 33 (Affected Non-party May File)

LRCP 18

Motion for Reconsideration, Filing, When Permitted or Required, Finality of Minute Order.

(a) Permitted. Except motions for reconsideration per LRCP 18 (b), all motions for reconsideration may, but need not, be filed in the trial court for the trial judge in any action or case prior to the expiration of the time for appeal per LRAP 7.

(b) Required. Except for the denial of a motion for stay per LRCP 17 or the denial of a motion for reconsideration per LRCP 18, which are immediately final and appealable whether in the form of a minute order or not, see LRCP 17 (d) and LRCP 18 (d), no otherwise final order, judgment or sentence of the trial court in the form of a minute order, is final for purposes of appeal unless:

(1) Within Twenty (20) calendar days after its entry, a motion for reconsideration thereon has been filed with the trial court for the trial judge, and either thereafter denied or Five (5) business days have passed after the filing of such motion and no ruling thereon has been made and so it is deemed denied, which date of denial or deemed denial of the motion to reconsider is the date of the final entry of such order, judgment or sentence for purposes of appeal, or

(2) Twenty (20) Days from the date of entry of the otherwise final order, judgment or sentence of the Trial Court has passed and no motion for reconsideration has been filed, at which time the date of finality is deemed to be the entry of such otherwise final order, judgment or sentence.

(c) The making of a motion for reconsideration per LRCP 18 (a) does not affect the finality or appealability of the order, judgment or sentence on which it is based.

(d) The denial, or deemed denial, of any motion for reconsideration, whether made in the form of a minute order or not, is immediately final for purposes of appeal, and may thereafter be the subject of an immediate petition for appeal.

ANNOTATIONS

LRAP 7 (20 Days from Final Order, Judgment or Sentence to File Petition for Appeal); LEO 211; Cf. LRCP 37 (Attorney Fees Order Finality); Comment: Except for minute orders denying a motion for stay or a motion for reconsideration that are immediately final and appealable, this rule gives the parties, the Trial Judge, and the Appeals Court the opportunity for a formal, type-written order or judgment specifying the findings of fact and conclusions of law upon which the decision in an otherwise abruptly written minute order are based. Because the volume of daily business of the Court requires most rulings to be in the form of minute orders, parties are encouraged, though not required, to file motions for reconsideration only when an appeal from a ruling in the form of a minute order is actually planned or anticipated or a formal, type-written order or judgment is otherwise needed.

LRCP 19

(a) **Motion, Pleading.** An application to the Court in a pending action or case for an order shall be by Motion, including a motion for stay of proceeding to enforce a judgment per LRCP 17, a motion to reconsider per LRCP 18 and any motion for enforcement of a Tribal Court judgment or order. A motion shall be made in writing, state with particularity the grounds therefore, and set forth the relief or order sought.⁹

⁹ Sufficient examples of titles in motions are as follows: "MOTION FOR ENFORCEMENT OF JUDGMENT [or] ORDER", or "MOTION FOR ENFORCEMENT OF JUDGMENT [or] ORDER BY WRIT OF REPLEVIN" or "EXECUTION" or "ATTACHMENT", or "MOTION FOR MODIFICATION OF JUDGMENT [or] ORDER", or "MOTION IN LIMINE TO EXCLUDE BREATH TEST RESULTS", or "MOTION TO DISMISS BY DEFENDANT".

(b) **Response to Motion, Reply to Response, Pleading.** A response to a motion or reply to a response shall be in form as the motion, except that a response shall be limited to issues raised in the motion and a reply shall be limited to issues raised in the response.

(c) **Motion, Submitted on Pleading.** Except a motion for provisional remedy, in which a hearing shall always be set per LRCP 15, any motion may, in the discretion of the judge, be deemed submitted upon memoranda unless the motion or response contains in the caption the words "oral argument requested" or unless otherwise ordered by the court. Motions in which oral argument has not been requested may be considered for decision upon expiration of the time prescribed for filing of a reply or a the regular status hearing for such case.

(d) **Motion, Filing, When Required, Response to Motion, Filing, When Required, Reply to Response to Motion, Filing, When Required.** Any motion, response to a motion, or reply to a response required or permitted to be filed under applicable LRCP or TRCP shall be filed, responded to, proceed, and be given all effects under the Rules applicable thereto, including TRCP 12 (b) and other pre-trial and post-trial motions, except that any pre-trial motion and any, plea agreement or stipulated judgment may not be filed after the close of business on the sixth (6th) business day before a scheduled jury trial in which a jury has been called, and no speedy trial objections may be raised after the close of business on the day a jury is actually ordered to be called, but such issues are thereafter waived, except as the Court, in its discretion, may order. When no time is set by any other applicable Rule, responses to motions shall be filed not later than Five (5) business days after service of them is completed and replies not later than Three (3) business days after service. If no response or reply is filed within this time, the Court may deem the matter submitted on the pleading and record before the Court and rule on the Motion or motion or response. When no other rule is set by any other applicable Rule, late motions, responses or replies may be denied as untimely, or at the request of the party against whom the motion was filed, provide compelling reasons for a continuance to run on the party filing the motion, or other orders as the Court, in its discretion may make.

ANNOTATIONS

LRCP 3 (Caption and Title); Cf. LRCP 26 (Speedy Trial); L&O 307 (b) (Speedy Trial and Waiver);
Comment: Less than Six (6) business days prior to the scheduled jury trial for which a jury has actually been ordered and called, no plea agreements or settlements will be considered by the Judge, except full pleas to all allegations with no stipulation or judgment or sentence.

LRCP 20

Attorney Appearance, In General, Admission to Practice

(a) **Notice of Appearance, Pleading.** A notice of appearance shall be in the form of a motion and encaptioned as any other pleading per LRCP 3, and, except for attorneys employed by the Tribes, shall affirm a current license to practice in the Courts of the Tribes.

LRCP 20 (Cont.)

(a) **Admission to Practice, Attorney Appearance.** To be admitted in the Courts of the Tribes, an applicant shall first purchase a Business License from the Tribal Business Licensing Department, at (520) 669-9211, and thereafter file an affidavit per L&O 106 (G)(1) and (2) in the Tribal Court, and then take the oath before the Clerk per L&O 106 (G)(4). For any off-Reservation attorney, the affidavit may be filed by fax with the Tribal Court at (520) 669-9223 and the oath taken on the attorney's first personal appearance at the Tribal Court, or telephonically with the Court Clerk at (520) 669-8367, if such personal appearance becomes unlikely or otherwise unreasonable.

(b) **Notice of Appearance, Filing, When Required.** Except for duly appointed agents of entities per L&O 106 (A)(1), Tribal members per L&O 106 (A)(2), the Tribal Prosecutor and Attorney General, a notice of appearance shall be filed by every attorney, that includes an affirmation of a current license to practice in the Courts of the Tribes, prior to any in-person or written appearance on behalf of any other, including but not limited to, an appearance by filing a complaint, application or petition.

(c) **Notice of Appearance, Expiration.** Unless acted on by the attorney and re-affirmed to the Court, or otherwise ordered by the Court, any notice of appearance, and any attorney obligation arising therefrom or thereto, expires upon entry of a plea, judgment, disposition, or order of dismissal of that case, such that the attorney is not thereafter required to receive notices, process or otherwise appear and defend therein, including but not limited to, review hearings in juvenile actions. It is the obligation of the person represented to renew the attorney/client relationship and so inform the Court.

