

TITLE 1

GENERAL PROVISIONS

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CHAPTER 1.1 ADMINISTRATION OF TRIBAL COURT

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PRELIMINARY PROVISIONS

1.1.1 Constitutional Authority

This Code is adopted pursuant to the authority vested in the Burns Paiute Tribal Council under Article VI of the Constitution of the Burns Paiute Tribe.

1.1.2 Prior Inconsistent Codes and Ordinances Repealed

Any Code or Ordinance of the Tribe which conflicts in any way with the provisions of this Code is hereby repealed.

1.1.4 Amendment of Law and Order Code

This Code may be amended in the manner provided for by Burns Paiute Tribal law. Amendments and additions to this Code shall become a part of the Code for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of this Code.

1.1.5 Adoption by Reference Not A Waiver of Sovereign Power

The adoption of any law, Code or other document by reference into this Law and Order Code shall in no way constitute a waiver or cession of any sovereign power of the Burns Paiute Tribe to the jurisdiction whose law or Code is adopted or in any way diminish such sovereign power, but shall result in the law or Code thus adopted becoming the law of the Burns Paiute Tribe.

1.1.6 Sovereign Immunity

Except as expressly and specifically waived by a resolution or ordinance of the Tribal Council specifically referring to such, the Burns Paiute Tribe shall be immune from suit, and their officers and employees shall be immune from suit for any liability arising from the performance of their official duties. Nothing in this Code shall be construed to have waived the sovereign immunity of the Tribe, any Tribal entity, department, or program, or any Tribal official, director, manager, or employee.

1.1.7 Principles of Construction

The following principles of construction will apply to all of the Law and Order Code unless a different construction is obviously intended:

(a) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.

- (b) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- (c) Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of this Code unless a contrary meaning is clearly intended.
- (d) This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.
- (e) Whenever the meaning of a term used in this Code is not clear on its face or in the context of the Code, such term shall have the meaning given to it by the laws of the State of Oregon, unless such meaning would undermine the underlying principles and purposes of this Code.
- (f) If any provision of this Code or the application of any provision or any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.
- (g) Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.
- (h) Any other issues of construction shall be handled in accordance with generally accepted principles of construction giving due regard for the underlying principles and purposes of this Code.
- (i) In the event that typographical, citational, reference or other errors appear in this Code as a result of re-codification, reorganization, amendment or other changes to this Code, and where, as a result of such changes, it is clear that the Tribal intention differs from the literal language in the Code, the Court shall reasonably interpret and follow the general intent of the provision(s) in question in order to avoid unlikely, inconsistent, or strained consequences which may result from a literal reading.
- (j) Any references to this Code in any statute, regulation, policy, resolution, Tribal Court opinion or other material adopted or produced by any department or entity of the Burns Paiute Tribe existing before any duly adopted re-codification, reorganization or other changes in the material referenced shall be deemed to conform to and reflect such changes to the extent necessary and practical.
- (k) When there is a conflict between one provision of this Code which treats a subject in a general way and another which treats the same subject in a specific manner, the specific provisions will prevail.

ESTABLISHMENT OF COURT

1.1.40 Establishment of Court

A Court is hereby established for the Reservation, to be known as the Burns Paiute Tribal Court.

JURISDICTION

1.1.70 Burns Paiute Tribal Court Jurisdiction Defined

The jurisdiction of the Tribal Court and the effective area of this Code shall include all territory within the Reservation boundaries, the lands outside the boundaries of the Reservation held in trust by the United States for Tribal members of the Tribe, and the land known as "Old Camp", and it shall be over all persons therein. To the greatest extent permissible by law, the jurisdiction of the Tribal court shall apply to all persons on lands where the Burns Paiute Tribe may be authorized to enforce its interests or rights and members asserting rights held by the Tribe without regard to location.

1.1.71 Means to Carry Jurisdiction Into Effect

When jurisdiction is vested in the Court, all the means necessary to carry into effect are also given and in the exercise of this jurisdiction, if the course of proceeding is not specified in this code, any suitable process or mode of proceeding may be adopted which appears most conformable to the spirit of Tribal Law.

1.1.72 Concurrent Jurisdiction

The jurisdiction invoked by this Code over any person, cause of action or subject shall be exclusive and shall preempt any jurisdiction of the United States, any state, or any political subdivision thereof; except in those instances in which federal law provides otherwise. This Code does not recognize, grant or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

1.1.73 Implied Consent to Jurisdiction

Entrance by any person or his property into the Reservation or Tribal Court jurisdiction as defined in this Code, shall be deemed equivalent to and construed to be a consent to the civil jurisdiction of the Tribe and the Tribal Court, and a consent to criminal jurisdiction of the Tribe concerning any legal action pursuant to this Code, and shall further be deemed a consent to service or summons or process by registered mail with return receipt requested at his last known address; provided, however, that criminal jurisdiction of the Tribal Court shall not extend to trial of non-Indians.

1.1.74 Acts Submitting Person to Civil Jurisdiction of Tribal Court

(a) The Burns Paiute Tribe shall have civil jurisdiction over:

- (1) Any person residing or present within the Reservation or lands outside the boundaries of the Reservation held in trust by the United States for Tribal members of the Tribe;
- (2) Any person who transacts, conducts, or performs any business or activity within the Reservation by being present on the Reservation or by mail, phone, broadcast, cable either in person or by an agent or representative;
- (3) Any person who owns, uses or possesses any real or personal property situated within the Reservation, for any civil cause of action arising from such ownership, use or possession;
- (4) Any person who commits a tortious act or engages in tortious conduct within the Reservation;
- (5) Any person who damages a natural resource of the Tribe or any individual member of the Tribe;
- (6) Children and their parent(s), guardian, legal custodians or other persons with responsibility for or control of the child who leave the exterior boundaries of the Reservation and over whom the Court had jurisdiction at the time they left;
- (7) Persons living in a marital relationship within the Reservation notwithstanding subsequent departure from the Reservation, so long as the petitioning party has continued to reside on the Reservation;
- (8) Persons engaging in the act of sexual intercourse within the Reservation with respect to which a child may have been conceived;
- (9) Any real or personal property located on the Reservation, the determination of ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable;
- (10) All causes of action, which involve either the Tribe, its officers, agents, employees, property or enterprises, a member of the Tribe, a member of a federally recognized tribe, or any other matter which effects the interest or rights of the Tribe;
- (11) Any child custody proceeding as defined in the Indian Child Welfare Act, 25 USC §1903(1); or
- (12) Persons who commit a civil infraction as currently defined in Chapter 3.2 under this Code, or as may otherwise be adopted by the Burns Paiute Tribe.

(13) Persons who choose to enter into domestic relationships with tribal members and commit an offense involving domestic violence whether the offender is Indian or non-Indian. These persons shall be subject to the civil provisions of Chapter 5.3 including but not limited to traditional cultural disposition.

1.1.75 Acts Submitting Person to Criminal Jurisdiction of Tribal Court

(a) All crimes committed by any Indian within the boundaries of the Burns Paiute Reservation; and

(b) Except as otherwise provided in the Burns Paiute Tribal Law and Order Code, an Indian is subject to prosecution under the laws of this tribe for an offense that the person commits by the conduct of the person or the conduct of another for which the person is criminally liable if:

(1) Either the conduct that is an element of the offense or the result that is an element occurs within the Burns Paiute Indian Reservation; or

(2) Conduct occurring outside the Burns Paiute Indian Reservation is sufficient under the law of this tribe to constitute an attempt to commit an offense within the Burns Paiute Indian Reservation; or

(3) Conduct occurring outside the Burns Paiute Indian Reservation is sufficient under the law of this tribe to constitute a conspiracy to commit an offense within the Burns Paiute Indian Reservation and an overt act in furtherance of the conspiracy occurs within the Burns Paiute Indian Reservation; or

(4) Conduct occurring within the Burns Paiute Indian Reservation establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction which also is an offense under the law of this tribe; or

(5) The offense consists of the omission to perform a legal duty imposed by the law of this tribe with respect to domicile, residence or a relationship to a person, thing or transaction in the Burns Paiute Indian Reservation; or

(6) The offense violates a statute of this tribe that expressly prohibits conduct outside the Burns Paiute Indian Reservation affecting a legislatively protected interest of or within the Burns Paiute Indian Reservation and the actor has reason to know that the conduct of the actor is likely to affect that interest.

APPOINTMENT AND REMOVAL OF JUDGES

1.1.100 Chief Judge and Associate Judges

The Tribal Court shall consist of one Chief Judge whose duties shall be regular and permanent and such Associate Judge(s) and staff as are deemed necessary by the Tribal Court. The Associate Judge may be called into service when the occasion arises. Among other duties assigned by the Tribal Council and this Chapter, Associate Judges shall preside over court proceedings as assigned by the Chief Judge, sign court documents, complete case dispositions, monitor court officer conduct to maintain respect due to the Court and abide by the Tribes' Judicial Code of Conduct.

1.1.101 Appointment, Compensation and Term

Each judge shall be appointed by the Tribal Council and shall be compensated on a basis to be determined by the Tribal Council. Each judge appointed by the Council shall hold office for a period of not less than two (2) years, unless sooner removed for cause by the General Council for criminal conviction, misconduct, negligence, or absence from duty, upon due notice and an opportunity for an open hearing.

Misconduct judged sufficient for removal shall include, by way of example and not limitation:

- (a) Excessive use of intoxicants,
- (b) Immoral behavior,
- (c) Conviction of any offense other than minor traffic violations,
- (d) Use of official position for personal gain,
- (e) Desertion of office, or
- (f) Failure to perform duties.

The decision of the General Council shall be final. Action taken under or interpretation of this section shall be consistent with Article VII, Section 1 of the Constitution and Bylaws of the Burns Paiute Tribe.

1.1.102 Judicial Cooperation

All judges and personnel of the Tribal Court shall cooperate with all branches of the BIA and with all federal, state, county and municipal agencies, when such cooperation is consistent with this Code, but shall always bear in mind that their primary responsibility is to the people of the Tribe.

1.1.106 Judges Protem

In emergency situations, where a judge from the Tribal Court cannot be available, a judge from an established Tribal Court or an Indian Reservation or another qualified and

experienced Tribal Court Judge may hear cases and attend to other court duties until a Burns Paiute Tribal Judge again becomes available. Such Judge Protem shall be selected by the Tribal Council. Payment for the Judge Protem shall be as provided by the Tribal Council.

GENERAL COURT PROCEDURES

1.1.140 Sessions of Court

(a) Sessions of the Court for the trial of cases shall be held by the Chief Judge, or in case of his disability, absence or unavailability, by an associate judge, provided, however, that an associate judge may be called in to hear cases at any time for any reasonable cause by the Chief Judge. In the case of disability, absence or unavailability of both the Chief Judge and the associate judges, the Chief Judge shall appoint a trial judge from the current list of protem judges who have presided in the Burns Paiute Tribal Court. In the case of recusal of the Chief Judge, the Trial Court Clerk shall select a name from the above-referenced list.

(b) Upon the assignment of a case to a judge other than a Chief Judge or associate judge, notice shall be given to all parties of the assignment. The parties will then be given the opportunity to file written objections, within seven (7) days after receipt of notice, stating: 1) the party seeking the objection; 2) the reason for the objection; and 3) a request for reassignment.

(c) If recusal is made by an associate, the Chief Judge shall review the matter and make a determination. If recusal is made by the Chief Judge, an associate shall make a determination. If recusal is made by both the Chief Judge and the associate judges, the Trial Court Clerk shall automatically reassign the matter to another protem on the list. The determination of whether or not to assign to another protem judge is within the sole discretion of the reviewing judge. Each party is limited to one such objection per case.

1.1.141 Acting Chief Judge

The Chief Judge of the Court shall designate, in writing, one associate judge to act as Chief Judge whenever the Chief Judge is absent from the Reservation, is on vacation, ill or otherwise unable to perform the duties of his office. The acting Chief Judge may exercise all the powers of the Chief Judge. The duly appointed Chief Judge may at any time change his designation of the judge empowered to act as Chief Judge. In the event that the Chief Judge fails to designate a judge to act in his absence, the Tribal Council shall designate an associate judge as acting Chief Judge.

1.1.142 Rules of the Court, Procedures

The time and place of court sessions, and all other details of judicial procedure not prescribed by this Code shall be governed by Rules of Court promulgated as herein provided. It shall be the duty of judges of the Court to make recommendations to the

Tribal Council for enactment or amendment of such Rules of Court as they believe to be in the interests of improved judicial procedures. Rules of Court, enacted, or amended in the above manner, will be made a part of this Code, but failure to so codify them shall not affect their validity.

1.1.143 Disqualification of Judge

Any party to any legal proceeding hereunder, including trials and appeals, may accomplish a change of assignment of his case from one judge to another upon filing an Affidavit of Prejudice with the Court, giving satisfactory reasons for the change. The Affidavit shall be in written form and must be filed with the Court before any trial action whatever has been taken by the initial judge. The initial judge shall refer the affidavit to another judge for decision. Such an order of the Trial Court may be appealed immediately under the procedures established in the subchapter on Appellate Proceedings of this Chapter, and all further actions in the case will be stayed pending outcome of the appeal. Only one such change will be allowed. Such an order of the Appellate Court shall not be appealable.

SPOKESMEN

1.1.180 Spokesmen Appearing in Tribal Court

Any person appearing in Court shall have the right to a spokesman, at his own expense, to assist him in presenting his case, provided that such spokesman shall first have been admitted to the Tribal Court Bar. The Court may appoint a spokesman to assist any person, if in the discretion of the Court, it appears necessary to protect such person's rights. Such appointment is discretionary with the court. A spokesman need not be an attorney.

1.1.181 Tribal Court Bar Admission

To be admitted to the Tribal Court Bar, a person must:

- (a) Be of good moral character,
- (b) Be approved by the Court,
- (c) Sign and take the Spokesman's Oath,
- (d) Pay the Tribal Court Bar admission fee as set out in section 1.1.184,
- (e) Be at least 18 years of age.

1.1.182 Spokesman's Oath

The oath, which all persons desiring to appear as spokesmen in the Court shall take is as follows:

"Spokesman's Oath"

Burns Paiute Indian Reservation, ss:

I, _____, do solemnly swear:

- (a) I have read the Burns Paiute Law and Order Code and I am familiar with its contents;
- (b) I will respect and obey the Constitution of the Burns Paiute Tribe in all respects;
- (c) I will abide by the rules established by the Tribal Council and the Burns Paiute Tribal Court;
- (d) I will at all times maintain the respect due the Tribal Court and its officers;
- (e) I will not counsel or speak for any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Tribe unless it be in defense of a person charged with a public offense;
- (f) I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statement.
- (g) I will abstain from all offensive conduct in the Tribal Court.

Subscribed and sworn to before me on _____, 20____.

1.1.183 Tribal Court Bar Roster

The clerk of the Court will maintain a roster of all spokesmen admitted to practice before the Court. The clerk will also keep on file the signed oaths of all such persons.

1.1.184 Tribal Court Admission Fee

Every person wishing to appear as a spokesman in the Tribal Court will pay an annual admission fee of \$35.00. Every person seeking to be admitted to the tribal court bar shall pay a \$100 fee and a \$100 fee per year thereafter.

1.1.185 Tribal Court Bar; Disbarment

Any spokesman violating the Spokesman's Oath shall be subject to disbarment. The Judge shall prepare in writing a complaint against such spokesman, including reasons for disbarment. Within ten (10) days of receipt of such complaint, the Council shall hold

a hearing at which time the spokesman involved may present witnesses and a defense of his actions. The decision of the Council shall be final.

1.1.186 Contempt of Court

Any spokesman failing to maintain the respect due the Tribal Court or engaging in offensive conduct in the courtroom shall be deemed guilty of contempt of court and subject to immediate sentencing by the judge to imprisonment for a period not to exceed three (3) days, or a fine not to exceed \$100.00, or both the jail sentence and fine.

1.1.187 Appeal

Any person denied admission to the Tribal Court Bar or any spokesman found guilty of contempt of court by the judge may appeal in accordance with the subchapter on Appellate Proceedings under this Chapter. Such person or spokesman shall have the right to a hearing within ten (10) days of his denial or conviction and shall have the right to present witnesses and present a defense. The decision of a majority of the Appellate Court shall be final.