(d) **Notice of Appearance, Continuance.** No continuance of a trial or hearing shall be granted on the sole basis that the attorney has just been retained and is unprepared for the trial or hearing set prior to her retention, absent a stipulation by all parties.

ANNOTATIONS

LRCRP 7 (a) and LRCP 11 (d) (No Notice of Appearance Required); LRJP 6 and LRJP 11 (d) (No Notice of Appearance Required) See 106 and Annotations.

III. GENERAL RULES OF TIME AND SERVICE, GENERAL RULES

LRCP 21

(a) **Time, Computation.** In computing any period of time prescribed or allowed by the Rules of the Court, or by any other applicable Tribal law, whether forward or backward, unless specifically stated otherwise, the day of the act, event or default from which the designated period of time begins to run is not included, but the last day on which such time period ends is included, unless it is a legal holiday, in which event the period runs until the end of the first business day after or before that non-business day.

(b) **Time, Extension of Time for Periods Less Than Eleven (11) Days.** When the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays shall be excluded in the computation, in other words, such days are business days. Time periods longer than Eleven (11) days are calendar days, unless otherwise specifically stated as business days. The addition of business days under this Rule to any time period less than Eleven (11) days does not, even if the total exceeds Eleven (11) days, convert them into calendar days, they are all still business days.

(c) Time, Notice of Trial or Hearing, Extension for Mail. Service by any form of mail of any notice of trial or hearing on any party requires the addition of Five (5) business days to the time-period prescribed or allowed for notice thereof.

(d) Time, Other Process, Extension for Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a process or notice (other than a notice of trial or hearing, cf. LRCP 21 (c), above) upon the party and the process or notice is served upon the party by any form of mail, Three (3) business days shall be added to the prescribed time, including to the prescribed time for filing and serving an answer or response on the plaintiff/petitioner to any summons and complaint, application or petition, regardless of the method used to serve the respondent/defendant if the respondent/defendant mails the answer or response.

(e) Time, Enlargement. When by these Rules or by a notice given thereunder or by order of the Courts of the Tribes an act is required or allowed to be done at or within a specified time, the court for good cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if a request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit, the act to be done where the failure to act was the result of excusable neglect; but may not extend the time for taking any action under TRCP 50 (b) and TRCP 50 (c)(2), TRCP 52 (b), TRCP 59 (b), TRCP 59 (d), and TRCP 59 (e), TRCP 60 (b), and TRCP 74 (a), and LRAP 7, except and to the extent and under the conditions stated herein.

ANNOTATIONS

LRCP 24 (b) (Time for Service of Answer or Response); LEO 106 (a) (2) (5 Days Notice for Trial or Hearing); 108 (a) (3) and assimilated Federal Rule 6 (3 Additional Days for Mail and Time Periods Less than 11 Days).

LRCP 22

(a) Process Required to be Served or Delivered. Every order required by its terms to be filed or served, every pleading, including the initial summons, and complaint, application or petition, and every document subsequent to the original complaint, application or petition, unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties, and shall be served upon the parties and the Attorney General, when required, within a reasonable time after filing, or served directly before filing in the case of motions, whenever possible, and all papers relating to a single item or any multiple items filed at the same time, shall all be served together, except that the Tribal Police Department will serve only a Domestic Restraining Orders separate from any other pleadings in this case by itself per LRCP 12 (c).

(b) **Proof of Service.** Any service or execution of process shall be verified by a certificate of the person making the service or execution, stating upon whom, when, how and where service was made, and either stating, or having attached copies of, the process served or executed, which certificate shall be filed with the Court.

(c) **Default.** Per TRCP 55, no service need be made on parties in default for failure to appear except that pleading asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of a summons.

(d) **Numerous Defendants, Service.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleading of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(e) **Who May Serve.** Notwithstanding any other interpretations of the language of L&O 108 (b), all process shall be filed or issued by the Tribal Court Clerk, and thereafter copies may be served by **ONLY** the Clerk; the Tribal Police; Tribal Court Bailiff; and a citation or other notice or process related thereto may be served by any officer, deputy, agent, or employee charged with enforcement of the Tribal law set forth therein, or by any private process server licensed to serve process on the Colorado River Indian Reservation by the Tribal Court, except that process in Small Claims Division cases may be served by the Plaintiff, the Defendant or any other of the parties themselves and at the request of the plaintiff, and except for subpoenas, which may be served by anyone who is not a party per LRSP 4 (a). The court may direct that service be effected by any other person or officer specially appointed by the court for that purpose who is not a party and of the age of eighteen (18) years or older.

(f) **Process from Other Jurisdictions.** Process from other jurisdictions shall be delivered to the Tribal Court for clearance prior to service on the Reservation, and such clearance is not a domestication of such process, which can only be domesticated by filing a petition or complaint therefor.

ANNOTATIONS

LRCP 28 (f), (g) or (h)(Special Proof of Service for Registered Mail, Publication and Waiver); See L&O 108 (b)(Service); LRSP 3 (b)(Subpoenas from other Jurisdiction).

LRCP 23

Responsibility for Service. Except a domestic restraining order served by the Tribal Police per LRCP 12 (c) and LRCP 22 (a), regardless of who does service, each party remains responsible for completing service of all documents, in proper and complete form, including that the plaintiff is responsible for service of a summons and complaint, application or petition and any provisional remedy and Notice of hearing therewith, if any. Each party on whose behalf service is made shall furnish the person effecting service with the necessary copies of the summons and complaint, application or petition and other documents as required by LRCP 22 (a), and that party remains responsible for timely completion of proof of service even, if the Clerk made copies thereof and the process was to be served by the Court Bailiff or someone else.

ANNOTATIONS

LRCP 24 (12 Days to Serve Summons and Complaint); LRCP 25 (OSC and Notice of Trial or Hearing, Time for Service); LRSP 4 (Subpoenas, Time for Service).

LRCP 24

(a) Summons and Complaint, Application or Petition, Time for Service. If service of the summons and complaint, application or petition initiating the action or case is not made upon a respondent/defendant within 120 days after its filing, the court, upon motion or its own initiative after notice to the plaintiff, shall dismiss the action with or without prejudice as to that respondent/defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This Rule does not apply to service in a foreign country under LRCP 28 (a)(3), (c)(3), and (d)(2).

(b) Answer or Response to Summons and Complaint, Application or Petition, Time for Service. Whenever a summons and complaint, application or petition have been issued, filed and served on a defendant/respondent, that defendant/respondent is required to serve on the plaintiff/petitioner or party so filing a written answer, reply or other response thereto within a reasonable time of the time required for filing answer or response per LRCP 7. Service by mail per LRCP 28 (i) of an answer or response to summons and complaint and application or petition extends for Three (3) additional business days, per LRCP 21 (d), the time to file and serve the answer from the Twenty (20) or Thirty (30) days otherwise set forth herein.

(c) Answer to Summons and Complaint in Small Claims Division Case, Service. Whenever a summons and complaint in a small claims division case has been issued, filed and served on a defendant, that defendant is required to serve an answer within a reasonable time of the time required for filing the answer per LRCP 7 (c).

ANNOTATIONS

LRCP 6 (Filing and Service of Summons); LRCP 7 (Filing and Service of Answer or Response Required); See LRCP 27 and Annotations, L&O 108 (a)(3); Small Claims Division, Section 4-203.

LRCP 25

(a) Order to Show Cause, Notice of Trial or Hearing, Time For Service. Service of any notice of trial or hearing, including any Order to Show Cause, shall be made on all parties at least Five (5) full business days prior to the trial or hearing.

(b) Untimely, Service. If service of a notice of trial or hearing is not made on all parties at least Five (5) full business days prior to the date of the trial or hearing per LRCP 25 (a), the court, upon motion or its own initiative, with or without notice to the plaintiff, shall vacate the trial or hearing, or reschedule it and direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall reschedule the trial or hearing and extend the time for service for an appropriate period.

(c) Answer or Response to Order to Show Cause or Notice of Trial or Hearing. Whenever a notice of trial or hearing has been issued and served on a defendant/respondent, that defendant/respondent is not required, unless otherwise ordered by the Court, or otherwise pursuant to other applicable law or rule, to file with the Court or to serve on the party initiating the trial setting or hearing, a written answer, reply or other response thereto; however, a timely served defendant/respondent is required to appear and defend at such trial or hearing.

ANNOTATIONS

LRCP 15 (Provisional Remedy), LRCP 12 (Domestic Restraining Order) Cf LRSP 4 (Time for Service of Subpoena in Expedited Hearings Less may be Less than Five (5) days). See LRCP 27 and Annotations.

LRCF 26

Service, Answer or Response to Both Summons AND Complaint, Application or Petition and Notice of Trial or Hearing. Whenever a defendant/respondent has been served with both a summons and complaint, application or petition initiating an action or case and a notice of trial or hearing, the defendant respondent is required to comply with both LRCF 24 to timely answer the summons and complaint, application or petition and LRCF 25 to appear and defend at the scheduled hearing or trial; provided, however, that no final trial or hearing shall be conducted in any matter, case or proceeding less than Twenty (20) or Thirty (30) days, as applicable, 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, except by consent per LRCF 27.

ANNOTATIONS

See Filing Requirements per LRCF 16, incorporating both LRCF 7 (Answer or Response) and LRCF 11 (To OSC or Notice of Trial or Hearing)

LRCF 27

Waiver of Time, Consent, Expedited Hearing. Any party in person or through his attorney or agent may consent, and thereby waive objection to, any hearing, including to a full and final hearing, less than Twenty (20) days after filing and serving the original complaint, application or petition, or to the Five (5) day notice required prior to any trial or hearing. Consent may be given expressly in writing, or clearly implied by the appearance and actions of the party, or imputed to the party filing or otherwise seeking relief against the party in whose benefit those time periods would operate, such that, including but not limited to, any party seeking a provisional remedy per LRCF 15, and being granted an order for relief without notice (other than merely a hearing setting) is thereby deemed to consent that on Two (2) business days notice or less to that party, or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and/or move for its dissolution or modification or stay, which also shall be deemed consent waiver to the Five (5) day notice for such hearing on the relief as that party seeks.

ANNOTATIONS

LRCF 15 (Provisional Remedy) LRCF 4 (e) and (f) (Subpoenas in Expedited Hearings may be Less than Five (5) Days); LRCF 25 (5 Day Prior Notice), L&O 108 (e) and Annotations; Comment: Consent and waiver is commonly imputed to hold arraignments, initial appearances and other preliminary hearings when criminal or regulatory complaints or juvenile petitions are filed.

LRCF 28

Who is Served and How. Any notice or process, including summons and notice of trial or hearing or answer or response, to any person or party, which is required or may be given or served under any provision of the L&O, or any applicable Rule, or order of the Courts of the Tribes, shall be served in accordance with one of the following provisions, as applicable.

(a) Method on an Individual Adult may be by:

(1) recorded, personal oral notification to that individual or his or her attorney or agent present in Court at such time, or

(2) personal service on the Colorado River Indian Reservation by delivering it to him or her personally, or by leaving it at his or her usual place of residence with a member of his family eighteen (18) years old or older, or

(3) personal service off the Colorado River Indian Reservation by delivering it to him or her personally, or by leaving it at his or her usual place of residence with a member of his family or the age of eighteen (18) years or older, or in the manner prescribed or required by the law of the jurisdiction in which service is to be effected, or in foreign countries under LRCP 28 (e), or

(4) (i) registered mail off the Reservation when he or she cannot be located on the Reservation per LRCP 28 (f), or (ii) registered mail on the Reservation only in Small Claims Division cases per Small Claim Divisions, Section 4-202, or

(5) publication in actions in rem under LRCP 28 (g), or

(6) by any type of U.S. mail, fax, or hand-delivery where he or she has appeared with or out an attorney per LRCP 28 (i), or

(7) by waiver of service per LRCP 28 (h).

(b) Method on a Corporation or Association may be by:

(1) delivering it personally to any individual adult who is an owner, proprietor, officer, director, partner, member, associate, principal stockholder, manager, foreman, or the supervisor per L&O 108 (e)(2), or

(2) by leaving it at any of the offices or places of business of the corporation or association with its principal employee, agent or representative at that office or place per L&O 108 (e)(2).

(c) Method on a Government may be by:

(1) delivering it personally to the officers, agents, employees, or other individuals on whom service is required or prescribed by the law of the government to be served per L&O 108 (e)(2), or

(2) by leaving it at the offices or places of business of the government with its principal employee, agent or representative on whom service is required or prescribed by the law of the government to be served per L&O 108 (e)(2), or

(3) upon a foreign (not one of the U.S.) state or a political subdivision, agency, or instrumentality thereof, per Title 28 U.S.C. § 1608.

(d) Method on a Minor or Incompetent Individual may be by;

(1) delivering it personally to an individual adult who is the parent, guardian or custodian of the minor or incompetent to be served per LRCP 28 (a), or

(2) if in a foreign country per the otherwise applicable LRCP 28 (e), or by such means as the Court may otherwise direct.

(e) **Method upon Individual in a Foreign Country, Service.** Service upon an individual from whom a waiver has not been obtained and filed, unless otherwise provided by federal or Tribal law, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the law of the foreign country, by (a) delivery to the individual personally of a copy of the summons and complaint application a petition; or (b) any form of mail requiring a signed receipt, to be addressed and dispatched by the Clerk to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the Court.

(f) **Service of a Summons and Complaint, Application or Petition, by Registered or Certified Mail on a Party who Cannot be Located on the Reservation.** Service on an individual, who cannot be located on the Reservation, but whose whereabouts off the Reservation and within the United States are known, may be done by registered or certified U.S. mail, by depositing a copy of the notice or process in the U.S. mails, addressed to the persons or party to be served, by registered or certified mail with request for a return receipt signed by the addressee only.

LRCP 28 (f)(Cont.) Upon return through the United States mails of the receipt, signed by the addressee, the person so serving the notice or process shall file the return receipt with the court, together with an affidavit alleging, (i) the circumstances warranting the utilization of the procedure authorized under this L&O 108 (c)(i), (ii) that a copy of the notice or process was mailed to the person or party as evidenced by the attached receipt, and (iv) the date of the return of the receipt to the serving person. The affidavit shall be prima facie evidence of personal service. Such service shall be with the same force and effect as if made pursuant to L&O 108 (a). (1) or (2). Service by registered mail of any process other than a summons and complaint, application or petition and accompanying documents does not proceed under this Rule, but as any other service by mail. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall also be made upon the person having custody or possession of the property at the time of its seizure. No extension of time for service by mail under this Rule other than the Ten (10) days per LRCP 7 and LRCP 24 is allowed.