JURIES

1.1.220 Eligibility of Jurors

A list of eligible jurors shall be prepared by the Tribal Council each year. The Rules of Court shall make provision for the drawing of names eligible for service as jurors. Any native American over 18 years of age receiving services from the Burns Paiute Tribe who resides within the service area for at least one (1) year shall be eligible to be a juror. A person may decline jury duty upon good cause shown to the judge.

1.1.221 Number of Jurors

In any case a jury shall consist of six (6) jurors drawn from the current list of eligible jurors by the Court clerk or judge.

1.1.223 Instructions

The judge shall instruct the jury in the laws governing the case, and the jury shall decide in accordance with this Code. The judge will render judgment in accordance with the verdict and existing law.

1.1.224 Fees

Every person who is required to attend Court for selection or service as a juror shall be entitled to a fee of \$10.00 per day for each day his services are required in Court.

WITNESSES

1.1.250 Subpoenas

A judge of the Court or the tribal court clerk shall issue subpoenas for the attendance of witnesses either on his or her own motion or on the request of the Police Chief or other tribal police officer, or any of the parties to the case which subpoena shall bear signature of the judge or tribal court clerk issuing it. Service of such subpoena shall be by a regularly acting member of the police department or by a person appointed by the Court for that purpose.

1.1.251 Fees

Each witness answering such subpoena shall be entitled to a fee of \$20.00 per day for each day his services are required in Court, plus the current approved tribal mileage rate for travel to and from the Court. Witnesses who testify voluntarily shall be paid their actual traveling and living expenses incurred in the performance of their function by the party calling them. The fees to witnesses in civil actions shall be paid by the party calling them.

1.1.252 Subpoenas-Continued Trial/Hearing

If a trial/hearing is continued for any reason, counsel and/or the defendant must submit to the Court the names of witnesses they wish subpoenaed prior to each time a new trial/hearing is set.

APPELLATE PROCEEDINGS

1.1.280 Court of Appeals

All matters appealable from the Burns Paiute Tribal Court shall be appealed to the Northwest Intertribal Court of Appeals.

1.1.281 Limitations

There may be established by Rules of Court the limitations, if any, to be placed upon the right of appeal, as to the type of cases which may be appealed, as to the grounds of appeal, and as to the manner in which appeals may be granted, according to the needs of the Tribe.

1.1.282 Grounds for Appeal

Grounds for requesting a new trial or limited appeal on issues of law and/or fact shall be limited to one or more of any of the following:

(a) Receipt by the jury of any evidence, paper, document or book not allowed by the Court;

(b) Misconduct of the prosecution, judge or jury;

(c) Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial;

(d) Accident or surprise;

(e) Irregularity in the proceedings of the court, jury, or prosecution, or any order of the Court, or abuse of discretion, by which the defendant was prevented from having a fair trial,

(f) Error of law occurring at the trial and excepted to at the time by the defendant;

(g) That the verdict or decision is contrary to law and the evidence;

(h) That substantial justice has not been done. When the motion is based on matters outside the record, the facts shall be shown by affidavit.

1.1.283 Notice of Appeal

Within ten (10) days from the entry of judgment, the aggrieved party may file with the Trial Court written notice of appeal, and upon giving proper assurance to the Court, through the posting of a bond or any other way that will satisfy the judgment if affirmed, shall have the right to appeal, provided the case to be appealed meets the requirements established by this Code or by Rules of Court.

1.1.284 Notice of Appeal; Contents

A notice of appeal must:

(a) Be titled a Notice of Appeal;

(b) Specify the party or parties seeking the review;

(c) Designate the decision or part of the decision which the party wants reviewed, and/or be accompanied by a motion and affidavit which shall state with particularity:

(1) The grounds therefore pursuant to section 1.1.282;

(2) The relief or order sought; and

(3) The governing rules and/or laws of the Burns Paiute Tribe.

1.1.285 Stay of Execution

Unless otherwise provided by this Chapter, in any case where a party has perfected his right of appeal as established by this Code, the final order, commitment or judgment of the Trial Court shall be stayed pending the appeal, providing that in a criminal case the defendant shall not be released pending appeal upon a finding by the Trial Court that his release would create a hazard to the safety of the community or persons or property in the community or that bond or assurance is inadequate to assure his appearance.

1.1.286 Appellate Court Trial; Procedure

Within forty-five (45) days from the date of written notice of appeal, or as soon thereafter as the Appellate Court is able to hear the case, the Appellate Court shall convene for the first time, unless delay is warranted by good cause, to hear the case on appeal at such place as may be designated. At this initial hearing the Appellate Court shall review the record and hear oral arguments of counsel to determine whether or not the facts and/or laws as presented in the appealed case warrant a limited appeal on issues of law and/or facts, whether a new trial should be granted, or whether the appeal should be denied. A new trial shall be held at such time as is scheduled by the Appellate Court, to be no later than twenty (20) days after the initial hearing of the Appellate Court unless delay is warranted by good cause, and the court procedures shall be the same as in other cases before the Tribal Court.

1.1.287 Appellate Court-Qualifications

The appellate court judges shall be qualified as per the requirements of the Northwest Intertribal Court of Appeals.

1.1.289 Conflict of Interest Disqualification

In addition to disqualifications provided for in sections 1.1.143 and 1.1.287, no person shall be qualified to sit on a panel of the Appellate Court in any case wherein he has any direct interest or wherein any relative by marriage or blood, in the first or second degree, is a party.

1.1.290 Costs of Appeal

The party initiating the appeal shall bear all costs for an appeal, including but not limited to court costs, legal fees, travel, telephone costs and per diem. All costs incurred may be awarded to the prevailing party. However, in criminal cases costs shall not be assessed against the tribe in the event the defendant prevails. The party initiating the appeal shall pay a \$75.00 filing fee payable at or before the party files his notice of appeal. This filing fee shall be payable to the Burns Paiute Tribal Court.

1.1.291 Bond

Upon filing notice of appeal, the appellant shall post bond, deposit cash, or give other assurance as will in the judgment of the Trial Court give adequate assurance of the serving of the sentence, performance of the judgment, or payment of the fine or judgment in the event the case appealed is affirmed and payment of any court costs and fees incurred by the Tribal court in the event the matter is heard by justices of the Northwest Intertribal Court System in accordance with this code.

1.1.292 General Provisions

(a) Filing. If papers must be filed by a certain date, the document must be received by the Tribal Court Clerk by the close of business on that date.

(b) Service of Papers Required. All papers filed with the Tribal Court Clerk shall contain a certification that a copy has been served on all other parties. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service. Service may be personal or by mail. Service by mail is complete on mailing.

(d) Day. Means a calendar day. When an action is required on a day when the office of the Tribal Court Clerk is not open, the required action is due on the first day that the office of the Tribal Court Clerk is open for business.

1.1.293 Record on Appeal

The record on appeal shall consist of the original papers and exhibits filed in the Tribal Court, the docket entries, and the transcript of proceedings, if any. Any party to the appeal shall promptly order from the reporter a transcript of such parts of the proceedings deemed necessary for the appeal and shall pay for the costs of the transcript.

1.1.294 The Briefs and Motion Papers . General Provisions

(a) Briefs and all motion papers shall be printed or typewritten, with double spaced typing, on white 8 1/2 by 11 inch paper.

(b) An original and four copies of each brief, any appendix, and any motion papers shall be filed with the Tribal Court Clerk, accompanied by a certificate of service upon all counsel of record.

(c) The front cover of each brief and appendix, if a separate document, shall contain the title of the case, the case number, the title of the document (e.g., Brief of Appellant, Brief of Appellee, Appendix); and the name, address, and telephone number of the party's counsel.

(d) The brief of the appellant shall not exceed thirty (30) pages and shall be filed within thirty (30) days after the filing of the notice of appeal.

(e) The brief of the appellee shall not exceed thirty (30) pages and shall be filed within thirty (30) days after the filing of the appellant's brief.

(f) The appellant may file a reply brief, not to exceed fifteen (15) pages, within fifteen (15) days after the filing the appellee's brief.

(g) Where cases are consolidated or a joint appeal has been filed, the brief of the appellants and that of the appellee's shall not exceed the page limitations specified above.

1.1.295 Contents of the Briefs

The briefs shall contain under appropriate headings and in the order indicated:

(a) A table of contents with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(b) A statement of the nature of the proceedings and of the facts of the case.

(c) A list or statement of the issues presented for review.

(d) The argument, divided under appropriate headings into as many parts as there are points to be presented.

(e) A short conclusion stating the precise relief sought.

1.1.296 Appendices

No appendix is required. However, an appendix may be used to excerpt lengthy exhibits or quotations from transcripts or to set forth any other parts of the record to which the parties wish to direct the particular attention to the Appellate Court.

1.1.297 Preargument Conference

(a) Prior to the date set for the oral argument, the Tribal Court Clerk shall schedule a Preargument conference between counsel and, in appropriate cases, the parties, and an Appellate Court Judge who shall not be assigned to hear oral argument and decide the appeal.

(b) The purposes of the Preargument conference are: to consider the simplification of the issues at oral argument; to take any appropriate action to aid the proceedings at oral argument or the disposition of the case on appeal; and to determine whether the case can be resolved prior to oral argument.

(c) Except to the extent agreed upon by all parties to the appeal, the proceedings at the Preargument conference shall be deemed confidential and shall be conference shall be

deemed confidential and shall be brought to the attention of the Appellate Court Judge who will hear and decide the appeal.

(d) Failure of counsel to attend the Preargument conference may result in sanctions, including costs and payment of attorney's fees to the opposing party; the prohibition against appearing in any case before the Burns Paiute Court system; or other appropriate discipline.

1.1.298 Finality

The decision of the Appellate Court shall be final.

Appendix of Forms. Form 1

NOTICE OF APPEAL TO THE NORTHWEST INTERTRIBAL COURT OF APPEALS

Name of Appellant)
)
 v.) NOTICE OF APPEAL
)
Name of Appellee)

Notice is given that (Name of party taking the appeal) in the above named case appeals to the Northwest Intertribal Court of Appeals from the (order of judgment briefly described) entered in this action on _____, 20_____.

Party or Spokesperson

Date Signed

CLERK AND RECORDS

1.1.322 Copies of Laws

The Court shall be provided with copies of this Code, all other enactments of the Tribal Council, Rules of Court and all other regulations which may be applicable to the conduct of business of the Court.

DEFINITIONS

1.1.350 Adult

The term "adult" as used in this Code shall mean a person 18 years of age or older.

1.1.351 Agency

The term "Agency" as used in this Code shall mean the Burns Paiute Tribe, Burns, Oregon.

1.1.352 Bodily Injury

The term "bodily injury" as used in this Code shall mean any physical pain, illness or any impairment of physical condition.

1.1.353 Child or Minor

The term "child" or "Minor" as used in this Code shall mean any human of less than 18 years of age unless a lesser age is specified.

1.1.354 Code

The term "Code" or "BPTC" as used in this Code shall mean this Code and all Ordinances and other enactments of the Tribal Council.

1.1.355 Tribe

The term "Tribe" as used in this Code shall mean the Tribe of the Burns Paiute Indian Reservation, Oregon.

1.1.356 Council

The terms "Tribal Council", "Council" as used in this Code shall mean the Tribal Council of the Burns Paiute Tribe of the Burns Paiute Indian Reservation, Oregon.

1.1.357 Court

The terms "Court" and "Tribal Court" as used in this Code shall mean the Burns Paiute Tribal Court.

1.1.358 Deadly Weapon

The term "deadly weapon" as used in this Code shall mean any explosive or loaded or unloaded firearm or other weapon, destructive device, instrument, material or substance, whether animate or inanimate (other than a penknife without a switchblade)

which in the manner it is used, attempted to be used, threatened to be used or intended to be used is readily capable of causing death or serious bodily injury.

1.1.359 Member

The term "member" or "tribal member" as used in this Code shall mean any enrolled member of the Burns Paiute Tribe.

1.1.360 Officer, Police

The terms "Officer", "Tribal Officer", "Police Officer", "Police", "Tribal Police", and "Tribal Law Enforcement Officer" as used in this Code shall mean qualified law enforcement personnel of the Tribe or the Bureau of Indian Affairs.

1.1.361 Person

The term "person" as used in this Code shall mean any natural person, corporation, trust, unincorporated association, partnership, and federal, state, or local governments, agencies or subdivisions thereof.

1.1.362 Reservation

The term "Reservation" as used in the Code shall mean the Burns Paiute Reservation as set out by Article I, Section 2 of the Tribal Constitution. For purposes of the Tribe's civil regulatory authority, "Reservation" shall also mean all lands, wherever located, owned by the Tribe of the Burns Paiute Reservation, or any interest in lands held by the Tribe, whether or not such lands or interests are held in trust for the Tribe by the United States, and any lands, wherever located, held in trust by the United States for a member or members of the Burns Paiute Tribe.

1.1.363 Indian

The term "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43. "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

1.1.364 Indian Tribe

The term "Indian Tribe" means any Indian Tribe, band, nation or other organized group or community including Alaska Native village, or regional village, corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C §§ 1606.1628) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

1.1.365 Signature

The term "signature" as used in this Code shall mean the written signature, official seal or the thumb print or mark of any individual.

1.1.366 Time

In computing any period of time prescribed under this Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

RELATIONS WITH THE COURT

1.1.400 Contempt of Court

Any person failing to maintain the respect due the Tribal Court or engaging in offensive conduct in the courtroom shall be deemed guilty of contempt of court and subject to immediate sentencing by the judge to imprisonment for a period not to exceed 10 days, or a fine not to exceed \$100.00, or both the jail sentence and fine.

1.1.401 Acts or Failures to Act Which Constitute Contempt of Court

Any person may be held in contempt of Court for any of the following reasons:

- (a) Disorderly or contemptuous or insolent behavior, committed in immediate view and presence of the Court while in session,
- (b) Any breach of the peace, noise or other disturbance, which interrupts the proceedings of the Court;
- (c) Willful disobedience or resistance to any process, judgment, summons or order lawfully issued by the Court;
- (d) Deceit or abuse of process of the Court by a party or attorney or spokesperson to a judicial proceeding;
- (e) Acting as an attorney, officer spokesman or official of the Court without authority;
- (f) Refusing to be sworn or answer as a witness; and
- (g) Any other interference with the process, proceedings, or dignity of the court or a judge of the Court while the Court is in session.

1.1.402 Civil Contempt

A civil contempt consists of the willful refusal to perform an act that is yet in the person's power to perform after being ordered by the Court to perform the act, or the failure, in the presence of the Court, to comply with an order of the court or Court rule. Relief in a civil contempt may include:

- (a) A fine payable to the Court; or
- (b) The imposition of a fine or imprisonment for the purpose of coercing performance. Imprisonment shall remain in effect for so long as the party in contempt has the ability to comply with the Court order or directive, and refuses. Persons incarcerated under this statute shall be brought to Court on a regular basis for the Court to determine if the contempt or continues in his refusal to purge of the contempt. A person shall not be entitled to reimbursement of a fine for the reason that he subsequently complies with the Court order.

Compliance with the Tribal Court's order prior to a contempt hearing held in relation to such order shall be a full defense to prosecution for civil contempt for refusal to comply with such order.

1.1.403 Criminal Contempt

- (a) Criminal contempt is a past act where a person knowingly or willfully violates a Tribal Court rule or order of the Court.
- (b) Criminal contempt is a Class B offense as provided by the Criminal Offenses provisions of this Code.

1.1.404 Contempt Procedure

- (a) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and as such may be adjudged and punished summarily as provided in this subchapter.
- (b) All other contempts shall be determined at an outside hearing. Notice of the hearing shall be given orally by the judge in open Court in the presence of the defendant, upon the filing of a complaint by the prosecutor, by an order to show cause or the issuance of an arrest warrant. The notice shall state:
 - (1) The time and place for the contempt hearing, allowing a reasonable time for the preparation of the defense
 - (2) The exact contempt charges and the essential facts constituting such charges;
 - (3) Whether the contempt proceedings are civil or criminal as provided by this Chapter; and

(4) The sanctions which may be imposed against the defendant.