(g) Service of a Summons and Complaint, Application or Petition by Publication in In Rem Actions or Cases. Service, in cases affecting the specific status of property or status or other proceeding in rem, on any individual whose whereabouts are unknown or who cannot be served by personal service, whether on or off the Colorado River Indian Reservation, on corporations which cannot be served because no person can be found upon whom service cannot be made, to or on a person who has departed the Colorado River Indian Reservation without the intention of returning, to or on a person who conceals himself or herself to avoid service of process, or to or on unknown persons, may be done by Court order in the manner permitted by LRCP 28. In addition to the other provisions of LRCP 28, in an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall also be made upon the person having custody or possession of the property at the time of its seizure. Service by publication shall be allowed only in or for a trial, case or proceeding affecting specific property or status or other proceedings in rem. Service by publication may be had upon unknown persons, a corporation which cannot be served because no person can be found upon whom such service can be made, a non-resident of the Reservation, a person who has departed from the Reservation without intention of returning, a person who conceals himself to avoid service of process, or a person whose whereabouts are unknown or who cannot be served by personal service. The person or party desiring service of notice or process by publication shall file a motion verified by the oath of such party or of someone in his behalf for an order of publication. It shall state the facts authorizing such service, and shall show the efforts, if any, that have been made to obtain personal service, and shall give the address, or last known address, of each such

LRCP 28 (g)(Cont.) persons or party to be served or shall state that his address and last known address are unknown. The court shall hear the motion ex parte and, if satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, it shall order publication of the notice or process in a newspaper published or publicly distributed within the exterior boundaries of the Reservation, at least once a week for four successive weeks, and the service shall be complete on the day of the last publication. Within fifteen (15) days after the order, the person making the service shall mail a copy of the notice or process to each person whose address or last known address has been stated in the motion. Proof of service by publication shall be by affidavit of publication by the publisher, or his designee, of the newspaper in which it appeared, together with an affidavit of the person making the service as to the mailing of a copy of the notice of process. No extension of time for service by publication under this Rule other than the Ten (10) days per LRCP 7 or LRCP 24 is allowed.

(h) Waiver of Service, Duty to Save Costs of Service; Request to Waive.

(1) A party who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the Court over the person of that party.

(2) Any individual, corporation, or association subject to service per LRCP 28 (a)-(g) and actually receiving notice of a case or action and being requested to accept service in the manner provided in this paragraph then has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the case or action and request that the defendant waive service of a summons.

(3) The notice and request shall:

- (i) be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer manager or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);
- (ii) be dispatched through first-class mail or other reliable means;
- (iii) be accompanied by a copy of the complaint application or petition commencing the action or case and shall identify the Court in which it has been filed;
- (iv) inform the defendant of the consequences of compliance and of a failure to comply with the request;
- (v) set forth the date on which the request is sent;

LRCP 28 (h)(Cont.)

(vi) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(vii) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

(4) If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the Court shall impose the attorney fees and costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(5) A defendant that, before being served with process, timely returns a waiver so requested, is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date is the defendant was addressed outside any judicial district of the United States.

(6) When the plaintiff files a waiver of service with the Court, the case or action shall proceed, except as provided in paragraph (3), as if a summons and complaint application or petition had been served at the time of filing the waiver, and no proof of service shall be required.

(7) The costs to be imposed on a defendant per LRCP 28 (h) for failure to comply with a request to waive service of a summons shall include the attorney fees and costs subsequently incurred in effecting service under another subdivision of LRCP 28, together with the fees and costs, of any motion required to collect the costs of service.

(i) By Mail on a Party Having Made an Appearance, Method on Party with Attorney. Service on a party who has made any appearance in the trial, case or proceeding pending before any of the Courts of the Tribes, as a party or otherwise, by personal appearance, by counsel, or by filing a complaint, answer, motion, or other pleading, may be done by delivery of a copy, or by fax, or any form of U.S. mail addressed to him at the number or address indicated by or at his appearance, or his last known address; provided, however, that if a party having made such appearance is represented by an attorney of record, such same service shall be made on his or her attorney by delivering a copy to the attorney. Service by mail is complete upon mailing.

(j) Service, Amendment, Time, Court Ordered Exceptions. At any time in its discretion and upon such terms as it deems, just, the court may allow any notice, process or proof of service thereof to be amended, including by the Clerk per LRCP 38 (d), unless it clearly appears the material prejudice would result to the substantial rights of the persons or party against whom the notice or process issued.

ANNOTATIONS

L&O 108 (d) (Amendment); L&O 108 (e) (Notice and Service); LRCP 2 (29) ("Law of the government to be served"); LRCP 2 (40) ("Manager"); LRCP 2 (41) ("Member of his family"); LRCP 2 (42) ("Natural Person"); LRCP 2 (43) ("Not a Party"); LRCP 2 (44) ("Notice"); LRCP 2 (45) ("Written Notice"); LRCP 2 (42) ("Notice of Trial or Hearing"); LRCP 2 (51) ("Principle Employee, Agent or Representative"); LRCP 2 (56) ("Residence or Usual Place of Residence"); FORMS: Acceptance of Service and Waiver for Default, p. 200; LRCP 28 (h) (Waiver of Service, p. 325); Affidavit of Service, p. 201; Affidavit of Non-Service, p. 202 .

IV. JURY TRIAL, RIGHT AND NOTICE, JURIES

LRCP 29

(a) Right. All parties have the right to a jury trial in all cases, except the following: Small Claims Division cases, Juvenile Court actions, child custody or support or assignments, paternity actions, adoption actions, domestic relations cases, actions on domestic restraining orders, initial hearings on provisional remedies, actions to domesticate foreign judgments, actions to enforce or modify judgments or orders, including subpoenas and contempts of courts actions per L&O 107.

(b) Notice of Request for Jury Trial. To exercise any right a party has to a jury trial, the party must deliver to the Tribal Court, and all other parties in the case, a notice of request for jury trial, that states that party would like a jury trial in the case, Not later than five (5) business days prior to the time and date of the first scheduled trial date of which that party receives notice, whether that date is continued or not, or else that party will be deemed to have forever given up and waived his right to a jury trial, and the case will be tried before a judge on that date, or before a judge even if continued to a later date.

(c) Automatic Continuance and Pretrial Conference. If a jury trial is requested by either party less than Twenty (20) business days before the trial time and date identified on the first notice that party receives, a continuance of trial will automatically occur, and a status hearing will be set per TRCP 16 (Pretrial Conference), unless the jury trial request is denied by the court upon a finding that no right existed in that particular action or case. When the new jury trial date is ultimately set and the jury ordered to be called, no continuance from that new time and date will be granted to either party, absent compelling reasons.