(c) In proceedings involving other than direct contempt cases if the charge involved disrespect to or criticism of a judge, such judge is disqualified from presiding at the trial or hearing except with the defendant's consent. If the defendant does not consent the case shall be presided over the any other available Tribal Judge.

COURT FEES

1.1.500 Civil Filing Fees

Plaintiff/Petitioner Filing Fee \$50.00

First Appearance Fee by defendant or respondent \$25.00

Marriage License Fees \$25.00

1.1.510 Trial Fees

Jury Panelists and alternates \$10.00/day or part day Shall be reimbursed to the court by party demanding jury trial.

Meals & Mileage Shall be reimbursed to the court by party demanding jury trial, at Federal rate.

Bond for Court costs Costs of summoning panel, compensation to panel & alternates, costs of meals & mileage. Party demanding jury trial may be required to post bond not to exceed \$5,000 at Court's discretion.

Witness Fees \$20/day or part day, transportation costs. Shall be paid by party requesting subpoena.

Expert Witness Reasonable Fee If applicable, shall be paid by party calling witness.

1.1.520 Appeals

Filing Fee Paid by party filing appeal. \$75.00

1.1.530 Court Fees

Child Support Cases \$2.00/payment

Photocopies \$.25/page

Certification \$2.00/page

Audio Tapes	\$10.00
Practice Manual in Binder	\$35.00
Practice Manual contents by e-mail	\$15.00
Practice Manual CD	\$15.00

1.1.540 Miscellaneous Court Fees

Fees & Costs:

Court time apportioned for fractions of an hour	\$50.00/hr
Clerk's time apportioned for fractions of an hour	\$15.00/hr.
Jail Time	\$65.00/day
Filing & Docketing Copy of Foreign Judgment or Complaint seeking enforcement of a foreign judgment.	\$75.00

Application for Writs of Execution of Garnishment	\$75.00
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Civil Process, Issuing & Serving Subpoena's	\$25.00
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JV Probation Fees	\$50.00
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1.1.550 Bar Admission Fees

Annual fee due at admission and each calendar year thereafter.	\$100.00
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Practice Manual in binder with copies Of Rules of Practice	\$35.00
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Practice manual contents by e-mail	\$15.00
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Practice Manual CD	\$15.00
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Spokesman Fee - Annually	\$35.00
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1.1.560 Waiver of Fees

The Court may waive filing fees upon well-documented showing of grave need. Attorneys appearing pro bono need not pay filing fees.

CHAPTER 1.2

RULES OF COURT

CHAPTER 1.2 RULES OF COURT

GENERAL RULES

1.2.1 Conduct

All court proceedings shall be conducted in a dignified and respectful manner. All persons addressing the Court shall arise and shall speak in a clear and courteous manner.

1.2.2 Time

All trials, both civil and criminal, shall be commenced at a designated time determined by the judge, with reasonable notice of the time being given to the parties.

1.2.3 No Discussion with Jurors

No person, including members of the Court's staff, any of the parties or witnesses, or any other person, shall discuss with any known juror, any case pending before him, or which may come before him, either before or during the trial and any juror who has any personal knowledge about the case or who has discussed it with any of the parties, witnesses or Court officials, shall be excused by the judge.

1.2.4 No Discussion with Judge

No witnesses or party to any case shall under any circumstances either before or during trial, attempt to discuss any case pending before the Court with any of the judges, except in open court, and with either the clerk or one of the other judges present, and shall under any circumstances attempt to influence the Court's decision unless in the course of regular Court proceedings.

1.2.5 Trial by Jury; Notice to Court (10-day Rule)

The Court must be notified by the defendant ten (10) days prior to a scheduled jury trial that a jury trial is still requested, or the right to a jury trial is waived.

1.2.6 Jury Instructions; When Filed

All jury instructions submitted for jury trials must be presented to the Court three (3) days prior to the scheduled jury trial. The instructions must be made available to opposing counsel at this time.

1.2.7 Withdrawal of Counsel – Criminal

Whenever a criminal cause has been set for trial, no counsel shall be allowed to withdraw from said cause, except upon written consent of the Court, for good and sufficient reason shown.

1.2.8 Service on Papers Filed

Whenever a party files a brief or other legal document with the Court, that party shall serve a copy of the legal document on opposing counsel three days before trial, and file such certificate of service with the Court.

1.2.9 Omnibus Hearing (Pretrial)

(a) When a plea of not guilty is entered, the Court may set a time for an omnibus hearing. If the hearing is not set at the arraignment, counsel must request the Court not less than 20 days prior to trial and a hearing shall be set for not less than 15 days prior to trial. Pretrial motions must be submitted to the Court, with a copy to opposing counsel, not less than 3 days prior to the omnibus hearing.

(b) Failure to raise or give notice at the hearing of any error or issue of which the party concerned has knowledge may constitute waiver of such error or issue.

(c) Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the Court in the interests of justice.

(d) At the conclusion of the hearing, a summary memorandum shall be made indicating disclosures made, rulings and orders of the Court, stipulations, and any other matters determined or pending.

1.2.10 Timely Filing of Motions

A written motion, including those which may be heard ex parte, shall be filed and served on opposing party no later than five (5) days prior to the time specified for the hearing, unless a different period is fixed by these rules, by order of the Court or for good cause shown. Motions shall be supported by affidavit, which shall be served with the motion. Opposing motions and affidavits shall be filed and served on opposing parties no later than one (1) day prior to the hearing, unless the Court permits them to be filed at some other time. All motions shall cite governing rules and/or laws of the Burns Paiute Tribe.

1.2.11 Applicable Law

In all criminal cases the Court shall apply, in the following order of priority unless superseded by a specific section of the Law and Order Code, any applicable laws of the Burns Paiute Tribe, tribal case law, state law, federal law and international law.

1.2.12 Criminal/Civil Recording Tape Retention

Tapes used in the recording of criminal and/or civil matters shall be retained by the Burns Paiute Tribal Court for a period of not less than three years from the date of the last recorded matter on the tape.

1.2.13 Criminal File Retention

Criminal case files shall be retained by the Court for a period of not less than three (3) years after the date of filing, provided:

(a) That the file has been closed at least one (1) year prior to destruction date and that no activity, excluding appeal, has occurred during that period.

(b) That all important information (citation date, charges, arrest warrants, final dispositions, completion dates, etc.) are recorded on permanent index cards that will be retained indefinitely by the Court; and

(c) That all files shall be disposed of in a manner consistent with regards to destruction of these types of documents.

TRIAL PROCEDURE

1.2.40 Impaneling the Jury

In cases to be tried to a jury, the jurors shall be selected in advance of trial under a procedure to be established by the Chief Judge. Six members of the jury shall then be seated.

1.2.41 Swearing in Witnesses

All witnesses shall be administered an oath by the judge, clerk or bailiff as follows: "Do you swear (or affirm) to tell the truth in the matter now before you?"

1.2.42 Conduct of Trial

Plaintiff shall make the opening statement setting forth the charge or claim for relief against the defendant. The defendant shall have an opportunity to make a statement of his position. Upon the conclusion of such statement, the plaintiff shall call such witnesses and produce such exhibits as he may see fit. The plaintiff shall thereafter, in rebuttal, have an opportunity to call such witnesses and produce such evidence as he may see fit to rebut the evidence by the defendant. Both the plaintiff and defendant shall have the right to cross-examine witnesses.

1.2.43 Final Argument

Upon the conclusion of the evidence, the plaintiff shall be given an opportunity to argue his case. The defendant shall then be given an opportunity to argue his case, and the

plaintiff shall be given an opportunity to make a closing argument. Further argument may be allowed at the Court's discretion.

EVIDENCE

1.2.50 Purpose

The purpose of the Burns Paiute Tribal Evidence Code is to secure fairness in administration, eliminate unjustifiable expense and delay, and to promote the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

1.2.51 Short Title

This chapter shall be known and may be cited as the Burns Paiute Tribal Evidence Code.

1.2.53 Definitions

(a) "Common Law" - law which originated in custom and use over a long period of time and which has gained its authority and acceptance by its continued use year after year.

(b) "Competent" - evidence that is reliable and relevant to the issues that are before the Tribal Court.

(c) "Cross-Examination" - the examination of a witness by the opposing party.

(d) "Direct Examination" - the examination of a witness by the party who has called that witness in support of their case.

(e) "Evidence" - anything that a party offers in Court to help prove his side of the case. It can be oral testimony or material things such as exhibits.

(f) "Hearsay" - the presentation of oral evidence that is not within the personal knowledge of the witnesses at trial. Most often, it is merely the restatement of what a witness has heard others say.

(g) "Judicial Notice" - the acceptance by the Tribal Court of certain facts that do not have to be proved by expert testimony because they are generally accepted and regarded as established by common knowledge.

(h) "Material" - evidence that is important and necessary and tending to prove or disprove an issue in question before the Tribal Court.

(i) "Oath" - the affirming of the truth of a statement.

(j) "Preponderance of Evidence" - evidence that leads the trier of fact to be convinced that the fact in issue is more probable than not.

(k) "Set-Over" - the rescheduling of a trial or hearing for a later time. It may be granted for good cause upon request of either or both parties.

(l) "Sustained" - to support or approve.

(m) "Testimony" - oral evidence which is given by a competent witness under oath.

1.2.54 Scope

The Tribal Court is not bound by common law rules of evidence or the rules of evidence applied in state or federal courts.

1.2.55 Burden of Presentation

(a) All cases before the tribal Court will be decided upon the evidence. Mere argument will not be sufficient to carry the required burden of presentation of evidence.

(b) Conviction in a criminal case requires that the Tribes prove the guilt of the defendant beyond a reasonable doubt.

(c) In a civil action, the plaintiff or petitioner will not prevail unless they have presented a preponderance of the evidence in support of their claim.

1.2.56 Admissibility

(a) Appearance by self-representation, by Tribal Court Spokespersons, or Child Support Investigators dictates that the Tribal Court must be liberal in the admission of evidence.

(b) All evidence may be admitted that can be shown to be relevant and material to the case.

(c) Fairness will dictate the decision of the Judge on challenges to admissibility of evidence. The Tribal Court may avail itself of any recognized and authoritative materials, books, or documents as guidance in reaching a decision on the admissibility of evidence.

(d) Relevant evidence of customs and traditions of the Tribes shall be freely admitted.

1.2.57 Hearsay

Hearsay evidence will be admitted if the Court determines that it is credible.

1.2.58 Exclusion of Evidence

At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk its admission will do the following:

- (a) Create a substantial risk of undue prejudice; confuse the issues; or mislead the jury; or
- (b) Unfairly surprise the opposing party.

1.2.59 Judicial Notice

- (a) Upon request of a party, the Tribal Court may take judicial notice of specific facts that are so certain as not to be subject to reasonable dispute.
- (b) Specific facts are propositions which are common, everyday knowledge on the Burns Paiute Reservation and which the average person is presumed to realize, understand and know.
- (c) Specific facts that are entitled to judicial notice need not be pleaded or proved. The Tribal Court Judge will direct the jury to find that such facts are true.

1.2.60 Expert Opinion

The Tribal Court will deny the admission of testimony offered as expert opinion where that opinion could reasonably be drawn by a person lacking expert qualifications and which would not normally be considered the subject of expert's testimony.

1.2.61 Testimonial Evidence and Examination

- (a) Testimony offered by a witness is admissible only if offered under a sworn oath. If for any reason, a cross-examination cannot be made of a witness who testified on direct examination, the testimony of that witness will be stricken from the record.
- (b) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.
- (c) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action unless a privilege applies. A party may impeach his own witness.
- (d) Cross examination shall be limited to the general scope of direct examination provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.
- (e) A defendant in a criminal trial may not be compelled to testify. Where a defendant elects not to testify, it shall not be taken as evidence or an indication of guilt. Where a

criminal defendant does voluntarily testify, however, he is then subject to direct, cross, redirect and re-cross examination in the same manner as any other witness.

1.2.62 Depositions in Lieu of Testimony

(a) Whenever a witness is unable, for good cause shown, to be present at a scheduled court proceeding, the testimony of that person may be taken and preserved by deposition.

(b) Depositions may be scheduled by agreement between the parties or by order of the Tribal Court. Where the need for a deposition is challenged, the party seeking the deposition has the burden to show that the testimony would be material and necessary and that the witness would be otherwise unavailable.

(c) All depositions must be taken under oath and each party or representative must be present. A defendant in a criminal case must be present personally unless he has waived that right in writing. In no instance will a deposition be taken from a criminal defendant without his consent.

(d) Objections will be made where appropriate during the taking of a deposition. The tribal Court will rule upon the objections as soon as possible after receiving a transcript or recorded tape, but in no instance, later than the time of trial. Where an objection is sustained, it will be stricken from the record.

(e) At a scheduled trial or hearing, all or any part of a deposition may be entered into evidence in the same way as if it were live testimony being offered. If only a part of a deposition is to be entered during the proceeding, the opposing party may move that all the material be offered and admitted at the same time.

(f) In a jury trial, the Tribal Court Judge shall fully explain the procedure and necessity for a deposition.

1.2.63 Investigations

The production of evidence is the responsibility of the parties. Requests for set-over of a trial date pending outcome of an investigation will be granted by the Court only for a reasonable period of time.

JURY INSTRUCTIONS; JUDGMENTS

1.2.70 Jury Instructions; Applicable Law

In all jury cases, after final argument, the judge shall instruct the jury as to the particular section of this Code, or any other applicable law that governs the case and shall read the jury its provisions. Similarly, if a custom of the Tribe governs the case, the judge shall instruct the jury as to the exact custom and manner in which it is to be applied.

1.2.71 Jury Instructions – Civil

In a civil jury case, the judge shall instruct the jury that the plaintiff has the burden of proving his case by the greater weight of the evidence and that if they find that he has proved his case by the greater weight of the evidence, then their verdict should be for the plaintiff, but, if on the other hand, they find that he has not proved his case by the greater weight of the evidence, then their verdict should be for the defendant.

1.2.73 Jury Instructions – Criminal

In a criminal jury case, in addition to reading the jury the applicable governing law and instructing the jury regarding applicable Tribal customs, the judge shall instruct the jury that the defendant is presumed to be innocent and must be proven guilty beyond a reasonable doubt and that if the jury believes beyond a reasonable doubt that the defendant is guilty, then they should find him guilty, but if they do not believe beyond a reasonable doubt that he is guilty, then they should find him not guilty.

1.2.74 Jury Instructions By a Party

In all jury cases, either party may propose instructions to the jury, which may be allowed by the judge if he finds that such instructions further the interests of justice.

1.2.75 Jury Instructions – Final

In all jury cases, the judge shall instruct the jury that they shall retire to consider the matter and that each juror shall be given an opportunity to state his opinion, that they shall elect a foreman and that their decision shall be by unanimous vote in criminal cases and a majority of at least four in civil matters.

1.2.76 Verdict and Judgment; Jury Trial

When the jury members reach a verdict, they shall return the verdict to the judge in open court with the parties present, and the judge shall enter judgment upon the verdict in open court or within a reasonable time after the trial. If the jury is unable to reach a verdict, then a new trial shall be impaneled and the case shall be retried.

1.2.77 Judgment; Non-Jury Trial

After final arguments in non-jury cases, the judge shall decide the case and render a judgment in open court or within a reasonable time after the trial.

1.2.78 Appeal

Any person aggrieved by the verdict of the jury or the judgment of the Court shall have the right to appeal such decision as provided in the Subchapter on Appellate Proceedings under Chapter 1.1.

1.2.79 Stay Pending Appeal; Bonds

If a party is granted an appeal, that party must then, in writing, request a stay of judgment pending the outcome of the appellate procedure. At that time, the appellant must also make provisions for a bond, which is discretionary with the Court.

1.2.80 Limited Appeals

A party requesting an appeal can request such appeal to be limited to conclusions of law, or facts based on the trial court record. Such request must be in writing, and must be submitted to the Court at the same time as the Notice of Appeal.

LIMITATIONS OF ACTIONS

1.2.100 Civil

All civil actions must be commenced within one (1) year from the date of act or omission which is the subject of the complaint or petition, except that if the act or omission is not of such character as to immediately manifest itself then one (1) year from that date that a reasonably prudent person would have discovered said act or omission. Any civil action not brought within the time limitations set forth above shall be forever barred in the Tribal Court.

TITLE 2

RULES OF PROCEDURE

TITLE 2 RULES OF PROCEDURE

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CHAPTER 2.1

CRIMINAL ACTIONS

CHAPTER 2.1 CRIMINAL ACTIONS

2.1.1 Scope of the Rules

(a) These rules shall govern the procedure in all criminal proceedings in the Burns Paiute Tribal Court and all preliminary and additional procedures as specified herein.

(b) Every proceeding in which a person is charged with an offense or crime and brought to trial therefore is a criminal proceeding.

(c) These rules shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unjustifiable expense and delay in the just determination of criminal proceedings.

2.1.2 Authority and Basis of Decisions

(a) In cases otherwise properly before the Burns Paiute Tribal Court and Court of Appeal decisions on matters of both substance and procedure will be based, in sequence, upon the following:

(1) The Constitution of the Burns Paiute Tribe.

(2) The Indian Civil Rights Act, 25 U.S.C. Sect. 1302 et. Seq.

(3) Ordinances of the Burns Paiute Tribe.

(4) Resolutions of the Burns Paiute Tribe.

(5) The customs, traditions and culture of the Burns Paiute Tribe.

(6) Laws, rules and regulations of the United States, the State of Oregon, other states, and Indian Tribes and cases interpreting such laws, rules and regulations.

(7) The Common Law.

(b) The Burns Paiute Tribal Court and Courts of Appeals shall not recognize or apply any federal, state or common law, rule or procedure which is inconsistent with either the spirit or the letter of either the Tribal Constitution, approved ordinances, resolutions, or with the customs, traditions or culture of the Burns Paiute Tribe, unless otherwise required by Federal Law.

2.1.10 Preliminary Provisions

(a) Prosecution of offenses.

(1) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court, by a court of competent jurisdiction. No incarceration or other disposition of one accused but not convicted of an offense, under these rules shall be deemed, a punishment.

(2) All criminal proceedings shall be prosecuted in the name of the Burns Paiute Indian Tribe as Plaintiff, against the person charged with an offense, referred to as the defendant.

(b) Rights of the defendant. In all criminal proceedings the defendant shall have the following rights:

(1) To appear and defend in person or by counsel. The defendant has the right to represent himself/herself, or be represented by an attorney or any other person admitted to practice before the Burns Paiute Tribal Court, but no defendant shall have the right to have a professional counsel provided at the Tribe's expense. However, the presiding Judge may order such fees to be paid, if it is determined to be necessary to protect that person's civil rights in a criminal or civil matter, and the Court or Tribal Council determined such funds are available. Such determinations will be on a case by case basis.

(2) To be informed of the charges against him/her and to have a copy of the complaint.

(3) To testify on his/her own behalf, or to refuse to testify about the charges against him/her; provided, however, that once the defendant takes the stand to testify to any matter relevant to the immediate proceedings against him/her, the defendant shall be deemed to have waived all right to refuse to testify in that criminal proceeding.

(4) To confront and examine all witnesses against the defendant, subject to the rules of evidence.

(5) To compel by subpoena the attendance of witnesses in the defendant's own behalf.

(6) To have a speedy and public trial by an impartial judge or jury.

(7) The right to appeal any final order, commitment or judgment.

(8) To prevent his/her present spouse from testifying against the defendant, except: (A) In any case when the offense charged is alleged to have been committed against the spouse, or the children of either the spouse or the defendant or against the marital relationship; (B) Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.

(9) Not to be twice put in jeopardy for the same offense by the Burns Paiute Tribal Court.

(c) Limitations.

(1) A complaint shall be filed within the periods specified following the commission of an offense:

(A) A prosecution for the misuse of public monies or the falsification of public records and may be commenced within ten years after the offense was committed.

(B) A prosecution wherein fraud is a material element, other than for a crime described in section (A) herein above, shall be commenced within three years after its commission became known or should have become known.

(C) Except as otherwise provided by the laws of the Tribe, prosecutions for offenses must be commenced within three years after the offense occurred or; in the event of a sex crime where the victim was a minor at the time the crime is alleged to have occurred, prosecution must be commenced within six years after actual discovery by the tribe or within six years from the time the victim attains the age of majority whichever occurs first.

(D) For the purposes of subsection (B) of this section, a prosecution is commenced when a complaint is filed.

(E) If, when a cause of action accrues against any person, the person is concealed, either on or off the reservation, such action may be commenced within the applicable period of limitation in this chapter after the person's concealment terminates; and if, after a cause of action has accrued against any person, the person shall become concealed, the time of the concealment of the person shall not be deemed or taken as any part of the time limited for the commencement of such action.

(2) The period of limitations shall begin upon the commission of the offense. The period begins to run on the date when the offense occurred or the date when any member of the Burns Paiute Law Enforcement Division learned of such offense, or forever thereafter be barred. Provided, that the prosecution of the offense by a separate sovereign shall toll this statute for the duration of that proceeding, including all appeals and the period of limitation shall not run during any period when the defendant is not physically within the jurisdiction of the Burns Paiute Tribe.

(d) The Complaint

(1) The prosecution for a criminal violation of the Burns Paiute Law shall be initiated by a written complaint. Each complaint shall contain the name of the defendant, a short description of the facts constituting the offense charged, and the date, time and place the offense occurred.

(2) No complaint shall be valid unless signed by the complainant or tribal prosecutor and witnessed by a tribal judge, court clerk or notary public, except in cases where a tribal police officer has issued a citation in lieu of arrest.

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

(e) Arrest/Hot Pursuit

(1) No police officer shall arrest any person for any offense defined by this Code or by federal law, except when the offense has occurred in the presence of the arresting officer, or the officer has probable cause to believe that the person arrested has committed an offense, or the officer has a warrant commanding the officer to apprehend the person.

(2) Any police officer who observes any person within the Tribe's jurisdiction, as provided by the Burns Paiute Tribal Court Rules of Procedure, committing an offense defined by this Code or by state or federal law or who has probable cause to believe that the person has committed an offense; may pursue and capture the person or seize and impound the property in the suspect's possession if Suspect attempts to flee the geographical jurisdiction of the Burns Paiute Tribe.

(f) Warrants or Summons

(1) Except when a citation is issued under these rules, upon the issuance of a complaint, a warrant of arrest or a summons shall be issued to bring the named defendant before a Judge of the Burns Paiute Tribal Court.

(2) When a summons is issued, it shall name the defendant, the offense charged, and order the defendant to appear before a Tribal Court Judge within ten (10) days from the date of service or within such other time as is provided in the summons to enter a plea to the charge. If a defendant fails to appear in response to the summons, a warrant of arrest shall be issued.

(3) Warrants and summons may be served by any Tribal Police officer or any person over the age of eighteen (18) years designated to perform that function by the Chief of Police or a Tribal Court Judge.

(A) Service may be made anywhere within the geographical jurisdiction of the Burns Paiute Tribe.

(B) The date, time, and place of service or arrest shall be endorsed on the warrant or summons along with the name of the person serving it. A copy will be left, with the person served and a copy shall be returned to the Court.

(C) In the event a person is arrested pursuant to a warrant issued under this section, the officer need not have the warrant in his/her possession at the time of arrest, but if the officer doesn't, the officer shall notify the defendant that a warrant has been issued and the nature of the charge, and shall provide the defendant with a copy of the warrant and complaint no later than the time of arraignment.

(D) If a defendant refuses service of a summons or if the defendant's whereabouts remain unknown after a reasonable search an arrest warrant shall be issued.

(g) Search warrants

(1) Every judge of the Tribal Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court. However, no warrant of search and seizure shall be issued except upon a presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation and charging the commission of an offense against the Tribe. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and seized and bears the signature of a judge of competent jurisdiction. Service of warrants of search and seizure shall be made by an officer.

(2) An officer may search or seize property without a warrant in circumstances under which warrantless searches are permitted by federal criminal law.

(h) Citations, Contents, Effects, Procedures

(1) Whenever a person is arrested for a violation of Burns Paiute Tribal law, the arresting officer, or any other officer, may serve upon the arrested person a citation and notice to appear in Court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:

(A) Whether the person has identified himself satisfactorily;

(B) Whether detention appears reasonably necessary to prevent imminent bodily harm to the arrested person or to another, injury to property, or breach of the peace;

(C) Whether the person has ties to the Tribe or is a local resident, so as to provide reasonable assurance of arrested person's appearance before the Court, or whether there is substantial likelihood that he/she will refuse to respond to the citation; and

(D) Whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful process of the Court.

(2) The citation written to the offender by the officer shall include the name of the arrested person, his/her address, the date of birth and sex, the date, time and place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer.

(3) The citation shall also state the time and place at which the person is to appear in Court to hear the charges against him/her and post bail, which shall be not less than 72 hours after the date of the citation, nor more than 30 days after the date of citation.

(4) If a defendant fails to appear, the judge may issue a warrant of arrest and may order any bail deposited by the defendant as hereinafter set forth forfeited.

(i) Arraignment

(1) As soon as reasonably possible after arrest but not more than seventy-two (72) hours thereafter excluding Saturdays, Sundays and holidays or within the period designated on a summons, the defendant shall appear or be brought before a Tribal Court Judge, and the defendant shall be advised of the defendant's right to counsel, and the defendant's rights under the Indian Civil Rights Act of 1968, USCA 25-1302. If the defendant desires, but does not presently have counsel, the defendant will be given a reasonable time to secure counsel at the defendant's own expense, before entering his/her plea.

(2) At that time, the complaint will be read to the defendant and the defendant will be asked to enter a plea.

(3) The defendant will enter a plea or the Court will enter one for him/her, then the defendant will be advised regarding bail or sentencing; whichever is appropriate.

(4) If the defendant has not received a copy of the complaint, one will be given to him/her.

(j) Joinder of Offenses and Defendants

(1) Two or more offenses may be charged in the same complaint in a separate count for each offense if the offenses are of the same character or based on the same act or transaction or if they constitute part of a common scheme or plan.

(2) Two or more defendants may be charged in the same complaint if it is alleged that they have taken part in the same act or transaction constituting the offense or offenses.

(3) Such defendants may be charged in one or more counts together or separately but all need not be charged on each count.

(k) Pleas

(1) A defendant may plead guilty, not guilty or no contest. The Court will not accept a guilty plea without first determining that the defendant made the plea voluntarily with an understanding of the charges against him/her and the possible penalties. If the defendant refuses to plead or if the Court refuses to accept a guilty plea, the Court shall enter a plea of not guilty. The Court shall not enter a judgment on a guilty plea unless there is a factual basis for the plea.

(2) The defendant, with the consent of the prosecuting attorney and the Court, may plead guilty to any lesser offense included in the complaint or to any lesser degree of the offense charged.

(l) Time of Trial

(1) When the defendant is brought before the judge upon a warrant of arrest the case shall be set for trial within 90 days unless continued for cause or at the request of the defendant. Bail shall then be set in accordance with the section on Bail, Bonds and Fines under these Rules.

(2) When the defendant is summoned before the judge pursuant to a citation as provided herein, the defendant shall appear on the date indicated on the citation to hear the charges against the defendant, post bail, enter a plea, and be assigned a trial date. Trial shall be set within 90 days unless continued for cause or at the request of the defendant.

(3) A defendant may post bail, enter a plea, and request a trial date prior to the return date on the citation if the defendant so desires, provided, that bail or other bond satisfactory to the judge is posted. A trial date shall be set within 90 days of the return date on the citation unless continued for cause or at the request of the defendant.

(4) Notwithstanding the foregoing herein above, a defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment.

(m) Bail and Bonds

(1) Except as provided herein, every person charged with any offense before the Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the Burns Paiute Tribe. These members must reside within the boundaries of the Tribe's geographical jurisdiction and shall execute an agreement in compliance with the form provided therefore to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of the Burns Paiute Tribal ordinance for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the clerk or

any bonded employee authorized by the Court to accept bail. All such bonds shall be promptly filed with the clerk.

(2) In lieu of bail, a person charged with any offense may be released on his/her personal recognizance (PR) without posting bail or bond, pursuant to the discretion of the judge. In determining whether to grant PR, the judge may consider the following factors:

- (A) Whether such person has identified himself/herself satisfactorily;
- (B) Whether detention appears necessary to prevent imminent bodily harm to such person or to another, injury to property, or breach of the peace;
- (C) Whether the person has ties to the Tribe or is a local resident, so as to provide reasonable assurance of his/her appearance before the Court, or whether there is substantial likelihood that the accused will refuse to appear for trial; and
- (D) In any case, to secure his/her release, the person must give written promise to appear in Court as required by the citation.

(3) The Chief Judge may establish a bail schedule for all offenses under Burns Paiute Tribal Law. Any person arrested and taken into custody for violation of such code may be released upon posting the specified bail with the clerk, or other person authorized by the Court to receive bail, unless released on personal recognizance or detention is ordered by the Court.

(4) The judge may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself/herself, the Tribe, or the public, if released, or if there is a substantial likelihood that the person will not appear for trial.

(n) Fine Schedule

The Chief Judge may also establish a schedule for fines for specified violations of this Code, within the limits prescribed by this Code and the section establishing the offense.

(o) Pleadings and Pre-Trial Motions; Defenses and Objections

Pleadings in criminal proceedings shall consist of the complaint and the plea of guilty, not guilty or no contest. All other pleas and motions shall be made as follows:

(1) All defenses or objections capable of determination other than at trial may be raised by motion before trial.

(2) Defenses and objections based on defects in the complaint other than it fails to show jurisdiction in the Court or fails to charge an offense may be raised only by a pre-trial motion or it shall be deemed waived, unless the Court on a showing of good cause grants relief from the waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses, or noted by the Court on its own motion, at any stage of the proceedings.

(3) Pre-trial motions shall be made in writing and filed with the Court at least five working days before the trial date. The motions will be argued before trial on the trial date unless the Court directs otherwise.

(4) If a motion is decided against the defendant, the trial shall proceed as scheduled. If a motion is decided for the defendant, the Court shall proceed or enter judgment as is appropriate.

(p) Discovery and Inspection

(1) The Prosecutor and/or the tribal police, shall upon request, allow the defendant or his/her representative to inspect and copy any statements or confessions, or copies thereof, made by the defendant which are reasonably obtainable or in their possession or control. They shall also make available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.

(2) The defendant or his/her representative shall present to the prosecutor and the Court written notice at least five (5) working days before trial the names of any witnesses they intend to call to provide an alibi for the defendant. Failure to provide this notice will bar the defense from using the witnesses unless it can be shown that prior notice was impossible or that no prejudice to the prosecution will result, in this case the Court may order the trial delayed or make such orders as will tend to assure a just determination of the case.

(q) Subpoenas

(1) Any party to a proceeding before the Tribal Court shall have the right to request the Court to issue a subpoena to compel witnesses to appear in court on his/her behalf.

(2) Upon the request of a party or his/her representative, the Court shall issue a subpoena which commands a named person to appear in court and/or to bring certain evidence or documents to court.

(3) Every subpoena commanding a witness to appear shall be in writing and shall include the name of the court, the names of the parties, the time and place the witness must appear and a clear and detailed description of any documents or evidence which the witness is required to bring.

(4) A subpoena issued as provided in this rule shall be delivered to the witness by a person designated by the Court for that purpose. The subpoena may be delivered either by giving it to the witness directly or by leaving it at the witness's residence or place of employment with a person at least fourteen (14) years old who lives or works there.

(5) A person who serves a subpoena on a witness shall promptly file with the Court a copy of the subpoena and a signed written statement describing where, when, how and to whom service was made.

(6) The failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of court.

(7) The Tribal Council may establish witness fees. The Court may order witness fees, if any are paid, to be assessed as costs in civil actions and appeals.

2.1.20 Trial

(a) Judge or jury trial

(1) All trials of criminal offenses shall be by the Court without a jury unless the defendant files a request for a jury trial at his/her arraignment or no later than two weeks prior to the date set for trial.