ANNOTATIONS

Constitution, Section 3, Trial by Jury (Jury Trial Right for any Criminal "Offense" Regardless of Whether Punishable by Imprisonment or Not), p. 131; L&O 203 (h)(Jury Trial Notice and Number of Jurors), p. 156; LRCP 2 (63)("Trials of . . . Matters"); L&O 203 (i)(Number Required for Verdict), p. 156; L&O 203 (f)(Voir Dire), p. 155; LRCP 2 (15)("Criminal"); LRCP 2 (47)("Offense"); 25 U.S.C. 1302 (10)(Jury Trial Right for Only An "Offense Punishable by Imprisonment"; See also Bench Book for Script of Standard Voir Dire Questions Usually Asked by the Judge; Bench Book for Standard Instructions; L&O 110

V. TRIAL OR HEARING

LRCP 30

(a) **Telephonic Appearance.** Oral argument by any off-Reservation attorney, and testimony by any witness, including but not limited to, licensed physicians and psychiatrists, shall, if identified by a party or attorney in Court, be presented telephonically absent a valid objection thereto brought to the attention of the Court and the party to call such witness in sufficient prior time to arrange for the personal attendance of the witness or such objection is waived. Counsel shall schedule such calls at a time mutually agreeable to all parties and the Court.

(b) **Conduct in Courtroom.** Any trial or hearing shall be conducted in an orderly, patient, courteous and dignified manner.

(c) **Argument to Court.** Arguments and remarks shall be addressed to the Court, except that by permission of the court counsel may make proper inquiries or ask questions of opposing counsel. Except for references to evidence not admitted at trial, closing argument shall not be limited in scope by the Judge, unless, in her sole discretion, the grossest unfairness or prejudice shall result.

(d) **Time-Limits for Argument.** All arguments are hereby limited per attorney or party to Ten (10) minutes total time, unless the Judge, in his or her sole discretion, allows otherwise.

(e) **Exclusion of Minors From Trial or Hearing.** When an action or proceeding of a scandalous or obscene nature is to be tried, the court may exclude from the Courtroom minors otherwise not excluded, whose presence is not necessary as parties or witnesses.

(f) **Proof of Authority by Attorney for Respondent Not Appearing in Divorce Action.** In divorce actions any attorney appearing for a defendant not personally served shall by affidavit show their authority to act for such defendant.

(g) **Officer of Court or Attorney as Surety.** No officer of the court or attorney shall be accepted as surety upon an undertaking or bond in a judicial action or proceeding.

(h) **Continuance.** Except continuances per LRCP 38 (d) and the LRJP, no continuance upon motion of a party shall be granted, unless the Court finds the moving party has shown compelling reasons why the continuance is necessary to serve the interests of justice. Upon such showing, the Court may grant a continuance of up to Twenty (20) business days, unless specified otherwise.

ANNOTATIONS

VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

LRCP 31

(a) **Domestic Restraining Order, When Available.** At the commencement of and during the course of an action or case, a Domestic Restraining Order is available per LRCP 12.

(b) **Provisional Remedy, When Available.** At the commencement of and during the course of an action or case, all provisional remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by Tribal law, however designated, and are as follows: attachment, replevin, sequestration, forcible detainer and eviction, Rule 65 preliminary injunctions and temporary restraining order, temporary order of child custody or support, remedies upon default arising out of a contract purportedly signed by the party, or authorized agent thereof, against whom the relief is sought, and other corresponding or equivalent remedies, initiated and heard per LRCP 15, or otherwise per Tribal law.

ANNOTATIONS

LRCP 12 (Domestic Restraining Orders); LRCP 15 (Provisional Remedies)

LRCP 32

(a) **Execution of Civil Judgment, When Available.** Process to enforce a judgment for the payment of money shall be by writ of execution, not Order to Show Cause, unless by Rule or order the Court directs otherwise, such as including but not limited to, child support actions per LRCSP and the LRPOSC. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution per L&O 207 (c) and shall be initiated by motion per LRCP 19, or other Tribal law. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears or record, may obtain discovery, commonly known as a debtor's exam, from any person, including the judgment debtor, which are initiated by motion per LRCP 19, or other Tribal law.

(b) **Judgment for Specific Acts; Vesting Title.**

(1) If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the costs of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the Judge shall issue a writ of attachment or sequestration against the property of the judgment. The Court may also in proper cases adjudge the party in contempt per L&O 207 (c), such as including, but not limited to, child support actions.

(2) If real or personal property is within the Reservation, excluding property upon which there are Tribal or federal restraints on alienation, the Court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the Judge.

ANNOTATIONS

See also LRCP 34

LRCP 33

Process in Behalf of and Against Persons Not Parties. When an order is made in favor of a person who is not a party to the action or case, that person may enforce obedience to the order by the same process as if a party, and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

ANNOTATIONS

See LRCP 17 (Applies to Allow Affected Non-Party File Motion for Stay); LRSP 5 and LRSP 6; LRPOSC 8 and LRPOSC 10

LRCP 34

Seizure of Property and Default in Regulatory Action. Where applicable law authorizes the Colorado River Indian Tribes or any Department or Agency thereof to seize property in any regulatory action and an officer or employee thereof commences the action by issuing a citation, or is otherwise commenced and also seizes such property, the defendant/respondent may forthwith reclaim such property by posting a bail per LRCP 36, in the amount of the possible fine or damages that may be imposed as set by the Court, unless ordered otherwise by the Court. In addition, such person posting such bail and repossessing such property shall bring it back in the reasonably same condition to Court at trial as evidence or suffer possible negative inferences from the loss or destruction of such evidence in his or her possession. In addition to any other result, the failure to appear at any duly noticed scheduled trial or hearing by the defendant/respondent may result in a default and the application such property in payment of the penalty, forfeiture or damages. The Tribal Court may also report judgment debtors to appropriate collections agencies consistent with Tribal and federal law.

ANNOTATIONS

L&O 208

(a) **Arrest, Civil Arrest Warrant.** A "civil arrest warrant" is an order issued against a party in a civil matter, or on a non-party in any matter, directed to any peace officer on the Reservation, to arrest the individual named therein and bring such person before the Court per LRCP 35 (d).

(b) **Civil Arrest Warrant, When Issued.** The Court may, on motion of a party or on its own motion, issue a civil arrest warrant if it finds that the person for whom the warrant is sought:

(1) Having been ordered by the Court to appear personally at a specific time and location, and having received actual notice of such order, including a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear as ordered; or

(2) Having been served personally with a subpoena to appear in person, at a specific time and location, which contains a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear; and

(3) Having failed to appear, the Court or any party seeks such person's appearance before the Court, which is independent of whether or not any Order to Show Cause or contempt action is commenced against such person for the failure to appear, which OSC or contempt action may only be commenced per the LRPOSC, whether or not such person is brought to the Court on a civil arrest warrant, criminal arrest warrant, or bench warrant.

(c) **Civil Arrest Warrant, Content of Warrant.** The civil arrest warrant shall be ordered by the Judge and issued by the Clerk. It shall contain the name of the person to be arrested and a description by which such person can be identified with reasonable certainty. It shall command that the person named be brought before the Judge or, if the Judge is absent or unable to act, another Tribal Court Judge. The warrant shall set forth a bond in a reasonable amount to guarantee the appearance of the arrested person, or an order that the arrested person be held without bond until the arrested person is seen by a Judge, which shall be deemed to be the order if no bond is set forth on the warrant.

(d) **Civil Arrest Warrant, Time and Manner of Execution.** A civil arrest warrant is executed by the arrest of the person named therein. Unless the Court otherwise directs upon a showing of good cause, a civil arrest warrant shall be executed on only business days between the hours of Eight (8:00) a.m. and Three-thirty (3:30) p.m. The arrested person shall be brought immediately before the issuing Judge if it is reasonably possible to do so. In any event, the arrested person shall be brought before the issuing Judge, or a Judge by the close of business on the same day as arrest.