(2) The right to a jury trial is limited to criminal prosecutions in which the offense is punishable by imprisonment.

(3) In a case tried without a jury, the judge shall determine both questions of law and of fact and shall make a finding of guilt or innocence. A judge shall upon the request, of either party, make specific findings which may be embodied in a written decision.

(b) Juries

(1) Members of the Burns Paiute Tribe who are at least 18 years of age are eligible to serve as jurors. However, no person shall be eligible to sit on a jury in any case in which he/she has a direct interest or is related to a party by blood or marriage in the first or second degree. Law enforcement officers and court personnel are not eligible to serve as jurors.

(2) When a defendant asks for a jury, the Court Clerk shall draw the names of at least twelve (12) persons, at random, from the Elections Board's list of qualified voters, which list constitutes the list of eligible jurors. The Clerk shall then send a summons to each person whose name is drawn. The summons shall order the person to appear in court at the time set for trial of the case. The summons shall contain the name of the Court, the title of the case, the offense charged and the defendant's name.

(3) At the trial six of the jurors summoned shall be called and then seated in the

courtroom. The parties shall alternately question the jurors as to their impartiality and fairness. A party may challenge any juror for cause and the judge shall excuse any juror whom he/she feels would not be completely fair and impartial. As a juror is excused, the Court Clerk shall draw the name of another juror to be seated and each party shall have an opportunity to examine the juror for fairness and impartiality. There shall be no limit on challenges for cause.

(4) Each side shall be entitled to three peremptory challenges.

(5) An alternate juror shall be treated as a regular juror for purposes of challenges.

(6) The alternate juror shall be dismissed prior to the jury's retiring to deliberate if he or she has not been called to replace an original juror who has become, for any reason, unable or disqualified to serve.

(c) Judges Disability

(1) If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other tribal judge may, upon certifying that he/she has familiarized himself/herself with the record of the trial, proceed with the trial.

(2) If by reason of death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the required duties of a judge after the verdict or a finding of guilty, any other tribal judge may perform those duties unless such judge feels he cannot fairly perform those duties, then a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of the defendant.

(d) Evidence

(1) Evidence presented must be relevant to the issue in dispute. A witness, including a party, may testify as to a statement made by a person not before the court if the witness heard the statement when it was uttered by the person alleged to have made the statement. The Court may inquire into the circumstances surrounding the failure of the party offering the statement to present the actual speaker and such circumstances may be considered in determining the credibility of the evidence.

(2) Whenever practical, documents presented as evidence shall be the originals. All issues regarding the admissibility of evidence shall be determined by the presiding judge, who shall have the discretion to exclude any evidence with good cause.

(e) Continuances

At any stage of the proceeding, the Court may grant a reasonable continuance upon its own motion or the request of a party after a showing of good cause. The Court shall consider the objections of any party to a continuance.

(f) Open Proceedings

All proceedings shall be open to the public and the press unless the presiding judge determines that, due to the highly sensitive nature of the testimony of young children or the circumstances which could cause extreme embarrassment to witnesses or parties, the proceeding should be closed.

(g) Exclusion of Witnesses

Upon the motion of either party, the presiding judge shall exclude witnesses not actually testifying from the room where proceedings are being held.

(h) Expert Witnesses

The parties may each call expert witnesses of their own choosing and they shall bear the expense for the expert witnesses they call.

(i) Interpreters

The Court may select and appoint an interpreter and each party may provide their own interpreters and shall bear the costs thereof. An interpreter through whom testimony is received shall be put under oath to faithfully and accurately translate and communicate as the Court requires.

(j) Motions for Acquittal

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

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

(k) Instructions

At the close of the evidence or at an earlier time during the trial as the Court may reasonably direct, any party may file written requests that the Court instruct the jury on the law as it is set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action

upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after arguments by counsel are completed. No party may assign as error any portion of the charge or an omission there from unless they make an objection thereto prior to the time the jury retires to consider its verdict, stating distinctly the matter to which he/she objects and the grounds of the objection. Opportunity to make the objection shall be made out of the hearing or if necessary out of the presence of the jury.

(l) Verdict

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

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

(3) The defendant may be found guilty of an offense which constitutes an attempt of the offense charged or of an offense which is of a lesser degree of an offense charged if supported by the facts entered into evidence at trial even though the defendant may not have been formally charged with having committed an attempt or a crime of lesser degree.

(4) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If upon being polled the jury does not unanimously concur, they may be directed to retire for further deliberations or may be discharged.

2.1.30 Judgment

(a) Judgment

A Judgment of Conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence when imposed. If the defendant is found not guilty or for any other reason entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(b) Sentencing

(1) The judges of the Burns Paiute Tribal Court shall have broad latitude in the sentencing of persons convicted of offenses. In determining sentences, judges shall be guided by both the welfare of the Tribal Community and the particular needs of the convicted person. Sentences may be of a nature customary with other systems or law, or may reflect traditional tribal remedies.

(2) Whether a trial is by a jury or the Court, upon conviction the presiding judge shall determine the sentence. The following shall guide the judge when imposing sentence.

(A) A defendant may be sentenced to jail or to community service, or both at the discretion of the judge;

(B) Fines may be paid pursuant to a payment schedule, to be determined by the judge, who shall carefully consider the person's financial resources;

(C) In serving jail time in lieu of paying a fine, the convicted person shall be credited at the rate of twenty-five dollars (\$25.00) per day;

(D) The Court may direct that all or part of a fine be paid to the victim as restitution for a wrong, provided; that in no event shall a fine and restitution, taken together, exceed five thousand dollars (\$5,000.00) per offense;

(E) In the event that restitution is ordered, if the defendant objects to the amount of restitution a separate hearing must be held within 90 days to determine the amount of the victim's damages;

(F) A defendant who testifies at a hearing determining restitution does not waive his right against self-incrimination in the event of a new trial;

(G) The fact that restitution shall be ordered as part of a criminal proceeding shall not preclude a civil action for damages to recover remaining damages;

(H) Upon conviction of any offense, the Court may order that costs be paid, provided that in no event shall a defendant pay more than a total of five thousand dollars per offense, including fines, restitution, costs, or other assessments;

(I) In determining the nature and duration of a sentence, the Court shall consider the previous conduct of the defendant, the circumstances of the crime, whether the defendant is likely to reform, whether the defendant presents a danger to the community, and the extent of the defendant's resources and the needs of the defendant's dependents;

(J) The penalties prescribed in any criminal offense under a Burns Paiute Tribal Ordinance are maximum penalties, and should be imposed only in extreme cases.

(c) Probation

(1) In its discretion, the Court may suspend a sentence and allow the convicted person his/her freedom on probation upon the condition of signing a pledge of good conduct. The Court may impose such terms as are fitting and just as conditions of probation.

(2) A person found by the Court to be violating their conditions of probation may be required to serve all or part of the original sentence.

(d) Parole

(1) A person is eligible for parole when they have served one-half of the sentence imposed without misconduct. At that point a hearing may be held by the judge who imposed the sentence to determine whether parole shall be granted, and if so, what conditions shall attach.

(2) A person found by the Court to be violating the conditions of his/her parole may be required to serve the remainder of the original sentence.

(e) Vacating sentence. Upon a motion brought to vacate, the judge who imposed the sentence may vacate any portion of a remaining sentence. A hearing on the motion shall be had in which all interested parties may present evidence or bring related facts to the attention of the Court.

(f) Disposition of fines

All fines and fees collected by the Court under the provisions of this ordinance shall be paid to the clerk of the Court, who shall in turn deliver them to the Tribal Treasurer for deposit in a special account of the Tribe to be used for maintenance of the Tribal Court and Law Enforcement program. Provided, however, that the clerk may maintain petty cash fund up to Fifty dollars (\$50.00), with a full and accurate accounting of such fund to be made available to the Tribal Council upon request.

(g) Default on fine

When a defendant defaults in the payment of a fine or any installment thereof, the Court on its own motion shall order the defendant to show cause why the defendant is not in contempt and may issue a summons or an arrest warrant for the defendant's appearance. If good faith is shown, the Court may allow additional time for payment or revoke all or part of the unpaid fine; otherwise, the Court may order the defendant's imprisonment until the fine is paid. The Court may order the seizure and sale of any personal property of the defendant found within the territorial jurisdiction of the Burns Paiute Tribe.

(h) Disposition of property confiscated by the Court

Any property, including equipment, which may have been confiscated by lawful order of the Court under the provisions of any Tribal ordinance shall be sold at public auction and the proceeds therefrom deposited by the clerk of the Court into an account for the Tribal Court and Tribal Law Enforcement Program.

(i) New Trial

The grounds for a new trial are as follows:

- (1) Receipt by the jury of evidence not authorized by the Court;
- (2) Determination of a verdict by lot, through intimidation, or without a fair expression of opinion;
- (3) Refusal by the Court to instruct the jury correctly as to the law;
- (4) Failure of the defendant to receive a fair and impartial trial;
- (5) New evidence discovered and not available at the time of the original trial.

2.1.40 Appeal

(a) Right of appeal

(1) The defendant has the right to appeal from the following:

(A) A final judgment of conviction;

(B) From an order made, after judgment, affecting the defendant's substantial rights.

(2) The Tribe has the right to appeal from the following:

(A) A judgment in dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before trial.

(B) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;

(C) An order of the Court directing the jury to find for the defendant;

(D) An order made after judgment affecting the substantial rights of the tribe.

(3) A notice of appeal must be filed within ten (10) days of the entry of final judgment or other appealable order and must be served on all parties except the party filing the appeal.

(4) The clerk of the Trial Court will prepare and transmit to the Appellate Court the record of the case appealed including a transcript or copy of the recordings taken in all the proceedings relevant thereto.

(5) The party making the appeal shall be referred to as the appellant and the other party as the respondent. The number and name of the case will be the same as the case

number and name used at trial except the names of parties not involved in the appeal may be omitted.

(6) Within ten (10) days after the receipt by the Appellate Court of the Trial Court record, the appellant shall file a brief supporting his position on appeal. Within twenty (20) days after receipt of a copy of the appellant's brief, the respondent shall file its brief. As soon thereafter as possible, the Appellate Court shall decide the case and may schedule and hold a hearing on the appeal. Each party shall file four copies of its brief with the Court.

(b) Stay of Judgment and relief pending appeal

(1) A sentence of imprisonment may be stayed if an appeal is made and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have time spent in custody counted towards the defendant's sentence in the matter under appeal.

(2) A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and relieve the defendant's obligation to pay a fine or a fine and costs.

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

(c) Appellate Court Review

(1) If the appeal is irregular in any substantial particular, the Appellate Court may order, upon motion of the respondent, either the correction of the defects or the dismissal of the appeal.

(2) The Appellate Court will decide the appeal on the basis of the briefs submitted without oral argument unless oral argument is requested by any party to the appeal or by the Court on its own motion.

(3) The Appellate Court will issue a written opinion or separate opinions as may be required to fully explain the Court's disposition of the case.

(4) The Appellate Court shall make one of the following determinations of the appeal:

(A) Affirm the Trial Court's result.

(B) Reverse or vacate the trial judgment and for disposition in accordance with the order of the Appellate Court.

(C) The judgment of the Trial Court will be deemed affirmed if no disposition can be reached by the Appellate Court.

2.1.50 Any Person

The term “any person” in this code shall be construed so that the Burns Paiute Tribe shall exercise jurisdiction only in a manner consistent with federal law, including U.S. Supreme Court Holdings limiting the jurisdiction of Tribal Courts.

CHAPTER 2.2 CIVIL ACTIONS

CHAPTER 2.2 CIVIL ACTIONS

COMPLAINTS

2.2.30 Complaints - Elements

A complaint filed in the Tribal Court shall contain:

- (a) The title of the cause, the name of the Court, and the names of the plaintiff and defendant;
- (b) A statement of the facts constituting the cause of action;
- (c) A request for whatever relief the party wants, including the amount, if monetary damages are requested;
- (d) The signature of the plaintiff, witnessed by a member of the Court staff or a licensed Notary Public.

2.2.31 Limitation on Filing of Complaint

No complaint shall be filed in a civil action unless the events shall have occurred within the applicable statute of limitations prior to the date of filing the complaint:

2.2.32 Filing Fees

In all civil suits the plaintiff shall be required to pay to the Court a filing fee of \$50.00. The fee may be waived by the Court upon a show of good cause. No fee shall be charged if the Tribe is the plaintiff.

2.2.33 Answers

An answer filed in the Tribal Court shall contain:

- (a) A general or specific denial or admission of the allegations in the complaint. Any such general or specific denials shall be made in good faith;
- (b) A statement of any new matter constituting a defense or counterclaim, in ordinary and clear language.

The answer is to be filed no later than twenty (20) days after the defendant has been served the summons and complaint, unless good cause for later filing is shown.

NOTIFICATION

2.2.70 Notice and Service

Civil actions may be instituted either by voluntary appearance and agreement of the parties or by service upon the defendant of a true copy of the filed complaint and notice either personally by a person not a party in the action or as provided herein. The notice shall be attached to the copy of the complaint, and cite the defendant to answer in writing, by filing with the Court and serving a copy on the plaintiff, not less than twenty (20) days from the date of service of the complaint and notice. The service may be made by means of certified mail, return receipt requested. Evidence of the receipt of notice shall be kept as part of the record in the case.

2.2.71 Substituted Service

(a) Upon a showing by the plaintiff to the Court that diligent efforts were made to serve the Notice and Complaint on the defendant and that for sufficient reasons service could not be made, the judge may allow substituted service pursuant to 2.2.71(b). Diligent efforts shall include an attempt of service by certified mail to the defendant's last known address. If the defendant is a tribal member and the plaintiff is the Tribe, or a tribal entity or program, then there shall be an attempt of service by certified mail to the defendant's address used for enrollment purposes.

(b) Substituted service shall be made as follows:

(1) Copies of the Notice and Complaint shall be posted in two public places on the Reservation for three (3) weeks.

(2) Service must also be made by publication of a copy of the Notice once a week for three (3) consecutive weeks in a newspaper of general circulation nearest where the defendant resides. If the plaintiff cannot determine where the defendant resides, the notice shall be published in the Burns-Times Herald newspaper. The Notice, when published, shall state the general nature of the case and the nature of the relief requested.

2.2.72 Civil Papers from Other Jurisdictions.

All civil papers originating from another jurisdiction (foreign jurisdiction) must be approved by the Chief of Police before they may be served on the Burns Paiute Indian Reservation. In the event the Chief of Police has any concerns about the validity of the papers, the Tribal Prosecutor will be consulted in order to determine their validity. Upon approval by the Chief of Police, a Tribal officer shall accompany the person serving the civil papers to protect the interests of the Tribe, its members and residents. The service

of process on the Burns Paiute Indian Reservation from a foreign jurisdiction shall be valid to give notice to the person served that there is a court proceeding in the foreign jurisdiction. However, such service of process shall not be valid to give personal jurisdiction over the person so served.

CIVIL PROCEDURE

2.2.100 Standard of Proof

The plaintiff in a civil case shall have the burden of proving his case by the greater weight of the evidence.

2.2.101 Jury

Civil actions, other than appeals, shall be tried by a jury upon written request filed by any party at least fourteen (14) days before the trial date and upon such party's posting of a fee or other security in the amount of \$75.00 to cover costs, disbursements and jury fees in the case. The fee may be waived by the Court upon a showing of good cause.

2.2.102 Applicable Law

In all civil cases the Court shall apply in the following order of priority, any applicable laws of the Burns Paiute Tribe, tribal case law, tribal customs and traditions, state statute, state common law, federal statutes, and federal custom law, and international law.

2.2.103 Customs

Where any doubt arises as to the customs of the Tribe the Court may request the advice of 3 elders familiar with those customs.

JUDGMENTS

2.2.140 Judgments-Generally

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

2.2.141 Judgments-Compensation

The judgment shall fairly compensate the injured person for the loss he has suffered or shall follow any rules of compensation set out in any ordinance or section of this Code

pursuant to which the action is brought.

2.2.142 Punitive Damages

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

2.2.143 Costs in Civil Actions

The judge may assess the accruing costs of the case against the person against whom judgment is given. Such costs shall include the expenses of voluntary witnesses for which either party may be responsible under this Code, and the fees of jurors in jury cases, and any further incidental expenses or fees connected with the procedure required by this Code as the judge may direct.

2.2.144 Judgments and Decedents' Estates

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

2.2.145 Judgments-Duration and Interest

A judgment of the Tribal Court shall be valid until satisfied in full, including interest upon the judgment. Interest on judgments shall accrue as follows:

(a) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts.

Provided, that said interest rate is set forth in the judgment.

(b) Except as provided under subsection (1) of this section, judgments shall bear interest from the date of entry at 9.0% per annum on the date of entry thereof.

Provided, that in any case where a judgment entered on verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

EXECUTION OF JUDGMENTS

2.2.170 Procedure

If, after the time for appeal has run, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or is not making payments in a manner agreed to by the parties or required by the Court, the judge shall order the judgment debtor to appear before him and answer under oath regarding his personal property.

The judge shall then determine what property of the judgment debtor is available for execution and order the police to seize as much of the property as reasonably appears necessary to pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the judge may proceed without his appearance.

2.2.171 Sale of Property

Sale of the seized property shall be at public auction conducted by the police after giving at least ten (10) days public notice posted in at least three public places on the Reservation. Property shall be sold in a commercially reasonable manner to the highest bidder. Payment for the property and transfer of title shall take place after the retention period has expired, as described below. If the sale results in a price higher than the debt plus expenses of sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale.

2.2.172 Exemption from Execution

The judge shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his immediate family. Only property of the judgment debtor himself may be subject to execution and not property of his family.

2.2.173 Redemption

At any time within fourteen (14) days after the sale under section 2.2.171 above, the judgment debtor may redeem the sold property by paying the judgment amount in full, plus expenses of the sale. Upon such payment, the property shall be returned to the judgment debtor and the purchaser shall be notified that the property has been redeemed.

2.2.174 Per Capita Payments/Dividends

Unless otherwise provided by the Tribal Council, the Tribal Court and all the judges thereof shall have the authority and power to order that all per capita payments/dividends of judgment debtors, as authorized by 25 U.S.C.A. §117b, be available for execution of judgment and to order appropriate tribal or federal officials to seize and all per capita payments/dividends of judgment debtors which may arise in the present or future, as much of said payments/dividends as appears necessary to satisfy any judgment of the Tribal Court where the Burns Paiute Tribe, as party plaintiff, was awarded money damages or money judgment for payment of contracted obligations, contracted indebtedness or otherwise.

FEDERAL RULES OF CIVIL PROCEDURE

2.2.175 Federal Rules of Civil Procedure

On any matter or issue that these rules do not cover, the Federal Rules of Civil Procedure in effect at the time shall apply.

JUDGMENTS OF OTHER COURTS; RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

2.2.400 Title

This code is known as the Burns Paiute Tribal Uniform Enforcement of Foreign Judgments Code.

2.2.401 Definitions for Burns Paiute Uniform Enforcement of Foreign Judgments Code

“Foreign judgment” means any judgment, decree or order of a court of the United States or of any other court, which is entitled to full faith and credit by the Burns Paiute Tribe.

2.2.402 Filing of Foreign Judgment; Effect

(a) A copy of any foreign judgment authenticated in accordance with the Act of Congress or the statutes of a state or this tribe may be filed in the tribal court. The clerk shall treat the foreign judgment in the same manner as a judgment of the tribal court.

(b) A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the tribal court, and may be enforced or satisfied in like manner.

2.2.403 Notice of Filing of Judgment; Delay in Enforcement

(a) At the time of the filing of the foreign judgment, the judgment creditor or the creditor’s lawyer shall make and file with the clerk of the tribal court an affidavit setting forth the names and last-known post office addresses of the judgment debtor and the judgment creditor, together with a separate statement containing the information of the judgment including the principal amount, interest accrued and the date of accrual, costs, attorney fees and a description of the injunctive relief, if any.

(b) Promptly after filing the foreign judgment and the affidavit, the judgment creditor must mail notice of the filing of the foreign judgment to the judgment debtor. The notice shall include the name and post office address of the judgment creditor and the judgment creditor’s lawyer, if any. The judgment creditor must file with the court proof of mailing the notice.

(c) No execution or other process for enforcement of a foreign judgment filed pursuant

to this act, except a judgment, decree or order of a court of the United States, shall issue until five days after the date the judgment, affidavit and separate statement required in subsection (1) of this section are filed.

2.2.404 Grounds for Staying Enforcement of Judgment; Security for Satisfaction of Judgment

(a) If the judgment debtor shows the tribal court of that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state or government in which it was rendered.

(b) If the judgment debtor shows the tribal court any ground upon which enforcement of a judgment of any other court would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required by the tribe.

2.2.405 Interest and Costs

When a registered foreign judgment becomes a final judgment of this tribe, the tribal court shall include as part of the judgment interest payable on the foreign judgment under the law of the state or other government in which it was rendered, and the cost of obtaining the authenticated copy of the original judgment. The tribal court shall include as part of its judgment court costs incidental to the proceeding in accordance with the law of the Burns Paiute Tribe and the costs of recording documents as permitted by statute.

2.2.406 Satisfaction of Judgment; Filing

Satisfaction, either partial or complete, of the original judgment or of a judgment entered thereupon in any other state or government shall operate to the same extent as satisfaction of the judgment in the tribal court, except as to costs authorized by this act. When such judgment in this tribal court has been satisfied, including costs authorized by this act, it shall be the responsibility of the judgment creditor to provide an executed satisfaction to this judgment debtor.

2.2.407 Construction

This Burns Paiute Tribal Uniform Enforcement of Foreign Judgments Code shall be interpreted and construed in order to effectuate its general purpose to make uniform the law of this tribe and those states and other governments, which enact it.

CHAPTER 2.3 GARNISHMENT

CHAPTER 2.3 GARNISHMENT

General

2.3.20 Purpose

Pursuant to the Burns Paiute Indian Tribal Constitution, Article VI, Section 1, the Tribal Council has legislative authority to establish Tribal codes. In order to protect the health and welfare of the Tribe, its members, employees, residents and visitors, the Council has established policies and procedures by which Judgments may be collected through garnishment.

2.3.21 Background and Intent

The Burns Paiute Indian Tribe recognizes the need for the Tribe, its members and other Persons doing business with the Tribe, its members, and its employees to have procedures in place that facilitate the collection of judgments and debts.

2.3.22 Definitions

(a) “Debtor” means a Person who owes a money judgment debt and whose property is being garnished by a Creditor.

(b) “Creditor” means a Person entitled to collect a debt arising from a money judgment and is garnishing property of a Debtor.

(c) “Garnishee” means a Person other than a Debtor or Creditor who is in possession of property of a Debtor and who has been garnished in accordance with this Code.

(d) “Judgment” includes a Judgment of the Burns Paiute Tribal Court and any Judgments of other jurisdictions given full faith and credit by the Burns Paiute Tribal Court under BPTC 2.2.400.

(e) “Person” means any individual, corporation, partnership, estate, trust, etc., residing, doing business or owning assets located on the Reservation or within the Tribal Service Area, which may legally incur debt and against whom payment or a debt is sought, or which has in its possession the assets belonging to another.

(f) “Reservation” means any real property belonging to the Burns Paiute Tribe of Indians or its members or any real property acquired by the Tribe and reverted to federal trust.

(g) “Tribe” means the Burns Paiute Indian Tribe and its governing body.

(h) “Writ” means the legal document used to garnish property or funds of a debtor as described in BPTC 2.2.206.

(i) "Tribal Court" or "Court" means the Burns Paiute Indian Tribal Court as established by the Constitution of the Burns Paiute Indian Tribe, Article VII.

2.3.25 Jurisdiction

(a) This Ordinance covers the garnishment of assets belonging to the members of the Burns Paiute Tribe, or the assets of any Person or entity doing business, or having assets, within the jurisdiction described in BPTC 1.1.70 to 1.1.72.

(b) The Burns Paiute Tribal Court may issue a writ of garnishment within its jurisdiction, as provided in BPTC 2.2.206.

(c) This Ordinance does not apply to the debts owed by or obligations required to be performed by the Burns Paiute Indian Tribe, the Burns Paiute Economic Development Corporation, the Burns Paiute Indian Housing Authority, the Wadatika Health Center or any other entity chartered under Tribal law. This Ordinance does permit garnishment of wages earned by a Debtor employed by the Tribe or any Tribally-chartered entity.

2.3.26 Garnishment Described

Garnishment is a procedure by which a money Judgment is satisfied. The Creditor must first obtain a Judgment against the Debtor. The Tribal Court may then be petitioned for a writ of garnishment which will allow the Creditor to collect the debt by seizing funds or property of the Debtor held by a third Person, called a Garnishee. Examples of funds or property that may be garnished include, but are not limited to, savings or checking accounts at a bank, wages earned and not yet paid by an employer, or money or property owned by a debtor. The writ of garnishment is served on the Garnishee, who is required to give the funds or property to the Person who asked for the writ.

2.3.27 Persons by and for whom writ of garnishment issued

This section establishes who may issue writs of garnishment and who may ask that writs of garnishment be issued. Such writs may be issued only by and for the following Persons:

(a) The Clerk of the Court may issue writs of garnishment upon application and payment of applicable fees. If a Judgment is from another jurisdiction, it must first be registered with the Burns Paiute Tribal Court and given full faith and credit by the Burns Paiute Tribal Court pursuant to BPTC 2.2.400 to 2.2.407 before the Clerk may issue any writ.

(b) Writs may be issued for Persons: (a) who have complied with the procedures established in this section; and (b) who have a Judgment on their behalf requiring the payment of money which has been registered with the Burns Paiute Tribal Court.

2.3.28 Writs issued by Court Clerk; procedure; payments; release of property

(a) A Person seeking payment of a money Judgment may petition the Burns Paiute Tribal Court to issue a writ of garnishment. The petition shall be accompanied by a copy of the Judgment being executed upon and a description of the action and findings of the Court which entered the Judgment. If the judgment being executed upon was entered by a Court other than the Burns Paiute Tribal Court, a certified copy of the original judgment must be attached to the petition. In addition, the Person requesting the writ shall provide, if possible, a description of the funds or property sought to be garnished, the location of such funds or property, and the name of the Person in possession of the funds or property, and any information concerning fees incurred in executing the Judgment through a writ of garnishment.

(b) The Clerk of the Burns Paiute Tribal Court shall issue a writ of garnishment upon hearing in the Burns Paiute Tribal Court. The writ of garnishment shall state the following:

- (1) The name of the Person seeking satisfaction of Judgment.
- (2) The name of the Person whose funds or property are being garnished.
- (3) The name of the third party holding the funds or property.
- (4) A description of the assets.
- (5) The address of the location of the funds or property and the third party holding the funds or property.
- (6) The title and location of the Court action under which a Judgment was issued.
- (7) The amount of the Judgment, including any applicable interest, and
- (8) The amount of any applicable fees.

(c) A writ of garnishment shall be valid until it is satisfied, but the Court shall review each garnishment as necessary until the Creditor has recovered the debt owed. The Court shall have discretion to determine the scope and manner of such review. But, in developing the scope of each individual review, the Court may balance the inconvenience to the parties against the need or desire for an in-person, contested hearing. For example, when a Debtor or Garnishee cannot be located, the interest in having an in-person hearing could be relatively low, and the Court could merely request an updated report from all parties on a pre-approved form.

(d) Fees – Expenses or fees incurred as a result of attempting to execute Judgment through a writ of garnishment are not recoverable under this chapter.

2.3.30 Rate of garnishment; claims of exemption; procedure

(a) The amount of money which may be withheld each week from all sources of income shall be determined by the Burns Paiute Tribal Court. The Debtor may claim as exempt certain property or funds as described in BPTC 2.3.33. Factors that should be considered in determining the amount of money to garnish shall include, but are not limited to:

- (1) Total income versus the amount of the debt.
- (2) The priority of the debt in relation to other obligations owed.
- (3) The type of debt.
- (4) The needs of the Creditor.
- (5) The needs of the Debtor.
- (6) The nature of any assets which could be garnished.
- (7) Other sources of financial support for the Creditor and the Debtor.

(b) Notwithstanding subsection (1) of this section, in the case of garnishment for the payment of support under a domestic relations order under BPTC 5.1.100 to 5.1.120, the Burns Paiute Family Laws Code, or a foreign domestic relations order registered in the Burns Paiute Tribal Court under BPTC 2.2.400 to 2.2.407 the amount of money that may be garnished shall be the amount defined under BPTC 5.1.119.

2.3.31 Form for writ issued by Court Clerk

This section establishes a form for a writ of garnishment issued by the Clerk of the Court. A writ of garnishment issued by the Clerk of the Court shall be in substantially the following form:

(To be Completed by Creditor)

BURNS PAIUTE TRIBAL COURT

_____)	WRIT OF GARNISHMENT
Plaintiff,)	ISSUED BY THE COURT CLERK
)	
vs.)	
)	
)	Case No. _____
_____)	
Defendant.)	

IN THE NAME OF THE BURNS PAIUTE INDIAN TRIBE, TO:

You are now a Garnishee.

AS A GARNISHEE, YOU NEED TO KNOW THE FOLLOWING (the following information is to be filled in by the Creditor):

On the ____ day of _____, 20__, (cross out one) plaintiff / defendant

_____ named above and called "Creditor," has (check one):

_____ filed an action

_____ obtained a judgment (a Court order for the payment of money) against the

(cross one out) plaintiff/defendant _____ named above and called "Debtor."

The Debtor's Social Security Number or Employer Identification Number is _____ (insert if known). The following amount is necessary to satisfy the Creditor's claim or judgment:

+Claim or Judgment Debt \$ _____

+Prejudgment Interest \$ _____

+Attorney Fees \$ _____

+Cost Bill \$ _____

+Post-Judgment Interest \$ _____

+Delivery Fee for this Writ \$ _____

+Issuance Fee for this Writ \$ _____

+Tribal Police fees other than Delivery Fees \$ _____

+Other (Explain. Attach additional sheets if necessary. NOTE: INSERTING ITEMS AND AMOUNTS NOT LAWFULLY SUBJECT TO COLLECTION BY GARNISHMENT MAY RESULT IN LIABILITY FOR WRONGFUL EXECUTION.)

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____	\$_____
Total other from additional sheet (if used)	\$_____
+Past Writ Issuance Fees	\$_____
+Past Delivery Fees	\$_____
=Subtotal	\$_____
LESS Payments Made	\$_____
=TOTAL Amount Required to Satisfy in Full this Claim or Judgment	\$_____

THE CLERK OF THE COURT HAS NOT CALCULATED ANY AMOUNTS ON THE WRIT AND IS NOT LIABLE FOR ERRORS MADE IN THE WRIT BY THE CREDITOR.

Witness the hand and seal of the Court on this _____ day of 20____.

CLERK OF THE COURT

By_____

Burns Paiute Indian Tribe)
)
) ss.

I certify that the foregoing a true and correct copy of the original writ of Garnishment in the above entitled case.

CLERK OF THE COURT

By_____

I certify that I have read the Writ of Garnishment; and to the best of my knowledge, information, and belief, there is good ground to support it, and all sums included above are lawfully subject to collection by this garnishment.

Creditor/Creditor's Attorney (or Agent)

Telephone Number

Address

Oregon State Bar Number/Burns Paiute Tribal Court Bar Number (if applicable)

GARNISHEE'S DUTIES

YOU MUST ANSWER THIS WRIT BY COMPLETING AND FILING A CERTIFICATE OF GARNISHEE WHETHER OR NOT YOU HOLD ANY OF THE DEBTOR'S PROPERTY OR OWE ANYTHING TO THE DEBTOR. IF YOU FAIL TO ANSWER THIS WRIT, OR IF YOU ANSWER IT UNTRUTHFULLY, OR IF YOU FAIL TO DELIVER THE PROPERTY WHEN REQUIRED TO DO SO YOU MAY BE SUBJECT TO COURT PROCEEDINGS AND MAY BE HELD LIABLE TO THE CREDITOR FOR THE LESSER OF:

- (A) THE TOTAL AMOUNT CLAIMED IN THIS WRIT, OR
- (B) THE AMOUNT YOU OWE THE DEBTOR OR THE VALUE OF PROPERTY YOU HOLD.