(e) **Civil Arrest Warrant, Duty of Court After Execution of Warrant, Civil Arrest Warrant, Bail and Bond.** The Judge shall advise the arrested person of the nature of the proceedings, release the arrested person on the least onerous terms and conditions which reasonably guarantee the required appearance, including that the person shall have the right to bail and bond per LRCP 36, and set the date of the next Court appearance.

ANNOTATIONS

LRCP 17 (a) Stay of Enforcement); LRCP 17 (b) Applies; LRCP 33 (Affected Non-Party May File Objections): cf. Arizona Rule of Civil Procedure, 64.1 and Federal Rule of Civil Procedure, 64 Incorporating Arizona Rule.

Bail and Bond Forfeiture and Exoneration

(a) **Security for Appearance, Bail.** In all actions and cases in the Courts of the Tribes, except criminal proceedings after conviction and Juvenile Court actions per the LRJP, and as otherwise provided by law, any party or person ordered or promising to appear, or requesting a trial or hearing, in the Courts of the Tribes, shall have the right to reasonable bail to ensure their appearance and the immediate return of any of their property seized pursuant to law. Bail can be paid only in cash or acceptable cashier's check or money order, and all such bail posted is deemed paid by, and the property of, the person whose appearance is secured thereby, regardless of who actually delivers the Bail to the Clerk or otherwise may claim it as their property.

(b) **Bail Forfeiture.** Non-appearance by any person or party posting bail, without good cause therefor, shall cause forfeiture of the bail as herein provided. Unless otherwise ordered by the Court, bail forfeited in civil cases shall be applied to any default judgment or other judgment obtained against such person or party. When the person or party failing to appear is again brought before the Court on an Order to Show Cause, bail may be forfeited if such person or party is found in contempt. In all other cases, bail shall be automatically forfeited upon entry of default judgment or other judgment, or Ninety (90) calendar days after the failure to appear, whichever is sooner, unless prior to such time that person or party appears, and moves for exoneration of bail and shows good cause for the failure to appear after being afforded the opportunity for a hearing thereon.

(c) **Security for Appearance, Bond.** Whenever a person or party has the right to bail, such bail can be secured by bond issued by only a Bail Bondsman authorized by the Tribal Court Clerk.

(d) **Bond Forfeiture.** Non-appearance by any person or party whose appearance is secured by a bond, without good cause therefor, shall cause forfeiture of bail and the Court shall direct payment of the bond by its issuer. In any such case, the Court Clerk shall notify the Bail bondsman as follows: (1) Upon issuance of a bench warrant, arrest warrant, or criminal complaint with a Section 341 charge, which is/are based on any failure to appear, and where the person or party is not in custody, and does not promptly return to custody by close of the next business day after such bench warrant or criminal complaint is issued, the Clerk shall mail, fax or deliver, in her sole discretion, a written notice to the Bail Bondsman and set a hearing on the inactive calendar for Ninety (90) calendar days therefrom. Proof of mailing such notice to the address of record or in the file is sufficient notice, and if no address of record or address appears in the file, this notice requirement is satisfied by the Clerk having such notice available upon request.

(2) The notice shall be of such violation and of the time and date of the Bond hearing and that the Bail Bondsman should, not less than five (5) business days prior to the hearing, check with the Court if that hearing has been vacated per LRCP 36 (d)(4).

(3) If the person or party is returned to custody on the case or makes voluntary or involuntary appearance in that action or case prior to the hearing, regardless of the disposition of the Contempt action or 341 case, the Court shall vacate the hearing and not forfeit the Bond.

(4) If by or at the time and date of hearing, however, the person or party has not returned before the Court, the Bail Bondsman shall be allowed the opportunity to appear and show good cause why Bond should not be forfeited despite the non-appearance, such as, including, but not limited to, by proving the death, incarceration or serious in-patient necessary hospitalization of the person or party, but failing show such cause, the Court may order the Bond forfeited. It is the responsibility of the Bail bondsman to either move the Court for an actual hearing and appearance on the time and date set pe LRCP 36 (d)(2) prior thereto or be sure the hearing has been vacated.

(5) No Bond may be forfeited, but shall be exonerated and returned upon request of the Bail Bondsman, if the Bail Bondsman has not been notified as required herein.

ANNOTATIONS

LEO 205

LRCP 37

Attorney Fees and Costs, Expedited Procedure. All applications for attorney fees and costs shall be by motion and affidavit made by the attorney or party so seeking and shall be filed by the close of business on the Fifth (5th) Business Days after entry of judgment and/or dismissal of the action or case. Responses thereto, shall likewise be by affidavit, and shall be filed by the close of business on the Third (3rd) Business days after filing the Application. Any Reply to such Response shall likewise by affidavit and be filed by the close of business on the day after the filing of such Response. The Court shall determine the lawfulness, or the appropriateness of the award, and, in its discretion, the reasonableness of the amounts awarded. No evidentiary hearing shall be held thereon by the Court, unless the compelling interests of justice so demand. If not ruled on by the Court prior to the time for appeal per LRCP 7, such application for attorney fees and/or costs shall be deemed denied and may be the subject of a Motion to Reconsider or a petition for appeal on that issue or joined with other issues arising from the final order judgment or sentence.

ANNOTATIONS

VII. COURTS AND CLERKS AND DOCKETS

LRCP 38

(a) **Hours of Court.** The Court shall regularly convene at 9:00 A.M. and close at 5:00 P.M. A recess will be taken between the hours of 12:00 noon and 1:30 P.M. Unless otherwise directed by the trial judge, trials will be held between the hours of 9:00 A.M. and 12:00 noon, and 1:30 P.M. and 5:00 P.M.

(b) **Status Hearing.** All criminal status hearings will be heard on Mondays at 9:00 a.m., except if that day is a legal holiday in which case these matters will be heard on the next business day thereafter. Any evidentiary hearing and actual trial dates in such cases will be scheduled at that time for hearing or non-jury trial per Insert B on Tuesdays and Thursdays. Jury trials are actually scheduled and held only on Wednesdays. In addition, the parties should anticipate the Court to set a status hearing for the Fifth (5th) business day before any trial in which a jury has been called.

(c) **Regular Initial Appearance, Regular Arraignment, Plea and Bail at Arraignment, Procedure, Plea and Bail at Initial Appearance, Procedure.** Regular arraignments and initial appearances are conducted in the Tribal Court each day at approximately 10:00 a.m. for adult respondent/defendants and 3:30 p.m. for juveniles. Officers shall cite all respondent/defendants not in custody to arraignment or initial appearance at such time not less than six (6) nor more than twenty-one (21) business days after citation and shall deliver to the Court at such time for arraignment or initial appearance all respondent/defendants in custody on the next business day after arrest for adults, and either the same or next business day after commencement of detention, whichever is first, for juveniles, except persons arrested on a civil arrest warrant per LRCP 35, who shall be delivered before the Judge on the same business day of arrest. At each regular arraignment or initial appearance, the Judge shall examine the complaint, petition, or other process make technical amendments thereon, add a Section or subsection number in the allegation on motion of the Tribal Prosecutor or Attorney General, advise the respondent/defendant his or her rights, the allegation(s) and the possible consequences thereof, enter a plea to the allegations, and provide the opportunity for bail and hearing thereon per LRCP 36, and set a preliminary hearing per Insert B on any person not released, but shall dismiss any insufficient or late citation, complaint or petition, and order the unconditional release of the person or property in custody or summoned to appear.

ANNOTATIONS

LRCP 5 (a) (2) (1) (Amendment of Citation); LRCP 6 (a) (3) (Amendment of Summons by Citation); LRCP 9 (Amendment of OSC) LRJP 6 (Amendment Juvenile Petition); Amendments Other Than At Initial Appearance. See LRCP 5 (a) (1) (1); LRCP 6 (a) (3) and LRCP 28 (j), and LRCP 38 (d). Cross Reference LRP 632 6; LRCP 6; LRJP 5 (a); L&O 202 (e) (Regular Sessions); See Bench Book for Standard Adult Criminal Arraignment and Advice of Rights Order Read to Defendants and the Supplemental Advice for Sentence Imposition, Regulatory, and OSC Proceedings also Read to Respondent/Defendants Summoned to Court at 10:00 a.m.

(d) **Trial or Hearing, Setting.** All cases and actions shall be calendared by the Clerk at filing and shall be kept on either the Court Calendar (active) or the Inactive Calendar, per Insert B, until final judgment or order. The Clerk may calendar, set or continue any case or action without judicial order, and provide any required notice to any party or person, any action or case, when a judge is unavailable or circumstances at the Court so require, and such settings and notices have the same force and effect as if specifically ordered by a Judge.

ANNOTATIONS

LRCP 20 (d)(No Continuance for New or Substituted Counsel); LRCP 29 (c)(Jury Trial Request, Automatic Continuance); LRCP 30 (h)(Standards for Grant of Continuance); LRCP 26 (b)(Unexecuted Warrants One Year Old)

LRCP 38 (Cont.) The Clerk is authorized to make the Schedule per Insert B in accordance with the following order of preferences:

- (1) Juvenile Court Child-In-Need of Care Actions, Child Offender Actions, and Other Juvenile Court Actions Involving Children, including Paternity, Custody and Support Actions;
- (2) Hardship Cases or where Preference is Granted by Motion to the Court, including civil cases in which were issued Provisional Remedies, or Domestic Restraining Orders, and Guardianship or Conservatorship Cases;
- (3) Adult Criminal Cases;
- (4) Domestic Relations Cases;
- (5) Small Claims and Civil Cases.

(e) Determination of Matters Within Sixty Days; Report; Appeal.

(i) Every matter submitted for final order, judgment or sentence to any Judge for decision shall be determined and a ruling made within Sixty (60) days from submission thereof, except the Appeals Judges shall have Ninety (90) Days. The Clerk shall place all matters submitted for final decision to all Judges on the inactive calendar, just as the Clerk keeps all pending matters on the active calendar per LRCP 38 (d).

(ii) The Clerk shall provide a written list to the Chief Judge and Chief Justice of all matters on the inactive calendar exceeding these periods in LRCP 38 (e)(i).

(iii) Any delay exceeding the time periods per LRCP 38 (e)(i) is an irregularity in the proceedings deemed substantially prejudicial to the rights of each party in the action or case per LRAP 8 (b) and L&O 211 (a)(2)(b), such that any party or affected non-party per LRCP 33, may immediately appeal such delay to the Appeals Court, per LRAP 3 and per LRAP 9 (b). The Judge to whom the matter was submitted shall comply with any order of the Chief Judge or Appellate Judge to determine the matter submitted in the time ordered. The failure to abide by any order per LRCP 38 (e)(iii) to determine a matter within the time specified by the order constitutes misconduct in the performance of judicial duties per L&O 201 (j)(1).

ANNOTATIONS

LRCP 26 (Preference of Child Support and Paternity Actions)

LRCP 39

Exemption from TRCP 16 and TRCP 26. All cases for which no jury trial obtains under LRCP 29

ANNOTATIONS

(a) Assignments of Judges.

(i) Except upon the stipulation of all parties to a specific judge by name and per LRCP 40 (a)(iii), below, the Chief Judge hereby delegates all assignments of judges in all actions and cases to Clerk to be randomly made at the time of filing, except for OSC's and summary contempts arising out of that action or case, which may be heard or sentenced by any judge other than the one assigned to the action or case out of which it arises, and except in extraordinary circumstances.

(ii) After the initial assignment, a change of Judge may be made by either: (1) stipulation of all parties to a different Judge by name, or (2) filing a motion for change of a sitting or deputy Judge, which may or may not be granted under applicable law, or (3) filing a motion to assign a deputy (pro tem) judge, which shall be granted if good cause is shown therefor, and which deputy shall be assigned by any judge other than the sitting judge just removed, (4) filing a peremptory strike of any assigned deputy judge, to which each party is entitled -- except as per LRCP 40 (a)(iii), below -- to one, and **only one**, peremptory strike per L&O per 201 (h)(1), in which case the Clerk randomly assigns another deputy judge, or (5) recusal by the assigned Judge herself.

(iii) The first deputy judge may be selected by the recused or another judge to save costs or in the interests of expertise, and either party may peremptorily strike that judge, which strike will not count as that party's one peremptory strike. The Clerk shall then randomly assign a deputy judge.

(iv) The judge assigned, unless removed or recused, shall be the judge for all proceedings in that action or case, except for initial appearance and arraignment, which may be conducted by any available judge who shall set the next hearing or trial dates at that time on the assigned judge's calendar, except OSC's arising out of that action or case, summary contempts, and except in extraordinary circumstances.

(b) Assignments of Jury Venire. All assignments of jury venire are made randomly by the Clerk of Court when a jury is called, in the following manner. The Clerk of Court frequently updates a sequentially numbered list of all Tribal members residing on the Colorado River Indian Reservation and age 18 or older. The persons on the list are numbered 1 to n. This list is confidential and can be accessed by only Court order, except for the Clerk of Court and specifically assigned Judicial Clerk in fulfillment of L&O 203. Approximately twenty (20) business days before a jury trial is set for actual trial, the Clerk of Court uses the Clerk's random number generating computer program for a list of 40 jurors for the venire on the trial day. The Clerk of Court then matches the randomly generated numbers to the sequentially numbered list of Tribal members. The Clerk of Court will specially note on the list of jurors selected for that venire **ONLY** those who have Tribal Court criminal records excluding them from service. For all others, the Clerk prepares jury duty notice for service by the Bailiff. If the number of jurors excluded reduces the number to less than thirty, ten more jurors will be selected in the same method. For purposes of this method, the term "venire" is the same as the term "panel" as used in L&O 203. The names of the jurors picked by the computer, including those excluded by the Clerk for criminal convictions, shall be available to any party who so requests, but not the corresponding numbers. It is the duty of the Court Bailiff to serve enough persons for the venire in sufficient time for them to appear.