NOTE: YOU MAY NOT LAWFULLY DISCHARGE THE DEBTOR FROM EMPLOYMENT AS A RESULT OF THIS GARNISHMENT.

As a Garnishee, you must take the following steps:

STEP 1. COMPLETE THE CERTIFICATE AND SCHEDULE.

Except when you have not received the original writ or a true copy thereof and one additional copy of the writ within five days of receiving the writ, you must fill out and file the forms below called "Certificate of Garnishee" and, if required (see schedule form), the "Earnings Exemption Computation Schedule."

In filling out the form, you must describe any garnished property you now have in your possession and debts that you owe to the Debtor. This writ garnishes only personal property of the Debtor you hold or debts you owe to the Debtor as of the date you received this writ, including wages and debts that existed but were not yet due when you received this writ. You file these forms by following Step 2 below.

If you have questions, you should contact an attorney. The Clerk of Court cannot give you legal advice.

If when the writ was delivered to you, you did not receive the original writ or a true copy thereof and one additional copy of the writ, the garnishment is not effective to garnish any property, you are not required to respond by filing the garnishee's certificate and you may deal with any property of the Debtor as though the garnishment had not been issued.

If the writ does not comply with Tribal law or if you cannot tell from the writ whether you hold any property of or owe a debt to the Debtor, the writ does not garnish anything, but you must fill out the certificate anyway and follow Step 2. Keep a copy for your records.

If the writ does comply with Tribal law and you can tell that you may hold property of or owe a debt to the Debtor but you are not sure what or how much, you must fill out the certificate anyway and explain why. You must then follow Step 2. When you find out whether or what you do owe the Debtor, you should amend the certificate, even if you find out you do not owe the Debtor anything. Follow Step 2 again and file the amended certificate.

If you discover before you send your certificate under Step 2 that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor under section 301, 302 or 303 of the United States Bankruptcy Code (11 U.S.C. 101 to 1330), you must describe in your certificate any garnished property or debts that you know that you have in your possession, and note on the certificate that a bankruptcy petition has been filed.

After filing the certificate under Step 2, move on to Step 3 if you owe anything to the Debtor or hold property that belongs to the Debtor.

STEP 2. FILE THE CERTIFICATE AND SCHEDULE.

Within five days of receiving the writ, you must send all of the following (information to be filled in by Creditor):

The original certificate and schedule form to the Clerk of the Burns Paiute Indian Tribal Court:

100 Pasigo Street
Burns, OR 97720

A copy of the certificate and schedule form to the Debtor at (last-known address):

Name _____

Street address _____

City _____ State _____

Zip Code _____

Telephone number (if known) _____

A copy of the certificate and schedule form to the Creditor at:

Name _____

Street address _____

City _____ State _____

Zip Code _____

Telephone number _____

A copy of the certificate to the Tribal Police:

100 Pasigo Street
Burns, OR 97720

You are required to send a copy to the Tribal Police only if you hold personal property of the Debtor.

STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

Unless you have discovered that a bankruptcy petition has been filed by or on behalf of the Debtor and your certificate contains a statement to that effect, you must do (a) or (b) below, or both, after you file the certificate under Step 2, depending on what you owe or hold:

(a) MONEY OR OTHER OBLIGATION. If you owe or hold a debt or other obligation payable in money, do the following:

Unless you receive a notice of claim of exemption or other direction from the Court (a document or other notice from the Clerk of the Court telling you what to do with the money or informing you that the Debtor is claiming that all or some of the money cannot be garnished) when you send your certificate or when the debt or other obligation becomes due, whichever is later, make your check or other draft payable to the Creditor and send the payment to the Burns Paiute Tribal Court at the address shown in Step 2.

In making payments under this writ you need to prorate any wages or periodic payments, so that you pay only the amount you owe the Debtor on the date you receive this writ.

If you receive a notice of claim of exemption from the Court and have not yet forwarded the money, send or deliver the payment directly to the Clerk of the Court. You must send the payment promptly with the Certificate of Garnishee if it is now due; otherwise, send it when it becomes due and send the Certificate of Garnishee as required under Step 2. If you make payment by check or other draft, make it payable to the Creditor. Because you may be liable for money that does not reach the Court, it is better not to send cash by mail.

AND/OR

(b) OTHER PROPERTY. If you filed your certificate with the Tribal Police under Step 2, do the following even if you receive a notice of claim of exemption from the Court:

Hold subject to this garnishment the property now in your possession, control or custody until you receive written notice from the Tribal Police. The Tribal Police's notice should tell you what to do with the property. If the property is not convenient for you to deliver to the Tribal Police and you want the Tribal Police to come get the property, you must explain this fact on the certificate. If you have followed all of the steps in this writ and you receive no notice from the Tribal Police within 30 days after this writ was delivered to you, you may treat this garnishment as being of no further force or effect. As long as this writ is in effect, you may be liable to the Creditor if you pay any debt or turn over any property to Debtor, except the exempt portion of any wages you owe to the Debtor unless you are otherwise directed by the Court or unless the claim or judgment for which this writ of garnishment was given is satisfied in full.

EARNINGS EXEMPTION COMPUTATION SCHEDULE

The Garnishee must complete the following form and fill in the correct amounts only if the Garnishee is an employer of the Debtor.

- | | |
|--|----------|
| 1. Debtor's gross weekly "earning" | \$ _____ |
| 2. Amounts required to be withheld by law (Federal and state withholding, social security, etc.) | \$ _____ |
| 3. Debtor's "disposable earnings" for week:
Subtract line 2 from line 1 | \$ _____ |
| 4. Minimum Exemption | \$170 |
| 5. Maximum Exemption
Enter 75 percent of line 3 | \$ _____ |

6. Earnings exempt from garnishment
Line 4 or 5, whichever is greater \$ _____

7. Nonexempt earnings
Subtract line 6 from line 3 \$ _____

8. Amounts withheld pursuant to a support order under support withholding process
available under prior law or BPTC Chapters 600 and ____ \$ _____

9. Earnings subject to garnishment
Subtract line 8 from line 7 \$ _____

(Case caption to be completed by Creditor)

BURNS PAIUTE TRIBAL COURT

_____)	
Plaintiff)	CERTIFICATE OF
)	GARNISHEE
)	Case No.
)	
vs.)	
)	
)	
_____)	
Defendant.)	

TO: The Clerk of Court, Debtor, Creditor/Creditor's Attorney and (if applicable) Tribal Police

(Following to be completed by Garnishee)

I hereby certify that at the time of delivery to me of the foregoing Writ of Garnishment on the _____ day of _____, 20____, I had in my possession, control or custody only the following property, money, debts, rights, dues or credits due or to become due, belonging or owing to the Debtor named in said Writ of Garnishment (include due date if not yet due):

I have placed a check in front of all the following statements that apply (more than one may apply):

I do not owe money to or hold personal property of the Debtor.

The Writ of Garnishment does not comply on its face with Tribal garnishment law or I am unable to determine from the information in the writ whether I hold any property of the Debtor. (Explain)

I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor.

The writ does comply with Tribal law and I am able to determine that I may owe money to or hold property of the Debtor, but I am not sure what or how much it might be. I will file an amended certificate when I find out. (Explain)

I owe a debt or other obligation to the Debtor, which is not now due but will become due within 45 days. I will forward the money when the debt or other obligation becomes due.

I am holding personal property of or owe a debt or obligation to the Debtor other than a debt or obligation due within 45 days. I am sending this certificate to the Tribal Police and if I receive instructions from the Tribal Police within 30 days I will follow those instructions even if I receive a notice of claim of exemption.

I owe a debt or other obligation to the Debtor which is now due and I am forwarding the money owed or enough of it to satisfy the garnishment to the Creditor.

I owe a debt or other obligation to the Debtor, and the Debtor owes Creditor a debt or other obligation to the holder of an underlying, lien on my property. Pursuant to _____, I have offset the sum of \$_____ and paid that amount to the underlying lien holder, and I am forwarding the balance of the money I owe the Debtor, or enough of it to satisfy the garnishment, to the Creditor.

___I am holding personal property other than money, but it is inconvenient to deliver the property to the Tribal Police. I will hold the property until the Tribal Police picks it up. (Explain)

___I have received a notice of claim of exemption or other direction from the Clerk of Court and am forwarding funds to the Clerk of Court.

___The Defendant owes me a debt in the amount of \$_____. I will forward the funds upon direction from the Court of the amount that I may first set off.

___Other (Explain).

Dated _____, 20_____

Name of Garnishee

Signature

Address

2.3.32 Delivery of Writ; Insurance of Deliverer; Fee

To be valid, a writ of garnishment must be delivered to the Garnishee as follows:

(a) Notwithstanding any other provision of Tribal law relating to service of documents, all Creditors must first attempt service of writs of garnishment by certified mail, return receipt requested. If the postal service cannot complete service by certified mail, for whatever reason, and returns the undelivered writ, the Creditor may attempt service under subsection (b) of this section

(b) In Person. The writ may be delivered by the Tribal Police or any other duly authorized law enforcement agency.

2.3.33 Effect of Delivery of Writ on Property of Debtor; Property to Which Garnishment Does Not Apply

(a) Delivery of a writ of garnishment in accordance with this Ordinance shall be effective to garnish all non-exempt property of the Debtor which is in the Garnishee's possession, control or custody at the time of delivery of the writ of garnishment to the Garnishee.

(b) Notwithstanding subsection (1) of this section, property which may not be taken by garnishment shall include but is not limited to equitable interests, property in the custody of the law, property in the possession of a conservator, property in the possession of a personal representative constituting the subject matter of a trust contained in a duly probated will of a decedent, and items of cultural or spiritual significance. The determination that an item is culturally or spiritually significant shall be by a person certified by the Tribal Council as a Tribal Cultural Expert or Tribal Oral Historian.

2.3.34 Copy to Debtor; Method of Delivery; Duty of Creditor; Civil Penalty

(a) Following delivery of a writ of garnishment to a Garnishee, the Person who mailed or delivered the writ of garnishment shall promptly mail or deliver a copy of the writ of garnishment, together with the Notice of Exemptions and claim form described in BPTC 2.3.35, to each Debtor whose property is being garnished by said writ. The following apply to this subsection:

(1) The Person may meet the requirements of this subsection by mailing the documents to the address of the Debtor provided by the Creditor.

(2) The Creditor shall provide to the Person or Tribal Police the last address of the Debtor known to the Creditor.

(3) The Person or Tribal Police may delay service and garnishment until the Creditor either provides such address or a statement that the Creditor has no knowledge of the Debtor's address.

(4) The Person or Tribal Police shall have no duty under this subsection if the Creditor provides a statement that the Creditor has no knowledge of the Debtor's address.

(b) If the Creditor fails to provide either the Debtor's address or a statement that the Creditor has no knowledge of the Debtor's address to the Person or Tribal Police who delivered the writ of garnishment, the Court may order the Creditor to return any property which was exempt from garnishment and garnished

2.3.35 Form of Notice of Exemptions or Exclusions

The notice of exemptions referred to in BPTC 2.2.230 shall be in substantially the form set forth in this subsection. Nothing in the notice form described under this subsection is intended either to expand or restrict the law relating to exempt property. The

description of exempt property contained in this notice shall not affect any factors taken into account by the Burns Paiute Domestic Relations Code to determine the appropriate rate or amount of any child support obligation.

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a claim or Judgment which has been asserted or entered against you. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

Tribal, federal and state laws say certain property lawfully in your possession may not be taken. Some of the property which may not be taken is listed below.

- (a) 75 percent of your wages or a salary.
- (b) Social security (including SSI).
- (c) Public assistance (welfare).
- (d) Unemployment benefits.
- (e) Disability benefits.
- (f) Workers' compensation benefits.
- (g) Exempt wages, social security, welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7500).
- (h) Spousal support, child support, or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.
- (i) A homestead.
- (j) Household goods, furniture, radios, a television set and utensils to \$3,000.
- (k) Automobile, truck, trailer, or other vehicle up to \$1,700.
- (l) Tools, implements, apparatus, team, harness or library necessary to carry on your occupation to \$3,000.
- (m) Books, pictures and musical instruments to \$600.
- (n) Wearing apparel, jewelry and other Personal items to \$1,800.
- (o) Domestic animals and poultry for family use to \$1,000 and their food for 60 days.
- (p) Provisions (food) and fuel for your family for 60 days.
- (q) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
- (r) Public or private pensions.
- (s) Veterans benefits and loans.
- (t) Medical assistance benefits.
- (u) Health insurance proceeds and disability proceeds of life insurance policies.
- (v) Cash surrender value of life insurance policies not payable to your estate.
- (w) Federal annuities.
- (x) Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.
- (y) Professionally prescribed health aids for you and any of your dependents.

(z) Elderly rental assistance.

(aa) Your right to receive, or property traceable to: (i) An award under any crime victim reparation law; (ii) A payment or payments, not exceeding a total of \$10,000, on account of Personal bodily injury suffered by you or an individual of whom you are a dependent; (iii) A payment in compensation of loss of future earnings for you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

(bb) Interest in Personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

(cc) The difference between what you actually owe the Creditor and the total amount due listed in the writ of garnishment, if the amount listed in the writ is larger.

You must act promptly if you want to get your money or property back. You may seek to reclaim your exempt property by doing the following:

(a) Fill out the form for claim of exemption that you received with this notice.

(b) Mail or deliver the form for claim of exemption to the Clerk of the Court at the address shown on the writ of garnishment. You must mail or deliver the form within 30 days after you receive this notice.

(c) Although (2) above allows you to claim an exemption, the law only requires the property to be held for 10 days before it is applied to the Creditor's use. You may be able to keep the property from being used by the Creditor before being allowed a hearing by promptly following (1) and (2) above.

You should be prepared to explain your exemption in Court. If you have any questions, you should see an attorney.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE.

When you file this claim of exemption, the Garnishee and Creditor will be required to pay any debt or obligation they hold into Court. They are subject to penalties if they do not.

The claim of exemption form referred to in this section shall be in substantially the following form:

BURNS PAIUTE TRIBAL COURT

_____)	
Creditor)	CLAIM OF EXEMPTION
)	
vs.)	Case No. _____
)	
_____)	
Debtor)	

I/We claim the following described property or money as exempt from execution:

I/We believe this property is exempt because:

Name _____ Name _____
Signature _____ Signature _____
Address _____ Address _____
Telephone _____ Telephone _____

ITEMS OF CULTURAL OR SPIRITUAL SIGNIFICANCE

Tribal law states that writs of garnishment do not apply to items of cultural or spiritual significance. If the Creditor has attempted to garnish an item that you feel is of cultural or spiritual significance, fill out the exclusionary form contained below and send a copy to the Clerk of Court. The Clerk will instruct the Garnishee and Creditor that the property is not to be garnished. If the identification of the items as culturally or spiritually significant is disputed, a Tribal Cultural Expert or Tribal Oral Historian will be appointed to decide the issue. IF YOU CLAIM THAT AN ITEM IS OF CULTURAL OR SPIRITUAL SIGNIFICANCE IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE.

The exclusionary form referred to in this section shall be in substantially the following form:

_____)
Creditor)
)
)
)
)
vs.)
)
)
_____)
Debtor)

CLAIM OF EXCLUSION
FOR ITEMS OF CULTURAL
OR SPIRITUAL SIGNIFICANCE

Case No. _____

I/We claim the following described property or money as excluded from garnishment because it is culturally or spiritually significant:

Name _____ Name _____
Signature _____ Signature _____

Address_____

Address_____

Telephone_____

Telephone_____

2.3.36 Duty of Garnishee

- (a) The Garnishee shall examine the writ of garnishment to determine whether the writ complies on its face with this ordinance. The Garnishee shall have no duty to determine whether the Creditor or Tribal Police or other Person has complied with these requirements or to otherwise determine the effectiveness of the garnishment.
- (b) In searching its records for the property of the Debtor, the Garnishee shall use all of the information contained in the writ of garnishment pertaining to the identity of the Debtor.
- (c) The Garnishee may, in the Certificate of Garnishee, notify the Court and the other parties of any debt that the Debtor owes to the Garnishee as provided in BPTC 2.2.236.
- (d) The Garnishee shall send the funds to the Court. In the case of property, the Garnishee will send the property to the Tribal Police only upon direction by the Tribal Police to do so pursuant to BPTC 2.2.246.