ANNOTATIONS

L&O 202 (b)(Assignment of Judges); L&O 201 (b)(Peremptory Strike of Deputy Judges); L&O 201 (g) and 210 (g)(Grounds of "For Cause" Motions for Recusal); L&O 203 (Jury Selection and Removal); LRCP 29 (Jury Trial)

LRCP 41

Minute Order, Notice of Entry of Judgment. Any minute order may serve as official records of proceedings, rulings and order to appear. Official recordings or transcripts and written orders and judgments prevail over a minute order, if conflicting. The Clerk shall mail or deliver a copy of each minute order to each party, when available. Immediately upon the entry of a judgment per TRCP 54 (a), the clerk shall mail or deliver a copy of the judgment stating the date of entry, to every party who is not in default for failure to appear, and shall make a record of the mailing or delivery. Any party may in addition serve a notice of such entry, in the manner provided in LRCP 28 for the service of papers. In the case of a judgment in the form of a minute order, the date of entry shall be the date on which the clerk affixes a file stamp on the minute order. Lack of receipt of the copy of the order or judgment by any party does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, provided a copy was mailed or delivered to the last known address of record of the party or her attorney in the case, or there is other sufficient proof of mailing, delivery or service.

ANNOTATIONS

LRCP 21 (d) (Extension of Time for Mailing); LRAP 7 (20 Days for Petition for Appeal); LRCP 18 (Motion to Reconsider, When Permitted or Required Prior to Appeal).

LRCP 42

TRCP 28 Officer for Depositions and Oath. The Tribal Court Clerks, Records Clerk and any other person authorized or designated by the Tribal Clerk or other person authorized or designated to administer oaths for depositions or other discovery in the La Paz County Superior Court are authorized to take, record and transcribe depositions and administer oaths in the Tribal Court.

ANNOTATIONS

LRCP 2 (54) ("Record or Recorded")

(a) Court Tape. Every hearing or proceedings in any case or action, and all discussions between any party and Judge in any case or action, are taped, including but not limited to, any hearing and applications before a Judge, such ex parte motions, search and arrest warrants.

(b) Record Inspection, Copy and Service Request Forms. Upon the request by anyone to inspect or copy any Court records, or for service by the Court, the Clerk of Court shall immediately provide such person, or their employee or agent, any forms required for such inspection or copying to such person, along with any instructions necessary for their completion. No request for service by the Court may be accepted, or if accepted will be returned, without full and accurate address information and service instructions provided by the party requesting service. The party remains responsible for completion of all documents required to be served in proper form per LRCF 23, even if the Clerk assists in their preparation. If service by the Court is unsuccessful after one mailing or three (3) personal service attempts at the address and service instructions provided by the party, the address or instructions are presumptively invalid. It remains the responsibility of the party to check with the Court to see if service has been made or was unable to be made and thereafter to provide the Court with the correct address and service instructions and pay the required fees for additional service attempts by the Court.

(c) Inspection of Court Record, Access. Upon receipt from anyone of a properly completed request, in the form prescribed by the Clerk of the Tribal Court, to inspect any non-juvenile case file, the Clerk shall make available that file, including all tapes of every proceeding in it, and upon specific request any tape of arraignment or multi-case status hearing, for visual and audio inspection, but not removal, as soon as reasonably possible following the request, in the place and manner the Clerk finds appropriate to that request. Juvenile case files are treated the same as others, but only parties, assigned Judges and Probation officers, including Department of Health and Social Services Child Protection Service ("DHSS CPS") officers may inspect juvenile court files. No one may enter into file areas or get files except through the Clerk of Court, including Court staff and Judges.

(d) Copy of Court Record. Upon receipt from anyone of a properly completed request in the form prescribed by the Clerk of the Tribal Court, for copies of any non-juvenile case file or tapes or a Petition for Appeal, and the fee therefor, the Clerk shall make such copies available to the requesting person by the close of the next business day following the completion of the request. Only parties, assigned Judges, or probation and DHSS CPS officers, may receive copies of juvenile court files or tapes.

(e) Transcript. The Tribal Council and its members, the Attorney General of the Tribes, or any Tribal Judge may request typed transcripts of all or parts of any non-juvenile record, and such transcripts will take precedence over all other transcripts and shall be made as soon as possible. Any party or person may request a typed transcript of any non-juvenile court tape(s), and requests by a party will take priority over requests by non-parties. Only parties, assigned Judges, or probation and DHSS CPS officers, may request transcripts of juvenile court tapes.

(f) Lost or Missing Court Record; Method of Supplying. Except as set forth in LRAP 10 (h), when the records and papers of a case or action, or part thereof, are lost or destroyed either before or after the trial or hearing, they may be supplied by

LRCF 43 (Cont.) either party on motion addressed to the court on Three (3) days notice to an adverse party. The motion shall be signed and verified, and shall state the loss or destruction of the records or papers, and shall be accompanied by certified copies of the originals, if obtainable, and if not, then copies duplicating the originals as nearly as possible. If the adverse party admits the correctness of the copies and the court is satisfied that they are copies in substance of the original, the court shall order the copies substituted for the originals. If their correctness is denied, or if the court finds them not correct, it shall hear evidence and correct copies shall be made under the direction of the judge. The substituted copies shall be filed with the clerk and shall constitute a part of the record in the case or action, and shall have the same force and effect of the originals.

ANNOTATIONS

LRAP 10 (b)(Missing Records for Appeal); DRC 1-105; DRC 1-111; DRC 1-114; DRC 1-115

LRCF 44

(a) **Copy Fees.** The Clerk shall prepare one copy of originals for service upon request of the plaintiff/petitioner, and shall issue separate or additional summons, also upon request thereby. In addition, the Clerk of Court will conform by file stamp any number of additional copies supplied by the party at no charge. Parties remain responsible for ensuring all copies for service are complete, even if the Clerk makes the service copy. All other copies of documents or records shall be supplied only after payment of the required fee per Insert A.

(b) **Filing Fees.** All fees for filing cases and actions and answers, replies or responses thereto, as required by the Code are set forth in the current list of Fees, Insert A.

(c) **Service Fees.** The fees, as required by the Code, for attempted service at the address provided by the party are set forth in the current list of Fees, Insert A.

(d) **Application and Waiver of Fees.** The Colorado River Indian Tribes and its subordinate entities and departments, pay no fees; however, this does not include fees arising on behalf of another party that is not the Tribal Government even where any attorney working for such party is employed by the Tribes, except the Tribal Public Defender and any attorney appointed or located by the Court to represent a party in the interests of justice. All fee waivers are automatically denied, unless granted. No fees may be waived, except by a Judge upon a finding of indigence and need. Except fees on petitions for appeal per LRAP 13 (c), no process may be accepted by the Clerk for filing or service unless either the required fee is paid or a waiver is approved at the time submitted to the Clerk.

ANNOTATIONS

(a) Standing Order. The Chief Judge of the Tribal Court, in his or her discretion has authority to establish and promulgate Rules of Procedures and make standing or administrative orders applicable to cases or procedures of the same type or class.

(b) Suspension of Rule or Standing Order. Except as otherwise directed by the Chi Judge or Appellate Judge, a Tribal Court Judge may, for good cause, and with prior notice to all parties in the affected case, suspend any local rule, standing or administrative order in that case only.

ANNOTATIONS

See Rules of Tribal Court: LRCP; LRCSF; LRP632; LRCP; LRJP; LRSP and LRPOSC: Standing Orders, pp. 282-285 and p. 287. Administrative Orders, p. 264; LEO 202 (c)(Authority to Establish and Promulgate Tribal Court Rules); Cf. LEO 211 (d) and Rules of Appeals Court, LRAP, and LRAP 15.