2.3.37 Certificate of Garnishee

- (a) Within five days from the date the writ of garnishment is delivered to the Garnishee, the Garnishee shall prepare a certificate and deliver the certificate to the Clerk of the Court, the Creditor and the Debtor. In the case of garnishment of property, the certificate shall also be sent to the Tribal Police. Delivery of the Certificate of Garnishee is deemed to have occurred if the Garnishee mails the certificate using first-class mail to the last known address of the Creditor and Debtor.
- (b) The certificate shall state whether the Garnishee has any property of the Debtor in the possession, control or custody of the Garnishee at the time of delivery of the writ of garnishment, or an amount of such property sufficient to satisfy the Creditor's claim or Judgment, whichever is less.
- (c) The certificate shall also state the amount of any debt owed by the Debtor to the Garnishee.
- (d) If a Garnishee discovers that the Debtor is in voluntary or involuntary bankruptcy proceedings, he or she shall note that fact on the certificate. In the case of bankruptcy proceedings, the Garnishee is not obligated to send any funds or property, and the writ is treated as if it had not been issued.

2.3. 38 Liability of Garnishee Who Fails to File Certificate or Deliver Property

(a) Unless the Garnishee shall file a certificate and deliver the property required to be delivered to the Tribal Police or the Clerk of the Court within the time provided by law, the Garnishee shall be liable to the Creditor in an amount equal to the lesser of:

(1) The amount required to satisfy Creditor's claim or Judgment; or

(2) The value of the Debtor's property held by the Garnishee at the time of the Garnishee's receipt of the writ of garnishment.

(b) Delivery of the property by the Garnishee to the Tribal Police or the Clerk of the Court, as the case may be, shall discharge the Garnishee from liability to the Creditor for the value of the property delivered. The Tribal Police or the Clerk of the Court shall, when requested, provide the Garnishee with a receipt for any property received.

2.3. 40 When Garnishee Punishable for Contempt

If a Garnishee fails to provide a certificate within the time stated, or if a certificate, when given is not satisfactory to the Court, or if the Garnishee fails to deliver the property within the time stated, the Garnishee or an officer of the Garnishee may be ordered by the Court to appear and be examined on oath concerning the same, and disobedience of such order may be punished as contempt.

2.3.42 Receipt and Disbursement of Funds

(a) Any funds recovered under the writ of garnishment shall be delivered directly to the Clerk of the Court. Upon receipt of the funds, the Clerk of the Court shall at the election of the Person seeking recovery, forward the funds by whatever means is appropriate, or inform the Person seeking recovery that the funds are in the custody of the Burns Paiute Tribe and will be made available for pickup at a reasonable time. Personal property which is to be garnished shall be handled in accordance with BPTC 2.2.248.

(b) Notwithstanding the previous subsection, if a Certificate of Garnishee indicates that the Debtor owes the Garnishee a debt, the Court shall review the Creditor's and Garnishee's respective claims. In such a case the Court shall enter an order that reflects the equitable recoupment interests of the Creditor and the Garnishee.

2.3.44 Garnishment of Property of Debtor Held by Another Person

(a) Property of the Debtor in the possession of a Person other than the Debtor or Creditor shall be garnished by delivery of the writ of garnishment or a true copy, plus one additional copy of the writ of garnishment to the Person in possession of the property.

(b) If any of the items described in subsection (1) of this section are not delivered to the Garnishee, the garnishment shall not be effective to garnish any property of the Debtor, and the Garnishee shall not be required to respond to the garnishment and may proceed to deal with any property of the Debtor as if the writ had not been issued.

2.3.46 Receipt of Certificate of Garnishee by Tribal Police; Duties

The Tribal Police shall accept a Garnishee's certificate that is mailed or delivered to the Tribal Police after five days from the date the writ of garnishment was delivered to the Garnishee. Upon receipt, the Tribal Police shall:

(a) Send or deliver a copy of the certificate to the Creditor or Creditor's attorney. The Tribal Police will then proceed as provided in this section and BPTC 2.2.248.

(b) The Tribal Police shall promptly mail or deliver a written notice to the Garnishee directing the Garnishee to mail or deliver the garnished property, or an amount sufficient to satisfy the garnishment, to the Clerk of the Court.

2.3.48 Disposition of Property Delivered to Court Clerk or Tribal Police; Payment of Expenses; Claim of Exemption

(a) Property delivered to the Clerk of the Court should be disposed of as follows: (a) 15 days after receipt of the property, unless a claim of exemption is filed and is pending, the Tribal Police shall sell the property in the same manner in which property is sold on execution. (b) If the Clerk of the Court receives a notice of claim of exemption or of a debt owed by the Debtor to the Garnishee, it shall hold the property pending a Court order and shall dispose of the property as ordered by the Court. (c) If the garnished property is perishable, or livestock and/or the cost of keeping the garnished property is great, the Tribal Police shall sell the property in the same manner in which property is sold on execution. (d) If the Tribal Police deem it impractical to keep and/or maintain such property, it may request the Court to exempt such property.

(b) If the Creditor notifies the Clerk of the Court or the Tribal Police that the money or property should be released to the Debtor, the Clerk of the Court or the Tribal Police shall promptly release it.

2.3.50 [RESERVED]

2.3.52 Multiple Writs; Priority

(a) A writ of garnishment for the payment of support under a domestic relations order shall take priority over any other writ of garnishment.

(b) Except as provided in paragraph 1, the priority of any other writ of garnishment shall be determined in accordance with the time it issued. Between any two writs, the one issued first shall have priority.

2.3.54 Sovereign Immunity Intact

Nothing in this ordinance is to be construed as a waiver of the sovereign immunity of the Burns Paiute Indian Tribe.

2.3.56 Severability

If any provision of this ordinance is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the remaining provisions shall continue in full force and effect.

CHAPTER 2.4 EXCLUSION

CHAPTER 2.4 EXCLUSION

GENERAL PROVISIONS

2.4.10 Authority, Interpretation, and Purpose

(a) In the customs and traditions of the Burns Paiute Tribe, individuals who posed a threat to the community were sometimes banished and excluded from the community. Today, the Burns Paiute Tribe has an inherent and federally recognized right to govern its land and territory. The Burns Paiute Constitution entrusts to the Burns Paiute Tribal Council, as the governing body of the Burns Paiute Tribe, the duty and authority to safeguard and promote Burns Paiute culture and identity, as well as the peace, safety, morals, and general welfare of the Burns Paiute People.

(b) This Code shall be liberally construed in the spirit of, and pursuant to, Burns Paiute custom and tradition and the Burns Paiute Constitution.

(c) The fundamental purposes of this Exclusion Code are twofold: the first is to protect the health, safety, and welfare of the Burns Paiute Tribe, its members, and the residents of the Burns Paiute Reservation; the second is to provide the person to be excluded with the motivation to seek treatment and rehabilitation so that his or her conduct may no longer be a threat to the health, safety, and welfare of the Burns Paiute Tribe.

2.4.11 Severability

The invalidity of any section, clause, sentence, or provision of this Code shall not affect the validity of any part of this Code which can be given effect without such invalid part or parts.

EXCLUSION AND GROUNDS THEREOF

2.4.30 Who May Be Excluded

Any individual, whether a member or a non-member of the Burns Paiute Tribe, who is shown by clear and convincing evidence to have engaged in any of the behaviors listed in section 2.4.31 may be excluded from the Burns Paiute Reservation.

2.4.31 Grounds for Exclusion

The commission of any of the following offenses, on, or off Reservation, as defined by Tribal, federal, or state laws, whether criminal or civil, shall be grounds for exclusion:

(a) Offenses involving the manufacture, delivery, distribution, or sale of a controlled substance. "Involving" shall be liberally interpreted to cover actions at all stages of the manufacture, sale, distribution, or delivery process.

(b) Sex offenses. A “sex offense” shall be liberally interpreted to mean any conduct involving illegal or coerced sexual activity, including but not limited to: rape in its various degrees; assault with intent to commit rape; sodomy in its various degrees; sex abuse in its various degrees; unlawful sexual penetration; any offense involving child pornography; contributing to the sexual delinquency of a minor; compelling or promoting prostitution; incest; and attempt to commit any offense described in this subsection. Any individual who commits a sex offense as described in this subsection shall be subject to mandatory exclusion, as set forth in section 2.4.61(c) of this Code.

(c) Offenses involving the use of a weapon that result or could have resulted in serious bodily harm. For purposes of this subsection, “serious bodily harm” shall mean a physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(d) Violent offenses, committed with or without a weapon. For purposes of this subsection, “violent offenses” shall mean offenses involving personal injury, the threat of physical injury, or the theft or attempted theft of property by force or threat of force. “Violent offenses” shall include but not be limited to murder, manslaughter, robbery, assault, extortion, intimidation, criminal endangerment, child abuse, domestic violence, and other offenses involving confrontational force or the threat of force.

(e) Exploratory, investigatory, or other analytical activities involving the Tribe, its members, or its natural or cultural resources, without the prior permission of the Tribe.

(f) Any other misconduct or objectionable condition that threatens the health, safety, or welfare of the Burns Paiute Tribe, its members, or the residents of the Burns Paiute Reservation and that is found by the Tribal Court to be sufficient cause for exclusion, provided that the individual subject to exclusion has been given notice to desist but nevertheless continues the misconduct or condition.

2.4.32 Additional Grounds for the Exclusion of Non-members

Any non-member of the Burns Paiute Tribe who is shown by clear and convincing evidence to have engaged in any of the following behaviors may be excluded from the Burns Paiute Reservation:

(a) A second or subsequent offense committed on the Burns Paiute Reservation; or

(b) A second or subsequent willful failure to adhere to a Tribal law or regulation, or the failure to correct a violation of a Tribal law or regulation after the Burns Paiute Tribal Court so orders.

PROCEDURE

2.4.60 Standing

Petitions for exclusion shall be brought in the name of the Burns Paiute Tribe. Only the Burns Paiute Tribe shall have the authority to petition the Tribal Court for the exclusion of an individual from the Burns Paiute Reservation.

2.4.61 Authorization of Complaints for Exclusion

- (a) Written complaints seeking exclusion may be submitted to the Burns Paiute Tribal Chief of Police, who will investigate to determine whether the exclusion is to be pursued.
- (b) If the Chief of Police concludes that the exclusion of an individual is justified, he or she shall submit information to the Tribal Prosecutor, who shall determine the appropriateness of filing a petition for exclusion.
- (c) In those situations where information provided to the Burns Paiute Tribal Chief of Police would support the mandatory exclusion of an individual under section 2.4.31(b) of this Code, the Chief of Police shall forward such information to the Tribal Prosecutor, who shall file a petition for exclusion in the Burns Paiute Tribal Court seeking the mandatory exclusion of such individual.

2.4.62 Procedures

Petitions for exclusion shall be treated as civil actions under chapter 2.2 of the Burns Paiute Tribal Code. Petitions for exclusion shall be filed and served according to the rules for filing and serving civil complaints. Trial by jury shall not be available in an exclusion proceeding.

2.4.63 Orders of Exclusion

The Tribal Court is authorized to issue an Order of Exclusion that excludes an individual from the Burns Paiute Reservation if the individual is shown by clear and convincing evidence to have engaged in any of the behaviors listed in sections 2.4.31 or 2.4.32 of this Code. The Tribal Court may also issue an Order of Exclusion in the case of default, or in a separate criminal proceeding in which the offender is convicted of an offense that is grounds for exclusion pursuant to sections 2.4.31 or 2.4.32 of this Code.

2.4.64 Conditional and Contingent Orders of Exclusion

Where an individual subject to exclusion demonstrates a need to be present on the Burns Paiute Reservation and a willingness to engage in treatment, services, or other rehabilitative or restorative justice activities, the Court may issue a Conditional or Contingent Order of Exclusion where appropriate. The only exception is that anyone convicted of any sexual conduct crime will not be allowed a Contingent or Conditional Order of Exclusion.

- (a) Conditional Orders of Exclusion exclude an individual from the Burns Paiute Reservation upon entry of the order, but allow the individual to regain access to the Reservation by fulfilling requirements imposed by the Court. Conditional orders of

Exclusion may also allow entry onto the Reservation only for specific purposes, including but not limited to alcohol or drug dependency treatment, funerals of immediate family members, and activities associated with funerals of immediate family members.

(b) Contingent Orders of Exclusion will take effect if the individual does not fulfill a requirement or requirements imposed under the order. A Contingent Order of Exclusion may restrict an individual's access to certain areas of the Burns Paiute Reservation or limit the individual's participation in activities conducted on the Reservation pending his or her fulfillment of the requirements imposed by the order.

(c) The requirements set forth in a Conditional or Contingent Order of Exclusion shall be relevant to the rehabilitation of the individual subject to exclusion in order that he or she may no longer be a threat to the health, safety, or welfare of the Burns Paiute Tribe.

(d) Both Conditional and Contingent orders of exclusion shall contain provisions allowing for the removal of the Order of Exclusion upon petition by the person subject to the exclusion order.

ENFORCEMENT

2.4.70 Enforcement of Orders of Exclusion

Any individual who has been excluded by the Burns Paiute Tribal Court may be immediately removed from the Burns Paiute Reservation by the Burns Paiute Tribal Police if he or she is found within the exterior boundaries of the Reservation.

IMMEDIATE REMOVAL

2.4.80 Immediate Removal

(a) The Burns Paiute Tribal Council may ask the Burns Paiute Tribal Court to order the immediate removal of any individual from the Burns Paiute Reservation if the presence of the individual on the Reservation:

(1) Presents a substantial and immediate threat to the health, safety, or welfare of the Tribe as a whole, to any individual Tribal member, to any other person within the exterior boundaries of the Reservation; or

(2) Has caused or threatens to cause destruction, injury, or other impairment to real or personal property on the Reservation, whether held by the Tribe or by an individual.

(b) Non-members of the Burns Paiute Tribe are present on the Burns Paiute Reservation only with the Tribe's permission. The Burns Paiute Tribal Council may ask the Tribal Court to order the immediate removal of a non-member from the Reservation if the non-member:

- (1) Has been cited for, convicted of, or found guilty of violating any Tribal, federal, or state law on the Burns Paiute Reservation;
 - (2) Otherwise poses a threat to the health, safety, or welfare of the Tribe; or
 - (3) Has no legitimate purpose for being present within the exterior boundaries of the Reservation.
- (c) The Burns Paiute Tribal Police, or another appropriate police entity at the direction of the Burns Paiute Tribal Police, may secure the removal of an individual pursuant to this section. Only the amount of force needed to secure the individual's removal and eliminate the threat that is posed may be used.
- (d) An individual who has been removed pursuant to this section shall be served with notice of the grounds for his or her removal. The notice shall inform the individual of his or her right to contact the Burns Paiute Tribal Court to request a hearing on the removal. The notice shall also state the conditions under which the individual may enter the Reservation for such hearing. If the individual requests a hearing, the hearing shall be set for the next regularly scheduled Tribal Court date. A Removal Hearing shall be treated as a civil action pursuant to chapter 2.2 of the Burns Paiute Tribal Code, as applicable. A trial by jury shall not be available.

REVOCAION OR AMENDMENT OF ORDERS OF EXCLUSION

2.4.90 Revocation or Amendment of Orders of Exclusion

- (a) Any individual who has been excluded from the Burns Paiute Reservation pursuant to an Order of Exclusion issued by the Burns Paiute Tribal Court may petition the Tribal Court, in writing, for the revocation or amendment of the order if at least one (1) year has passed since the Tribal Court issued the initial order. A hearing on the petition shall be conducted in accordance with chapter 2.2 of the Burns Paiute Tribal Code, as applicable.
- (b) The Tribal Court may revoke or amend an Order of Exclusion if the Court finds, by clear and convincing evidence, that the individual is no longer a threat to the health, safety, or welfare of the Burns Paiute Tribe.